

SIMON TUGWELL O. P., *Did Dominicans practice affiliation in the thirteenth century?: I: Two nineteenth-century arguments*, in «Archivum Fratrum Praedicatorum» (ISSN 0391-7320), 79, (2009), pp. 85-191.

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.

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.



Nota copyright

Tutto il materiale contenuto nel sito [HeyJoe](#), compreso il presente PDF, è rilasciato sotto licenza [Creative Commons](#) [Attribuzione-Non commerciale-Non opere derivate 4.0 Internazionale](#). Pertanto è possibile liberamente scaricare, stampare, fotocopiare e distribuire questo articolo e gli altri presenti nel sito, purché si attribuisca in maniera corretta la paternità dell'opera, non la si utilizzi per fini commerciali e non la si trasformi o modifichi.

Copyright notice

All materials on the [HeyJoe](#) website, including the present PDF file, are made available under a [Creative Commons](#) [Attribution-NonCommercial-NoDerivatives 4.0 International License](#). You are free to download, print, copy, and share this file and any other on this website, as long as you give appropriate credit. You may not use this material for commercial purposes. If you remix, transform, or build upon the material, you may not distribute the modified material.



DID DOMINICANS PRACTISE AFFILIATION IN THE
THIRTEENTH CENTURY?
I: TWO NINETEENTH-CENTURY ARGUMENTS.¹

BY
SIMON TUGWELL OP

1. *Introduction*

Present-day Dominican law recognizes two different ways in which a friar is inserted into the structure of the order, *affiliatio* and *assignatio* (LCO 267-270). Assignment determines the province and convent to which he is attached at any given moment, and in general an assignment lasts until it is superseded by a new one emanating from the provincial or the master of the Order. Affiliation, on the other hand, determines which province he belongs to in a more absolute sense, regardless of where he may be assigned; it is contracted by entry into the Order in or for a particular province, and it is unaffected by an assignment outside that province and can be changed only by the master.

¹ Berthier = J.J.Berthier, ed., *Humberti de Romanis opera de vita regulari*, Rome 1888-1889. Const. = (Dominican) constitutions. De Meyer, *Cong. Holl.* = A. De Meyer, *La Congrégation de Hollande, documents inédits*, Liège 1946. Douais, *Acta* = C.Douais, ed., *Acta capitulorum provincialium ordinis Fratrum Praedicatorum*, Toulouse 1894. EV = *Escritos del Vedat*. Fontana, *Constitutiones* = V.M.Fontana, *Constitutiones, declarationes et ordinationes capitulorum generalium*, Rome 1655. Jasinski, *Summarium* = C.Jasinski, *Summarium ordinationum capitulorum generalium*, Brescia 1654 (I have not seen the first edition published in Kraków in 1638). LCO = *Liber Constitutionum et Ordinationum ordinis Fratrum Praedicatorum*, first ed. Vatican City 1969 (cited by paragraph-number). Madura = R.F.Madura, ed., *Acta capitulorum provinciae Poloniae Ordinis Praedicatorum*, Rome 1972. Maiarelli, *Cron. Per.* = A.Maiarelli, ed., *La Cronaca di S.Domenico di Perugia*, Spoleto 1995. Orlandi, *Necrologio* = S.Orlandi, "*Necrologio*" di S.Maria Novella, Florence 1955. Z = Zaragoza, Bibl. Univ. MS 185 (provincial chapters of Aragón). I give references to Jordan's *Libellus* ('*Lib.*') and the Bologna canonization process ('*Acta canon. Bonon.*') according to the paragraph-numbers in MOPH XVI, and to the *Vitas fratrum* according to the page-numbers in MOPH I, but I cite my own working editions.

The Jandel constitutions of Paris 1872 recognized the same distinction, except that affiliation was taken to mean affiliation to a convent, contracted by reception of the habit for a particular convent; by decree of Clement VIII in 1601 it could not be changed after profession except on the authority of the pope (pp.252-254).²

The first step towards the establishment of provincial rather than conventual affiliation as the norm throughout the Order was taken in 1885. The general chapter of that year, noting that affiliation to particular convents was causing problems, made the following inchoation (*Acta* 49): 'Volumus ac decernimus ut deinceps, apud nos, affiliatio fiat non *ad aliquem Conventum* sed *ad Provinciam*; prout iam in pluribus Provinciis nostris a multo tempore consuetum est.' This was endorsed in 1891 (*Acta* 39), and brought into effect in 1895 (*Acta* 88) with the proviso 'firmo tamen remanente iure antiquo de affiliatione ad Conventum in illis Provinciis quae circa hoc nihil innovandum esse censuerint'. On 4 Aug. (the feast of St Dominic) 1913 Pius X imposed on the whole Order the principle of affiliation to provinces rather than convents: 'Quod singuli Sodales adscribantur ut filii, non quemadmodum ante actis temporibus ad peculiare aliquod coenobium, sed contra ad Provinciam, id quum hodiernae rerum conditioni videatur aptius congruere, ... decernimus auctoritate Nostra consuetudinem hanc Sodales ad Provinciam adscribendi iam nunc vim habere et naturam induere Constitutionis Ordinis propriae' (ASOP 11 [1913] 160-161).

It is worth remarking that conventual and provincial affiliation are treated as straightforward alternatives; contrary to what we might have expected, there is no hint that provincial affiliation had previously existed alongside conventual affiliation and that the new practice effectively meant suppressing the latter and leaving the former in sole possession of the field. On the face of it there need not be any contradiction between being *filius* of a convent and being *filius* of the province to which the convent belongs, and Jasinski actually begins his article on *Affiliationes* by citing texts to show that each friar's convent is the one of which he is a *filius* and that he is a *filius* of the province in which or for which he made profession

² The general chapter of 1601 included a number of ordinations made 'ex mandato sanctissimi domini nostri Clementis octavi', one of which was 'ne fiant affiliationes de uno conventu in alium ex quacunque causa, sed tantum maneant filii conventus qui ibidem professionem emisissent'; the ordination was 'accepted' (*acceptamus*), i.e. not revoked, by the chapter of 1605 (MOPH XI 21.5-8, 69.9-15).

(*Summarium* 20). But the text cited for the latter, a declaration of the 1428 general chapter (MOPH VIII 207.1-4), does not actually use the language of affiliation and Jasinski's interpretation of it was not taken up by Fontana.

Fontana's article on *Affiliationes* does contain a few references to the transfer of affiliation from one province to another (*Constitutiones* 36-37), but the texts he cites tend rather to confirm that the Order had not developed a concept of provincial affiliation.

A declaration which he quotes from the 1530 general chapter required that, if a friar who was transferred from one province to another (or from a congregation to a province) failed to acquire a convent 'cuius sit filius' within a year, he should be sent back to his former province (MOPH IX 226.23-26); in other words, 'translation' to a different province resulted in a new affiliation only if it led to a friar becoming *filius* of a convent of that province.³

Fontana also twice cites an admonition from the 1596 chapter, once to show that transferring the brethren's *affiliationes* is the business of the master and the general chapter, and once to show that provincials do not have authority to transfer *affiliationes* from convent to convent and from province to province. The admonition (MOPH X 371.35-41) bids provincials

ut omnino abstineant a translatione fratrum per affiliationem, potissime ab aliis provinciis ad suas respective, cum translatio ista ad generale capitulum vel ad ipsum reverendissimum patrem generalem tantummodo pertineat secundum nostras leges et constitutiones, sine quorum auctoritate factas translationes sive affiliationes nullas esse decernimus, et fratres sic translatos et affiliatos ad suas remittimus provincias.

³ Iacobus de Viterbo was transferred from the Roman *province* to the *convent* of Kraków by the master on 18 June 1546 'interveniente consensu provincialis et maioris partis fratrum', which implies that it was only when he was accepted as *filius* of a convent that his change of province was truly effected (Madura 666). This is even clearer in the case of Hiacyntus Polonus whom the 1580 general chapter transferred from the Roman to the Polish province at his own request (MOPH X 210.23-24); the transfer of 'fr. Hiacintus Leopoliensis' was duly noted by the provincial chapter later in the year (Madura 423), but it was only on 26 Jan. 1583 that the process was completed by the vicar general's transfer of his affiliation *from the Roman province* to the convent of Leopolis at the convent's request (Madura 679). Cf. also the ordination of the 1569 general chapter forbidding members of the province of Greece to be affiliated 'in *conventibus* aliarum provinciarum' (MOPH X 93.31-35); translocation was not from province to province but from one province to a *convent* of another province.

Since the first printed edition of the constitutions, that published by Vincenzo Bandello in Milan in 1505, the commentary on const. I 13 contained a declaration that assignation was the only way in which a provincial could determine which convent someone belonged to;⁴ if he would be exceeding his authority by transferring affiliations within his own province, it would be even more outrageous for him to do so with someone from another province, and this was the 1596 chapter's main concern. But in the light of the 1530 declaration there can be little doubt that *translatio* refers to the transfer from one province to another and that *affiliatio* refers to the affiliation of someone so transferred to a particular convent.

It is certainly possible to find references to people being *filii* of provinces,⁵ but the Order does not seem to have developed the notion of provincial affiliation in tandem with that of conventual affiliation; we must accordingly be prepared to find Dominicans using the term on the assumption that it meant conventual affiliation, as it did for Clement VIII when he explained on 19 May 1603 how his regulations on the training of novices in specially designated houses could be combined with the practice of affiliation.⁶

The 1885 inchoation, then, even if it was just a proposal to generalize something which was already functioning in some parts of the Order, did not merely involve simplifying a pre-existing system under which affiliation operated homogeneously at two levels, it called for a real change of system; and it has been widely assumed that this change overturned a practice going back to the earliest days of the order. Mortier, for instance, commenting on Jordan of Saxony's 'oeuvre législative', says 'Le novice était reçu par un couvent et lui appartenait; ... c'était ce que l'on appela l'affiliation conventuelle'.⁷ In his account of the structure of the Order in its early years Walz mentions that new recruits were provided for by the convent by which

⁴ Milan 1505 ff.40^v-41^r, Venice 1507 f.27^r, Rome 1566 f.35^v.

⁵ One was added to the constitutions in 1518 (MOPH IX 164.4-6).

⁶ 'Quia in quibusdam ordinibus filiationis usus est receptus, declaratur quod licet decretum sit ut noviciis educandis certa monasteria aut conventus designata quilibet ordo habere debeat, licitum tamen sit superioribus monasteriorum et conventuum huiusmodi ordinum in quibus filiationis usus receptus est eos quos praenarratis qualitatibus suffultos repererint in suorum locorum filios iuxta cuiusque ordinis constitutiones adscribere sicque adscriptos ... ad loca noviciatum cum testimonialibus literis transmittere, ubi tanquam dictorum conventuum seu monasteriorum filii eorundem nomine et instantia recipi ac in noviciatu probari ... debebunt' (BOP V 606-607).

⁷ A.Mortier, *Histoire des Maîtres Généraux I*, Paris 1903, 178.

or for which they were received, and casually identifies this as *affiliatio ad conventum*.⁸ D'Amato relegates the principle to an aside as if it were a self-evident truth: 'Il domenicano, pur essendo affiliato ad un determinato convento (in seguito sarà affiliato alla provincia), al momento della professione promette obbedienza al maestro generale'.⁹ In his article on provinces in the *Dizionario degli Istituti di Perfezione* A.Gautier says with regard to the Dominicans, 'In un primo tempo i religiosi saranno generalmente incorporati nel convento piuttosto che nella provincia ... Poco alla volta, tuttavia, il ruolo avuto dalle strutture provinciali diventerà più importante, ma solo nel 1913 l'incorporazione nella provincia diventerà normativa presso i Frati Predicatori' (VII 1059).¹⁰

Despite this modern consensus, though, it remains open to question whether the concept or practice of affiliation really did exist in the early years of the Order. Since it is not generally claimed that the actual terminology of affiliation is found then, we shall mainly be testing allegations that there are traces of affiliation without the name, and we must be clear what this must mean if it is to be convincing. For anything to count as evidence of affiliation without the name it must point to something with the same distinguishing features as affiliation with the name, otherwise we shall simply be indulging in equivocation.

2. Clarification of terms

An assignation to a convent obliged the person so assigned to move to that convent. As it says in the 1872 constitutions:

Declaramus quod in potestate Provincialis positum est Fratres suae Provinciae ex uno ad alium Conventum per assignationem transferre,

⁸ 'Qui ordinem intraverunt ab illo conventu a quo vel pro quo recepti sunt sustentabatur. ... Quae affiliatio ad conventum magis magisque strictior effecta est, donec ad conventualismum perduxerit' (A.Walz, *Compendium Historiae Ordinis Praedicatorum*, Rome 1948, 116). He dates this growth of *conventualismus* to the fourteenth century (ibid. 111).

⁹ A.D'Amato, *L'Ordine dei Frati Predicatori*, Rome 1983, 56.

¹⁰ This is quoted in Spanish, without acknowledgement, in Carlos Azpiroz Costa's Angelicum doctoral dissertation (*El capítulo provincial en el libro de las Constituciones y Ordenaciones de la Orden de los Frailes Predicadores*, Rome 1992, 107), but the only text he cites in his note comes from the general chapter of 1451 (MOPH VIII 256.13-15), hardly evidence for 'un primer tiempo'.

nec isti possunt, quocumque praetextu, resistantiam opponere (p.352).
 ... Fratres assignati celeriter ad obediendum se disponant ... ut, post
 notitiam assignationis, Fratres, saltem infra octo dies, iter arripiant
 versus Conventum suae assignationis, nisi aliter in ipsis litteris
 dispositum fuerit (p.354).

Affiliation¹¹ identified the convent to which someone belonged, and he would be expected to live there unless he was moved somewhere else (ibid. 252):

Declaramus quod in Ordine nostro quilibet Frater debet pertinere ad unum Conventum, qui dicitur *suus*, cuius *filius* appellatur, a quo sustentatur, in quo permanet, et in quo fruitor iuribus quibus fruuntur assignati; nisi Provincialis aliter disposuerit, ipsum alibi assignando simpliciter aut ad tempus.

Affiliation offered no protection against being moved: 'Affiliatio non confert ius inamovibilitatis a Conventu' (ibid. 254); and someone who had been moved elsewhere had no right to return to his convent of affiliation unless he was re-assigned there: 'Assignati simpliciter numquam intelliguntur assignati in Conventibus quorum sunt filii, nisi reassignentur' (ibid. 355).¹²

Simple (unqualified) assignation was distinguished from assignation *ad tempus*, 'id est ad exercitium seu Officium certo tempore durans et determinato'; the latter lapsed when the *exercitium* or *officium* was finished, whereupon those so assigned 'remanent ipso facto assignati vel in Conventu in quo, ante haec Officia, inveniebantur assignati simpliciter, vel in Conventu suae affiliationis, si non fuerint in aliquo alio Conventu assignati simpliciter' (ibid. 355). In other words, a temporary assignation did not annul a previous simple assignation, and it was this (or a new assignation) which determined where a friar went when he had completed his *exercitium* or *officium* (as prior or student, for example); he could only return to his convent of affiliation if he

¹¹ Strictly speaking *filiatio* means the state of being a *filius*—for example, in Latin translations of Dionysius, *Theol. myst.* 3, *paternitas et filiatio* was generally used for *πατρότης τε καὶ υἱότης* (P.Chevallier, *Dionysiaca*, Paris 1937, 585)—and *affiliatio* means making someone a *filius* (it is treated as synonymous with *adoptio*, in *filium acceptio*, in Balbi's *Catholicon* s.v. *adoptare*); it is sometimes useful to remember this specific sense of *affiliatio*, but the distinction has not always been observed in Dominican usage and is now generally forgotten.

¹² This was added to the constitutions in 1518 (MOPH IX 158.34-36).

had not previously been simply assigned away from it or if he was reassigned there.

Assignment, whether simple or temporary, was also distinguished from *depositatio* or *deputatio* by which friars could be moved for a short time to a convent other than their house of assignment; this was not supposed to last for more than four months 'quibus expletis, non maneat deputatus quisque Frater, nec in alio Conventu possit deinde toto anno deputari, sed redire teneatur ad Conventum suae assignationis, nisi alias Provincialis ipsi de Conventu alio per assignationem providerit' (ibid. 356-357).

Whatever terminology is used, affiliation with or without the name must in the first place be distinguishable from assignment, a distinction which is most visible when the two do not coincide. On 24 August 1391, for example, Raymund of Capua made fr. Georgius Baptistae de Pera *filius natus pro perpetuo* of Pera, a house of the Societas Peregrinantium, and on 25 August he assigned him to Mondovì in the province of Lombardia Superior (MOPH XIX 223 nos. 27-28).

Nor is it enough to find evidence of people belonging in different ways to more than one convent, since this could result from temporary assignment or *deputatio*. The distinction between simple and temporary assignment was already made in the thirteenth century with reference to people sent outside their provinces.¹³ Under a constitutional amendment confirmed in 1423 the goods of someone who died while on any temporary assignment, whether outside his province or within it, were to belong in equal parts to his 'original

¹³ A modification to const. II 14 confirmed in 1242 distinguishes between a friar assigned *simpliciter* to teach in a different province and one sent *ad tempus*: 'Si simpliciter illi provincie ad quam mittitur assignetur' any books he had received from the province *de qua mittitur* will belong to that province after his death, but the rest are to belong to the province *ad quam mittitur*; 'si vero ad tempus mittitur omnes libri ad provinciam de qua assumptus est revertantur', and the same applies to people sent from one province to another 'non ad regendum' (infra Appendix, 1242.29-37). This was substituted for an earlier, simpler distinction between people sent to another province to teach and people who were not sent to teach (Primitive const. X 18, AFP 71 [2001] 143), presumably understood by Raymund of Penyafort as a distinction between lecturers and students since he included it in his const. II 14 'de studentibus' (ed. R.Creytens, AFP 18 [1948] 66). I cite the Primitive constitutions by chapter-number in accordance with A.H.Thomas's edition in *De oudste constituties van de Dominicanen*, Louvain 1965, but I take the text from my own working edition of the first distinction and the edition of the second distinction I published in AFP 71 (2001) 5-182.

convent' and the one 'de quo assumptus fuit', i.e. the one to which he was previously assigned (MOPH VIII 181.24-30). Unlike simple assignation, being sent somewhere *ad tempus* did not entirely break a friar's link with the province or convent he came from; a fortiori the same was true of someone merely *deputatus* to another convent.

The case of John Halewik illustrates the different ways in which the same person could be associated simultaneously with several convents: on 7 June 1397 Raymund of Capua appointed him lector of Athenry in Ireland for three years, and then on 22 June he both 'assigned' him to Dunwich and 'transferred' him from Ipswich to London (MOPH XIX 191 no. 130, 193 nos. 144 and 150); while Halewik was in Athenry, assuming he took up his position there, he remained simply assigned to Dunwich and affiliated to London.

Affiliation as a legal concept must also be distinguishable from the brute fact of being a native of a particular place or having joined the Order in or for a particular place. If you originated in the territory of the convent of Riga and were duly received into the order in or for that convent this fact may continue to be of antiquarian or sentimental interest even if you subsequently distinguish (or disgrace) yourself at the other end of the world—historians may wish to point out that you came from Riga, and the people and friars of Riga may view your career as a source of civic or conventual pride or embarrassment; but that is not the same thing as legal affiliation.

Even if entering the Order in or for a particular place had legal consequences this does not necessarily mean anything more than that a friar's original convent was effectively his first house of assignation. Nothing can be inferred about affiliation unless there are legal consequences which can be distinguished from those resulting from assignation, as, for example, in the constitutional change confirmed in 1518 under which the allocation of a dead friar's goods involve his original convent (the one for which he entered the Order), the convent of which he was a *filius* (if different from his original convent), and the convent in which he was assigned when he died.¹⁴

The most obvious hallmark of affiliation as distinct from the brute fact of originating in such and such a place is that, unlike the brute fact, legal affiliation could be altered by a competent authority, as when fr. Iacobus de Tuba was 'translatus de conventu Wormaciensi'

¹⁴ The text in MOPH IX 164-165 is defective, but see 133.8-22 and const. II 14 in any edition after 1518.

by Raymund of Capua on 29 March 1398 'et factus filius natus conventus Argentinensis', and on 15 April 'fr. Iohannes de Ludguno conventus Brugensis fuit translatus de provincia Franciae ad provinciam Saxoniae et factus filius natus conventus Novimagensis' (MOPH XIX 152 nos. 265 and 270). In this respect affiliation is like citizenship: if you are born in France you will ordinarily be a French citizen; but, though no one can give you a different birthplace, legal procedures may be followed which will make you a citizen of Zimbabwe or Mongolia or wherever.

In sum, if we are to show that affiliation existed in the thirteenth century, with or without the name, we must adduce evidence that the Order recognized a way of belonging to a convent which was unaffected even by simple assignation to another convent, and which can be distinguished (most obviously by being transferable) from the mere fact of having entered the Order for that convent or having originated in its territory.

We must also be careful not to cheat by assuming that early occurrences of terminology which is associated with affiliation in later sources can be used without further ado as early evidence of affiliation. For example, Jasinski begins his entry on *Affiliationes* with the statement 'Cuiuslibet fratris conventus est ille cuius est filius' (*Summarium* 20), the authority for which is a clause in const. I 7, 'Conventum autem suum dicimus cuius est filius'; this was inserted in 1518 (MOPH IX 160.25-26) to clarify a text confirmed in 1247, 'Fratres leprosi infra septa sui conventus seorsum ab aliis procurantur' (MOPH III 38.9-10). Whether or not it was legitimate for Jasinski to generalize the scope of this clarification in the seventeenth century, in the thirteenth century *suus conventus* could certainly be used to mean someone's convent of assignation, as when the Spanish provincial chapter of 1249 said 'Volumus et monemus quod fratres assignati per capitulum vadant recta via ad conventus suos non contrahendo moram' (AD 5 [1984] 25), or that of Provence in 1252 directed people who had received assignations 'cum matura festinatione vadant ad domos suas' (Douais, *Acta* 47).

Fontana also begins his account of *Affiliationes* by citing const. I 7, and he follows it with an alleged quotation from the general chapter of 1451, 'Declaramus quod illorum Conventuum filii habendi sunt Fratres pro quibus habitum Ordinis susceperunt' (*Constitutiones* 35-36). We do not have the acts of the 1451 chapter, but Jasinski (loc. cit.) seems to be more honest in paraphrasing the declaration without the word *fili*: 'Similiter Romae 1451 declaratum fuit quod quilibet

Frater ad illum Conventum pertinet in quo habitum suscepit et in quo vel pro quo Professionem emisit'.¹⁵ Whatever the meaning of *pertinere* in the fifteenth and seventeenth centuries, it clearly does not refer to affiliation when the 1290 provincial chapter of Provence says 'Ordinamus quod fratres missi ad studia naturarum et logice nove ad conventus ad quos missi fuerint pertineant usque ad sequens provinciale capitulum nisi de ipsis interim aliter fuerit ordinatum' (Douais, *Acta* 337).

It must also be borne in mind that the distinguishing theoretical features of affiliation may not be typical of its effects in practice. In practice it is probably the case that throughout much of the Order's history most friars spent their whole Dominican lives without ever being simply assigned away from their original convents. One of the explanations given by Humbert in about 1250 for the Order's lack of uniformity is

quod pauci sunt fratres qui transierunt per diversas provincias vel domos multas, et ideo pauci sunt qui viderunt huiusmodi varietates sed putant quod ubique fiat quod fit in domibus suis, et ideo, quia ignorant istas varietates, non institerunt neque miserunt petitiones ad capitula ut apponeretur in hiis consilium.¹⁶

If it had not been usual for people to remain in the convents for which they entered the Order it would not have been possible to invoke affiliation in an attempt to turn the norm into a rule, as was apparently being done in the late seventeenth century, prompting the general chapter of 1686 to complain about the *non levia inconvenientia* and the *rebelliones et dissolutiones* which resulted from the claim being made by some people that they could not be moved

¹⁵ The text printed in MOPH VIII 256 is actually Taegio's report of the chapter's acts; according to him 'Declaratum fuit ... fratres ad illos pertinere conventus in quibus habitum nostri ordinis susceperunt et in quo et pro quo professi sunt, nisi aliter per magistrum ordinis vel priores provinciales ordinatum fuerit' (Bologna, Bibl. Univ. 1894 f.247^v; AGOP XIV 52 f.199^r). Borselli quotes the chapter as saying 'Declaramus fratres pertinere ad conventus in quibus habitum nostri ordinis susceperunt et in quo vel pro quo professionem fecerunt nisi aliter fuerit per reverendum magistrum ordinis vel provinciales ordinatum' (Bologna, Bibl. Univ. 1999 f.197^v).

¹⁶ Berthier II 6; I take the text from Bologna, Bibl. dell'Archiginnasio A 214 ff.47^v-48^r, which contains the original version of Humbert's *Expositio super Constitutiones*, written in about 1250 (cf. Tugwell, MOPH XXX 285-294).

'a suis conventibus originariis et quorum sunt filii' (MOPH XIII 217-218). The chapter's reaction shows that this was not a correct understanding of affiliation.

Precisely because affiliation cannot be distinguished from other ways of belonging to a convent in these circumstances unless the actual term is used, we must beware of inferring that a concept of affiliation was implicitly operating if we find earlier evidence that it was normal for people to spend their lives in the convents for which they first entered the Order.

Thus forearmed against temptation let us begin to look at evidence which has been adduced to show that conventual or provincial affiliation was at work in the thirteenth century.

3. *Pio Tommaso Masetti*

The generally accepted modern doctrine was originated by Pio Tommaso Masetti,¹⁷ the only authority cited by Mortier and Walz for their statements about the early practice of conventual affiliation. In his *Monumenta et Antiquitates* published in 1864 he appended 'aliquam de Filiatione, ut vocant, inquisitionem' to a discussion of the reception, noviciate and profession of new recruits, unpacking the question as 'an scilicet recepti iuvenes ita uni Domui addicerentur, ut ab ea omnia reciperent, ipsi vero omnia darent toto quod vixissent tempore'.¹⁸

The way the question is formulated suggests that Masetti was not thinking of the legal concept of affiliation even as it existed in his own day, but of a principle of perpetual residence in the convent for which a new recruit was received into the Order; he anticipates what is said in the Jandel constitutions (quoted above) about everyone having a convent 'cuius filius appellatur, a quo sustentatur, in quo permanet', but without the rider 'nisi Provincialis aliter disposuerit ipsum alibi assignando'. It would be absurd to expect someone assigned to Rome, for example, to 'receive everything from and give everything to' a convent in Siena or Valladolid or Bogotá if that was

¹⁷ For an outline of the life of Masetti (1816-1900) see his obituaries in ASOP 4 (1900) 524 and MD 17 (1900) 212-217 (with a list of his writings).

¹⁸ *Monumenta et antiquitates veteris disciplinae ordinis Praedicatorum*, Rome 1864, I 59-61.

his house of affiliation,¹⁹ and in any case the house with which a friar had this kind of relationship was and always had been the one to which he was assigned.²⁰

Masetti was not dispassionately arguing an historical point, he was defending the antiquity of a principle he considered desirable against people who denied its antiquity and value, particularly two distinguished scholars from the Congregation of Bl. Giacomo Salomini, Daniele Concina (1687-1756, on whom see DBI XXVII 716-722) and Bernardo Maria De Rubeis (1687-1775, on whom see DBI XXXIX 238-239).

In his *Commentarius historico-apologeticus*, first published in Venice in 1736 under the pseudonym Antonius Plantamura, Concina argued that 'the law of affiliations' was not yet in existence in 1380 when Raymund of Capua was elected master, and that it originated 'ex ipsius Ordinis relaxatione'. The Order was decimated by the Black Death, so, to avoid leaving convents empty, unsuitable young men were recruited indiscriminately ('iuvenes pietate et litteris destituti nullo delectu recipiebantur') and, to stop them leaving, most of the Order's traditional austerities were waived in the futile hope that they could be reimposed later on when the young men matured. In the ensuing period, 'ex bellorum, pestis et schismatis cladibus ruentibus coenobiis', friars left their convents to look after themselves elsewhere ('ut vitae suae consulerent Fratres alio se se recipiebant'). 'Quapropter Patres

¹⁹ According to his obituary in ASOP Masetti was a *filius* of the Minerva, but from 1858 until 1870 (which covers the period when he was compiling the *Monumenta*) he was a penitentiary at S.Maria Maggiore (G.Cappelluti, *Il Collegio Apostolico della Penitenzeria di S.Maria Maggiore in Rome*, Vatican City 1988, 96); the penitentiaries formed an independent *canonicatus* with its own financial arrangements (ibid. 51-57), so while he was there it would have been most irregular for him to receive everything from and give everything to the convent to which he was affiliated.

²⁰ In the constitution enacted by the most general chapter of 1236 requiring the brethren to show *omnia sibi commissa* to their priors (*prioribus suis*) once a year and put everything at their priors' disposal (MOPH III 7.3-5) 'their priors' cannot ever have meant anything other than the priors of the houses where they were actually living, i.e. the houses to which they were assigned; and it should be noted that this remained in the constitutions until modern times and survived the transition from conventual to provincial affiliation unchanged (Raymund of Penyafort placed it in const. I 14, and it became 554-§III in the Gillet constitutions promulgated in 1932). According to the amendment to const. II 14 confirmed in 1518 making a clear distinction between affiliation and simple assignation the house of assignation gets a full share in a deceased friar's goods only if he had actually been resident there and it had provided for all his needs in health and in sickness 'as it is obliged to' (*prout tenetur*) (the text in MOPH IX 165.5-10 is defective, but see 133.14-20 or any post-1518 edition of the constitutions).

in comitiis generalibus congregati, ut maius malum evitarent, decreverunt singulis Fratribus suam peculiarem domum assignare, eiusdemque filios constituere, ut hoc privilegio devincti eam incolerent, gnari quod non raro validius pro focus quam pro aris pugnatur'.

The *lex affiliationum* which Concina believed to have been introduced by some general chapter is apparently to be identified with the first text cited by Jasinski on affiliation, the clause inserted into const. I 7 glossing *suus conventus* as the convent of which one is a *filius*; Concina could not date the insertion precisely, but he had manuscript evidence that it was not yet in the text in 1420, and in his view it was an untraditional and desperate measure, introduced in the wake of the disasters which had ravaged the Order in the fourteenth century, with the aim of inspiring in not very religious friars a proprietorial feeling about their convents which would discourage them from running away when things got difficult.

Concina's evidence that the law was not primitive includes the false claim that Fontana 'affirmat ... sub initium Religionis nostrae legem affiliationum non fuisse conditam';²¹ but he was on firm ground in remarking that there is no mention of this law in the constitutions or in the acts of general chapters in the first century of the Order's existence.²²

Concina's position needs to be situated against an historical background provided by De Rubeis.

²¹ Concina quotes part of Fontana's comment on Clement IV's letter of 9 June 1268 (BOP I 493 no. 83) requiring Dominicans who become bishops to surrender their goods to the priors and convents 'de quibus assumpti fuerunt'. Fontana found this ambiguous: 'Quia vero tunc temporis non erant in Ordine institutae Conventuum Affiliationes, supradictae Apostolicae Constitutionis verba *Prioribus et Conventibus de quibus assumpti fuerunt cum integritate resignentur* possunt modo et de Conventibus originalibus et de illis in quibus fuerint assignati intelligi, pro qua dubietate tollenda debet ex capitulis generalibus aliqua declaratio super hoc emanere' (*Constitutiones* 259). If Fontana really meant to deny that conventual affiliation existed in Clement's day there would have been no ambiguity to be resolved since 'de quibus assumpti fuerunt' could then only mean their convents of assignation. His point seems to be that in 1268 there were only two possibilities (original convent, convent of assignation), because it was only later that a third possibility arose (someone's convent of affiliation as distinct from his original convent); it is not *filiatio* whose existence in 1268 he was denying but *affiliatio* in the sense of transfiguration.

²² I have not seen the original edition of the *Commentarius*. The work was re-issued under Concina's own name in Venice in 1742; the comments on affiliation come in the first chapter of the *Dissertatio historica de origine disciplinae regularis* ..., ed. cit. 99-100.

The Congregation of Bl. Giacomo was erected within the province of St Dominic in 1662, with its own vicar but under the jurisdiction of the provincial,²³ and before long it was having problems with affiliation. Members of the congregation, disaffected with its strict observance, were leaving their convents to find a more congenial form of Dominican life elsewhere, but they remained *fili* of the convents they had left; since Italian convents were allotted a fixed number of *fili* this meant that the deserters could not be replaced. A remedy was found in 1692-1693 in measures taken by the master, the Sacred Congregation for Bishops and Regulars, and finally Innocent XII, allowing deserters to be stripped of their affiliation to convents of the congregation (De Rubeis 346-352); but in 1697, learning that the recently founded Congregation of Santa Sabina²⁴ had been allowed to receive people to profession without any affiliation to particular convents (*adfiliationibus* queis singuli singulis adscribi Coenobiis solent omnino sublatis'), the Congregation of Bl. Giacomo asked for and received the same permission. In De Rubeis's words this seemed a sound policy 'quo plurium submovebatur malorum causa quae oriri ex huiusmodi adfiliationibus facile poterant, eaque simplicissima inducebatur vitae ratio quam florentibus instituti Praedicatorum Ordinis temporibus Maiores nostri constantissime coluerunt'. The chapter of the congregation in 1701 accordingly decreed 'ut *adfiliationes* imposterum de medio tollerentur' (De Rubeis 375-376).

De Rubeis waxes lyrical on the advantages of life without affiliation (De Rubeis 376):²⁵

Vitam ergo absque ullo *Adfiliationis* iure ducimus in Congregatione, nulli addicti loco aut Coenobio. Conventus incolimus sive mediocres sive ampliores, in urbibus aut oppidis aut pagis positos, quos Praefectus

²³ J.F.B.M. De Rubeis, *De rebus congregationis sub titulo Beati Jacobi Salomonii in Provincia S. Dominici Venetiarum erectae*, Venice 1751, 254-256. In 1531, when Clement VII turned the observant Congregation of Lombardy into the province Utriusque Lombardia, the old province of St Dominic (Lombardia Inferior) was reduced to a vicariate; in 1580 it was restored to the status of a province and designated Provincia Sancti Dominici Venetiarum (S.L.Forte, AFP 42 [1972] 137).

²⁴ The Congregation of Santa Sabina was formed out of convents from the province of Lombardy in 1695 (BOP VI 412-413).

²⁵ That affiliation could really cause problems is clear from other evidence. Both the Congregation of Holland and the province of Poland had to insist that friars assigned to convents were as much members of them as *fratres nativi*: in 1494 the chapter of the Congregation of Holland 'declared' that 'non debere discerni inter fratres nativos et assignatos alicuius conventus, sicuti quidam faciunt dicentes de assignatis quod non sunt de conventu, cum de utrisque idem per omnia debeat esse iudicium' (De Meyer, *Cong. Holl.* 201); and the provincial chapter of Poland issued a similar

Congregationi singulis designat, mandatis eius quae pro conditione et idoneitate alumnorum temperantur prona voluntate obsequentes. Communi bono addicti, pari studio emolumenta huiusce vel alterius loci curamus ubi nos degere contingit, deque rebus omnibus necessariis ubique pari providentia instructi singulas omnesque perinde stationes gratas habemus. Faxit Deus ut hanc vitae rationem, quam novimus antiquis Maiorum nostrorum moribus consentaneam ac regulari proficuum disciplinae, iugiter perseverantes custodiamus.

Benedict XIII, a Dominican from the province of Lombardy, was not of the same mind. On 5 June 1726 he reunited the Congregation of Santa Sabina with the province of Lombardy (BOP VI 591-593)²⁶ and required all its members to be affiliated to particular convents on the grounds that such affiliation was beneficial rather than harmful to observance:

Quoniam affiliationes quas vocant strictiori disciplinae laudatissimi ordinis non adversantur, immo potius valde conducunt ut religiosi observantiae cultores retineantur in conventibus quibus per affiliationem fuerint adscripti.

It is clear that on both sides of the argument what was at issue is not affiliation as a principle of Dominican law but a particular practice of affiliation which effectively inhibited people from being assigned away from their original convents.

This, then, was how the question presented itself to Masetti, and he evidently shared Benedict XIII's doubts about the benefit of doing without affiliation:

Congregationes reformatae aemulantes charismata meliora filiationes sustulerunt; an earum reiectio sit opus maioris perfectionis dicant qui

declaration in 1512: 'Quia saepenumero inter fratres in conventibus professos et aliunde assignatos solet de conventualitate oriri contentio, idcirco per praesentes declaramus omnem fratrem alicui conventui assignatum ibidem durante sua assignatione esse conventualem' (Madura 190). Some Polish convents would apparently not accept *assignati* at all: the 1600 chapter complained that 'saepius auctoritas r.p. provincialis et eius vicarii ex non acceptance fratrum assignatorum in conventibus nonnullorum priorum labefactatur' (Madura 566). An ordination of 1568 suggests that convents of affiliation were being used as terms of abuse: 'Consulendo paci et tranquillitati provinciae nostrae statuimus et ordinamus ne fratres invicem se exprobrando compellent obliendo sibi titulos conventuum quorum sunt filii dicentes tu Cracovita, tu Leopolita, tu Posnanita etc., quia inde nutriuntur odia, contentiones, dissensiones, crescunt intraneae inimicitiae' (Madura 371-372).

²⁶ The congregation's independence was restored by Clement XII on 2 May 1731 (BOP VI 714-716).

experiuntur, sed forte quibusdam in casibus, si velint vera testari, vetustam Provinciarum disciplinam de filiationibus Congregationes, arbitror, concupierint.

Masetti's aim was to show that the particular practice of affiliation which Concina and De Rubeis considered to be an untraditional abuse was in fact the *vetusta disciplina* of the Order.

In the earliest days of the Order, he concedes, friars had no fixed abode but wandered far and wide 'charitatis ardore succensi', preaching wherever their zeal and charity led them. 'Nil igitur mirum si ferme nullum in hisce primordiis filiationum esset vestigium'.

He thus conceded Concina's claim that there is no mention of affiliation in official documents from the Order's first century, but with an important qualification: he would only admit that there is 'almost no trace of filiations', 'Dixi ferme nullum, licet a principio aliqua mentio filiationum habeatur'. His authority for this is Échard's assertion that many people who joined the Order in Paris in the early years were deemed to belong to convents 'qui in sua patria aut iam erecti erant aut postea exstruebantur', and he justifies his claim that *filiatio* is actually mentioned by the example of Hugh of St Cher and Humbert of Romans who 'licet Parisiis institutum fuerint professi, de *Praedicatione* tamen Lugdunensi dicuntur; ... constat autem Umbertum anno 1224 Ordinem fuisse ingressum Parisiis, et iam tunc filius habebatur Lugdunensis Coenobii'.²⁷

Échard actually says nothing about *filiatio*, nor does he use the expression '*filius* of a convent'. Most of Échard's examples of people becoming Dominicans in Paris but belonging (*attinere*) to convents in their native territories concern the involvement of local friars in the foundation of such convents; it is in that sense that they 'ad eos conventus attinent qui postea exstruebantur', and all it shows is that the Order followed the natural practice of using local friars to establish new convents.

Hugh of St Cher and Humbert of Romans are the only two who do not fit this pattern, and what Échard says of them is that 'de praedicatione Lugdunensi in nostris annalibus dicuntur', having already explained that *praedicatio* means convent ('sic alias conventus nostri dicebantur') in his argument that Vincent of Beauvais ought to be considered as 'de praedicatione Bellovacensi'.

²⁷ This is based on J.Échard, *Sancti Thomae Summa suo auctori vindicata*, Paris 1708, 17-18.

Échard was misled by Percin into believing that *praedicatio* was an early designation of a convent, an interpretation which rests on a false analysis of a few documents from Languedoc, as I showed in AFP 73 (2003) 9; the correct meaning of the term is indicated by Douais: 'Il désigne la partie du territoire de la province dominicaine qui appartient à l'action apostolique du couvent' (*Acta L*).²⁸ If Échard really found Hugh and Humbert described as *de praedicatione Lugdunensi* its import would be purely geographical, it would simply mean that they were born in the territory of the Lyons convent; but he gives no references and I have been unable to find any *annales* containing such statements.²⁹ Masetti's appeal to Échard thus signally fails to validate his contention that Humbert and Hugh were deemed to belong to the Lyons convent as early as 1224, let alone that *filiatio* was mentioned as early as this.

Masetti then turns to the Roman province and alleges that a decree of the 'previously cited' chapter of 1245 implies *filiationes*: 'Nomen illius Conventus cui fit professio in aliquo quinterno scribatur'. By implication this refers to the provincial chapter of 1245 which is mentioned twice on pp.55-57,³⁰ but the words quoted are extracted from a longer text attributed on p.58 to the general chapter of 1245: 'Cum aliquis profitetur nomen profitentis et tempus et nomen illius Conventus cui fit professio in aliquo quinterno scribatur'. Masetti's argument relies on the idea of *conventus cui fit professio*, but the crucial word *conventus* is an interpolation; the

²⁸ This is clear, for instance, from decrees of the Provence chapters of 1243 and 1248 forbidding the brethren to beg *in aliena predicatione* (Douais, *Acta* 25) or go more than three leagues outside *suam predicationem* without the provincial's permission (ibid. 32), the 1256 Spanish provincial chapter's ban on priors sending their brethren *extra terminos praedicationis suae* without good cause (AD 5 [1984] 40), and the 1272 Roman provincial chapter's fixing of the *termini predicationis* of several convents (MOPH XX 40.6-8).

²⁹ Pignon, whose chronicle was known to Échard (QE I 804), says that Humbert was 'de terminis conventus Lugdunensis' (MOPH XVIII 36), and before him Rosell, whose *Commentarii de rebus ordinis Praedicatorum* was not known to Échard (QE I 651), actually describes Humbert as 'de Conventu Lugdunensi' (AGOP XIV lib. LLL f.79^v); but this only takes us back to the mid fourteenth century, and I have found nothing of the kind in any earlier chronicle. As for Hugh of St Cher I know of nothing earlier than the epitaph quoted in QE I 196 in which Hugh is claimed as a *filius* of the Lyons convent, but this dates from 1684 (cf. M.Cormier, *L'ancien couvent des Dominicains de Lyon* II, Lyons 1900, 4 and 18).

³⁰ The texts he cites actually come from the 1246 provincial chapter: MOPH XX 5.20-22 (interpreted in the light of later ordinations such as that of 1305, 153.20-22) and 6.27-29.

relevant admonition actually comes from the 1246 general chapter (MOPH III 36.12-13), and it is preserved with identical wording in two independent manuscript traditions, AGOP XIV A 1 from S. Maria Novella, Florence, and the manuscripts of Bernard Gui's collection of acts: 'Cum aliquis profitetur nomen profitentis et tempus et nomen illius cui fit professio in aliquo quaterno scribantur'.³¹

Contrary to Masetti's asseveration, then, what was to be recorded was the name of the person to whom someone made profession, not the convent for which he made profession. And this is exactly what we find being done in the Barcelona register of professions, which begins with a date, 'anno domini .m.cc.lv.' (*tempus*), and records that Raimundus de Rosanis (*nomen profitentis*) made profession 'in manu fr. P. de S.Poncio' (*nomen illius cui fit professio*), and continues in the same vein up to 1342 (ed. T.Kaeppli, AFP 37 [1967] 80-90).

We should also bear in mind that const. I 13 in the new version of the constitutions confirmed in 1241 (cf. infra Appendix, 1241.12-14) only required laybrothers, not clerical recruits, to be received in any sense 'for' particular convents; the provincial could receive clerics without reference to any convent:

Nullus recipiatur in canonicum vel in conversum nisi a priore provinciali, vel ab eo cui super hoc licentiam dederit specialem, sed nec conversos recipiat prior provincialis nisi de consensu conventuum ubi fuerint induendi; conventualis vero prior in canonicum nullum recipiat nisi requisito consensu totius vel maioris partis capituli et obtento.³²

Modifications were confirmed in 1251,³³ 1264,³⁴ 1265,³⁵ and 1275,³⁶

³¹ Apart from AGOP XIV A 1 I have checked the text in Barcelona, Bibl. Univ. 218, Bologna, Bibl. Univ. 1535, Bibl. de Bordeaux 780, and Bibl. de Toulouse 489.

³² This part of Raymund's constitutions, which eluded Creytens (AFP 18 [1948] 39), is retrievable from a manuscript he did not know, Prague, Univ. Knihovna VIII B 23.

³³ The most significant results were to substitute *fratrem clericum* for *canonicum* and to give conventual priors the right to receive laybrothers with the provincial's permission (MOPH III 44.16-23, 49-50, 55.27-28).

³⁴ The result of this change was to specify that the convent's assent to the provincial's reception of a laybrother meant the agreement of the prior and two thirds of the brethren (MOPH III 116.20-22, 119.23-26, 122.33-36).

³⁵ The provincial's reception of a laybrother required the consent of the convent *for which* rather than *in which* he was to be clothed (MOPH III 120.1-2, 123.1-3, 126.19-21).

³⁶ *Recipiatur* was expanded to *recipiatur ad probationem vel professionem* (MOPH III 168.23-24, 172.17-19, 178.3-5).

yielding the text which then remained in the constitutions until the twentieth century:

Nullus recipiatur in fratrem clericum ad probationem vel professionem nisi a priore provinciali, vel ab eo cui super hoc dederit licentiam specialem, vel a priore conventuali cum assensu totius vel maioris partis capituli; conversum autem non recipiat prior provincialis nec aliquis de eius licentia nisi de consensu prioris et duarum partium fratrum qui sunt de conventu pro quo fuerit induendus, nec conventus aliquis recipiat conversum sine licentia prioris provincialis.

The general chapter of 1257 inchoated an amendment which would have forbidden everyone except the master of the Order to receive anyone to profession 'nisi de voluntate maioris partis capituli ubi debet novicius profiteri' (MOPH III 85.30-33), but this was not approved in 1258.

Masetti uses his supposed text from a supposed provincial chapter to argue that 'Patres nostri' understood the need for each friar to have his 'propriam destinatum domum, ad quam confugeret quocumque in discrimine',³⁷ and concludes 'A consuetudine, quae postea vim legis obtinuit, filiationes ortum duxisse arbitror'. This at least recognizes that *filiatio* as a formal principle with the force of law was a later development, but even if the alleged capitular text were genuine it would only prove that friars made profession for particular convents, not that they could expect to spend the rest of their lives there or at least return there *quocumque in discrimine*, much less would it show that the attachment thus contracted had all or any of the distinguishing features of affiliation as a legal principle.³⁸

³⁷ This seems to mark a retreat from Masetti's original formulation which envisaged someone spending his whole life receiving everything from and giving everything to a single house, and it is strangely prophetic. In 1870 Masetti was made one of the librarians of the Biblioteca Casanatense, and in 1872 he was appointed its prefect; as such it was his sad duty to hand over the keys to a state-appointed director in 1884 when the Order finally lost its struggle to retain control of the library (cf. G. Palmerio-G. Villetti, *Storia edilizia di S. Maria sopra Minerva in Roma*, Rome 1989, 278; C. Pietrangeli, ed., *La Biblioteca Casanatense*, Florence 1993, 24). In the words of Masetti's obituary, 'fortioris dictamine victus in Conventum Minervitanum se recepit, ubi studii tranquilliorisque vitae amantissimus ad ultimum diem permansit'. In this *discrimen* he did have 'propriam domum ad quam confugeret'.

³⁸ It was only in 1596 that the Order forbade provincials to give anyone the habit in private and belatedly determined the filiation of friars received into the Order

His next two texts are authentic, but he paid no attention to their historical background (on which see *infra* 132-140). The provincial chapter of 1278 (not 1277, as stated by Masetti) not only required novices to be provided with clothes 'a conventibus ad quos spectant' (which is all that Masetti found interesting), it told priors and convents to contract debts if necessary 'pro induendis novitiis idoneis predicationis proprie' (MOPH XX 50.3-8); that of 1312 (held at Lucca, not Orvieto) went further and forbade the reception of a novice 'in aliquo conventu ad cuius predicationem non spectat nisi de assensu et voluntate illius conventus ad cuius predicationem noscitur pertinere' (MOPH XX 184.32-35). But neither text says anything to indicate that convents contracted a life-long responsibility for recruits from their own territories (*predicationis proprie*) or indeed any responsibility at all beyond clothing them (as prescribed in 1278) or expressing an opinion on their reception (as required by the 1312 chapter).

On the supposition that the 'law' expressed in 1312 might have become neglected because of the schism Masetti cites a chapter held at Orvieto in 1399³⁹ to show that Raymund of Capua revived it ('Non inficior B. Raymundum hanc legem ... in usum revocasse'):

Volumus quod omnes fratres de quibus per praesentes non facimus mentionem ad suos Conventus unde traxerunt originem revertantur,

without reference to a particular convent: the general chapter ordained 'quod de caetero provinciales neque per se neque per alios in cellis vel quomodolibet secreta fratres ad habitum recipiant, sed publice in capitulo id facere teneantur; quando si fratrum vota non requisierint et sic receptum in alio conventu profiteri contigerit, non primi sed eius in quo professionem fecerit filius dicetur et erit' (MOPH X 369.19-23). Until then it was possible to be a member of the Order with no conventual affiliation, as is confirmed by a letter of Ususmaris on 15 Sept. 1555 authorizing Augustinus of Šibenik 'qui ad habitum receptus fuerat nomine provinciae et non alicuius conventus particularis' to become affiliated in any convent of his province which would accept him (S.Krasić, 'Regesti pisama generala dominikanskog reda poslanih u Hrvatsku' II, *Arhivski vjesnik* 21-22 [1978-1979] 266 no. 1566). In 1706 the general chapter issued a *declaratio* to the effect that no one should be received to the clerical or lay habit 'nisi prius pro aliquo speciali conventu sit receptus ad affiliationem' (MOPH XIII 339.31-35), and in 1777 it was made fully explicit that the consent of the convent *pro quo recipiendus est* was a condition of validity for the vestition of a cleric by the provincial (MOPH XIV 331.19-28; cf. Jandel, *Constitutiones* 1872 p.126).

³⁹ The chapter in question was certainly provincial, not general. On Masetti's own account the acts of the provincial chapters after 1346 are lost, 'nihilominus nonnulla ex antiquis monumentis eruere licuit', and one such chapter was Orvieto 1399 (*Monumenta et antiquitates* I 42); he must have found the text he quotes in one of these *monumenta*, but I have not been able to identify his source. The Roman obedience held no general chapter between Frankfurt 1397 and Udine 1401 (the latter approved an inchoation and confirmed an approbation of the former; MOPH VIII 93.29-35, 104.6-14).

quibus eos simpliciter assignamus, quod si aliquis esset natus alicuius Conventus irretiti⁴⁰ ipsum Conventui ubi fuit anno praeterito deputamus.

It is unlikely that Raymund actually had anything to do with the Roman provincial chapter of 1399,⁴¹ and although we have no immediate context for the ordination quoted by Masetti it is most plausibly related, not to any primitive Dominican practice, but to measures introduced by the Order to compensate for the devastation wrought by the Black Death. Thanks to these the situation in 1399 was significantly different from that in 1312.

For one thing the convent of which someone was *nativus* in 1399 was no longer necessarily the 'conventus ad cuius predicationem noscitur pertinere', the convent to whose territory he belonged, which is what interested the Roman capitulars of 1312. The principle that convents other than those with *studia generalia* should not unilaterally receive novices from someone else's territory was affirmed by the general chapter in 1302 (MOPH III 315.32-35) and again, more emphatically, in 1336 (MOPH IV 237.11-19), but it was waived in 1348 when the general chapter urged all the brethren to attract suitable young men to the Order 'cum ... numerus fratrum nostrorum per communem pestilentiam sit in diversis partibus imminutus', adding 'et recipiantur ad presens in quibuscumque conventibus etiam si sint de terminis alienis' (MOPH IV 322.18-23). At least in Raymund's language a friar was *nativus* of the convent for which he was received into the Order (or of which the master made him *nativus* by transferring him from one convent to another),⁴² and by 1399 there were evidently people in the Roman province who were in this sense *nativi* of convents other than those in whose territories they were born.⁴³

⁴⁰ This is glossed by Masetti 'nempe censuris propter schisma'.

⁴¹ He seems to have left Italy for the last time in the autumn of 1396 and remained in Germany, except for a brief visit to Prague, until his death in Nürnberg on 5 Oct. 1399 (cf. A.W. van Ree, AFP 33 [1963] 222-229).

⁴² This is particularly clear in MOPH XIX 207 no. 46: on 20 May 1391 Raymund made three people 'filios nativos de conventu Mediolanensi' ... volens quod de cetero pertineant ad conventum Mediolanensem ac si pro eodem ad ordinem fuissent recepti'.

⁴³ On 16 Dec. 1395 Raymund of Capua 'deputavit et assignavit et pertinere declaravit omnes fratres de civitate Urbevetana aut de praedicatione conventus Urbevetani ad conventum Urbevetanum, et ipsos ad dictum conventum perpetuo reduxit quamquam in aliis quibuscumque conventibus fuerint recepti et professi' (MOPH XIX 114 no. 534); evidently there were people born in the territory of the

There was also a series of measures creating a presumption that convents would generally be able to keep the people they recruited. The 1348 general chapter not merely allowed people to be received by any convent 'etiam si sint de terminis alienis', it added 'sic tamen quod iuvenes sic recepti ad illos conventus perpetuo pertineant in quibus et pro quibus fuerunt recepti' (MOPH IV 322.23-25). Strict conditions were laid down in 1353 for the removal of people from their 'native convents',⁴⁴ in 1358 people who had spent five years 'in extraneis conventibus' were recalled 'ad proprios conventus' unless there was good reason for them to be left elsewhere,⁴⁵ and even the five-year concession was dropped in 1359⁴⁶ and 1362.⁴⁷

The one province whose reaction to these developments can be observed in detail is that of Aragón; thanks to an eighteenth-century copy in Zaragoza, Bibl. Univ. 185, we have an unusually rich series of more or less complete chapter-acts running with some gaps from 1302, a year after the foundation of the province, to

convent of Orvieto who had not joined the Order in Orvieto. There is no sign in Raymund's register that he had a general policy of sending people to the convents in whose territories they were born, so he must have had a particular reason for doing so in the case of Orvieto; this letter should certainly not be used as evidence of any desire on his part to revive a more primitive practice.

⁴⁴ 'Cum ex eo quod fratres a suis natis conventibus pro levi causa interdum remouentur conventus ipsi in numero et merito fratrum ut frequentius defectum quamplurimum patiantur, volumus et ordinamus quod nullus frater a suo conventu nativo amoveatur per quemcumque nisi tantummodo propter studium vel propter officium seu vitandum ordinis scandalum vel etiam propter necessitatem' (MOPH IV 352.14-19).

⁴⁵ 'Volumus et ordinamus quod fratres conventuum vel pro aliquibus conventibus ad ordinem recepti qui quinque annis continuis in extraneis conventibus steterint ad proprios conventus redire cogantur nisi propter officium prioratus vel lectoratus vel studium aut officium, scandalum aut aliam causam eque bonam provincialis et diffinitorum capituli provincialis iudicio discernendam, magistris in theologia dumtaxat exceptis' (MOPH IV 383.22-28)

⁴⁶ 'Omnes fratres ordinis, magistris in theologia dumtaxat exceptis, ad conventus ipsos pro quibus sunt recepti ad ordinem simpliciter revocamus, nisi propter officia aut studia aut scandala vel propter aliam causam rationabilem prioribus provincialibus illorum fratrum aliter videatur, et nisi alteri provincie auctoritate magistri ordinis fuerint assignati' (MOPH IV 387.4-9).

⁴⁷ 'Volumus et ordinamus quod fratres ad conventus pro quibus recepti sunt redire cogantur et ex nunc omnes fratres ordinis, magistris in theologia dumtaxat exceptis, ad conventus illos pro quibus sunt recepti simpliciter revocamus, nisi propter officia aut studia aut scandala vel propter aliam causam rationabilem prioribus provincialibus illorum fratrum aliter videatur, et nisi alteri conventui vel provincie auctoritate magistri ordinis fuerint assignati' (MOPH IV 395-396).

1530.⁴⁸ The general chapter's recall of friars 'ad proprios conventus' or, less ambiguously, 'ad conventus ipsos pro quibus sunt recepti ad ordinem' in 1358 and 1359 seems to have had no impact on the province, but the ordination of 1362 calling for people to be compelled to return to the convents 'pro quibus recepti sunt' appears to have caused confusion and consternation;⁴⁹ the provincial therefore took the occasion of the 1363 provincial chapter to reassign all members of the province to their native convents⁵⁰ with the exception of those whom the provincial chapter had assigned elsewhere and a handful of others (EV 26 [1996] 105):

Propter multa inconvenientia et contradictiones plurimas facta et factas in diversis conventibus pro eo quia capitulum Ferrariense⁵¹ omnes fratres reduxerat ad suos conventus nativos, cuius ordinationi quamplurimi obedire contempserant et inmiscabant se in alienis conventibus tanquam conventuales ad actus expectantes ad conventuales praecise, cupiens praefatus provincialis serenitati conscientiarum providere et remove materiam seditionum et scandalorum, seque conformare actis dicti capituli Ferrariensis, omnes et singulos fratres supradictae provinciae ad suos nativos conventus reduxit simpliciter et assignavit, exceptis ...

In 1365 the general chapter again recalled people 'ad conventus suos' (MOPH IV 407.9-11), and the Aragón provincial chapter duly specified procedures for implementing its friars' return 'ad suos nativos conventus', though the provincial ordained that 'non obstante ordinatione capituli generalis' its laybrothers and a few others should continue to belong to the convents where they were (EV 26 [1996] 112, 117).

The acts of general chapters from 1366 onwards are patchily preserved until after the end of the schism, but those of 1370 have

⁴⁸ These have so far been edited up to 1399 in EV 20 (1990) 242-285, 21 (1991) 109-154, 22 (1992) 133-178, 23 (1993) 259-321, 24 (1994) 231-297, 25 (1995) 329-374, 26 (1996) 94-139, 27 (1997) 253-286, 31 (2001) 206-242, 32 (2002) 344-386, 33 (2003) 394-430, 34 (2004) 277-331, 35 (2005) 310-359.

⁴⁹ We have the acts of 1358 and they give the impression that no notice was taken of the brethren's recall 'ad proprios conventus' by the general chapter. We do not have the acts of 1359-1362, but those of 1363 reveal a reaction in Aragón to the 1362 recall which suggests that that of 1359 had also passed unnoticed.

⁵⁰ The equation of *conventus pro quibus recepti sunt* in the general chapter's ordination and *conventus nativi* in the provincial's application of it is in line with the usage of Elias who employs both terms with the same meaning in his 1368 letter to the province of Aragón (EV 27 [1997] 254).

⁵¹ The 1362 general chapter.

survived and they contain another general recall of friars to their native convents;⁵² it is also clear that the Order was still trying to remedy the loss of manpower caused by the Black Death.⁵³ We have the acts of the Aragón provincial chapters from 1366-1373 except those of 1367, and there is nothing about friars being returned to their native convents; the acts of 1374-1375 are missing,⁵⁴ but in 1376 the directive setting a time limit within which newly assigned friars must set off for their new convents, which it had been customary to include in the acts since 1345,⁵⁵ is accompanied by one recalling all those not mentioned in the acts to their native convents, and a similar formula recurs in 1379 (EV 32 [2002] 351, 383), and thereafter until at least 1530 chapters routinely recalled everyone not named in the acts 'ad conventus proprios et nativos',⁵⁶ though from 1393 onwards an exception was made for friars who had been assigned away from their native convents 'ratione scandali sive poenae'.⁵⁷ After 1530 there is a gap until 1550, and by then the formula has disappeared.⁵⁸

It is surely not too adventurous to suggest that the ordination of the 1399 Roman provincial chapter is of a piece with the routine

⁵² 'Mandamus fratribus universis qui ratione officii aut evitandi scandali vel impositae penitentiae non sunt alibi assignati quod redeant ad suos nativos conventus, quibus eos ex nunc simpliciter assignamus' (MOPH IV 414.24-26).

⁵³ The Order continued to suffer for many years from the effects of the Black Death and subsequent outbreaks of plague. In 1368 the provincial chapter of Aragón commanded every prior to receive at least three novices within the year (EV 27 [1997] 257), and it was still lamenting that the province was 'in fratrum numero notabiliter iminuta' in 1418 (Z p.746). In 1376 the general chapter issued a formal precept requiring the brethren and especially superiors to do their best to receive novices (MOPH IV 431.11-14), and a similar call was repeated in 1378 with an appendage obliging all priors to receive one or two novices a year on pain of absolution (ibid. 444-445). In 1439, 'quia propter pestilencias ordo est diminutus', the general chapter granted jubilarians' privileges to anyone of forty or more who brought six novices to the Order (MOPH VIII 243.14-17), and this was repeated in 1442 (ibid. 246.27-29); in 1450 the chapter lamented that the Order was so ravaged by 'sudden and frequent death' in nearly all provinces that it risked imminent collapse in some places (ibid. 252.22-26).

⁵⁴ That the provincial chapter was held in 1367, 1374 and 1375 is known from Petrus de Arenys (MOPH VII 53, 55).

⁵⁵ EV 23 (1993) 273, 292, 302-303; 24 (1994) 240, 257; 25 (1995) 341, 362; etc.

⁵⁶ EV 33 (2003) 399, 406-407, 415, etc. For the last acts contained in the Zaragoza manuscript see Z pp.1201, 1209, 1218, 1240 (chapters of 1512, 1523, 1525 and 1530).

⁵⁷ EV 34 (2004) 305, 315 etc.

⁵⁸ Some acts from 1550 onwards are preserved in a different manuscript; I have used the transcription made by Stephen Forte OP.

practice of the province of Aragón in this period; far from attesting the revival of a primitive law as Masetti supposed, it reflects the emergency measures adopted in the latter part of the fourteenth century in the wake of the Black Death.

These measures may well have contributed to an abiding sense that, other things being equal, Dominicans ought to be in their native convents, the convents for which they were received into the Order,⁵⁹ and to that extent they are relevant to what Masetti took to be the main practical consequence of *filiatio*. But the 1410 general chapter of the Roman obedience reacted fiercely against claims that the brethren had any right of irremovability: 'pro obedientia in nostro ordine conservanda' it condemned to excommunication and imprisonment anyone who failed to act promptly on an assignation to a different convent or who publicly maintained that he could not be moved from his native convent or any other convent 'nisi propter crimen vel scandalum' (MOPH VIII 140.14-24).⁶⁰

Where the Order was well established it had probably always been the exception rather than the norm for people to be moved from one convent to another;⁶¹ but such evidence as there is suggests

⁵⁹ It was on the authority of the 1348 general chapter that Bandello declared in his commentary on const. I 14 'quod novitii ad illos conventus perpetuo pertinent in quibus vel pro quibus fuerunt recepti' (*Const.*, Milan 1505 f.40').

⁶⁰ Irremovability was a privilege. It could be granted to individuals, as when Raymund of Capua assigned five decidedly unreformed friars to Thetford on 24 Nov. 1395, two of them natives of the convent, with the rider that they could not be moved from there against their will (MOPH XIX 180 nos. 81-85); on 15 Dec. 1477 Magister Michael of Chelmno was assigned to the convent of Kraków 'et ab eo non potest amoveri ab aliquo sine sua voluntate' (Madura 592). Or it could be granted to convents as when, on 13 Feb. 1475, Leonardus de Mansuetis confirmed the privileges of the convent of Chur and that 'nullus possit eorum fratrum nativos vel ibi receptos vel recipiendos sine auctoritate reverendissimi magistri inde amovere' (QF 6 [1911] 69); this was doubtless meant to bolster the reform of the convent (cf. O. Vasella, *Geschichte des Predigerklosters St. Nicolai in Chur*, Paris 1931, 40-47, esp. 45). One of the privileges granted on 28 Sept. 1475 to the convent of Stuttgart, newly founded as an observant house (it was among the *loca* accepted *pro conventibus* by the 1474 general chapter, MOPH VIII 332.2-3), was that no one could be assigned there by anyone below the master without the community's consent, and that no one could be moved away except to become prior of a reformed convent (QF 6 [1911] 85-86).

⁶¹ Thanks to Bernard Gui and the indices provided by his modern editors we have easy access to a lot of information about the assignations and appointments of thirteenth-century members of the province of Provence; it is therefore suggestive that 147 of the 196 names contained in the four lists of deceased brethren which Gui preserved do not otherwise feature in the indices of Douais's *Acta*, MOPH XXII, MOPH XXIV, or Guiraud's *Cartulaire de Prouille*, even if we give all uncertain identifications

that at least by the sixteenth century Aragón was atypical in routinely recalling people to their native convents if they had been assigned away from them and were not given new assignations. Some surviving chapter-acts from elsewhere contain clauses indicating what people not named in them should do, but unlike those of Aragón they tell such people to remain where they had previously been assigned.⁶²

the benefit of the doubt. Of these 147 there are twelve whose place of death is known and whose designations suggest identifiable places of origin; of these twelve nine died in what may well have been their local convents when they entered the Order. Of those who died in 1267/8 (Douais, *Acta* 134-136) 'P. Mimatensis' who died at Alès was evidently from Mende, more or less equidistant from Le Puy, Alès, and Aubenas; B. de Ulmis died at Narbonne, whose territory could easily have included Homps, which is presumably where B. came from; 'Garsias de Saltu' died at Bayonne, but Orthez (the nearest convent to Sault-de-Navailles) was not founded until 1253 (MOPH XXIV 117); 'Bertrandus de Morlanis' and 'Bertrandus de Sancto Savino' died at Orthez, the former presumably from Morlaas, the latter from Saint-Savin which is nearer to Morlaas than to Orthez, but permission for a foundation in Morlaas was only granted in 1268, the *locus* was accepted in 1269, and for a time it was effectively a dependency of Orthez which suggests that until it became an independent convent it was in the territory of Orthez (MOPH XXIV 185; Douais, *Acta* 142, 168). Of those listed in 1275 (Douais, *Acta* 201-202) 'R. de Anagnia', who died in Montpellier, presumably came from Aniane, which would have made Montpellier his local convent; 'Geraldus de Malomonte', who died at Limoges, is not mentioned in the Limoges 'memorialia', but we hear of Gerald de Frachet's uncle 'Guillelmus de Malomonte', canon and archdeacon of Limoges, and of Stephanus de Malomonte OP who died in 1294 having apparently lived for fifty years in the Limoges convent (C. Douais, *Frères Prêcheurs de Limoges*, Toulouse 1892, 32, 60); 'Hugo de Bellovicino' died at Nîmes, which would probably have been his local convent if he came from Beauvoisin; 'Stephanus de Gordonio' died at Brive as a novice, and, though Gourdon was nearer Cahors than Brive, Brive is not too far away to be considered a possible local convent.

⁶² The Congregation of Holland told those not mentioned in the acts to remain in the convents 'quibus hucusque assignati fuerunt' in 1479, 1485, 1491, 1494, 1496 and 1508 (De Meyer, *Cong. Holl.* 106, 144, 182, 192, 219, 282). There is a similar clause in acts of the province of Saxony from 1513 to 1530 (QF 26 [1930] 20, 36, 44, 60, 82, 98, 127, 143, 156, 178, 188, 207). The acts of the Spanish reform congregation and, after 1504, the Spanish province contain directives leaving people where they were already assigned, or re-assigning them there, in 1502, 1504, 1508, 1511, 1516, January and October 1518, 1522, 1529, 1537 and 1539 (AD 2 [1981] 80, 109; 7 [1986] 27; 9 [1988] 53; 14 [1993] 22; 18 [1997] 24; 16 [1995] 24; 19 [1998] 24; 24 [2003] 16; 28 [2007] 18, 35). In 1535, 1536 and 1538 Germania Inferior said that those not assigned in the acts 'assignati censebuntur in conventibus in quibus ad praesens commorantur' (ed. S.P. Wolfs, *Acta capitulorum provinciae Germaniae Inferioris*, The Hague 1964, 137, 146, 154). We only have occasional fragments from Teutonia, but if there had been a general policy of recalling people to their native convents the chapter of 1401 would not have needed to say 'Remittimus fratres conventuum Nove civitatis et Cremensis omnes ad conventus suos nativos, lectoribus et studentibus

We must conclude that, even if in practice there had always been plenty of undistinguished friars who were left in peace by their superiors and remain hidden from the curiosity of historians, Masetti failed to show that the practice of *filiatio* which he wished to defend was the *vetusta disciplina* of the Order; as for affiliation as a legal concept with specific distinguishing features he comes nowhere near showing that there was anything like it in the early centuries of Dominican history.

4. *Mothon's case for provincial affiliation*

In 1897 Pie Mothon (1854-1929), a member of the French province which, as far as I can make out, did not practise conventual affiliation, entered the fray as a champion of thirteenth-century provincial affiliation. In a note attached to his edition of Humbert's revision of the constitutions from AGOP XIV L 1 (ASOP 3 [1897] 98)⁶³ he says 'Licet ex consuetudine posteriori aetate apud nos introducta pluribusque Constitutionum textibus sancita fuerit AFFILIATIO AD CONVENTUM, quasi certum videtur per totum saeculi tertii decimi spatium apud nos viguisse dumtaxat AFFILIATIONEM AD PROVINCIAM'. Ignoring Masetti, Mothon argued that *affiliatio ad conventum* is never mentioned in thirteenth-century chapter-acts and 'nullubi proponuntur

dumtaxat exceptis' (*Römische Quartalschrift* 11 [1897] 321). The acts of the Polish province have no general clause on the fate of brethren not given assignments, but in 1501 and 1514 its assignments include the comment that someone is being recalled to his native convent (Madura 136, 137, 209), which would have been superfluous if there were a general policy to this effect, and its remedy for footloose friars was to tell them to stay in the convents to which they had been assigned (*ibid.* 188 [1512], 564-656 [1600]). In 1587 and 1591 the Portuguese chapter absolved a number of vicars and assigned them to the convents of which they were *fili*i (António do Rosário, ed., *Capítulos provinciais da Ordem de S. Domingos em Portugal, 1567-1591*, Cartório Dominicano Português, Século XVI fasc. 10, Porto 1977, 43 §421, 48 §474), but this was because of the 1571 general chapter's declaration that friars 'qui sunt in vicariis aut in conventibus monialium censeantur assignati in conventibus quorum sunt filii quantum ad suffragia' (MOPH X 125.25-27), echoed in a declaration of the provincial chapter of 1578 that people *in vicariis* are assigned 'in conventibus quorum sunt filii quoad suffragia solum' (*Cap. prov.* 27 §238).

⁶³ The notes are not attributed to anyone, but Mothon was editor of ASOP from 1893-1904 and 'reique historicae Ordinis ... praecipue incubuit', as his obituary says (ASOP 19 [1929] 193), and it is clearly he who contributed the edition of 'Vetera ordinis monumenta' which ran from 1893-1900. For another outline of his life see R.Louis in *L'Année Dominicaine* 65 (1929) 155-157.

mores ususve affiliationi huiusmodi adnexi', but there are legislative texts which presuppose or imply provincial affiliation.

Mothon begins with an admonition attributed to the general chapter of 1239 (infra Appendix, 1239.83-86):

Volumus ut frater qui dum esset in seculo provinciam in qua natus est dimiserat omnino et ad aliam se transtulerat domicilium commutando sit de illa provincia in qua domicilium habuit nisi de eo per magistrum vel capitulum generale aliter ordinetur.

This is patently a modification of a previous practice whereby recruits were allocated to the provinces in which they were born regardless of where they had actually been living, and, perhaps for the first time, it gave legal force to a commonsense practice going back to the earliest years of the Order. When Dominic dispersed the brethren in 1218 he sent natives of the peninsula to Spain (Jordan, *Lib.* 49),⁶⁴ and the party going to Paris included (and was led by) Matthew (*Lib.* 51) whom Gui was surely right to call *gallicus* (MOPH XXII 150);⁶⁵ it was Scandinavians who were sent to Sweden in 1220 and to Denmark in 1221 (AFP 66 [1996] 163), an Hungarian who led the party sent to Hungary in 1221 (AFP 68 [1998] 94),⁶⁶ an Englishman who led the party sent to England in 1221,⁶⁷ a Pole and a Moravian who launched the Polish province in 1222 (whose territory originally included Bohemia and Moravia), having probably been ordered there in 1221 (R.Loenertz, AFP 27 [1957] 14-15). Later on, when Jordan was recruiting in university cities such as Paris and Bologna, as Gerald de Frachet says, 'conventus eo ibi morante apum alvearia videbantur quam plurimis intransibus et multis ex hinc ad diversas provincias ab eo transmissis' (MOPH I 108). The same principle also applied on a smaller scale: Dominic sent Buonviso of Piacenza to initiate a

⁶⁴ Jordan identifies two of the four as Spaniards (one was from Madrid, the other from Ucero). The Dominic sent to Spain can hardly be other than the one identified as *hispanus* in *Lib.* 31, and 'frater Guomicius', alias Suerius Gometii, soon became involved in Portugal (AFP 70 [2000] 21-32) and I see no reason to dispute his claim to be 'o primeiro dominicano português' (António do Rosário, *Primórdios Dominicanos em Portugal*, Braga 1965, 3).

⁶⁵ Before joining the Dominicans he had been installed as prior of the canons of Castres when Simon de Montfort erected the chapter 'iuxta morem ecclesie gallicane' (MOPH XXII 12).

⁶⁶ For a vindication of the traditional belief that Paul 'of Hungary' was Hungarian see above 5-21.

⁶⁷ Jordan, *Lib.* 88; Trevet, *Annales*, ed. T.Hog, London 1845, 209; W.A.Hinnebusch, *The early English Friars Preachers*, Rome 1951, 3.

convent in Piacenza,⁶⁸ and in all probability he left Paul of Venice in Venice to start a foundation there (cf. AFP 66 [1996] 74); a recruit from Perugia was used to make a beginning in Perugia in 1233.⁶⁹

The following year, Mothon goes on to say, the chapter re-issued essentially the same ordination as an inchoation with a view to getting it into the constitutions (Appendix 1240.71-74). If so, it must be significant that there is no sign of it being approved in 1241 or confirmed in 1242, and there is no trace of it in manuscripts of the constitutions; we should have to infer that the principle it enshrined was no longer considered acceptable. But it is probable that the supposed inchoation is illusory and there was never anything more than an ordination which, as such, would have retained its validity indefinitely without needing to be re-affirmed; if a subsequent chapter was unhappy with it it would have had to revoke it. It is also unclear whether the ordination was issued twice, in 1239 and 1240, or just once either in 1239 or in 1240 (see *infra* Appendix § 5).

Mothon has the edge over Masetti inasmuch as he could cite a clear principle which was officially adopted for the whole Order no later than 1240, whereas the earliest genuine evidence cited by Masetti is far less precise, concerns only one province, and dates from 1278. However, in both cases the most that is involved is a principle that recruits have a natural point of insertion into the structure of the Order, which is far from proving that this point of insertion retained any permanent legal significance regardless of subsequent assignations; and both Masetti and Mothon ignore the background to the edicts they cite.

That the 1239/40 admonition did not result in an unbreakable link between friar and province is shown by the case of Simon Hinton: in 1261 the general chapter removed him from being provincial of England as a penance for refusing to let Oxford function as a *studium generale* and assigned him to the German province;⁷⁰ in 1262 he was given permission to return to England 'et quod sit de illa provincia', which indicates that during his assignation to Germany he was not deemed to belong to the English province.⁷¹

⁶⁸ *Acta canon. Bonon.* §24; cf. AFP 66 (1996) 133.

⁶⁹ Maiarelli, *Cron. Per.* 38; AFP 70 (2000) 85-86.

⁷⁰ 'Assignamus eum provincie Teutonie ut legat Colonie vel alibi ubi videbitur priori provinciali expedire' (MOPH III 110.33-34).

⁷¹ 'Fratri Symoni quondam priori provinciali Anglie damus licentiam quando sibi placuerit ad provinciam redeundi et quod sit de illa provincia' (MOPH III 117.13-14).

Mothon then cites capitular decrees requiring provinces to provide for their students who were at *studia generalia*,⁷² with the comment 'quae quidem non consonant affiliationi per Conventum'; but affiliation is irrelevant. It was provinces which sent students to *studia generalia*,⁷³ and this would have had to be the case however tightly friars were attached to particular convents—no *studium generale* could have coped if every convent had the right to send students there;⁷⁴ it was only fair, then, that provinces should be responsible for supporting their students.

The rest of Mothon's argument is equally ineffective. 'Affiliationis ratio', he declares, 'praecipue consistit in educatione iuvenum et senium sustentatione', which allows him to pass from students to the infirm; on the basis of a long quotation from Humbert's commentary on 'Si vestra toleratur infirmitas' in the Rule⁷⁵ he paints an emotive picture of priors mercilessly shunting the elderly, the sick, and the weak in mind or body from one house to another, a regrettable consequence, he says, of provincial affiliation. 'Quare', he concluded, 'posteriori saeculo, refrigescente inter Fratres charitate, prout huic malo remedium introducta est affiliatio ad Conventum'.

In the case of provincial affiliation it makes a kind of sense to say that *affiliationis ratio* consists primarily in providing for the

15). It is tempting to translate *ad provinciam redeundi* as 'to return to his province', and this is legitimate in that, as an Englishman, Hinton's natural home even as a Dominican was in England; but in terms of Dominican law it had clearly stopped being his province, otherwise he would not have needed permission to belong to it again.

⁷² He cites a decree from 1240 (Appendix, 1240.129-131) and refers to a later note (n.1 on p.177) where he cites Primitive const. II 28 (AFP 71 [2001] 129) and capitular decrees from 1249 and 1256 (MOPH III 47.18-21, 82.9-11).

⁷³ This is implied by Primitive const. X 19, at least as reinterpreted and placed in const. II 14 by Raymund of Penyafort (AFP 71 [2001] 143, 152-153). The general chapter of 1240 specified that students were to be sent to Paris 'a priore provinciali de concilio diffinitorum capituli provincialis' (Appendix 1240.136-137). When extra *studia generalia* were created in accordance with a constitution confirmed in 1248 provincials were given the power to send two students to each of them (MOPH III 41.13-18).

⁷⁴ Even in the sixteenth century, when conventual affiliation was well established, it was still provinces which designated students for *studia generalia*. The provincial chapter of Poland, for example, regularly sent students *extra provinciam* to *studia generalia* (Madura 137, 157, 170, 181, 240, 259 etc.). Assignations of students *extra provinciam* are included in all but the last of the provincial chapters of Saxony edited by G.M.Löhr in QF 26 (1930). In 1513 and 1533 the provincial chapter of Spain sent students to Paris 'pro rata huius provincie' (AD 13 [1992] 36, 26 [2005] 25).

⁷⁵ *Praeceptum* 5.1 (ed. G.Lawless, *Augustine of Hippo and his monastic Rule*, Oxford 1987, 94); Berthier I 373-375.

education of the young and in caring for the old. A province could certainly be expected to accept responsibility for the formation of its own recruits, and someone called (like Mothon himself) to devote his mature years to working outside his province might reasonably count on his province to look after him in his dotage. But affiliation has nothing to do with the plight of burdensome friars being passed from one convent to another.

Mothon in fact misrepresents Humbert, who does not actually refer to priors sending the old and infirm from convent to convent; quoting the Lord's description of himself as a nurse (Hosea 11:3), Humbert comments:

Sicut nutrix parvulum qui facit ei multa taedia et gravamina non proicit sed sustinet omnia eius amore devicta, ita facit Dominus de nobis, et suo exemplo docet nos ita de infirmis aliis faciendum. Quid possunt ad haec respondere illi qui fratres onerosos propter infirmitates vel mores aliquos graves non cessant ventilare,⁷⁶ procurando crudeliter expulsionem eorum de domo in domum?

Procurando as such does not make it clear how the expulsion of burdensome friars could be 'procured', but the counter-examples of charitable behaviour cited by Humbert show unequivocally that it would involve soliciting the provincial; there is nothing to suggest that he envisaged priors expelling friars from their convents on their own authority. And conventual affiliation would not make the slightest difference; as Mothon should have known, the Jandel constitutions are as explicit as ever that 'affiliatio non confert ius inamovibilitatis a conventu' (*Constitutiones* 1872, 254).⁷⁷ Nor is provincial affiliation relevant since with or without a notion of affiliation a provincial's authority only extended to his own territory,⁷⁸ so he lacked the power to send *fratres onerosos* to a convent in another province; and someone

⁷⁶ Humbert's use of *ventilare* is explained by the quotation from Ezekiel 34.21 which follows, 'Cornibus vestris ventilabatis omnia infirma pecora', where *ventilare* corresponds to *καρατίζειν* in the LXX and the pi'el of *נָנַח* in Hebrew; by extension it means 'harass'.

⁷⁷ The provincial's right to assign people away from the convents 'pro quibus ad ordinem sunt recepti' was unhesitatingly acknowledged by the general chapter of 1331 (MOPH IV 209.16-19), and we have seen what the capitulars of 1410 thought of people who claimed that they could not be so moved.

⁷⁸ According to a text which has remained in the constitutions with only minor changes from 1220 until now a provincial has the same authority as the master *in sua provincia* (Primitive const. II 16a, AFP 71 [2001] 28; then const. II 3, 421-2 in the Gillet constitutions, and LCO 338-II).

assigned outside his own province did not have any automatic right to return home by virtue of provincial or conventual affiliation. With or without affiliation the fate of a cranky, decrepit old Dominican was in the hands of his major superiors.

Mothon, we must conclude, was no more successful in demonstrating the practice of provincial affiliation in the thirteenth century than Masetti was in proving that conventual affiliation was the *vetusta disciplina* of the Order.

It seems that Mothon accepted Masetti's idea of conventual affiliation meaning that every friar had a 'propria domus ad quam confugeret quocumque in discrimine', which may more or less correspond to one particular way of practising affiliation but it does not tally with what the Order's official texts say about it. Of course Mothon had an excuse for dreaming of a happier world in which all Dominicans had convents they could call their own, in which they could be confident of being cared for in their old age: only a year after he completed his studies and began teaching philosophy at Flavigny the Dominicans there were brutally evicted from their convent;⁷⁹ and when he arrived in Rome in 1885 the master general had just been driven out of his quarters at the Minerva and was settled in accommodation he had luckily been able to find in Via S. Sebastiano (now S. Sebastianello).⁸⁰ But these expulsions were the work of the civil authorities and had nothing to do with Dominican law or hard-hearted religious superiors.

Far from ending his days in a convent of his own, Mothon died as chaplain to the Ursuline nuns at Saint-Jean-de Bournay, just south of Lyons where he was born.

5. *The principle of natural appurtenance*

In support of their respective positions both Masetti and Mothon appealed to texts which imply that, other things being equal, there was a convent or province to which a new recruit naturally or properly belonged. They interpreted these texts in the light of the very notion of affiliation whose existence they were trying to demonstrate, but if we situate them against a more historical background a rather different picture emerges.

⁷⁹ There is a blow-by-blow account of their eviction on 5 Nov. 1880 in L. Boitel, *Cinquantenaire du couvent des Dominicains de Flavigny-sur-Ozerain*, Tours 1900, 42-54.

⁸⁰ Cf. A. Zucchi, *Roma Domenicana II*, Florence 1940, 196.

We know almost nothing about the mechanics of reception into the Order in its earliest years, but it would not be surprising if a great deal of recruiting was done by major superiors, and this is certainly the impression given by the sources. It goes without saying that Dominic gave people the habit, and it was Reginald, as his vicar (cf. MOPH I 25), who 'multos Bononie recepit ad ordinem' (Jordan, *Lib.* §58); it was at least under Matthew's auspices as abbot, then provincial, that the brethren in Paris 'multos bonos clericos receperunt qui ordinem fratrum predicatorum intraverunt',⁸¹ and most new provinces began with the despatch of a handful of friars who obviously had to attract recruits before they could establish convents.⁸² Jordan of Saxony, as master, was credited with receiving more than a thousand people to the Order.⁸³ It is also likely that men sent to pioneer new foundations in territories (provinces) in which the Dominicans were already present had the authority to accept recruits; when Buonviso of Piacenza reluctantly went to preach in his home town, as commanded by Dominic, 'tantam gratiam contulit sibi deus in predicatione quod ad predicationem eius tres fratres intraverunt ordinem predicatorum' (*Acta canon. Bonon.* §24), which probably implies that he accepted them into the Order himself.

By 1236 recruiting by individual convents was common enough to be governed by procedures laid down in the constitutions. Three men were to be appointed by the convent chapter to examine candidates and report back to the prior and chapter, and it was the prior and chapter who decided whether to accept them or not: 'In quolibet conventu eligantur tres ydonei fratres de comuni consilio capituli qui recipiendos in moribus et scientia diligenter examinent et examinationem priori et capitulo referant, eorum iudicio an recipi debeant relinquentes' (Primitive const. I 14).

⁸¹ *Acta canon. Bonon.* §26, testimony of John of Spain.

⁸² In Hungary, for example, the party sent by Dominic in 1221 preached first in Győr 'ubi in ipsa prima predicatione tres de bonis scholaribus sunt recepti ad ordinem, et quia nondum locum habebant egressi inde transierunt in Pannoniam' (Suipert, ed. Tugwell, AFP 68 [1998] 87-88).

⁸³ According to Gerald de Frachet's original text of the *Vitas fratrum* 'plus quam mille traxit ad ordinem'; Humbert modified this to 'estimatur plus quam mille traxisse ad ordinem' (MOPH I 102), on the strength of which Gui reported that 'mille fratres et amplius manu sua fertur et scribitur ad ordinem recepisse et habitum induisse' (Bologna 1535 f.20^v, Agen, Bibl. mun. 3 f.47^v; in later editions of *Catalogus magistrorum* Gui dropped *et scribitur*: Bordeaux 780 f.26^v, Barcelona 218 p. 88).

Jordan could brave the wrath of the general chapter by receiving sixty barely literate young men in Paris on a single occasion,⁸⁴ but the Order was becoming wary of indiscriminate recruiting, as can be seen from some of the earliest chapter-acts we possess: in 1240 the general chapter admonished that 'Fratres nimis iuvenes et indocti non multiplicentur', in 1242 the provincial chapter of Provence issued a similar warning, 'Caveant ne sine diligenti examinacione litterature et morum recipiant fratres cum non deceat talem ordinem inutilibus honerari', in 1246 the Roman provincial chapter expressed a wish 'quod non passim et indifferenter recipiantur ad ordinem', and in 1254 the provincial chapter of Lombardy bid each convent 'caveat ab inutilium fratrum et ordini non convenientium receptione'.⁸⁵

It is impossible to say when the text on examiners was added to the constitutions, but it is unlikely to antedate the prescription which comes shortly before it in Primitive const. I 14, 'Conventualis prior nullum in conversum recipiat, in canonicum vero neminem nisi requisito consensu totius vel maioris partis capituli et optento', which must mean that a conventual prior may not receive anyone at all as a laybrother,⁸⁶ and he may only receive someone as a canon (cleric) with the consent of his chapter. The rather curious shape of the text suggests that it was not originally formulated in this way, and we may surmise that it had previously been something like 'Conventualis prior nullum recipiat in canonicum vel in conversum nisi requisito consensu sui capituli et obtento'.⁸⁷ If so, it had probably

⁸⁴ 'Memor sum loci, temporis et persone quod beatissime memorie frater Iordanus magister ordinis predicatorum secundus iuvenes uno tempore tam parve litterature ad ordinem recepit Parisius sexaginta ut plures eorum vix possent ut audivi cum multa repetitione ad matutinale officium unam legere lectionem; super quo ut dicitur a fratribus graviter ad generale capitulum accusatus spiritu sancto repletus dixit: Sinite istos, ne contempnatis unum ex hiis pusillis; dico vobis quod multos et fere omnes predicatores videbitis gloriosos et per quos dominus super multos litteratos in salutem operabitur animarum. Quod nos veridico ore dictum usque in hodiernum diem vidimus et videmus' (Thomas of Cantimpré, *De apibus* II 19.2; I take the text from Bologna, Bibl. Univ. 1674 f.43').

⁸⁵ Appendix, 1240.132; Douais, *Acta* 22 (I take the text from Bordeaux 780 f.135'; Douais prints the text with *caveant priores*); MOPH XX 5.20-21; AFP 11 (1941) 140.

⁸⁶ Raymund's reformulation of this constitution, with which we shall soon be concerned, makes it clearer that it was the provincial, not the conventual, prior who had the right to receive laybrothers.

⁸⁷ A.H.Thomas compares the Dominican constitution to a passage in the letter Gregory IX addressed to some Praemonstratensian abbots on 23 June 1232, 'Nec abbates aliquos recipiant in canonicos et in fratres sine prioris et supprioris et aliquorum maiorum de domo requisito consilio et assensu' (Pl.F.Lefèvre, ed., *Les*

been modified before 1233, since an ordination of that year's general chapter implies that it was already reserved to provincials (or, a fortiori, the master) to accept laybrothers: 'Priores provinciales moderamen habeant in recipiendis fratribus laicis ne conventus graventur' (MOPH III 3.30-31).

It is understandable that anxiety about useless recruits was most acute in the case of laybrothers; clerics, even if they were good for nothing else, could at least help to sustain the choral office, but laybrothers who could perform no useful task for the community were just a burden. The fact that it was provincials rather than local superiors who retained the right to receive them, and that it was conventual priors, not provincials, whose freedom to accept clerics was restricted, suggests that in the eyes of the Order at large, as represented by general chapters, recruiting was primarily the concern of provinces, even if convents could play a significant part in it. To this extent Mothon's instinct was sounder than Masetti's, but we should not overlook the circumstances: in the 1230s the Order was expanding by founding new convents, not by launching new provinces, and, while convents would naturally recruit for themselves, provinces needed to recruit for houses which did not yet exist.

This perspective was reinforced by Raymund's revision of the relevant constitution in his const. I 13. The old text only mentioned conventual priors, but in his version the rôle of provincials is highlighted by being placed first and expressed in such categorical terms that it would seem to deny conventual priors any independent authority to accept recruits, though this is not how it was understood: 'Nullus recipiatur in canonicum vel in conversum nisi a priore provinciali vel ab eo cui super hoc licentiam dederit specialem'.⁸⁸

Statuts de Prémontré réformés sur les ordres de Grégoire IX et d'Innocent IV, Louvain 1946, 133), and he may be right to suggest the influence of current papal interest in reforming religious life (*De oudste Constituties ...* 169); but it is as likely that the Dominicans were following the example of the Victorines, whose *Liber Ordinis* required the chapter's consent for the reception of lay or clerical recruits: having examined the candidate, the abbot 'referet fratribus in capitulo quid sibi super eo videatur atque eorum assensum ac voluntatem pro illius susceptione exquiret' (ed. L. Jocqué-L. Milis, *Corpus Christianorum Continuatio Mediaevalis LXI*, Turnhout 1984, 99-100). Both parallels go some way towards confirming my suggested restoration of the original Dominican text.

⁸⁸ The next clause, 'Conventualis vero prior in canonicum nullum recipiat nisi requisito consensu totius vel maioris partis capituli et obtento', taken in close conjunction with 'Nullus recipiatur ... nisi a priore provinciali vel ab eo cui super hoc licentiam dederit specialem', should mean that even with the support of his chapter

The one restriction in Raymund's constitution is that the provincial is told not to receive laybrothers 'nisi de consensu conventuum ubi fuerint induendi', a clearer formulation of a constitution enacted by the most general chapter of 1236;⁸⁹ in other words, no one was to be received as a laybrother unless it was certain there was a convent willing to take him. The underlying presupposition must be that there was always room for more clerics, provided they were suitable, but there might not always be room even for skilled laybrothers.⁹⁰

Beyond ensuring that laybrother recruits had somewhere to go, the Order's legislators do not at first seem to have felt any need to regulate provinces' arrangements for placing novices in convents, but, as we have seen, in 1239 and/or 1240 the general chapter modified a pre-existing practice, which may or may not have been formally expressed as an official principle, and declared that a friar belonged to the province in which he had been resident, whether or

a conventual prior could only receive someone as a cleric if he was authorized to do so by the provincial. However, the continuing right of conventual priors to receive clerics under the same conditions as before is implied by the fact that, though surviving acts of provincial chapters contain plenty of admonitions and penances concerning convents' reception of clerics, there is never any suggestion that priors would be or had been acting out of order in receiving suitable clerics without reference to the provincial; and the provincial's consent was mentioned in 1249-1251 specifically with reference to convents' reception of laybrothers when const. I 13 was amended to allow this (MOPH III 55.27-28), and in 1265 with reference to the reception of recruits below the minimum age set by the chapter (MOPH III 129.19-20), with the implication that it was not otherwise required. The general chapter of 1756 was innovating when it decreed 'ut nemo deinceps ad habitum ordinis recipiatur nisi consulto praeside provinciae aut congregationis' (MOPH XIV 247.1-2), and even that stopped short of making the provincial's *licentia* necessary. In explicating the rôle of provincials Raymund may have intended to exclude a possible, if perverse, reading of the old text as only imposing restrictions on conventual priors, leaving everyone else (and not just major superiors) free to accept clerics and laybrothers as they wished.

⁸⁹ The 1236 text was reportedly 'Priores provinciales conversos non recipient nisi conventuum ubi fuerint induendi' (MOPH III 6.9-10).

⁹⁰ This was clearly Humbert's opinion. In his view it was part of the provincial's responsibility 'in recipiendis conversis pluribus vel qui non noverunt officia in quibus possint ordini deservire et etiam clericis minus ydoneis dignam adhibere cautelam' (*De officiis ordinis*, Berthier II 199); the quality of all recruits was important, but in the case of laybrothers quantity also needed to be controlled (there is a limit to the number of cobblers or cooks a single province can put to work). I cite *De officiis* by reference to page-numbers in Berthier, but I base the text on Berlin, Staatsbibl. theol. fol. 164, Siena, Bibl. Mun. G.XI.36, and Vienna, Österreichische Nationalbibl. 1507.

not he was born there, unless the master or general chapter decided otherwise. We may call this the principle of natural appurtenance, and we should not forget that in nearly every case Dominican *provinciae* began simply as *provinciae* (territories) in which the Order established a presence,⁹¹ and even if they grew beyond their natural boundaries these boundaries were not entirely forgotten.⁹²

The 1239/40 admonition is expressed in quite general terms, but it is hard to believe that questions often arose about a man's province unless he had only recently joined the Order, and it must have arisen most frequently in convents located in university towns with a significant international population; they could not realistically be seen as recruiting solely for themselves or the provinces in which they were situated, and it was to be expected that a foreigner who joined the Order there would normally be deemed to belong to the Dominican *provincia* which corresponded to his natural *provincia*. A German would naturally become a German Dominican, a Scot would naturally become an 'English' Dominican because it was the province called *Anglia* which had moved into Scotland; and the natural *provincia* was more important than the Dominican *provincia* in that it determined which Dominican *provincia* even a veteran friar belonged to if Dominican boundaries were redrawn.⁹³

Originally this principle or practice was probably just a reasonable way of allocating novices received in places like Paris and Bologna to provinces; but by 1240 it seems likely that another factor had come to the fore, money.

The cost of clothing novices is a recurrent theme in chapter-acts. An admonition of the 1233 general chapter implies that it was

⁹¹ In 1221 *provincia* acquired the technical meaning of a specifically Dominican circumscription only because of the need to find a term which would apply to the uniquely artificial territory comprising houses in central Italy and in Sicily (on the genesis of this use of the word and papal resistance to it see AFP 75 [2005] 29-55).

⁹² In 1281, for example, we find *provincia* straddling its natural and technical uses: 'Cum conventus Soldinensis in provincia Polonie esse dicatur inchoamus quod de provincia Theutonie ad provinciam Polonie transferatur' (MOPH III 213.7-9). Because Soldin (Myślibórz) was already said to be in the province (natural territory) of Poland the chapter proposed *transferring* it to the province (Dominican territory) of Poland.

⁹³ When the division of the provinces of Provence, Lombardy, and Teutonia was confirmed in 1303 the general chapter ordered 'quod fratres de provinciis divisas ad suas provincias unde traxerunt originem revertantur' (MOPH III 323.14-15); the divided *provinciae* were purely Dominican territories, but each friar's *sua provincia* in the Order was determined by the *provincia* (natural territory) in which he originated.

already standard practice for novices to pay for their own clothes.⁹⁴ Thereafter we find repeated calls for suitable men not to be turned away because they were unable to do this (*propter defectum vestium* or *pro defectu vestium*, as successive chapters put it),⁹⁵ but it cannot have been easy to comply in places like Paris where the Order was attracting recruits from a large international student body.

This is the situation addressed in an admonition of the 1240 general chapter (Appendix, 1240.129-131):

Nullus aptus et idoneus recipi propter defectum vestium repellatur, sed studentes pro provinciis prout comodius poterunt provideant sibi vestes et provincie ad quas pertinent pecuniam illam persolvere teneantur.

The reference to *studentes pro provinciis* and to reimbursement by provinces shows that the chapter was concerned specifically with the economic problems of convents which had students deemed to belong to different Dominican provinces. *Sibi* is ambiguous (were students supposed to find clothes for themselves or for new novices?), but either way the aim was clearly to make provinces relieve the financial burden of outfitting impecunious but suitable recruits.

What is less clear is the identity of the *studentes pro provinciis* who were supposed to find some way of paying for clothes in anticipation of being reimbursed by their provinces. Are they the same as the *studentes provinciarum* (students sent by provinces) mentioned in admonitions of 1261 and 1274 (MOPH III 110.28, 174.28), or is it significant that they are called students *for* provinces rather than students *from* provinces?

This raises the question where students were actually being sent outside their provinces in 1239/40.

⁹⁴ Some acts from 1233 are preserved by Bernard Gui, but his text of this admonition is not wholly convincing, though the meaning is clear: 'Volumus ut novicii qui tantam pecuniam habent ut solutis vestibus possint de illa emere bibliam et breviarium quod ex ea de residuo emant' (MOPH III 4.12-14; I have verified the text). *Quod* is redundant after the first *ut* (a common enough phenomenon); *ex ea de residuo*, if correct, must mean 'from that money, out of what is left', leaving the object of *emant* to be inferred (i.e. *bibliam et breviarium*), but I suspect it should be emended to *et ea de residuo*, 'we want them to buy these things too (i.e. these books) with what is left of the money'.

⁹⁵ See the general chapters of 1240, 1261, 1268 and 1336 (Appendix, 1240.129-131; MOPH III 110.17-20, 143.35-36, IV 237.2-7), and the 1246, 1249 and 1282 provincial chapters of the Roman province (MOPH XX 5.20-22, 9.13-14, 60.9-12), the 1281 chapter of the province of Provence (Douais, *Acta* 253), and the 1314 chapter of Aragón (EV 21 [1991] 135).

A constitution which there is good reason to ascribe to the general chapter of 1220 required every convent to have a *doctor* or *lector*;⁹⁶ to meet the resulting need for *doctores* another constitution which even more certainly dates from 1220 bade every provincial 'curet ... ut si habuerit aliquos utiles ad docendum qui possint in brevi apti esse ad regendum mittere (*sic*) ad studendum ad loca ubi viget studium',⁹⁷ and this clearly included the possibility of sending potential lectors outside his own province, otherwise it would not have been necessary to add, probably some years later, that convents housing such students were not to send them back to their provinces (Primitive const. II 16, AFP 71 [2001] 28-32). On this basis any convent in a place *ubi viget studium* might have had students from other provinces; Paris was singled out for mention only in an extravagans restricting to three the number of students which *provincia* might send there (it is unclear whether this means the province of Provence or any province) (X 19, AFP 71 [2001] 143, 152-153).

Raymund's constitutions retained the exhortation to provincials to send potential lectors *ad loca ubi viget studium* and the ban on sending such students back to their provinces (const. II 14), but how was it understood? It was followed immediately by the clause setting a limit of three to the number of students any province could send to Paris (*provincia* is no longer ambiguous), and in 1246-1248 an additional clause passed through three chapters calling for Provence, Lombardy, Germany and England to establish and maintain *generalialia studia et sollempnia* to which each province could send two students (MOPH III 34-35, 38.22-27, 41.13-18). This kind of *studium* was *generale* in the same sense as a general chapter: it was a *studium* of and for the Order as a whole;⁹⁸ by implication the *studia generalialia*

⁹⁶ Primitive const. II 23 (AFP 71 [2001] 113-114). On the later fortunes of the terms *doctor* and *lector* see AFP 77 (2007) 53-54.

⁹⁷ The solecism *curet ut ... mittere* survived into early printed editions of the constitutions; *ut* was suppressed in the edition of Rome 1566.

⁹⁸ Attempts to understand Dominican *studia generalialia* by reference to the application of the same term to universities cause nothing but confusion (cf. M.M. Mulchahey, "First the bow is bent in study ...": Dominican education before 1350, Toronto 1998, 351-374). They were 'of the Order' in that the Order as a whole took responsibility for them: an addition to const. II 14 confirmed in 1257 obliged the master to provide a competent lector for any of the four new *studia generalialia* whose host province was unable to furnish one (MOPH III 84.24-28). And they were 'for the Order': the *studium* set up in Oxford in compliance with the amendment of 1246-1248 ran into trouble in the late 1250s and the provincial chapter decided not to re-admit foreign students, and measures taken by the 1260 general chapter to resolve

were now the only *loca ubi viget studium* to which students from other provinces could be sent. Was Paris already thought of as a *studium generale* in this sense in 1240, and as such the only one which the Order had?

An admonition from 1240 suggests that it was. The general chapter granted a special dispensation from choir to 'studentes qui sunt pro lectoribus assignati' with exclusive reference to Paris (Appendix, 1240.115-118); and these students must surely be the same as the 'utiles ad docendum qui possint in brevi apti esse ad regendum' whom const. II 14 bade provincials send *ad loca ubi viget studium*.

If by 1240 Paris was de facto the only house which had students sent to it by different provinces, the general formulation of the admonition in 1240.129-131 suggests that *studentes pro provinciis* may have a broader application, as it would if it included recruits who had entered the Order far from home and had not yet been sent to the provinces which were appropriate to their places of origin, but were nevertheless regarded as students *for* those provinces even though they had not been sent by them and might be quite unknown to the provincial authorities. This would explain why the admonition calls for them to find a way of getting clothes for themselves (if this is what it means)⁹⁹ rather than placing the onus on provinces as was done in 1289 when the general chapter ordained 'quod provincie induant suos studentes' (MOPH III 253.18).

We should also bear in mind that if the master or general chapter could allocate foreigners who had joined the Order in places like Paris or Bologna to provinces other than those in which they had been resident, a possibility expressly mentioned in the 1239/40

the situation were ignored; in 1261 the general chapter took matters into its own hands and designated Oxford a *studium pro provinciis* which could not be moved without authorization from the general chapter (MOPH III 110-111).

⁹⁹ Even the main parts of the habit were not expected to last very long judging by the 1302 provincial chapter of Provence which ordered priors 'lectoribus suis ad minus de una veste, videlicet de tunica vel capa provideant *annuatim*' (Douais, *Acta* 476), and the ordination of the 1304 general chapter requiring 'ut singule provincie debeant studentibus quos mittunt ad studia generalia extra provinciam *annis singulis* de vestibus providere' (MOPH IV 3.30-33). Smaller items, such as the woollen *caligae* which the brethren were meant to wear even at night (const. I 9) and receive 'ut necesse fuerit et facultas permiserit' (const. I 10), probably wore out much faster. It is thus quite credible that a foreigner who was given the habit in Paris or Bologna, say, would need more clothes before he was sent off to an appropriate province.

ordination, they could perfectly well decide where to send any such foreigners; if this was all that was at issue it is unclear why a capitular pronouncement was needed to take changes of residence into account in deciding where they belonged.¹⁰⁰ But if provinces were required to reimburse the cost of clothes procured for students or new recruits from their territories it could be important to know which provinces they belonged to without waiting for the arrival of the master or the occurrence of a general chapter.

Too much of the background is obscure for any firm conclusion to be warranted, but it seems probable that the 1239/40 admonition was essentially meant to answer the question 'Who pays for the clothes of a foreign recruit who joins the Order outside his home province?'. If so, its relationship to 1240.129-131 gives us a reason to date it too to 1240.

This interpretation finds some support from the surviving acts of the 1252 provincial chapter of Dacia, whose penances include 'Qui alio anno ad vestes noviciorum tres solidos seu sterlingorum Parisius non miserunt hoc anno .vi. solidos Ripis mittant et duas dies in pane et aqua ieiuent, ceteri tres mittant et duas dies in pane et aqua ieiuent'.¹⁰¹ *Ceteri (piores ac fratres* being understood from the previous penance) shows that there was a province-wide tax of 3s per annum to raise money to be sent to Paris for *vestes noviciorum* (Ribe was evidently where the money was to be collected, not its final destination). What purpose could this have had except to cover the cost of clothes acquired by people recruited in Paris but belonging to Dacia by the principle of natural appurtenance?

¹⁰⁰ It is actually unclear whether anyone other than the master or the general chapter had authority to send foreign recruits away at all from the houses where they entered the Order. This, I think, is the issue addressed by the 1243 general chapter, though with broader implications: 'Concedimus omnibus prioribus provincialibus quod fratres de suis provinciis ubicumque sint possint revocare si voluerint nisi per magistrum vel capitulum generale aliis provinciis fuerint assignati; excipimus provincias Grece et Terre Sancte' (MOPH III 27.1-4). Provincials could already recall students they had sent outside the province (const. II 14), and they had no power to assign anyone else beyond the limits of their own jurisdiction (supra 115), so I do not see what this can refer to except people who had joined the Order elsewhere and belonged to the province under the terms of the 1239/40 declaration. On this interpretation they were given leave to recall all such people to the province whenever they wanted except in the case of those who had joined the Order in the provinces of Greece or the Holy Land.

¹⁰¹ G. Stephens, *Brotstücken av en Dominikaner-Ordens eller Predikare-Brödernas Statut- eller Capitel-Bok*, Copenhagen 1852, 2.31-34.

If this is correct, the principle as adjusted in 1240 was intended to apply specifically to houses which were in effect recruiting for the Order as a whole rather than for individual provinces, i.e. houses associated with universities which had a significant international population.¹⁰² S.Jacques, with its chronic financial difficulties,¹⁰³ would certainly have been a major concern, and at least Bologna among northern Italian university towns would have been affected;¹⁰⁴ but it is unlikely that anyone meant to interfere with occasional foreigners entering ordinary convents¹⁰⁵ or to stop provincials recruiting them for their own provinces.

Money is involved again when the principle of natural appurtenance is alluded to in an admonition of the 1261 general chapter (MOPH III 110.17-20):

Volumus quod priores provinciales et diffinitores capitulorum provincialium ordinent quod sic provideatur volentibus ingredi ordinem qui sunt ydonei et pauperes et ad suas provincias pertinentes quod propter defectum vestium non repellantur.

¹⁰² Foreigners who joined the Order in university cities would normally be clerics, so it would not have been considered necessary to ensure that there was some place where they were actually wanted before they were received. It apparently did not matter that provinces would be forced to accept and even pay for new clerical members they knew nothing about, over whose admission they had not been consulted; but that is of a piece with provincials being able to accept clerics without reference to any particular convent.

¹⁰³ In 1246 and 1261 the general chapter begged the brethren to find ways of helping it, and measures were taken to reduce its burden of debt in 1289 (MOPH III 36.6-9, 109.30-31, 253.17-21).

¹⁰⁴ The Lombard provincial chapter of 1284 refers to Bologna receiving novices 'from all over the place' (*undique*) (AFP 11 [1941] 160). Oxford and Cambridge, by contrast, had a tiny minority of non-English students, and an even smaller minority of students who were not from the British Isles, so their recruits would almost invariably have been from the territory of the English Dominican province (cf. H. de Ridder-Symoens in W.Rüegg, general ed., *A history of the University in Europe I*, Cambridge 1992, 284).

¹⁰⁵ In 1270 the provincial chapter penanced the prior of Arles 'propter indebitam receptionem novicii theutonici', and the novice was given the option of becoming a laybrother or being expelled, in which case 'quecumque occasione ingressus expendit eidem a priore et conventu restituantur' (Douais, *Acta* 146). The fact that the German could become a laybrother if he wanted suggests that he lacked the education normally expected of a clerical recruit, but novices deemed *insufficientes in scientia* were not on any other occasion required to choose between expulsion and becoming laybrothers. Even so, this does not necessarily mean that the German's reception in Arles was flawed precisely because he was German; he was apparently not impecunious, and for all we know he may simply have been considered too old to make up for his educational shortcomings.

Since what was at issue was finding a way of enabling people to join the Order, ex hypothesi they did not yet have any way of belonging to a province except by natural appurtenance; and the explicit aim of the admonition was not to prevent provinces accepting recruits who did not belong to their territories, merely to ensure that those who did would not be turned away because of a lack of funds.

If I am right so far, natural appurtenance was formally invoked in 1240 as a way of devolving upon provinces some degree of financial responsibility for people who were in effect recruited by the Order, not by a particular province; and it is in the same context that the principle first appears in surviving acts of provincial chapters.

In Provence it makes its apparent début in 1248 (Douais, *Acta* 33):

Novicii qui induentur in posterum in alienis conventibus si non possunt se induere, illi conventus de quorum predicatione sunt solvant .I. solidos turonenses conventibus illis qui eos induerunt, et prior provincialis det super hoc litteras.

Since it was the provincial who had to issue the necessary letters it looks as if this measure was introduced as a way of devolving upon convents some financial responsibility for provincial recruiting, whether the novices concerned were accepted by the provincial himself or by convents other than those which would naturally be 'theirs' by virtue of their place of origin.¹⁰⁶ We obviously do not know how much is hidden from us and was taken for granted by the capitulars, but nothing in the text implies that there was anything irregular about someone entering the Order *in alieno conventu*, or that the convent in his home territory had any say in the matter,¹⁰⁷

¹⁰⁶ *Alienus* does not mean 'foreign' in the sense of 'outside the province' (though this is not necessarily excluded). In 1259 priors were ordered not to let their brethren enter *alienas predicationes* 'sine magna et evidenti necessitate, et hoc de consilio seniorum' (ibid. 77), and the following year a penance was imposed on priors 'qui extra predicationem suam miserunt fratres sine necessitate et consilio' (ibid. 81); *alienus* is the contrary of *suus*, so any *predicatio* other than that of one's own convent is *aliena*.

¹⁰⁷ The possibility of one house accepting a novice at the request of another had already been envisaged in an admonition of the 1245 provincial chapter: 'Nolumus quod priores vel gerentes vices eorum circa recipiendos dispensent in literatura vel etate, sed nec alios nisi valde dignos recipiant quia provincia multum est onerata; possint tamen sibi recipere secundum constitutiones et domus possit portare vel alie domus petant' (Douais, *Acta* 28). Since *domus possit portare* and *alie domus petant*

or even that it could expect him to be transferred to it in due course.¹⁰⁸

In 1251 the provincial chapter reiterated the amount to be paid by convents for novices from their territories,¹⁰⁹ and in 1252 priors were threatened with punishment if they failed to pay up within two months of being asked to do so.¹¹⁰ Only in 1266 do we encounter the first sign of any restriction being imposed on the acceptance of recruits from other convents' territories, and the restriction is not what we might have expected (Douais, *Acta* 118):

Priores vel eorum vicarii non recipiant aliquem de alienis predicationibus preter formam constitutionum nisi de voluntate conventus vel maioris partis eiusdem de cuius predicatione erit recipiendus.

are alternatives it was presumably the house which asked for someone to be received which would be expected to support him. But the 1245 and 1248 acts are not easily combined: that of 1245 says nothing about the *predicationes* from which novices came, so it does not exclude the possibility of someone being received in convent X at the request of convent Y though he came from the territory of convent Z; conversely the act of 1248 says nothing to intimate that paying for the clothing of novices received *in alienis conventibus* was in any way connected with asking for them to be received.

¹⁰⁸ The only clue I am aware of could hardly be less conclusive, though it does mildly suggest that by the early 1270s there was no general policy of keeping friars in the convents from whose territories they originated: in 1272 there were evidently natives of Morlaas who were not in the convent in whose territory it lay, and it was in very particular circumstances that the provincial chapter assigned them there. A *locus* was accepted in Morlaas in 1269 (Douais, *Acta* 142), but the Order's occupation of the site was disputed by some monks (MOPH XXIV 185.15), and in 1272 the prior of Orthez was told to keep two friars there the whole time, whose brief was to safeguard the Order's possession of the place (*servent possessionem*) but not to engage in fisticuffs (*non faciant brigam*); they were to be changed every fortnight (Douais, *Acta* 168), implying that it was an unpleasant and possibly hazardous assignment. At the same time the provincial chapter assigned all *fratres de Morlanis* to Orthez unless they were expressly given assignations elsewhere (*ibid.* 172). By implication Morlaas was in the territory of Orthez until it acquired its own convent in 1273 (*ibid.* 176), so Orthez would have been the convent in whose *predicatio* natives of Morlaas originated. But the foundation in Orthez itself was only launched in 1250 (*ibid.* 41), and according to Gui the convent was established in 1253 (MOPH XXIV 117), so there could still have been friars from Morlaas who entered the Order before this, when Morlaas was presumably in the territory of Bayonne.

¹⁰⁹ 'Iniungimus conventibus de quorum predicatione novicii induentur quod provideant .i. solidos turonensium pro vestibus, ita tamen quod vestes et libri et omnia que habuerint in predicto precio computentur' (Douais, *Acta* 45); the *ita tamen quod* clause means, I think, that the clothes, books etc. which a novice himself has should count as part of the payment owed by the affected convent.

¹¹⁰ 'Expense pro vestibus novitiorum infra duos menses a repetitione mittantur, alioquin ex tunc priores punientur' (Douais, *Acta* 48).

There was nothing in const. I 13 to inhibit the reception of people *de alienis predicationibus*, so receiving them would not in itself be *preter formam constitutionum*. What the chapter had in mind can be seen from another admonition of the same chapter forbidding subpriors and vicars to accept anyone 'preter formam constitutionum de etate et scientia et examinatione traditam' if the prior is absent but due to return soon or if he is within easy reach (ibid. 117-118).¹¹¹ It was not the reception of people *de alienis predicationibus* as such which the 1266 chapter wanted to stop, merely the reception of recruits who did not meet the constitutions' requirements; and even they could be received if the convent whose territory they came from so desired.¹¹²

Erit is disconcerting, but I have checked the text in Bordeaux 780 and Toulouse 488 and 490 and the reading is certain. While it would make sense to say that a recruit from an *aliena predicatio* will belong to some other convent if he joins the Order, it is absurd to say he will 'be of' some other convent's territory; it is because he *is* from another convent's territory that he is *de aliena predicatione*, and that other convent is the only one whose wish could be relevant to his reception. The future in 'de cuius predicatione erit' must be understood with reference to his possible reception; whether or not the transmitted text is correct, the sense must be that no one from another convent's *predicatio* can be received unless he will be to-be-received at the wish of the convent from whose *predicatio* he is.

Provincial chapters regularly opposed the reception of unsuitable young men,¹¹³ and we may be sure that that of 1266 did not intend to allow convents to receive them simply at the whim of

¹¹¹ Cf. also the admonition of 1242, 'Caveant priores ne sine diligenti examinatione litterature et morum recipiant fratres cum non deceat talem ordinem inutilibus honorare' (ibid. 22), and the one already quoted from 1245 telling priors not to burden an already overburdened province by dispensing would-be recruits in the matter of age or education, but allowing them to receive people *secundum constitutiones* in so far as their own houses could support them or another house asked for them (ibid. 28).

¹¹² The same point was made again in different terms in 1274 and 1278: 'Admonemus ne aliquis conventus aliquem novicium de alterius conventus predicatione ad ordinem recipiat nisi in moribus, scientia et etate ydoneus sit et aptus'; 'Districtius inhibemus ne priores vel fratres alii novicios alterius predicationis recipiant infra etatem in constitutionibus assignatam qui in scientia aliqua dispensatione indigere noscantur nisi a conventibus de quorum terminis sunt oriundi essent specialiter per patentes litteras requisiti' (Douais, *Acta* 187, 223).

¹¹³ They issued admonitions against receiving useless, under-age, under-educated recruits in 1242, 1245, 1250 and 1254 (Douais, *Acta* 22, 28, 40, 60). In 1263

another convent. The reason for the permitted exception must be that the examination of candidates (to which, as we have seen, the same chapter drew attention as a constitutional requirement) could be conducted more effectively in their native territories,¹¹⁴ and the local convent might on occasion discover good cause to accept someone who did not strictly qualify.

This time the local convent was given a significant rôle in the acceptance of candidates *de alienis predicationibus*, but it is no more clear than it was before whether it acquired any subsequent claim on those who came from its own territory;¹¹⁵ nor is there anything in the text to indicate that the chapter envisaged such recruits being received *for* their local convents, though by now the concept of people being clothed in one convent for another was current enough to have entered the constitutions.¹¹⁶

It is in Lombardy that we first encounter a provincial chapter insisting that recruits must be received *for* the convents from whose

the chapter penanced everyone involved in the acceptance of recruits who were *insufficientes in scientia et etate* and decreed that such people could thenceforth not be accepted without a dispensation from the provincial (ibid. 100). In 1266 it imposed penances on those who had received under-age novices since the general chapter of 1265's ban on receiving anyone under fifteen (MOPH III 129.19-20), and further warnings were issued and penances imposed in 1267, 1269, 1272, 1273 (Douais, *Acta* 119, 126-127, 143, 161, 179).

¹¹⁴ In his instruction *de officio examinatorum* Humbert bids them take into account such factors as the testimony of reliable witnesses and *fama publica*, and he advises them to make discreet enquiries among the candidate's friends and acquaintances (Berthier II 268-269), none of which could normally be done except in the place where the candidate lived.

¹¹⁵ In 1268 and 1269 the provincial chapter forbade the brethren to put pressure on novices to make donations to particular convents, because if they were then transferred elsewhere the houses to which they were sent would have the burden of supporting them without benefiting from their gifts: 'Priores vel fratres non inducant novicios ad faciendum donationes aliquibus certis locis ne si transferantur alia loca habeant onus et non emolumentum'; 'Caveant priores et fratres ne inducant novicios ad faciendum donationes conventibus in prejudicium aliorum conventuum (ad quos transferri possent) si haberent onus sine emolumento' (Douais, *Acta* 132, 144). This might suggest that no convent had any long-term claim on any novice, but it is more likely that what these chapters had in mind was the possibility of novices being sent to more suitable houses to receive their initial formation, as recommended by the general chapter of 1267 (MOPH III 139.5-7).

¹¹⁶ In 1263 the chapter inchoated an amendment to the constitution on the reception of laybrothers in const. I 13 changing *conventus ubi fuerit induendus* to *conventus pro quo induendus fuerit* (MOPH III 120.1-2). This was duly approved and confirmed in 1264 and 1265 (ibid. 123.1-3, 126.19-21).

territories they came, and the province seems to have been concerned mainly to stop an influx of useless young men. The surviving acts begin in 1254 and from the outset there are admonitions urging convents not to accept inadequate candidates,¹¹⁷ and it is in this context that the principle of natural appurtenance first appears, in an admonition of 1268 (AFP 11 [1941] 146):

Caveant fratres ab inutili receptione novitiorum cum provincia nimia fratrum multitudine sit gravata et a receptione illorum quos fratres in propriis terris propter insufficientiam recipere nolissent.

Since this was apparently not enough, the chapter of 1273 added a further restriction (ibid. 151):

Cum multi inutiles et insufficientes ad ordinem recipiantur ordinamus quod nullus recipiendus in capitulo ponatur sine consilio maioris partis sacerdotum domus, nec in etate a constitutionibus determinata dispensetur nisi ubi multum magna et evidens et rationabilis esset causa. Item inhiemus quod nullus alterius predicationis ad ordinem recipiatur sine consensu illius conventus de cuius predicatione extiterit, exceptis locis illis in quibus est studium generale. Et si aliquis conventus contrarium fecerit ipsum recipiendi quoscumque novitios potestate privamus.

The final step was taken in 1277 (ibid. 155):

Inhiemus quod nullus alterius predicationis ad ordinem recipiatur sine consensu illius conventus *et pro illo conventu* de cuius predicatione extiterit, exceptis locis illis in quibus est studium generale. Et si aliquis conventus contrarium fecerit ipsum recipiendi quoscumque novitios potestate privamus.

After this we hear no more about novices being received from someone else's territory, but in 1280 the chapter imposed a procedure for vetting candidates which went beyond the examination already required by const. I 13 (ibid. 157):

Cum multi inutiles ad ordinem sepe recipiantur, talem modum circa recipiendos volumus observari, videlicet quod prior, priusquam

¹¹⁷ 'Admonemus ... ut caveat quilibet conventus ab inutilium fratrum et ordini non convenientium receptione' (1254); 'Admonemus ... quod caveant a receptione novitiorum insufficientium nisi sint sufficientes secundum constitutiones nostras' (1256); 'Admonemus ... quod priores et alii fratres non sint faciles ad recipiendum insufficientes et inutiles vel tales ex quibus ordo veniat in contemptum' (1266) (AFP 11 [1941] 140, 146).

recipiendo examinatores concedat, ordinet ut aliqui discreti fratres secum conferant de moribus et de conversatione inquirant. Postquam autem examinatus fuerit, priusquam in capitulo ponatur, prior .xii. sacerdotes de discretioribus convocet inter eos. Examinatores referant bona fide que invenerint tam de scientia quam de vita, et si maiori parti videbitur in capitulo ponatur.

This was re-affirmed in 1283, but the chapter of 1286 had to issue yet another warning about *inutilis noviciorum receptio*, and in 1289 three convents were stripped of the right to receive novices because of the number of under-age, under-educated boys they had accepted (ibid. 158, 162, 163).

The principle of natural appurtenance was not invoked in this case as a way of solving a financial problem but as a way of curbing an influx of unsuitable candidates which added to the difficulties of a province already *fratrum multitudine gravata*, as the provincial chapter complained in 1286 (ibid. 162). The point was not that convents had a right to 'claim the vocations' that developed in their territories, as alleged by W.A.Hinnebusch, who cites the Lombard chapters of 1273 and 1277,¹¹⁸ but that they had a responsibility to check the quality of people from their territories who wanted to join the province, and (as of 1277) they must deal with the consequences of their decisions.

In the acts of the Roman provincial chapter the principle of natural appurtenance first appears in 1265, and once again it is invoked in a financial context (MOPH XX 32.8-13):

Fratri Thome de Aquino iniungimus in remissionem peccatorum quod teneat studium Rome et volumus quod fratribus qui stant secum ad studendum provideatur in necessariis vestimentis a conventibus de quorum predicatione traxerunt originem; si autem illi studentes inventi fuerint negligentes in studio, damus potestatem fratri Thome quod ad conventus suos possit eos remittere.

Shortly thereafter the same procedure was applied to all students assigned to special studia: in the acts of 1269 the appointment of lectors and students to the province's *studia theologie* and *studia artium* (whose details are not preserved) is followed by 'Volumus autem et mandamus quod conventus de quorum predicatione omnes

¹¹⁸ *The History of the Dominican Order I*, New York 1966, 281 and note 13.

predicti studentes tam in theologia quam in artibus traxerunt originem teneantur in vestibus eisdem providere', and there is a similar injunction in the acts of 1272 (MOPH XX 36.10-17, 40.1-3).

The formula was shortened in 1276 to 'Volumus quod omnes studentes a conventibus unde traxerunt originem induantur', but the re-appearance of 'a conventibus de quorum predicatione traxerunt originem' in 1284 and 1285 suggests that the meaning was always the same (MOPH XX 47.25-26, 69.20-21, 72.6-10);¹¹⁹ there is in fact evidence from a later period that *conventus unde traxerunt originem* was still identified on the basis of where people came from, not the convents where their Dominican life originated: when Sezze was transferred to the *predicatio* of a different convent in 1327 the *conventus proprie originis* of friars from Sezze was altered accordingly.¹²⁰

The Roman province presumably made use of the Order's *studia generalia*, but before 1265 it seems otherwise to have relied on ordinary convent schools for its members' education;¹²¹ its first provincial studium was the one St Thomas was told to establish in Santa Sabina in 1265. His power to send unsatisfactory students back *ad suos conventus* shows that they were drawn from a number of convents, and it had apparently not yet occurred to the province to assign them to Santa Sabina, so whatever convents they were taken from remained 'theirs';¹²² students were first assigned to the houses

¹¹⁹ Cf. an ordination of the provincial chapter of 1321 in which *conventus unde traxit originem* clearly means the convent to whose *predicatio* someone belonged: 'Ordinamus et volumus quod nullus conventus recipiat ad ordinem personam aliquam ad alterius conventus predicationem spectantem sine expressa licentia illius conventus unde traxit originem' (MOPH XX 222.1-3).

¹²⁰ 'Facimus castrum Sezzie de predicatione conventus Anagnini et eundem Anagninum conventum fratribus de eadem Sezzia oriundis pro conventu proprie originis deputamus' (MOPH XX 243.3-5). This was no doubt a modification of the boundaries established after the foundation of a convent in Terracina in 1318 (ibid. 212.18-25). Sezze was about midway between Terracina and Anagni, and it had presumably been in the territory of Anagni before 1318.

¹²¹ In 1263 the chapter urged priors and subpriors to see that the brethren *tam iuvenes quam alii* attend school regularly, and in 1264, lamenting that 'in ista provincia studium negligitur', it strictly enjoined priors to pay more attention to making the brethren study 'et ordinet quod in qualibet septimana lectiones semel repetant, et examinentur diligenter, maxime iuvenes, a magistro studentium de hiis que in scolis per septimanam audierint a lectore' (MOPH XX 28.4-5, 29.14-19). There is no hint of there being any provision for students beyond that available in their convent school.

¹²² That *suus* identifies someone's house of assignation is clearest in connection with new assignations, as when the 1249 Spanish provincial chapter instructed 'quod

where they were to study in 1269.¹²³ There was no requirement in the legislation of the Order or the province that recruits should enter their local convents,¹²⁴ and in any case Thomas's students were presumably a select group of comparatively mature men and as such they might already have been assigned away from their original convents, so there is no presumption that *conventus sui* would coincide with the convents from whose territories they originated.¹²⁵

fratres assignati per capitulum vadant recta via *ad conventus suos* non contrahendo moram' (AD 5 [1984] 25), or the 1252 Provence chapter said 'Socii priorum et fratres novorum locorum portent nomina fratrum qui de domibus suis aliis assignantur, et illi teneantur credere de ordinatione ipsis et statim cum matura festinatione vadant *ad domos suas* ... Illi qui sunt assignati ad artes bene induti mittantur, et cum *ad domos suas* pervenerint non occupentur in officiis ...' (Douais, *Acta* 47). I see no reason to suppose that the usage of the Roman province was any different, though I can cite no textual evidence before the provincial's letter of 1281; the rules he laid down for people transferred from one convent to another by him or by the chapter include a ban on lingering anywhere on the way 'donec ad suos conventus pervenerint' (MOPH XX 59.5-10).

¹²³ 'Eosdem in conventibus in quibus sunt locati pro studio deputamus' (MOPH XX 36.17-18). *Deputare* is equivalent to 'assign': the import of 'Volumus et mandamus quod infra .x. dies a notitia presentis ordinationis fratres teneatur iter arripere ad conventus quibus sunt per acta capituli deputati' (1271) and 'Fratres qui per acta capituli presentis de conventibus suis sunt mutati et aliis conventibus deputati infra .viii. dies a notitia presentium de conventibus de quibus non sunt recedere teneantur' (1275) does not appear to differ from that of 'Iniungimus districte omnibus fratribus qui in presenti capitulo sunt aliis conventibus assignati quod infra quindenam a notitia presentium ad suos conventus studeant se transferre' (1295) (MOPH XX 38.35-37, 47.2-4, 122.25-27). The concept of *ad tempus* assignation was not unknown, but it was only applied to assignations outside a man's own province (as in const. II 14).

¹²⁴ That the Order at large did not yet have a rule about where people entered the Order is incidentally shown by an admonition of the 1273 general chapter: 'Nullus prior conventualis apostatam alterius conventus recipiat ad ordinem sine prioris provincialis vel eius vicarii licentia speciali' (MOPH III 169.22-23); the specific question of other convents' runaway friars would not even have arisen if there had been a general ban on accepting recruits from other convents' territories. The Roman province issued a similar injunction against receiving other convents' apostates in 1249, and penances were imposed in 1259 for their unauthorized reception (MOPH XX 9.24-26, 24.7-10).

¹²⁵ A different impression is given by the chapter of 1281 which appears to make *conventus sui* responsible for students' clothes: 'Volumus et mandamus prioribus, supprioribus et eorum vicariis quod fratribus studentibus qui de suis conventibus ad studium mittuntur cuiuscumque facultatis in vestibus sicut suis conventualibus studeant providere' (MOPH XX 56.9-12). But the subsequent re-appearance of the cumbersome 'conventus de quorum predicatione traxerunt originem' suggests that either there was a brief change of policy in 1281 and convents of assignation became responsible for clothing students who were to go to provincial studia, or, more probably, *de suis conventibus* is a kind of shorthand identifying students from the territory of a convent as being (from the point of view of the conventual authorities) 'from their convent' so that they must be clothed *as if (sicut)* they were *conventuales* there.

The significant feature of the students sent to Thomas's studium and to other provincial studia thereafter is that they were the province's rather than any particular convent's students; they were selected by the province and sent to studia organized by the province, and as such they were the province's concern. Once again we find the principle of natural appurtenance employed as a way of devolving a provincial responsibility upon the convents of the province.

That the convents from whose territories students originated were being asked to meet a provincial obligation becomes particularly clear in the early fourteenth century, though now only with reference to those sent to *studia generalia*.

In 1304 the general chapter ordered provinces to make provision for the clothing of students they sent to *studia generalia* outside their own territories (MOPH IV 3.30-33), and the provincial chapter explicitly sought to comply with this by calling on convents of natural appurtenance (MOPH XX 150.15-19):

Cum ordinatum sit per capitulum generale quod studentibus extra provinciam suam missis de vestibus a suis provinciis provideatur, volumus et ordinamus quod talibus fratribus de vestibus provideatur a conventibus unde traxerunt originem secundum quod aliis conventualibus providetur.

Aliis conventualibus gives the impression that the students in question were themselves *conventuales* of the convents *unde traxerunt originem*, but this is probably misleading. In 1305 the general chapter issued a curriculum specifying the minimum number of years to be spent in different kinds of study before anyone could move on to the next stage (MOPH IV 12-13); the provincial chapter, uncertain that its study assignments were all in accordance with this curriculum, appended a precautionary clause (MOPH XX 158.12-17):

Si qui autem fuerint de studentibus supradictis in quibus non fuerint ille conditiones que requiruntur ad audiendum Sententias, philosophiam et logicam secundum quod determinant eas acta immediate precedentis generalis capituli Ianue celebrati, eos per acta ista revocamus a studiis supradictis et reassignamus eos conventibus ubi prius erant conventuales.

In most cases the convents in which the people concerned were previously *conventuales* would be those to which they had been assigned as students, and we may assume that those lucky enough to be sent to a *studium generale* would similarly have been *conventuales* of a house in which they were studying or possibly teaching.

In 1326 the provincial chapter ordained that thenceforth it was only students sent *by the province* to a *studium generale* whose clothes were to be supplied by the convents from whose territories they originated,¹²⁶ and this was reiterated in 1327 and 1329 (MOPH XX 242.4-9, 248.5-7).

It is against this background that we must situate the decree of 1278 which Masetti cited (MOPH XX 50.3-6):

Volumus et mandamus quod pro induendis novitiis ydoneis predicationis proprie priores et conventus contrahere debita teneantur, et quod novitiis qui recipiuntur provideatur in vestibus a conventibus ad quos spectant.

It is clear from the first *quod* clause that the chapter saw convents as being responsible for clothing recruits from their own territories and, no doubt to prevent suitable but impecunious candidates being turned away, it even ordered them to run into debt for the purpose. The fact that the second *quod* clause is part of the same decree suggests that *conventus ad quos spectant* means the convents which are responsible inasmuch as the *novitii qui recipiuntur* come from their territories.¹²⁷ What is significantly absent from the decree is

¹²⁶ 'Ordinamus et ordinationem istam volumus in posterum observari quod solum fratri studentis misso per provinciam ad studium intraneum vel extraneum generale conventus ille unde traxit originem ex debito, ut moris est, teneatur de vestibus providere. Aliter vero assignatis conventum eundem providere ex debito minime volumus obligari' (MOPH XX 239.25-29).

¹²⁷ *Spectare ad* means 'to be the concern or responsibility of', a sense which passed to *spettare a* in Italian: cf. 'Ad curatorem rei publicae officium spectat ut dirutae domus a dominis extruantur' (Justinian, *Dig.* 39.2.46); in Dominican law it occurs in Primitive const. II 15, 'Statuimus quod electio prioris provincialis spectet tantum ad priores conventuales ...' (AFP 71 [2001] 23), and in an amendment to const. II 2 confirmed in 1272 which refers to a majority of those 'ad quos spectat electio' (MOPH III 161.32-162.1). It thus overlaps with *pertinere* (cf. 'ad ipsum provinciale capitulum eius electio pertinebit' in an amendment to const. II 3 confirmed in 1276, MOPH III 183.14-15), and can function interchangeably with it: cf. 'Omne et commodum et incommodum ad emptorem pertinere debet' and 'Statim post venditionem contractum periculum ad emptorem spectat' in *Dig.* 43.24.11. It can be used like this in connection with property rights: an amendment to const. II 3 confirmed in 1286 regulating the disposition of dead provincials' goods specifies that things they had *per provisionem ordinis* before assuming office 'ad provinciam vel conventum simpliciter pertinebunt', but those they acquired while in office 'ad provincias quarum erant priores spectabunt' (MOPH III 231.11-17). *Pertinere* can certainly be used of belonging to a Dominican house (e.g. MOPH III 208.1-2), and the Roman provincial chapter of 1312 uses *pertinere* and *spettare ad* of belonging to

any explicit interest in where novices were received; there is at least nothing to contradict the inference that the convent in the place they came from was required to pay for their clothes wherever they were received. Nor is there anything to suggest that they would be received for the convent which covered their costs.

For the past thirteen years the province had already been devolving the cost of clothing students in provincial studia upon the convents from whose territories they originated; it looks as if in 1278 it decided to follow the same policy with regard to novices. There is no sign in the surviving acts that the province took any immediate notice of the 1261 general chapter's admonition bidding provincial chapters find a way of clothing suitable but impecunious candidates (MOPH III 110.17-20), but that is surely just what the provincial chapter was doing in 1278. The principle of natural appurtenance, already being applied to the clothing of students, was invoked again as a way of devolving upon convents the province's responsibility for clothing novices.

After 1278 natural appurtenance is not mentioned in connection with the reception of novices until the fourteenth century, and by then the general chapter had intervened. In 1302 it made the consent of the local province or convent a condition for the acceptance of novices from elsewhere (MOPH III 315.32-35):

Districte inhibemus prioribus et fratribus universis ne novicium aliquem recipiant alterius provincie vel conventus sine voluntate et consensu prioris provincialis vel conventualis loci illius unde dictus novicius fuerit oriundus, locis exceptis ubi viget studium generale.

The Roman provincial chapter echoed this in 1312 (MOPH XX 184.32-35):

Volumus et mandamus quod nullus novitius recipiatur ad ordinem clericus vel conversus in aliquo conventu ad cuius predicationem non spectat nisi de assensu et voluntate illius conventus ad cuius predicationem noscitur pertinere.

It issued a similar ordination in 1321 and re-iterated it in 1322 (MOPH XX 222.1-3, 223.21-22).

the territory of a convent (MOPH XX 184.33-35); nevertheless, I doubt whether *conventus ad quos spectant* can be taken as 'the convents to which they belong' in the context of the 1278 injunction except in the sense that a convent has a certain responsibility for novices who are 'of its *predicatio*'.

Neither the general chapter nor any of these provincial chapters explained the motivation for such an edict, but when an even stricter measure was adopted by the province of Toulouse in 1317 the context suggests that it was primarily concerned to prevent the acceptance of unsuitable recruits:¹²⁸

Cum ex receptione vilium personarum ad ordinem ordo multipliciter contempnatur volumus et ordinamus quod fratres in receptione noviciorum diligentius solito invigilent et antequam receptio alicuius conventui proponatur prior cum examinadoribus positus per conventum et aliis fratribus conventualibus qui consueverunt ad consilia advocari de scientia et moribus recipiendi et aliis laudabilibus condicionibus plenarie se informant. Nec vota requiruntur in publico nisi in consilio fuerit sic conclusum. Et inhibemus districte quod nullus conversum vel clericum recipiat nisi fuerit de terminis sue predicationis oriundus, et contra facientes voce in receptione noviciorum ipso facto sint privati.

This was toned down in 1318 in line with the 1302 general chapter's ordination,¹²⁹ but in 1329 concern about quality re-appears with reference to complaints that the latitude granted to houses with *studia generalia* was being abused, saddling convents with unsuitable and unwanted novices (Toulouse 490 ff.457'-458'':

Cum diversorum conventuum habuerimus querelam valde gravem quod per enormem abusum studentes in studiis generalibus indifferenter recipi procurant novicios, conventibus ad quorum terminos pertinent minime requisitis in eorundem conventuum preiudicium et contemptum, ex quo contingit interdum recipi minus aptos, volumus et ordinamus et districtius inhibemus ne priores aut eorum vicarii in conventibus quibuscumque pretextu studii generalis aut aliquo quovis colore quesito pro conventu alieno quemquam ad ordinem recipiant ad alterius conventus terminos pertinentem sine voluntate conventus illius aut maioris partis eiusdem de cuius terminis assumetur, de qua voluntate nulli creditur nisi per litteras prioris vel conventus illius fuerit facta fides. Quod si secus actum fuerit sit irritum et inane, et volumus ... quod novicii qui taliter sunt recepti nullo modo ad professionem nisi de conventuum illorum ad quorum terminos pertinent voluntate nec interim teneantur conventus ipsi eos ad professionem recipere vel eis in aliquo providere.

¹²⁸ Toulouse 488 f.78^v, 490 ff.427^v-428^r.

¹²⁹ 'Districte inhibemus prioribus et eorum vicariis et fratribus universis ne novicium recipiant provincie alterius vel conventus sine licentia et voluntate prioris provincialis vel conventualis loci illius unde dictus novicius fuerit oriundus' (Toulouse 488 f.80^r, 490 f.430^v).

When the general chapter returned to the subject in 1336 it was unambiguously motivated by the same concern for quality (MOPH IV 237.1-19):

Cum bona consistentia ordinis nostri dependeat totaliter ex personis ydoneis et in bonis moribus educatis, mandamus et districte imponimus fratribus universis quod de attrahendo iuvenes aptos pro ordine sollicitam curam gerant. ... Et ne propter defectum noticie recipiendorum contingere possit error volumus et ordinamus quod novicii de terminis unius provincie nati in alia provincia vel de terminis unius conventus in alio conventu nequaquam recipiantur nisi de magistri ordinis vel priorum provincialium aut vicariorum generalium licentia speciali vel ad preces priorum et conventuum de quorum terminis fuerint oriundi vel nisi persona petens ordinem sit multum spectabilis et honorabilis pro ordine nec possit sine dispendio magistri ordinis vel prioris provincialis licentia expectari, conventibus generalia studia habentibus dumtaxat exceptis.

The Roman province, however, was more worried about poaching when it next addressed the subject in 1333 (MOPH XX 281.27-30):

Ut nullus presumat in alienam messem mittere falcem suam districtius inhibemus quod nullus prior seu conventus presumat induere seu recipere novitium qui sit de predicatione alterius conventus nisi per conventum ad cuius predicationem spectat fuerit ante receptus.

There can be little doubt that this is related to the anxiety about reduced numbers expressed by the provincial chapter in 1331 (MOPH XX 257.7-9): 'Cum nostra provincia sit in fratribus notabiliter diminuta imponimus singulis presidentibus quod ad receptionem novitiorum dent operam efficacem'. In these circumstances it is understandable that convents wished to protect their right to claim recruits who were naturally theirs.

The province of Toulouse had the opposite problem: as the provincial chapter commented in 1338 there was scarcely a single convent which did not contain more people from its own territory than it could easily support;¹³⁰ it is against this background that we must understand its outburst in 1341 (Toulouse 490 f.497^r):

Cum multiplicatio iuvenum et maxime minus sufficientium sit ordini scandalosa, et iam in hac provincia inoleverit quod per procuraciones

¹³⁰ Toulouse 490 f.485^v; the text is edited, not quite accurately, in C.Douais, *Les Frères Prêcheurs en Gascogne*, Paris 1885, 240.

indebitas et ex<t>ortas iuvenes in conventibus ad quorum terminos non pertinent recipiuntur ad ordinem in gravamen suorum conventuum et multiplicationem fratrum inutilium, inhibemus expresse ne aliquis prior, subprior vel vicarius recipere possit aliquem novicium ad ordinem qui non pertinet ad predicationem seu terminos illius conventus nisi de mandato seu licentia prioris provincialis, quam non concedat nisi ex causa multum notabili et urgente.

The reception of useless young men in convents which were not naturally theirs was not just burdensome and embarrassing, it was an obstacle to the reception of more suitable local candidates.

We have so far found the principle of natural appurtenance invoked for a number of reasons which had nothing whatsoever to do with any notion of affiliation: it provided a mechanism for devolving financial responsibility from the Order to provinces and from provinces to convents, it helped to protect provinces and convents from being landed with useless recruits they did not want, and it served as a way of preventing unfair recruiting in an underpopulated province and indiscriminate recruiting in an overpopulated province.

There is one final application, however, which we find in Provence, Toulouse and the Roman province, in which affiliation is faintly adumbrated.

The province of Provence had never appealed to natural appurtenance as a way of covering students' costs,¹³¹ but in 1294 it adopted a policy of recalling theology students who had completed their course in a provincial studium 'ad conventus ad quorum predicationem pertinere noscuntur' unless they were assigned elsewhere by the provincial chapter (Douais, *Acta* 385), and this was

¹³¹ From 1244 at the latest until 1260 the province generally followed the system hinted at in an admonition of the 1236 general chapter (MOPH III 9.31-32): potential lectors were allocated to particular convents which then assumed responsibility for providing them with the 'three books of theology' called for by Primitive const. II 28 (AFP 71 [2001] 129), later const. II 14, 'videlicet in biblia, hystoriis et sententiis', i.e. the bible, Petrus Comestor's *Historia scholastica*, known in the middle ages as *historie* or *historie scolastice* (cf. G. Murano, *Opere diffuse per exemplar e pecia*, Turnhout 2005, 84 no. 24, 674-675), and Peter Lombard's Sentences. See Douais, *Acta* 27, 31, 44-45. There was a change of policy in 1252 (ibid. 47-48), but the older system was revived in 1258 (ibid. 74-75, 81). The province assumed direct responsibility in 1261 (ibid. 85-87).

maintained after 1303 in the province of Toulouse.¹³² In 1312 the same policy was extended to all students (Toulouse 490 f.415^v), and from 1313 onwards the formula was adapted to include lectors who were not given new assignments (ibid. 418^v):

Omnes autem fratres quibuscumque studiis sive lectionibus deputatos sive per acta sive per litteras fuerint assignati qui in hiis actis non assignantur conventibus ad quorum predicationis terminos pertinent assignamus.

From 1310 onwards absolved priors were also assigned 'conventibus ad quorum predicationes pertinent' (ibid. f.407^r). The formula in 1342, the last chapter whose acts have survived, is more elaborate than in 1313 but not essentially different (ibid. ff.498^v-499^r):¹³³

Fratres autem omnes quibuscumque studiis sive per acta sive per litteras ad legendum vel audiendum alias assignatos qui in actis non nominantur, exceptis lectoribus et secundis lectoribus in theologia <anni> immediate precedentis, magistros studentium generalium studiorum, studentes etiam extra provinciam quibuscumque studiis assignatos sive per litteras assignandos, necnon et priores in actis generalis capituli huius anni absolutos, conventibus ad quorum predicationis terminos pertinent assignamus.

A slightly different use of the same principle was introduced in 1290 when the chapter forbade *iuvenes insolentes* to be sent to *studia logice*, 'et si qui tales missi fuerint ad huiusmodi studia, priores illorum conventuum ad quos missi fuerint remittendi eos ad conventus de quorum predicatione sunt de trium seniorum consilio liberam habeant potestatem; idem dicimus de assignatis studiis naturarum' (Douais, *Acta* 337); in one form or another this was retained until 1330 (Toulouse 490 f.460^r).

¹³² The formula varied for the first few years, but 'ad conventus ad quorum predicationem pertinent' prevailed from 1298 onwards and was retained in the province of Toulouse until 1312 (Douais, *Acta* 423, 438, 452 etc. up to Toulouse 490 ff.408^v, 411^v, 415^v). Thereafter 'conventibus ad quorum predicationis terminos pertinent assignamus' was favoured (Toulouse 490 ff.418^v, 420^v, 424^r etc. up to f.499^r)

¹³³ I have supplied *anni* and corrected *magistris* to *magistros* in accordance with the text contained in the acts of the 1341 chapter (f.495^v).

The adoption of much the same policy in the Roman province is first attested in the acts of the 1305 provincial chapter (MOPH XX 155.3-5):

Volumus quod priores et lectores isto anno absoluti ad illos conventus redeant conventuales unde traxerunt originem exceptis fratribus de Pistorio.

Lectors 'quibus parcimus a lectione hoc anno' were similarly assigned 'illis conventibus unde originem contraxerunt' in 1307 (MOPH XX 166.12-13), as were absolved priors and lectors in 1308, 1315, 1318, 1330, 1331, 1332, 1338, 1339, 1340, 1341 and 1344,¹³⁴ if we had more complete acts we should probably find the same clause more often. Students are not normally mentioned, but in 1319 those who had completed their appointed time in a *studium generale* were 'ipso facto illis conventibus deputati unde originem contraxerunt' (ibid. 217.13-15).

Assigning unemployed students, lectors, and priors to the convents from whose territories they came is not at all the same thing as recalling all otherwise unassigned friars to the convents for which they were received, as was done in the wake of the Black Death. It differs in two important regards: only certain categories of friar were affected, and they were not recalled to a particular convent but to a particular territory, whose local convent could vary as new foundations were made or boundaries between convents redrawn.

What lectors, students (even those dismissed for unruly behaviour), and to some extent priors had in common was that, by comparison with most friars, they had no fixed abode. Lectors and students were shunted from one convent to another by the provincial chapter, and, although it was theoretically the case that a convent seeking a prior from another house had to postulate him,¹³⁵ *de facto*

¹³⁴ MOPH XX 171.20-21, 196.3-5, 206.11-14, 254.6-8, 259.24-26, 271.30-32, 295.18-21, 308.22-24, 322.7-9, 333.10-13, 354.5-8.

¹³⁵ According to a text added to the constitutions before 1236 the election of someone from another convent required the provincial's permission (Primitive const. II 24, AFP 71 [2001] 116-118), and possibly as early as 1239 choosing someone from another convent was perceived as a postulation rather than an election; though it had no practical consequences, this distinction was introduced into the constitutions by an amendment confirmed in 1272 (MOPH III 161-162, cf. AFP 72 [2002] 62-64). In 1264 the general chapter told provincials not to propose a potential prior from another convent unless asked to do so: 'Caveant priores provinciales ne conventibus priore carentibus aliquem fratrem qui non sit de illo conventu offerant eligibilem nisi prius ab illo conventu fuerint requisiti' (MOPH III 124.34-36)

it does not seem to have taken long for what we may call 'career priors' to emerge in the Order,¹³⁶ and in any case the constitutions said nothing about where an absolved prior was to go.¹³⁷ In the absence of any notion of temporary assignation within a province¹³⁸ such people had no convent waiting to receive them when they had completed (or been dismissed from) the tasks which brought them to whatever convent they were in; the principle of natural appurtenance was invoked to supply this lack.

This use of natural appurtenance resembles affiliation inasmuch as it gave each friar a permanent point of reference which could be

¹³⁶ Of the sixteen priors of Toulouse between about 1240 and 1300 (MOPH XXIV 50-54) only two, Raymundus de Fuxo and Raymundus Mansi, were reportedly never prior of any other convent, five were priors elsewhere when they were elected in Toulouse, and they came from all over the territory of the province. The picture is similar at the less prestigious convent of Morlaas: of its nine priors between 1273 (when the convent was established) and 1310 only three were never prior anywhere else, and though most of them came from the south-western corner of the province there was one each from Rieux, Agen, Bordeaux, and Chatelus (north-east of Limoges) (MOPH XXIV 185-187). It seems to have been much the same in the Roman province: of the sixteen people identified as having been priors in the period before 1300 in the chronicle of S. Maria Novella (Orlandi, *Necrologio* nos. 1-177) ten are stated to have been prior in several convents, one is said vaguely to have been 'prior aliquando', and, although it is not mentioned, Aldobrandino de' Cavalcanti was prior of Lucca (MD NS 21 [1990] 102-103) as well as Florence before becoming provincial and then bishop. We do not have detailed evidence from other provinces, but in 1307 the general chapter had to respond to complaints from several provinces that reigning priors were too easily being granted to other convents which had postulated them (MOPH IV 24.31-34).

¹³⁷ According to a constitutional amendment to const. II 3 confirmed in 1279 'Priores provinciales cum fuerint absoluti ad illos conventus pertineant de quibus fuerunt assumpti nisi per superiores suos aliter fuerit ordinatum' (MOPH III 200.10-13), but the same principle was seemingly first extended to conventual priors by a declaration in Bandello's edition of the constitutions 'quod priores absoluti a suis officiis ad illos conventibus de quibus fuerunt assumpti pertinebunt nisi per superiores de illis aliter fuerit ordinatum' (Milan 1505, f.75^v).

¹³⁸ The lack of such a notion was vividly brought out in 1327 when the question was posed 'Utrum studens intraneus in studio generali, completo termino trium annorum qui eidem studio in constitutionibus est taxatus, in ipso conventu in quo studens fuit an in illo in quo erat quando fuit primo eidem studio assignatus conventualis existat si de eo nichil aliud extiterit ordinatum'. The response was that 'Studens intraneus conventualis remanet in conventu in quo studens fuit, sed extraneus in conventu sue provincie ubi remanet in conventu in quo primo fuit assignatus' (MOPH IV 175.4-12). A student from another province was assigned *ad tempus* and thus retained a residual assignation elsewhere; a student from the province in which the *studium generale* was situated had no such residual assignation anywhere else, he was simply assigned to the house in which he was studying.

brought into play when necessary; but it differs crucially in that it was based on territories, not convents, and on a link between friar and territory which existed independently of the Order. And it is perhaps not unfair to suggest that here too it gave provinces a way of devolving their responsibility on to convents: students and lectors and to some extent priors were called upon to forgo a settled life in particular convents to meet the needs of the province as a whole, so it was up to the province to look after them when it allowed them to rest or retire; and where better could they go, other circumstances being equal, than to the convents which corresponded to their natural homes?

APPENDIX

The general chapters of 1239-1241.¹1. *The transmission of early chapter-acts*

Our knowledge of the acts of general chapters from the early decades of the Order's existence derives from two independent collections. One made in the Roman province survives in AGOP XIV A 1 (A), an early fourteenth-century manuscript from S. Maria Novella, Florence, with acts of general and provincial chapters; the other, made by Bernard Gui, is known from several surviving manuscripts of his compilation of Dominican historical material.

A was undoubtedly copied from a pre-existing collection of acts which seems to have ended with the chapters of 1306; the first continuation went as far as 1310, and further chapters were added later.² The compiler could apparently not discover any acts from general chapters before 1236, and from 1236 to 1240 he could only find admonitions; the acts of 1241 are more or less complete, but those of 1242 and 1243 are missing in their entirety.

Gui's collection of general and provincial chapters is mentioned in the letter to Aymeric of Piacenza which accompanied the first edition of his compilation in 1304;³ as he explained in later editions, in whose manuscripts the acts themselves are generally included, 'Acta capitulorum generalium et provincialium nostre provincie que ab initio usque in presentem annum potui reperire in uno conscripsi uolumine ex diuersis antiquis rotulis et

¹ For sigla used in this appendix see *infra* 152; in addition V = the lost Venice manuscript of Bernard Gui, last seen in Berlin (now partly known from Kaeppli's photographs). Hitherto in this article I have tacitly introduced the modern distinction between 'u' and 'v' in quotations and Latin words; in this appendix I use only 'u' and 'V' in Latin texts except in numerals.

² The original collection of acts of general and Roman provincial chapters runs up to 1310, but it is only from 1307 onwards that there is a change of ink or writing between chapters; before that there is sometimes a change of script in the middle of a chapter. It is probably relevant that the provincial chapter of 1306 ordered priors and their vicars to get at least the acts of the last twelve years' general and provincial chapters copied and to copy all chapter-acts thereafter 'in uno libello de bonis cartis de pergamento et non de papiro, et hoc de littera competenti' (MOPH XX 162.8-12).

³ His account of masters of the Order and provincials was, he says, partly based on things he had read 'in actis capitulorum que prius in unum collegeram' (V f.1^v); in later editions he added 'quantum potui reperire' after *collegeram* (cf. MOPH XXII 4.20).

quaternis colligens cum multiplici tedio et labore'.⁴ The *unum uolumen* to which he refers can probably be identified with Bordeaux, Bibl. Mun. 780 (B), which is recognizably his own working manuscript⁵ in which for a time he got newly discovered acts inserted.

The first general chapter for which he had been able to find a full set of acts was that of 1240; as he noted in the margin in B and in the prologue to the collection of general chapters in later manuscripts in which these are separate from the provincial chapters:

Ab anno domini .m.cc.xx. usque ad annum eiusdem domini benedicti .m.cc.xl. de actis capitulorum generalium pauca que potui reperire inferius annotaui.

From 1240 onwards the acts are more complete 'quibusdam tamen exceptis pro quibus suo tempore si occurrerit recolligendis et complendis spatia vacua in locis suis inferius dimittantur' (MOPH III 1.1-7). The same prologue was adapted for the collection of provincial chapters (Douais, *Acta* 7).

In B there is a note under each year from 1220 to 1239 indicating that the general chapter was celebrated, with whatever information was available about it such as the name of the master or the election of a master or, in 1233, the translation of St Dominic; there are also some admonitions from 1233, 1234 and 1235. Under 1220 Gui also noted 'Nullum adhuc prouinciale capitulum inueni fuisse celebratum', and under 1221 'De prouinciali capitulo nichil inueni'; after that provincial chapters are ignored until 1239 except for three admonitions from 1231 (since he did not know where the chapter was held he headed them 'Capituli prouincialis eiusdem anni').

As Gui directed, there are generally gaps between years, but these are of different sizes.⁶ The first three pages display little concern for symmetrical

⁴ These words are added in Gui's own hand in the margin of Agen, Bibl. Mun. 3 f.1^v, and (with *multo* instead of *multiplici*) in Bibl. de Toulouse 490 f.4^v, though neither manuscript actually contains the acts of general chapters; cf. MOPH XXII 3.10-11.

⁵ Cf. L. Delisle, 'Notice sur les manuscrits de Bernard Gui', in *Notices et extraits des manuscrits de la Bibliothèque Nationale* XXVII ii, Paris 1879, at pp. 329-331. B is the only manuscript in which the acts of general chapters and Provence (Toulouse) provincial chapters are written in tandem, and it has them twinned like this up to 1304.

⁶ Up to 1233 there is a gap of a few lines after each notice; anything added to the notice on 1223 would have had to be placed outside the writing frame, but after 1228 (at the bottom of the second column of f.130^v) there is a gap at the top of the next page. Under 1233 there is quite a large gap between Gui's account of the translation of St Dominic and the chapter's admonitions. Under 1234 there is no such gap between the statement that the chapter was held and its admonitions, and there is no gap at all between them and the entry for 1235. There is then a generous gap between the handful of admonitions from 1235 and the notice on the most general chapter of 1236.

arrangement, but f.131^v is laid out more spaciouly, with 1237 (a year in which there was no general chapter) and 1238 (with no acts) being allocated half a column each, and 1239 (originally with no acts) being allocated the whole of the second column; this was presumably intended to use up f.131^v so that the acts of 1240 could begin on a new page.

At first Gui found nothing from 1236, but the acts of the general chapter were added later on f.132 (presumably inserted for the purpose), where they neatly fill the second column of f.132^r and both columns of f.132^v. The first column of 132^r and the whole of the space below the writing frame of both columns are occupied by admonitions headed simply 'Admonitiones', the only indication that they come from 1239 being the running title at the top of the column; they were apparently written after the acts of 1236.⁷ Later still, it seems, Gui discovered the acts of the 1239 provincial chapter and an approbation and a few inchoations from the general chapter, all of which he crammed into the second column of f.131^v.⁸

The acts of the general and provincial chapters of 1240, the provincial chapter of 1241, and both chapters of 1242 were in the original collection, but at first all Gui could find from the general chapter of 1241 was a few admonitions which duly appear on f.134^r between the provincial chapters of 1240 and 1241. He subsequently discovered the rest of the acts and they were meant to be inserted elsewhere: in the space after the admonitions Gui noted 'Acta istius capituli require ad .v. folia supra et debent scribi in isto loco', but no such folio is found between f.129 (where the index of chapters ends) and f.130 (where the collection of acts begins), and it is doubtful if it was ever inserted since the alternative direction

⁷ The first column of f.132^r had presumably been left blank in the hope that further early acts would come to light.

⁸ I am grateful to M.Nicolas Barbey of the Bibliothèque Municipale de Bordeaux for comparing the ink and writing of the second column of f.131^v with those of the first column of f.132^r for me; his conclusion is that the two columns were not written at the same time, and that f.132^r seems to have been written first. It is also doubtful whether the acts of the provincial chapter and the missing acts of the general chapter were discovered together. 'Anno domini .m.cc.xxxix. celebratum fuit a magistro Raymundo de Penna forti .xxii. capitulum' is written within the frame at the top of the second column of f.131^v, *generale* outside it (suggesting it was added later); *Parisius* is a much later insertion. In both P and Toulouse 488 the original text of their respective chapter-acts runs up to 1307, though the prologue was copied in Toulouse 488 from a manuscript dated 1305 by Gui, and in P from a manuscript dated 1306; Toulouse 488 has the acts of the provincial chapter of 1239, but P does not have the acts of the general chapter, which suggests that the provincial acts were discovered first and given the second half of the second column of f.131^v in B (even so they required six extra lines below the writing frame), and that the missing acts of the general chapter were inserted later (and the frame had to be ignored entirely to accommodate them).

found in the margin, 'Require in alio libro in quo sint',⁹ cannot have been written much later.

The few acts from the general chapter of 1238 which are present in later manuscripts presumably came to Gui's notice after he had abandoned work on B.

B gives us a glimpse of how acts of chapters might be pieced together from different sources, and such reconstruction was no doubt part of the *multiplex tedium et labor* which went to the making of the original collection as Gui assembled material 'ex diuersis antiquis rotulis et quaternis'.

Rotuli could refer to copies of the acts brought back from general chapters by the province's delegates, or to copies of these acts made at provincial chapters and taken to each convent with the acts of the provincial chapter.¹⁰ If they had been systematically preserved Gui would have been spared much of his *tedium et labor*, but their purpose was to communicate capitular decisions to the brethren, and it is doubtful if they were prepared in such a way as to suggest that they were meant to be kept as a record.¹¹

⁹ The manuscript clearly has *sint*, not *sunt* as reported in MOPH III 18, so 'in quo sint' is itself a directive: the acts *are to be (written)* in the other book, presumably (as Reichert says) Toulouse 489 (U), whose relationship to B is clear from the fact that the first rubric is *Admonitiones* (as in B), though what follows is actually the *confirmationes* (which B lacks).

¹⁰ In connection with the provincial chapter of 1254 Gui notes a proposal that the master should request the pope to drop *temporalibus non destituatur auxiliis* from the collect for St Dominic and add *et gaudiis perfruatur eternis* at the end; he says he found it written 'de manu fratris Stephani de Salanhac ... in dorso rotuli' (B f.146^r). Salanhac should have attended the chapter as prior of Limoges (MOPH XXIV 60), and the *rotulus* presumably contained material that was taken back to the convent.

¹¹ We should perhaps envisage them as bits of rolled up parchment rather than as finely produced scrolls. 'Dans le domaine administratif ... les copies d'actes ou les données sont fréquemment consignées sur des rouleaux (*rotuli*)' (O.Weijers, *Vocabulaire du livre et de l'écriture au moyen âge*, Turnhout 1989, 131); but the term *rotuli* can also refer to brief official communications, as when Humbert made it the cantor's business to prepare *breuia* and *rotuli* announcing someone's death, the former to be sent to other Dominican houses, the latter to be sent to religious communities with which the brethren had an arrangement to pray for each others' dead: 'Ad ipsum pertinet formare breuia que interdum ad alia loca mittuntur pro suffragiis inpetrandis ... Similiter in rotulis que mittuntur interdum pro suffragiis scribere quod scribi solet hoc modo: Titulus fratrum predicatorum talis loci. Anima eius et anime omnium fidelium defunctorum requiescant in pace. Oramus pro uestris, orate pro nostris. Die tali fuit rotulus apud nos' (Berthier II 239-240). Berthier was wrong to exclude from his edition the well-attested *anima eius et* which shows that *rotuli* were used in connection with individual deaths, and his note on *rotuli* is misguided ('dicebatur *rotulus* quia suspendiculo ligneo uersatili, ad uoluminis modum, asseruabatur, perpetuus autem membranis assutis continuabatur'); it is unlikely that anyone would have sewn sheets of parchment together and attached them to a roller just so that acts etc. could be taken home from a chapter.

Quaterni came into play when the acts arrived at a convent. In 1240 the provincial chapter of Provence decreed that 'quelibet domus habeat unum librum ubi scribantur acta capitulorum generalium et prouincialium, quod uisitatores faciant obseruari' (Douais, *Acta* 15). If this had been observed to the letter Gui should have been able to find the acts from 1240 onwards in the *quaternus* of any convent which was in existence by 1240; clearly this did not happen.

In 1245 the general chapter issued a similar decree: 'Mandamus quod in quolibet conuentu sit unus quaternus in quo scribantur singulis annis acta capituli generalis et prouincialis, et quater in anno legantur, nec deleantur nisi fuerint reuocata'.¹² Evidently this too was not generally obeyed, as Gui's difficulties attest.¹³

The compiler of the A collection was perhaps slightly more fortunate. In 1244¹⁴ the Roman province obliged subpriors to ensure 'quod in aliquo certo loco semper acta capitulorum inueniantur cum necesse fuerit' (MOPH XX 3.35-37), and it is from 1244 onwards that A has a reasonably complete set of acts of general chapters, and the 1244 provincial chapter is only the second in its set of provincial chapter-acts. Nevertheless the brethren's compliance was evidently less than perfect: the provincial chapter of 1246 penanced priors and subpriors 'in quorum domibus non sunt scripta acta capituli generalis et prouincialis', subpriors were penanced for the same failure in 1248, in 1251 it was felt necessary to order priors to get chapter-acts copied, in 1273 visitators were told to punish priors and subpriors of convents which did not have the acts of general and provincial chapters *in uno uolumine*, and the command to get acts copied was reiterated in 1284 (MOPH XX 6.36-37, 8.20-22, 11.35-36, 42.30-32, 64.21-23). Who knows how

¹² I quote Gui's text; A lacks *mandamus quod* and *et prouincialis*.

¹³ In the margin by the acts of the 1255 general chapter in B f.146^v Gui noted 'Hic incipiunt acta figiacensis conuentus antiquiora', which suggests he was particularly impressed by the Figeac *quaternus*, presumably because it was more complete than others he had seen; if he discovered it during the 1306 provincial chapter, the first to be held in Figeac (Toulouse 490 f.395^v), it would have been too late to give him much help (he should have attended the chapter as prior of Limoges, MOPH XXIV 67). In 1311 the provincial chapter, at which Gui was a diffinitor, obliged priors 'quod dent operam ad scribendum et ad habendum in conuentibus suis librum de actis generalium et prouincialium capitulorum qui nouiter est confectus', which must refer to Gui's *liber* (Toulouse 490 ff.374^v, 377) and implies that his collection was superior to those generally found in the province's convents. It may be a further tribute to his collection that, when the general chapter of 1558 announced that the newly elected master general, Vincenzo Giustiniani, proposed publishing all surviving acts of general chapters, it particularly asked provincials and priors to look for acts 'ab anno 1309 usque ad 1506' (MOPH X 12.11-16), which suggests awareness of a text of Gui containing chapter-acts up to 1308.

¹⁴ At the delayed 1243 provincial chapter (cf. AFP 72 [2002] 137-146).

much *tedium et labor* was expended by the compiler of the A collection or how many *rotuli* and *quaterni* he had to consult?

Both Gui's collection and A suggest that admonitions from early general chapters were easier to find than other parts of the acts, and V contained a section apparently devoted exclusively to admonitions of general chapters, beginning with those of 1234.¹⁵ The reason for this is not hard to divine. However conscientious the brethren were, no convent really needed to keep complete copies of the acts of general chapters. Liturgical innovations would naturally be recorded in the appropriate liturgical books, and constitutional changes would be noted in the constitutions; proposed changes (inchoations and approbations) might be discussed at the provincial chapter, but after that they were of no practical concern except to the provincial or diffinitor who would have to vote on them at the following general chapter, and perhaps his socius. Once a chapter's administrative decisions had taken effect, such as absolutions of superiors, the granting of new foundations, the imposition of penances, and the prescription of suffrages,¹⁶ there was no obvious reason to keep those sections of the acts. It was thus only admonitions which needed to be preserved and would be homeless unless they were collected as such.

The decree of 1245 was probably intended to oblige convents to maintain a complete record of all the acts of general chapters, but its wording could have suggested that it would be enough to transcribe (in some cases, probably, to go on transcribing) admonitions into a *quaternus*.¹⁷ The acts thus transcribed were meant to be read four times a year (read to the assembled community, that is), but it would have been silly to keep reading their administrative sections; liturgical changes should have been implemented, the constitutions were read in chapter anyway¹⁸ (and should have been kept up to date), so what else was there of which the brethren needed to be periodically reminded except admonitions? Furthermore, 'nec

¹⁵ 'Incipiunt admonitiones capitulorum generalium ab anno domini .m.cc. tricesimo .iiii.' (f.47^v); Kaeppli's photographs only preserve one page.

¹⁶ According to Humbert it was part of the cantor's job 'ponere in aliqua cedula que assignanda est in sacristia in loco apto numerum missarum et orationum que iniunguntur in capitulo uel a maioribus cuilibet fratri uel conuentui ut fratres sciant ad quid tenentur et quando soluerunt totum' (Berthier II 239). It is unclear how long-term promises of suffrages were supposed to be remembered, as when the general chapter of 1240 prescribed suffrages for Raymund of Penyafort when he died, which he did not do until 1275, and that of 1241 promised similar suffrages for the king of France, who did not die until 1270 (infra 1240.174-175, 1241.91-93), but we may guess that most people hoped to be reminded of them when the time came.

¹⁷ The similar admonition of the 1266 chapter significantly says 'In quolibet conuentu habeatur unus liber in quo acta capitulorum generalium et prouincialium *integre* conscribantur' (MOPH III 135.1-2).

¹⁸ On ferial days the ritual of chapter or Pretiosa included a reading from the constitutions (Primitive const. I 2, later const. II 6).

deleantur nisi fuerint reuocata' applied particularly to admonitions.¹⁹ Humbert was being realistic in urging the subprior, as the official particularly responsible for maintaining religious observance, to do his best to ensure that his convent had a good, accurate text of the rule, the constitutions, masters' letters and 'acta capitulorum et precipue admonitiones', and to arrange for the periodic reading of the constitutions and admonitions in the refectory;²⁰ even the master of the Order was only advised to keep a copy of the *admonitions* of general chapters with him.²¹ It is perhaps no coincidence that the first general chapter at which Humbert presided as master inchoated a constitutional amendment requiring that 'monitiones capitulorum generalium uel prouincialium in aliquo certo libello scribantur quolibet anno'.²²

2. *The general chapters of 1238-1243, a partial edition*

Before we proceed any further we need better and more information about the text of the chapters with which we are concerned than is provided in MOPH III. I have edited the acts of the general chapters of 1238-1241

¹⁹ 1243 seems to be the last chapter which revoked a constitutional amendment (MOPH III 26.1); thereafter failed amendments were just dropped. To the question whether admonitions lasted 'ultra annum siue solum per annum' Humbert replied in the early 1250s that they lasted indefinitely unless they contained an explicit or implicit time-limit or were revoked, though in practice many lapsed because they were forgotten (*Questiones* 2, ed. Creytens, AFP 21 [1951] 208-210; cf. MOPH XXX 405-407). In 1280 the general chapter declared 'Monitiones et ordinationes in actis capitulorum generalium et prouincialium facte durent quousque fuerint reuocate' (MOPH III 210.15-17); this was revoked in 1281, presumably to avoid burdening the brethren with a theoretical obligation to obey nearly every admonition that had ever been issued; but the contention that capitular admonitions only lasted 'per annum uel tantum ad uitam admonentium et alia huiusmodi' was also rejected (MOPH III 213-214). In the fourteenth century ordinations were more commonly repeated year after year, and the 1342 general chapter declared 'quod ordinationes et precepta ac sententie excommunicationum que ponuntur in actis capitulorum generalium et prouincialium non obligant fratres nisi solum usque ad receptionem actorum immediate sequentis capituli generalis uel prouincialis' (MOPH IV 281.14-17).

²⁰ 'Curare debet et erga priorem laborare quod habeantur in domo bene correcta et bene legibilia regula, constitutiones, littere magistri, acta capitulorum et precipue admonitiones, et totum officium ecclesiasticum, et diligenter seruentur; ut autem per obliuionem non negligantur debet ordinare quod ... interdum cum plures fratres intersunt legantur in refectorio constitutiones, admonitiones et littere predicte' (Berthier 211-212).

²¹ 'Debet secum habere regulam, constitutiones, priuilegiorum ordinis transcripta, admonitiones capitulorum generalium, breuiarium et unum missale bene correctum' (Berthier 182).

²² MOPH III 69.5-8 (1254); the inchoation was not approved in 1255.

from a representative sample of Gui's manuscripts and from A insofar as I have been able to decipher it; since constitutional amendments took three years to run their course I have added Gui's text of the confirmations and approbations from 1242 and the confirmations from 1243 (A has no acts from either year).²³

What follows is essentially an edition of Gui's version of the acts, and in the case of those which were in the original text of B it is an edition of B; I use angular brackets, <...>, to signify that I have supplied something from some other manuscript or manuscripts, and square brackets, [...], to indicate words which appear to have got into the text by mistake and passages which seem to have got into the wrong acts. To make for easier reading I have to a large extent normalized the spelling.

I have ignored the historical comments which are found in the margins of Gui's manuscripts, and I have tried to make it clear in the apparatus where A's readings can be inferred and where they cannot, and to avoid giving an exaggerated impression of my success in reading A.

SIGLA

Codex actorum capitulorum

A AGOP XIV A 1 (olim conuentus florentini s.Mariae Nouellae)

Codices compilationis Bernardi Guidonis

B Bibl. de Bordeaux 780

D Barcelona, Bibl. Univ. 218

F Frankfurt am Main, Stadt- und Univ. Bibl. Praed. 82

P Bologna, Bibl. Univ. 1535

U Bibl. de Toulouse 489

Codices constitutionum secundum ordinationem Raymundi

R Porto, Bibl. Mun. 101

S Praha, Univ. Knihovna VIII B 23

Codices constitutionum secundum ordinationem Humberti

L AGOP XIV L 1

M London, British Library addit. 23935

*

²³ There was a most general chapter in 1236 and no general chapter in 1237, so the process of constitutional amendment began afresh in 1238.

1238

Anno domini .m.cc.xxxviii. celebratum est Bononie sextumdecimum capitulum generale, in quo fuit electus in magistrum ordinis frater Raymundus de Pena forti cathalanus natione, barchinonensis, qui fuerat doctor in decretis Bononie, domini pape capellanus et penitentiarius, qui mandante domino papa Gregorio .ix. compilauerat decretales. Summam etiam de casibus siue de penitentia perutilem fecit. 5

Hec sunt acta eiusdem capituli que potui reperire.

Inchoamus hanc constitutionem ut de tertio in tertium annum mittantur de prouincia in prouinciam uisitatores.

Item damus licentiam ut fratres si inciderint in minorem excommunicationem absoluant se inuicem. 10

Item uolumus ut carceres fiant pro apostatis et fratribus inquietis coercendis.

Item damus licentiam captiuandi apostatas et corrigendi inordinate ambulantes. 15

Item concedimus ut priores prouinciales eligant sibi confessores etc.

*

1239

Anno domini .m.cc.xxxix. celebratum fuit Parisius a magistro Raymundo de Penna forti .xvii. capitulum generale.

Acta capituli generalis Parisius celebrati anno domini .m.cc.xxxix. **Approbationes**

1238 1-6 *om.* (in isto capitulo in magistrum fuit electus fr. Raymundus de Penna forti *post 16 inserto*) A 1 est Bononie] fuit *DFPU* 2 generale] generale Bononie *DFPU post ordinis add.* in die translationis beati Dominici fere ab omnibus (ab omnibus fere *D*) electoribus *DFU* 3 barchinonensis *om.* *D* 4 domini pape] eratque *D* et] ac *D* mandante] mandato *F* 4-5 mandante ... decretales] compilauit decretales mandante domino Gregorio papa nono *D* 5 etiam] quoque *DFPU* 6 siue] seu *DFPU* perutilem fecit] fecit perutilem *D* 7-16 *om.* *BP* 7 hec ... reperire] acta capituli generalis Bononie celebrati anno domini .m.cc.xxxviii. A hec] et hec *FU* eiusdem *om.* *F* que potui reperire *om.* *FU* 8-9 *om.* A 10 item *om.* A 10-11 *nil nisi* damus licentiam quod si fratres se absoluant *pro certo legere potui in A* 10 inciderint] inciderent *U* 12-16 *praeter ea quae infra indicata sunt eadem (ut puto, sed aliqua uerba minus clare legere potui) habet A* 12 ut] quod *A* 16 eligant sibi] sibi eligant *A* etc. *om.* *A* *deest admonitio qua prohibitum est ne fratres sacramenta praeter paenitentiam mulieribus religiosis administrarent (cf. 1240.147-150)*

1239 1-3 (a) *BP*, (b) *ADFU* 1b acta] hec sunt acta *A* 2-3a Parisius ... generale] .xvii. capitulum generale Parisius a fratre Raymundo magistro prefato *P* 2a Parisius *om.* et supra lin. manu recentiori *suppl. B* 3a actis a Ber. Guidonis repertis (quae primitus deerant) *post generale add.* Hec sunt acta capituli generalis Parisius celebrati anno domini .m.cc.xxxix. *B* 3b rubricam in marg. habent *DF, om. AU*

- 5 Approbamus hanc constitutionem, De tertio in tertium annum mittan-
 tur uisitatores per prouincias a capitulo generali qui habeant potestatem
 corrigendi excessus priorum conuentualium et aliorum fratrum. Et hec
 habet duo capitula.

Inchoationes

Inchoamus has constitutiones.

- 10 Statuimus ut .iiii. prouincie, scilicet Polonia, Dacia, Siria, Grecia, aliis
 octo prouinciis per omnia adequentur tam in duobus electoribus magistri
 quam in potestate quam habent priores prouinciales magistro ordinis mortuo
 uel amoto.

- 15 Item statuimus quod lectores quamdiu possunt officium exercere in
 priores conuentuales nullatenus eligantur, sed nec in diffinitores nisi forte
 cum capitulum fuerit in eadem prouincia celebrandum, nec passim in
 confessionibus occupentur.

- 20 Item statuimus ut ornamenta aurea et argentea preter calices fratres
 nostri non habeant, nec pannos sericos nec lapides preciosos nec campanas
 ad horas nisi unam.

Item statuimus ne decetero in nostris conuentibus habeantur ymagines
 nisi picte, nec fenestre uitree nisi albe cum cruce, nec littere auree in libris
 nostris.

- 25 Item statuimus ut hec correctio et ordinatio et additio ab omnibus
 uniformiter et uniuersaliter obseruetur.

Admonitiones

Fratres nostri non eligant uel postulent sibi priores nisi ille qui preest
 primitus sit amotus, nec etiam sub condicione Si eum contigerit amoueri.

- 30 Item admonemus ut fratres nostri si uacauerit semel in septimana
 celebrent in honore beati Dominici missam conuentualem, et quod in festis
 .ix. lectionum dicatur ad uesperas ad memoriam antiphona Transit pauper,
 ad laudes antiphona Carnis uigor, ad secundas uesperas O decus Hyspanie,
 in diebus uero ferialibus ad uesperas Senescenti Iacob, in matutinis Imitator.

Item ut festum beati Vincentii fiat decetero semiduplex.

4-86 om. P 4-25 in spatio nimis paruo ante acta capituli prouincialis inferius in eadem
 columna scripta suppl. B, om. A 5 per prouincias om. B generali om. U 6 aliorum]
 alium U, omnium DF 8 rubricam in marg. habent DFU, om. B 10 scilicet (cf. 1241.7)
 om. BU 11 octo om. F adequentur (cf. 1240.53, 1241.8)] assequantur B, asequantur
 in adequentur corr. D 26-86 in prima columna et ad calcem folii primitus pro actis
 anni 1236 inserti suppl. B 26 rubricam in textu habet B, incipiunt admonitiones in
 textu FU, incipiunt admonitiones in margine et in textu D, om. A 27 fratres sic et A]
 admonemus ut fratres B nostri om. A 27-28 non eligant ... amoueri sic etiam A
 29-33 om. A 32 uigor om. F Hyspanie om. F

Item ut fratres nostri diligenter admoneant populum ut ecclesias et 35
prelatos eorum honorent et eis fideliter reddant iura sua, et quod temporibus
suis ecclesias suas parrochiales frequentent.

Item admonemus ne fratres nostri uadant ad domos secularium uel
clericorum pro funeribus, nec recipiant cum scandalo euidenti.

Item ut priores non mittant ad predicandum uel confessiones audiendas 40
nisi fratres maturos et discretos.

Item fratres nostri dum <predicationis> officium exercent questum
publice non faciant nec procurent quod pro eis in eorum presentia in ecclesia
aut in alio loco publico fiat; sed nec uinum nec bladum nisi ad presentis
anni necessitatem accumulunt. 45

Item ne fratres curias regum uel principum absque magna necessitate
seu fructu animarum frequentent, nec arbitrium in se suscipiant nec
testamenti intersint nec eorum executores fiant.

Item admonemus ne fratres nostri itinerantes quacumque necessitate
habitum nisi de sui prioris prouincialis licentia speciali transforment, nec 50
sint prelatis suis nimis inportuni pro inpetranda licentia exeundi nisi
necessitas uel euidens utilitas hoc exposcat. Sed nec priores se exhibeant
faciles ad huiusmodi licentias concedendas.

Item fratres nostri proprios currus uel equos non habeant, nec etiam
alienos in domibus suis teneant nisi de licentia magistri ordinis uel capituli 55
generalis, nec seruientes seculares plus quam duos uel tres in domibus suis
teneant nisi propter necessitatem in aliquibus locis per priorem prouincialem
de pluribus dispensetur, pro quibus etiam in domibus nostris carnes non
preparentur.

35-37 diligenter ... frequentent] *praeter ea quae infra indicata sunt eadem habet A*
35 ut *om. A* populum (*cf. 1240.78*) *om. BU* ecclesias et *om. A* 37 ecclesias suas]
suas ecclesias *A* 38-39 item ... funeribus] item ne ad domos secularium uel clericorum
uadant pro funeribus *A* 38 ne] nec *B* domos] domum *D* 39 nec ... euidenti] *praeter*
recipiant ea (*cf. 1240.95*) *eadem habet A* 40-41 item ... maturos] item prior non mittat
ad predicandum nec ad confessiones audiendas instituat fratres nisi discretos et maturos
(*cf. 1240.80-81*) *A* 42-44 item ... publico] *praeter ea quae infra indicata sunt eadem*
habet A 42 fratres nostri *om. A* predicationis *ex A* *recepti* (questuacionis *perperam legit*
Reichert), *om. BDFU* officium *om. F* questum *sic ADF*] questus *BU* 43 faciant]
facient *D* in eorum presentia] in presentia eorum *BU* 44 aut in alio loco publico] aut
in aliquo loco publico *F*, aut aliquo loco publico *BU*, uel alio publico loco *A* 44-45 fiat
... accumulunt] *nil nisi* bladum nisi ad presentis *pro certo legere potui in A* 46-47 item
... animarum] *nil nisi* absque magna necessitate seu fructu animarum *pro certo legere*
potui in A 47 frequentent] frequentare presumant (*cf. 1240.85*) *A* 47-48 nec arbitrium
... fiant *sic etiam A* 49 item ... nostri] item fratres *A* 49-56 itinerantes ... generalis]
praeter ea quae infra indicata sunt eadem habet A 49 quacumque] quod quacumque *F*
50 prouincialis (*cf. 1240.87*) *om. BU* licentia speciali] speciali licentia *A* transforment]
non transforment *A* 51 sint prelatis suis] prelatis suis sint *BU* nimis *om. F* 52 utilitas
om. A 52-53 se exhibeant faciles] faciles se exhibeant *A* 54 nostri *om. A* 55 teneant
(*cf. 1240.97*)] detineant *BU* 56-59 nec seruientes ... preparentur *om. A*

60 Item admonemus ut fratres hospites secundum quod magis et minus
in itinere laborauerunt diutius et commodius procurentur. Qui autem adeo
infirmi et debiles fuerint ut necesse habeant carnibus recreari siue sint
priors siue alii extra non exeant, et si aliquando occasione capituli uel
65 necessitate exire contigerit nec equitent nec quadrigent nec carnes comedant
nisi adeo grauis infirmitas superuenerit quod aliter fieri sit necesse, et tunc
ad suos conuentus reuertantur.

Declaratio illius constitutionis Maior in mensa loqui poterit. Qui maior
est in ordine potest loqui in mensa ubique extra refectorium absque aliqua
licentia speciali, et si maior superuenerit ipse quidem taceat et qui ceperat
70 loqui loquatur, ad mensam uero episcoporum uno loquente nichilominus
alii ad interrogata respondeant.

Item lecti nostri in dormitorio uel alibi nullis intermediis obumbrentur,
poterit tamen in extremitatibus lectorum in altitudine unius cubiti usualis
a superficie lecti aliquod intermedium ligneum uel plastreum interponi. Hoc
75 autem intelligimus ubi celle cum lectis minime coniunguntur. Ubi aliter
factum est emendetur.

Item admonemus ut nulli seculari hospiti in domo nostra recepto lectus
cum lintheaminibus a nostris fratribus preparetur, quod si secum ea detulerit
poterit sustineri.

80 [Item uolumus ut prior prouincialis cum diffinitoribus prouincialis
capituli uisitoribus prouincie conuentus diuidat uisitandos prout uiderit
expedire.

60-66 item ... reuertantur] *praeter ea quae infra indicata sunt eadem (ut puto, sed aliqua uerba minus clare legere potui) habet A 60 ut] quod F 61 in itinere om. A autem om. A 62 et debiles] uel debiles A 62-63 siue sint priores] siue priores sint A, om. F 63 alii (cf. 1240.103)] sint alii BFU aliquando om. A 65 superuenerit] in uia superuenerit (cf. 1240.105) A 66 suos conuentus (cf. 1240.106)] conuentus suos D post conuentus uerbum quod nescio an sit citius (cf. 1240.106) add. A 67-71 om. A ad 67 in marg. declaracio alia manu add. F 67 in mensa om. BU 68 aliqua] alia BU 72-76 post item lecti nostri in dormitorio pauca legere potui ex eis quae habet A 75 celle cum lectis (cf. 1240.111)] lecti cum cellis A, celle cum cellis BU minime (sic ut puto et A) in dubium uocat 1240.111, sed intelligendum mihi uidetur 'aliquod intermedium' concessum ubi lecti in parte dormitorii essent a cellis seiuncta (de cellis autem 'in quibus sunt lecti' anno 1289 iniunctum est prioribus ut eas 'taliter ordinent et disponant quod katedra, lectus et pulpitus clare a transeuntibus uideantur', MOPH III 252.29-253.2) ubi² et ubi D 75-76 aliter factum est] est factum aliter A, aliter factum U 77 item admonemus ut] item monemus quod A nulli ... recepto] nulli hospiti seculari in domibus nostris recepto A 77-78 lectus ... preparetur] lectus cum lintheaminibus preparetur a fratribus A 78 quod ... detulerit sic (ut puto) et A 79 poterit sustineri] sustineri poterit A, post quod aliquot sunt uerba quae nec ego nec Reichert legere potuimus, pauciora tamen quam ut sententiam uel unius ex admonitionibus quae apud Ber. Guidonis sequuntur expriment 80-86 recte ut uidetur om. A (cf. 1240.119-120 et 1240.71-74), unde eadem seclusi 81 conuentus diuidat (cf. 1240.120)] \conuentus/ diuidat B, diuidat conuentus U*

Item uolumus ut frater qui dum esset in seculo prouinciam in qua natus est dimiserat omnino et ad aliam se transtulerat domicilium commutando sit de illa prouincia in qua domicilium habuit nisi de eo per magistrum 85 uel capitulum generale aliter ordinetur].

*

1240

In nomine patris et filii et spiritus sancti, amen.

Acta capituli generalis Bononie celebrati anno domini .m.cc.xl.

Reuocamus hanc constitutionem, De tertio in tertium annum mittantur uisitatores per prouincias a capitulo generali etc.

Item hanc, Lectores quamdiu possunt lectionis officium exercere in 5 priores conuentuales nullatenus eligantur, sed nec diffinitores etc.

Item constitutionem de ornamentis non habendis.

Approbationes

Approbamus quod non habeamus nisi unam campanam ad omnes horas.

Item quod non habeamus ymagines sculptas. 10

Item approbamus hanc constitutionem, Hec ordinatio et correctio et additio ab omnibus uniuersaliter obseruetur. Et hec habet duo capitula.

Hoc tamen addimus, Fratres nostri sedeant ad Laudate sicut prius.

Item fratres nostri layci dicant .d. pater noster.

84 dimiserat] dimisit B aliam] illam BU

1240 1 in nomine ... amen om. AD post amen quasi titulum Generalis add. B 2 praeter hec sunt acta eadem habet A 3-70 om. A 4 etc. om. PU 5 lectionis officium] lectiones F 6 diffinitores] in diffinitores DF 7 ornamentis] ornamentis sericis DF 8 rubricam in margine habent BDFPU 9 quod] et P 11 approbamus om. et in marg. suppl. U, om. DFP hanc] h(ui)us ac (sic) P constitutionem om. DFP 12 additio] additio constitutionum nostrarum DF uniuersaliter (cf. 1241.13 et cod. R post finem const. II 15)] uniuersaliter et uniformiter (cf. 1239.25) D, uniuersaliter et conferuntur (sic) F 13 addimus] addimus F 13-50 fratres nostri sedeant ... non detur totum sub Hoc tamen addimus ... et hec additio et subtractio habet unum capitulum intelligi uoluisse diffinitores uidentur idque approbationi constitutionum a Raymundo ordinarum eo subiunxisse ut mutationes quibus aliqua adicerentur textui earundem aut demerentur ab inchoationibus constitutionum omnino nouarum distinguerentur 13 laudate scripsi] laud' B, laudes PU, Ps. Laudate dominum omnes gentes DF (hoc modo reuocanda erat constitutio a capitulo generalissimo anno 1236 facta Quando dicitur Laudate dominum omnes gentes fratres non sedeant et eo finito sedeat chorus ille qui prius sedere debuerat [MOPH III 8.35-36], qui psalmus ante nouam psalterii ordinationem iussu Benedicti pp. XV factam tertius erat ad uesperas feriae secundae)

- 15 Item si quis in proclamatione iudicium fecerit ponatur in leui culpa post illud uerbum Vindicando clamare presumpserit.
- Item ubi dicitur de annuntiatione mortis magistri addatur quod domus parisiensis annuntiet prouincie Dacie, bononiensis uero Polonie, Terre Sancte, Grecie; et deleatur de constitutionibus illud Aliis quibus poterit.
- 20 Item ubi dicitur Scripturam publicent in medium addatur Expressis nominibus eligentium et electorum.
- Item ubi dicitur de diffinitore Vel nisi in priorem prouincialem electus fuerit addatur Et confirmatus.
- Item ubi dicitur in constitutione de priore conuentali eligendo Secun-
25 dum formam canonicam eligatur addatur Videlicet a maiori parte medietate eligentium uel per compromissionem uel per communem inspirationem, aliis iuris subtilitatibus relegatis, quod similiter in electione magistri ordinis et priorum prouincialium obseruetur.
- Item quod dicitur in graui culpa Si indumenta uel [alii] alia data fratri
30 uel concessa sine ipsius licentia alius acceperit etc. ponatur in titulo de leui culpa post illud Negligenter tractauerit.
- Item predicatorum et etiam alii fratres itinerantes sint contenti officio illorum ad quos aliquando declinant; residuum amoueat.
- Item frater qui in alienam prouinciam ad legendum mittitur omnes libros
35 suos glosatos, postillas, bibliam et quaternos secum deferat, et si simpliciter illi prouincie ad quam mittitur assignetur libri quos habuit de prouincia de qua mittitur ipso mortuo ad illam prouinciam pertinebunt, alii uero omnes

15 proclamatione] proclamatione sui *DF* iudicium *recte primitus B*] iurgium *FDP* et manu correctoris recentioris *B* (*const. antiquae OP I 21 leues culpas tam praesumendi accusatorem quasi uindicando clamare quam iudicium faciendi in clamatione e mediis culpis praemonstransium* [Liber consuetudinum III 2] *reperunt, sed ut uidetur ob iudicium iam in iurgium corruptum Raymundus culpam iurgium faciendi in titulum de culpis grauibus transtulit* [*const. I 17*]; *patet diffinitores culpam iudicium faciendi in locum pristinum restituere uoluisse*) 16 post] \non/ post *U* (*etenim culpa iudicium faciendi, in cod. S et in const. sororum de Monte Argi* [AFP 17 (1947) 76] *post culpam accusatorem quasi uindicando clamandi posita, in codd. paulo recentioribus ante eam occurrit*) uindicando] uindenouido ut uidetur *P*, om. *F* presumpserit] presumpserit uincando (*sic*) *F* 17 mortis om. et in marg. suppl. *F* 18 parisiensis (*cf. 1241.19, 1242.9*) ex *U* *recepti*] Parisius *BDFP* 19 de constitutionibus illud] illud de constitutionibus *DFPU* 22 ubi] ibi *U* 24 conuentali *recte B* (*cf. const. II 2*)] prouinciali *FP*, prouinciali in conuentali *corr. DU* 26 compromissionem] compromissiones *P* 29 alii quod *recte om. U* (*cf. const. antiquas I 21, 1241.31, 1242.21 et const. I 16* [S] uel 17 [R]) *seclusi* 30 alius] aliis *P* etc.] et cum *P*, om. *U* 33 amoueat] moueat *P* 34 alienam] aliam (*cf. 1241.37, 1242.29*) *DF* (*sed frater ... prouinciam ad uerbum nec in uetere constitutione* [*const. antiqu. X 18, AFP 71 [2001] 143*] *occurrit nec in noua* [*const. II 14*]) 35 postillas] post illos *P* 36 de prouincia (*cf. 1241.39-40, 1242.31-32 et textum nouum huic constitutioni insertum in R* [*const. II 14*])) a prouincia *DFPU* 37 ipso] pp'o *P* alii uero omnes (*cf. 1241.41, 1242.32-33 et textum nouum huic const. insertum in R necnon const. II 14 in LM*)] omnes uero alii *DFPU*

sint illius prouincie ad quam mittitur, siue in uia siue in prouincia moriatur. Si uero ad tempus mittitur omnes libri ad prouinciam de qua assumptus est reuertantur. Idem dicimus de missis de prouincia <ad prouinciam> non ad regendum, non tamen portent nisi bibliam et breuiarium <et quaternos>. 40

Item ubi dicitur quod socius obediat in omnibus predicatori remoueat In omnibus.

Item ubi dicitur Predicator non audeat etc. nisi habeat mandatum generale etc. remoueat Generale. 45

Item in suffragiis defunctorum remoueat quod dicitur de sociis magistri et priorum prouincialium.

Item remoueat quod dicitur de cisterciensibus non recipiendis absque domini pape licentia speciali.

Item benedictio post completorium non detur. 50

Et hec additio et subtractio habet unum capitulum.

Item approbamus ut .iiii. prouincie, uidelicet Polonia, Dacia, Ierosolimitana, Grecia aliis octo prouinciis per omnia adequentur tam in duobus electoribus magistri quam in habenda potestate quam habent priores prouinciales magistro ordinis mortuo uel amoto. Et hec habet duo capitula. 55

Inchoationes

Item inchoamus has constitutiones.

Generalem statum ordinis uel consuetudinem diu obtentam et communiter in ordine approbatam neque magister ordinis neque priores

38 mittitur] mittatur *F* 40 ad idem paragraphum statuit *U* de prouincia] prouincia *P* ad prouinciam (cf. 1241.43-44, 1242.35-36) e *DF* recepi, om. *BPU* non] uero *P* 41 et quaternos (cf. *const. antiqu.* X 18 [AFP 71 (2001) 143], 1241.45, 1242.36-37 et textum nouum insertum in *R*) e *DF* recepi, om. *BPU* 42 ubi] quod *U*, om. *P* 45 remoueat (cf. 1241.49)] amoueat (cf. 1242.28) *DFPU* 46 defunctorum] diffinitorum *F* 46-47 de suffragiis pro sociis prouincialium aliorumque diffinitorum generalis capituli dicendis agitur in *const. antiquis* II 36 (AFP 71 [2001] 110), sed ubinam de sociis magistri aliusue sociis prouincialium? suspicor Raymundum post suffragia ibidem pro magistro prouincialibusque mandata et pro sociis eorum uel simile adiecisse, et id diffinitores ut minime a tribus capitulis confirmatum auctoritate huius solius capituli dempsisse 48 quod dicitur om. et in marg. suppl. *U*, om. *DFP* non om. *F* 56 rubricam in margine habent *BDFPU* 57 item om. *DFPU* 58 generalem statum recte *B*] generale statum *P*, generalem statutum *D*, generale statutum *U*, generalem statutam *F* (*iuris canonici peritis placuit nec etiam papae licere generalem ecclesiae statum mutare* [cf. *Y. Congar, 'Status ecclesiae'*, *Droit ancien et structures ecclésiales, Variorum Reprints, Londinii* 1982, I], sed librariis statum a statutum parum discernentibus [cf. *G. Post, 'Copyists' errors and the problem of papal dispensations contra statutum generale ecclesiae or contra statum generalem ecclesiae according to the decretists and decretalists ca. 1150-1234'*, *Studia Gratiana* 9 (1966) 357-405], haud mirum est eandem uariationem in codicibus tam actorum capitulorum quam constitutionum *OP* occurrere) generalem ... obtentam] generalem statutum ordinis" ... optentam "generale *D* (*uoluitne librarius sic generalem in generale corrigere?*) 59 approbatam] probatam *D*

60 prouinciales aliquatenus ualeant immutare nisi per tria capitula fuerit approbatum.

Diffinitores excessum magistri seorsum corrigant et emendent, quod si preuaricator ordinis fuerit aut contemptor aut adeo negligens et remissus quod ordinis dissolutionem inducat moneatur a diffinitoribus ut magisterio
65 cedat et locum ad manendum sibi eligat, alioquin amouendi ipsum ab officio liberam habeant potestatem; et alia forma remoueat.

Item statuimus ut ornamenta pannorum tam altaris quam ministrorum sint absque lapidibus preciosis et auro preter aurifrisium, et quod solus ebdomadarius capa serica tam in choro quam in processione utatur.

70 Et iste constitutiones habent unum capitulum.

Item frater qui dum esset in seculo prouinciam in qua natus est omnino dimiserit et ad aliam se transtulerit domicilium commutando sit illius prouincie in qua domicilium habuit nisi de eo per magistrum ordinis uel generale capitulum aliter ordinetur.

75 **Monitiones**

[Admonemus ut in festis .ix. lectionum dicatur ad primas uesperas Transit pauper, ad secundas O lumen pro memoria.

Item fratres nostri diligenter admoneant populum ut ecclesias et prelatos honorent et ecclesiis reddant iura sua.

80 Item priores non mittant ad predicandum nec ad confessiones audiendas instituant fratres nisi discretos et maturos.

Item fratres nostri uinum <et> bladum non accumulent nisi ad presentis anni necessitatem, quod bona fide seruetur.

61 approbatum *om. P* 62 diffinitores] item diffinitores *DF* 63 et remissus (*cf. 1241.62 et textum nouum in R insertum necnon const. II 8 in LM*)] aut remissus *DFPU* 65 amouendi ipsum (*cf. 1241.64, 1242.51 et textum nouum in R insertum necnon const. II 8 in LM*)] ipsum amouendi *DFPU* 66 potestatem *om. P* 69 in choro quam in processione (*cf. 1241.58-59, 1242.46-47, const. I 1 in S et LM atque textum nouum in R insertum*)] in processione quam in choro *DFPU* 70 et iste ... capitulum *om. et in marg. suppl. U, om. DFP* 71-74 *om. A* (*hanc ordinationem credi potest ante rubricam Monitiones poni quia Ber. Guidonis eam primo post admonitiones iam in aliquo quaterno repertas in quodam rotulo actorum inuenerit uel etiam quia eam ipsi diffinitores monitionem proprie dictam non censuerint nec admonemus ut praemittere uoluerint*) 72 dimiserit sic ut puto *B*] dimisit *DFPU* ad aliam] aliam *F*, alio *P* transtulerit] transtulit *DFP* 72-73 commutando ... domicilium *om. P* 74 post ordinetur *perperam add.* Iste constitutiones habent unum capitulum *DFPU* 75 rubricam in margine habent *DFPU* et tam in margine quam in textu *B, om. A* 76-114 recte ut uidetur *om. A* (*iisdem paene in actis capituli antecedentis apud Ber. Guidonis repertis*), unde eadem seclusi 76 ut] quod *D, om. FP* transit] antiphona Transit *F* 77 credo librarium quendam o lumen pro o decus Hispanie (*cf. 1239.32*) substituuisse quia uix credendum est diffinitores ita oblique ipsam antiphonam mutare uoluisse 80 ad confessiones] confessiones *DFP*, (*in marg. ad*) confessiones *U* 81 audiendas] audiendum *D*, audi^d *P* fratres nisi] nisi fratres *DPU*, ubi fratres *F* 82 et ex *F* *recepti, om. BDPU* nisi *om. P*

Item fratres curias regum uel principum absque magna necessitate seu fructu animarum frequentare non presumant nec testamentorum executores fiant. 85

Item fratres nostri itinerantes habitum nisi de sui prioris prouincialis licentia speciali non transforment, nec sint prelati suis nimis inportuni pro inpetranda licentia exeundi nisi necessitas uel euidens utilitas hoc exposcat, sed nec faciles reddant se priores uel exhibeant ad huiusmodi licentias concedendas. 90

Item fratres non eligant uel postulent sibi priorem nisi ille qui preest fuerit primitus amotus, nec etiam sub condicione Si contigerit eum amoueri.

Item non uadant ad domos secularium uel clericorum pro funeribus apportandis nec recipiant ea cum scandalo euidenti. 95

Item fratres nostri proprios currus uel equos non habeant nec etiam alienos in domibus suis teneant, nec seruiantes seculares habeant plus quam duos uel tres nisi propter necessitatem per priorem prouincialem dispensetur; pro seruientibus uero in domibus nostris carnes nullatenus preparentur.

Item fratres hospites secundum quod magis uel minus laborauerint in itinere diutius et commodius procurentur. 100

Item qui adeo infirmi et debiles fuerint quod necesse habent carnibus recreari siue sint priores siue alii extra claustrum non exeant, et si aliquando occasione capituli uel alia necessitate exire contigerit non equitent uel quadrigent nec carnes comedant nisi in uia adeo grauis infirmitas superueniat quod aliter fieri sit necesse, et tunc ad suos conuentus citius reuertantur; possit tamen prior prouincialis aliter dispensare. 105

Item lecti nostri in dormitorio uel alibi nullis intermediis obumbrentur, poterit tamen in extremitatibus lectorum in altitudine unius cubiti usualis a superficie ceruicalis aliquod medium ligneum uel plastreum interponi, et hoc intelligimus ubi celle cum lectis coniunguntur. Ubi autem aliter factum est emendetur. 110

Item nulli hospiti seculari recepto in domo nostra lectus cum linteaminibus a fratribus preparetur, sed si secum ea detulerit poterit sustineri.]

Item fratres studentes Parisius qui sunt pro lectoribus assignati in ferialibus diebus ad completorium tantum uenire teneantur, in festis uero 115

85 testamentorum executores] executores testamentorum *DFPU* 87 de *om.* *P* 87-88 prouincialis licentia speciali] presencia speciali licencia *F* 88 prelati suis nimis] nimis prelati suis *DFPU* 89 hoc] id *DFPU* 93 condicione] d(ici)one *F* eum] ipsum *DFPU* 96 item *om.* *F* 97 seruiantes seculares] seculares seruiantes *U* 100 uel] et (*cf.* 1239.60) *U* 102 infirmi et debiles] debiles et infirmi *DFPU* 104 contigerit] contingit *P* 104-105 uel quadrigent] nec quadrigent *U* 110 a superficie *om.* *D* ceruicalis] cum uitalis *F* medium ligneum] ligneum medium *U*, lig^m medium *P*, lignum medium *DF* 111 celle cum lectis] lecti cum cellis *DFPU* post lectis *supplendum uidetur* minime (*cf.* 1239.75) 114 si *om.* *F* detulerit] tulerit *U* 115-123 item ... sustinere] *praeter ea quae infra indicantur eadem habet* *A* 115 item *om.* *A* Parisius qui sunt] qui sunt Parisius *A* 116 uenire *om.* et (*eadem manu ut puto*) *supra lin. suppl. B*

.ix. lectionum in aliis horis nisi remanserint de licentia speciali eos uolumus interesse, nec ad officium infirmarie scribantur.

Item prior prouincialis cum diffinitoribus capituli prouincialis uisita-
120 toribus prouincie conuentus diuidat uisitandos prout uiderit expedire.

Item carceres fiant ad conpescendam insolentiam peruersorum.

Item prouideatur lectoribus in libris ut scriptum est, et in cibis necessa-
riis ut possint laborem studii sustinere.

Item nullus remittat fratres ad suas prouincias sine licentia magistri
125 ordinis uel nisi a prioribus prouincialibus de quorum prouinciis oriundi sunt
repetantur.

Item libri non uendantur nisi alii magis necessarii ex illa pecunia emer-
rentur.

Item nullus aptus et idoneus recipi propter defectum uestium repellatur,
130 sed studentes pro prouinciis prout commodius poterunt prouideant sibi uestes
et prouincie ad quas pertinent pecuniam illam persoluere teneantur.

Item fratres nimis iuuenes et indocti non multiplicentur, nec predica-
torum generalium numerus absque diligenti cautela et debita augeatur.

Item a prioribus procuretur ut lumen maius in nostris dormitoriis et
135 cameris priuatis uniuersaliter habeatur.

Item studentes mittantur Parisius a priore prouinciali de consilio diffi-
nitorum capituli prouincialis.

Item notabiles superfluitates a choris nostris penitus remoueantur, et
amodo talia in nostro ordine numquam fiant.

Item nouicii nullam curam rerum suarum nec occasione librorum reti-
neant, sed priores procurent eis libros secundum quod ex rebus eorum pote-
runt et uiderint expedire.

Item nullus faciat sibi sigillum fieri nisi predicator fuerit generalis, et
qui aliter habent usque ad instans reddere subprioribus teneantur.

117 horis *om. P, om. et in marg. suppl. U* 118 officium] seruitium *DFPU* 120 prouincie
om. A conuentus diuidat uisitandos] diuidant per tres conuentus *A* uiderit] uiderint
A 121 conpescendam] compescendum *AU* 122-123 in libris ... necessariis] in cibis et
in aliis necessariis *A* 123 laborem] labores *A*, labore *F* 124-128 *praeter ea quae infra*
indicantur eadem (ut puto sed aliqua minus clare legere potui) habet A 124 suas prouincias]
prouincias unde sunt oriundi *A* 125 nisi *om. A* prouincialibus ... prouinciis (*sic et A*)
om. P oriundi sunt] sunt oriundi *A* 127 ex illa pecunia] illa pecunia *A, om. et in marg.*
suppl. U, om. DFP 127-128 emerentur] emantur *A*, emerentur inde *DFPU* 129-139 item
... fiant] *praeter ea quae infra indicantur eadem habet A* 129 recipi *om. A* 130 sed
studentes] sed studentes. Sed studentes (*sic F*) pro prouinciis] prouinciis *A* prouideant
sibi uestes] uestes sibi prouideant *A* 131 persoluere] soluere *A* 132 nimis *om. (ut puto)*
A 134 ut] quod *A* maius] mag(num) *F* nostris dormitoriis] dormitorio *A* 135 cameris]
in cameris *A* 136 priore *om. A* 139 talia in nostro ordine] in nostro ordine talia *DFPU*
140-142 *saltem ab occasione eadem praeter eius pro eis habet A* 140 suarum *om. U*
141 libros] lib^m *P* 142 uiderint] uiderunt *D*, uidebitur *F* 143-146 *uix eadem praebet A*
sed praeter Item nullus faciat sibi sigillum et excepto magistro ordinis nullus faciat
nihil pro certo legere potui 144 usque ad instans (*i.e. usque adhuc*)] usque ad instans
capitulum prouinciale *DF* subprioribus] suis subprioribus *D*, suis prioribus *F*

Item nullus sigillum habeat curiosum nec excepto magistro ordinis in sigillo suo faciat fieri crucifixum. 145

Item monemus ne fratres nostri amodo religiosis mulieribus sacramenta preter penitentiam administrent. Qui uero contrarium attemptauerint post generale capitulum quod fuit Bononie ultimo celebratum cum eis fuerit tunc inhibitum et acriter reprehensum ieiuent .vii. dies in pane et aqua et dicant .vii. psalteria et .vii. missas de spiritu sancto et .vii. recipiant disciplinas. 150

Item priori regino iniungimus .iii. dies in pane et aqua et tria psalteria et tres missas de spiritu sancto et paret se ad disciplinam, et cuilibet fratri qui interfuit .i. diem in pane et aqua et .i. missam et .i. psalterium et .i. disciplinam.

Item frater Bartholomeus priuetur biblia propter modum notabilem acquirendi, et paret se ad disciplinam, et faciat penitentiam sibi a uicario iniunctam. 155

De penitentia prioris Brixiensis

De hiis qui non debuerunt uenire ad capitulum et uenerunt sine licentia, item culpe sociorum prioris brixiensis in inquisitione episcopi, reseruentur priori prouinciali. 160

Item uisitoribus qui non uisitauerunt iniungimus .v. dies in pane et aqua et .v. psalteria et totidem disciplinas in capitulo, et illis qui non scripserunt ut debuerunt .iii. dies et .iii. disciplinas.

Concessiones domorum.

Concedimus domos:

prouincie Ungarie unam in prouincia Siluana, 165

147-151 *praeter ea quae infra indicantur eadem (ut puto sed aliqua minus clare legere potui) habet A ad 147 Nota in marg. add. P et ante item F, in marg. Monitiones add. D 147 monemus] ammonemus A nostri om. PU 148 uero om. A attemptauerint ex AU recepi] attemptauerit BDFP 149 ultimo celebratum] celebratum ultimo DFP, celebratum A 149-150 fuerit tunc inhibitum] tunc fuerit inhibitum DFP, fuerit inhibitum tunc A 150 et acriter] a g'g' F 150-154 et dicant ... aqua om. P 150 dicant om. DF 151 .vii. psalteria ... spiritu sancto] .vii. missas. de sancto spiritu et .vii. psalteria F, .vii. (in marg. missas de spiritu sancto et .vii.) psalteria \dicant/ D, .vii. missas et .vii. psalteria U .vii. recipiant] recipiant .vii. A recipiant om. et post disciplinas inserendum suppl. in marg. U et supra lin. D, om. F 152-154 item priori ... disciplinam om. et in marg. suppl. U, om. ADF 155-179 om. A 156 sibi a uicario] a uicario sibi DFP 158 rubricam (quae Bernardo Guidonis adscribenda uidetur potius quam ipsius actis capituli) hic in textu habet B, in marg. (briccensis pro brixiensis scripto) ad 158 F et ad 160 DP 159-160 de hiis ... licentia cum eis quae sequuntur intelligendum puto quamquam ad item paragraphum statuerunt DFP 160 brixiensis] brixensis U, briccensis P, briccensis D, brictiens F 163 et ante .v. psalteria om. DFP 165 rubricam in margine habent DPU et tam in textu quam in margine B, concedimus domorum (sic) in marg. F 166 concedimus domos sic recte ut uidetur B (cf. cod. A in app. crit. ad 1241.91-93 citatum)] concedimus DFP, item concedimus U 167 post Ungarie add. duas domos (nescio an recte) DFP post unam add. ponendam DFP*

- Dacie .ii. secundum quod uidebitur capitulo prouinciali,
 Francie .i. in Altisiodoro,
 170 Polonie .i. secundum quod uidebitur capitulo prouinciali.

Suffragia

- Pro domino papa quilibet sacerdos .iii. missas de beata uirgine, clericus
 psalterium, conuersi .d. pater noster.
 Pro fratre Raymundo quondam magistro fiat post mortem sicut pro
 175 magistro ordinis.
 Pro electione magistri futuri quilibet sacerdos .i. missam de spiritu sancto,
 quilibet conuentus unam, clericus .vii. psalmos, conuersus .c. pater noster.

- Concedimus et confirmamus fratrem Stephanum in priorem prouin-
 cialem prouincie Grecie.
 180 Interpretatio de silentio mense reuocetur.

*

1241

In nomine patris et filii et spiritus sancti, amen.

Acta capituli generalis Parisius celebrati anno domini .m.cc.xli.

Confirmationes

- Confirmamus hanc constitutionem quod non habeamus nisi unam
 5 campanam ad omnes horas, et hec ponatur in fine capituli de officio ecclesie.
 Et hec habet tria capitula.

Item hanc ut .iiii. prouincie, scilicet Polonia, Dacia, Ierosolimitana,
 Grecia, aliis prouinciis in omnibus asequentur tam in duobus electoribus
 magistri quam in habenda potestate quam habent priores prouinciales

169 post .i. add. ponendam DFPU 170 Polonie ... prouinciali om. et in marg. suppl. U, om. DFP 171 rubricam in margine habent DP, tam in textu quam in margine B, om. FU 172 ante pro domino add. suffragia DFPU (sed cf. cod. A in app. crit. ad 1241.91-93 citatum) 173 .d.] centum F 174 magistro] magistro ordinis DFPU 174-175 fiat ... magistro ordinis om. F 176 spiritu sancto] sancto spiritu F 177 .vii.] .iii. F post 172-177 .xii. misse in uniuerso in marg. habent BDP, unde patet suffragia aliqua deesse 180 interpretatio ... reuocetur sic etiam A mense om. (spatio relicto) P

1241 1 in nomine ... amen om. AD 2 sic et A 3-86 om. BP, acta istius capituli require ad .v. folia supra et debent scribi in isto loco (sed tale folium deest et ut uidetur numquam insertum est, unde in marg. require in alio libro in quo sint) B 3 rubricam confirmationes in marg. habet D, admonitiones (e textu primitiuo Ber. Guidonis ubi cetera deerant) in marg. U, om. AF 4-6 sic et A 6 habet] sunt U 7-90 praeter ea quae infra indicantur eadem (ut puto quamquam pauca quaedam minus clare legere potui) habet A 7 ut] quod A 8 Grecia] et Grecia A aliis] aliis octo (cf. 1239.10-11, 1240.53) A

magistro ordinis mortuo uel amoto. Ubi cumque ergo in constitutionibus fit 10
 mentio de .viii. prouinciis ponatur .xii. Et hec habet tria capitula.

Item hanc quod hec correctio et ordinatio et additio constitutionum
 nostrarum ab omnibus uniuersaliter obseruetur, et hec habet tria capitula, hoc
 addito, Fratres nostri ad Laudate dominum omnes gentes sedeant sicut prius.

Item fratres nostri laici quingenta pater noster dicant. 15

Item illud Si quis in proclamatione sua iudicium fecerit ponatur in leui
 culpa post illud uerbum Vindicando clamare presumpserit.

Item ubi dicitur de annuntiatione mortis magistri addatur quod domus
 parisiensis annuntiet prouincie Dacie, bononiensis uero Polonie, Terre
 Sancte, Grecie, et deleatur illud de constitutionibus Et aliis quibus poterit. 20
 Et hec habet duo capitula.

Item ubi dicitur Scripturam publicent in medium addatur Expressis
 nominibus eligentium et electorum. Et hec habet duo capitula.

Item ubi dicitur de diffinitore Vel nisi in priorem prouincialem electus
 fuerit addatur Et confirmatus. Et hec habet duo capitula. 25

Item ubi dicitur in constitutionibus de priore conuentali eligendo
 Secundum formam canonicam <eligatur addatur> A maiori parte <medietate>
 eligentium uel per compromissionem uel per communem inspirationem, aliis
 subtilitatibus iuris relegatis, quod similiter in electione magistri ordinis et
 priorum prouincialium obseruetur. Et hec habet duo capitula. 30

10 in constitutionibus *om.* A 11 *post* prouinciis *add.* et prioribus prouincialibus A
 11-12 et hec ... et ordinatio *om.* F 12 hanc] confirmamus hanc A, *om.* U correctio
 et ordinatio (*cf.* 1239.24)] ordinatio et correctio (*cf.* 1240.11 et R *post finem const.*
 II 15) A 14 addito] addito quod (*ut puto*) A 14-17 *diffinitores has mutationes*
utpote quibus textus antiquior restituendus esset confirmationem totius ordinationis
Raymundi participare uoluisse uidentur, unde easdem capitulum anni sequentis non
confirmauit 14 ad Laudate ... sedeant] ad laud' omnes g. sedeant F, sedeant ad
 laudes do. (*sic*) A dominum *om.* F 15 quingenta ... dicant (*cf. const. I 3*)] dicant
 quinquaginta pater noster U 16 quis] quid D iudicium] iudicium in iurgium *corr.*
 D 16-17 ponatur in leui culpa *om.* A 17 uindicando] uindicandum F 18 addatur]
 etiam addatur A 19 annuntiet] annunciat U, annuncietur F bononiensis] Bononie
 U 21 hec] hoc U duo] tria A 22 scripturam] per scripturam D 23 duo *sic et* A
 24 item] item hanc A 25 duo *sic et* A 26 item] item hanc A in constitutionibus
om. A 27 eligatur addatur (*cf.* 1240.25, 1242.17) *ex A suppleui, om.* DFU medietate
ex A (eligentium medietate) *suppleui sed ante eligentium posui* (*cf.* 1240.25, 1242.17,
necon textum nouum in R insertum et const. II 2 prout in codd. recentioribus
inuenitur), *om.* (*cf. LM*) DFU 28 compromissionem] prouisionem A per communem
(cf. 1240.26, 1242.18)] communem A (*cf. textum nouum huic const. insertum in R*
necon const. II 2 in LM), per communionem F 29 subtilitatibus iuris (*cf.* 1242.18-
 19)] iuris subtilitatibus A (*cf.* 1240.27 et *textum nouum huic const. insertum in R*
necon const. II 2 in LM) 30 priorum prouincialium (*cf.* 1240.28, 1242.19-20 *necon*
const. II 2 in LM)] prioris prouincialis (*cf. textum nouum in R insertum*) A duo]
 tria A

Item quod dicitur in capitulo de graui culpa Si indumenta uel alia fratri data uel concessa sine ipsius licentia alius acceperit etc. ponatur in titulo de leui culpa post illud Negligenter tractauerit.

35 Item predicatorum et etiam alii fratres itinerantes sint contenti officio illorum ad quos aliquando declinant, residuum remoueat. Et hec habet duo capitula.

Item frater qui in aliam prouinciam ad legendum mittitur omnes libros suos glosatos, postillas, bibliam, breuiarium et quaternos secum deferat, et si simpliciter illi prouincie ad quam mittitur assignetur libri quos habuit de
40 illa prouincia de qua mittitur ipso mortuo ad illam prouinciam pertinebunt, alii uero omnes sint illius prouincie ad quam mittitur siue in uia siue in prouincia moriatur. Si uero ad tempus mittitur omnes libri ad prouinciam de qua assumptus est reuertantur. Idem dicimus de missis de prouincia ad prouinciam non ad regendum, non tamen portent nisi bibliam, breuiarium
45 et quaternos. Et hec habet duo capitula.

Item ubi dicitur quod socius obediat predicatori in omnibus, remoueat. In omnibus. Et hec habet duo capitula.

Item ubi dicitur Predicare non audeat nisi habeat generale mandatum etc., remoueat. Generale. Et hec habet duo capitula.

50 Item remoueat de cisterciensibus non recipiendis absque speciali licentia domini pape. Et hec habet duo capitula.

Approbationes

Approbamus has constitutiones.

55 Generale<m> statum ordinis uel consuetudinem diu obtentam et communiter in ordine approbatam nec magister ordinis neque priores prouinciales aliquatenus ualeant immutare nisi per tria capitula generalia fuerit approbatum. Et hec habet duo capitula.

Item approbamus hanc quod solus ebdomadarius capa serica tam in choro quam in processione utatur. Et hec habet duo capitula.

60 Item hanc, Diffinitores excessum magistri ordinis seorsum corrigant et emendent, quod si preuaricator ordinis fuerit aut contemptor aut adeo

31 quod dicitur in capitulo] ubi dicitur A 32 titulo] capitulo U 34 et etiam] et A, etc. D alii fratres] fratres alii U 35 illorum] eorum A 36 duo sic ut puto et A 37 ad legendum mittitur] mittitur ad legendum F 39-40 assignetur ... mittitur om. F 39 habuit (cf. 1240.36, 1242.31 et textum nouum insertum in R necnon const. II 14 in LM)] habuerit U, habet A 40 pertinebunt] pertinebit U 43 assumptus est (cf. 1240.39, 1242.35 et textum nouum insertum in R)] mittitur A ad idem paragraphum perperam statuerunt DFU (cf. 1240.40, 1242.35) 45 hec om. U duo] tria A 46 predicatori in omnibus] in omnibus predicatori A 47 duo] tria A 48-49 item ubi dicitur Predicare ... duo capitula om. U 49 duo] tria A 50 speciali om. D 51 duo] tria A 52 rubricam in margine habent ADU, om. F 54 generalem ex A recepi] generale DU, et F statum] statutum U 55 neque] nec A 56 generalia om. A 57 et hec ... capitula om. A 58-59 item approbamus ... capitula om. U 58 ebdomadarius] ebdomarius F 60 hanc sic AU] approbamus hanc D, approbamus hanc quod F 61 aut adeo] uel adeo A

negligens et remissus quod ordinis dissolutionem inducat, moneatur a diffinitoribus ut magisterio cedat et locum ad manendum sibi eligat, alioquin amouendi ipsum ab officio liberam habeant potestatem. Et alia forma remouetur. Et hec habet duo capitula. 65

Inchoationes

Inchoamus hanc additionem quod cessio eius non admittatur a diffinitoribus nisi propter aliquod premissorum aut propter defectum uel inpotenciam que ipsum ab executione officii magistratus perpetuo inpediret. Et hoc precipimus firmiter obseruari. Et hec habet unum capitulum. 70

Item inchoamus hanc quod in constitutionibus ubi dicitur Mortuo priore etc. donec prior eiusdem prouincie sit electus et confirmatus addatur Et ipse uel ille cui uices suas commiserit presens in prouincia fuerit.

Item inchoamus hanc quod in constitutionibus ubi dicitur de subpriori Et in aliis quantum <prior> ei assignauerit uel permiserit addatur Idem autem subprior mortuo priore uel amoto uices eius in omnibus plenarie obtineat quousque prior electus et confirmatus in domo presens extiterit uel prior prouincialis aliud ordinauerit. 75

Item inchoamus hanc quod in constitutionibus ubi dicitur Capitulum generale uno anno Parisius, alio anno Bononie celebretur addatur Nisi magistro et diffinitoribus ex causa legitima quandoque aliud uideatur. 80

Item inchoamus hanc quod in prouincia ubi capitulum generale celebratur ad illud capitulum non ueniat nisi diffinitor et socius eius sicut de aliis prouinciis, sed alio tempore capitulum prouinciale eiusdem prouincie celebretur, et deleatur illa constitutio Statuimus insuper quod omnes priores conuentuales etc. 85

Admonitiones

Admonemus quod fratres accusationes non mittant ad capitulum in litteris apertis sed clausis.

Item quod fratres nostri horas beate uirginis incipiant calciati. 90

63 magisterio] a magisterio U 66 rubricam in marg. habet D, om. AFU 69 perpetuo] in perpetuo ut uidetur A 70 hec] hoc U 73 uel ille cui] et ille cui U, aut cui (?) A suas (cf. 1242.60, 1243.11 et textum nouum insertum in R necnon const. II 3 in LM) ex A recepi] eius DFU 74 quod om. A 75 prior ex A suppleui, om. DFU ei assignauerit (cf. const. antiqu. II 25 [AFP 71 (2001) 117]) assignauerit ei A (cf. const. II 3 in RS et LM) 77 obtineat] teneat D 78 aliud (cf. textum nouum insertum in R)] aliter A (cf. 1243.16 et const. II 2 in LM) 79-81 om. A 79 item om. F 81 quandoque] quando F 82 hanc om. A capitulum generale] generale capitulum A 84 eiusdem prouincie om. A 87 rubricam in textu habet B, in margine D, om. AFPU 88-89 in litteris] litteris DFU 90 quod om. P uirginis] Marie uirginis U incipiant calciati] calciati incipiant ADF

Pro rege Francie et matre et uxore quilibet frater sacerdos .i. missam de sancto spiritu, et in morte fiat pro eo sicut pro magistro ordinis per totum ordinem.

*

1242 (*usque ad approbationes*)

In nomine patris et filii et spiritus sancti, amen.

Acta capituli generalis Bononie celebrati anno domini .m.cc.xlii.

Reuocamus hanc inchoationem ita quod in prouincia ubi capitulum generale celebratur ad illud capitulum non ueniant nisi diffinitor et socius eius sicut de aliis prouinciis sed alio tempore prouinciale capitulum celebretur.

Confirmationes

Item confirmamus has constitutiones.

Ubi dicitur de annuntiatione mortis magistri addatur quod domus parisiensis annuntiet prouincie Dacie, bononiensis uero Polonie, Terre Sancte, Grecie, et illud deleatur de constitutionibus Et aliis quibus poterit annuntiare. Et hec habet tria capitula.

Item ubi dicitur Scripturam publicent in medium addatur Expressis nominibus eligentium et electorum. Et hec habet tria capitula.

Item ubi dicitur de diffinitore Nisi in priorem prouincialem electus fuerit addatur Et confirmatus. Et hec habet tria capitula.

Item ubi dicitur de priore conuentuali eligendo Secundum formam canonicam eligatur addatur A maiori parte medietate eligentium uel per compromissionem uel per communem inspirationem, aliis subtilitatibus iuris relegatis, quod similiter in electione magistri ordinis et priorum prouincialium obseruetur. Et hec habet tria capitula.

Item quod dicitur in graui culpa Si indumenta uel alia fratri data uel concessa sine ipsius licentia alius acceperit ponatur in titulo de leui culpa post illud Negligenter tractauerit. Et hec habet tria capitula.

91-93 pro rege ... ordinem] *om. ABP (ex eis quae A hoc loco habet haec tantum pro certo legere potui: Pro domino papa quilibet sacerdos .iii. missas de beata uirgine, clericus psalterium, deinde Concedimus domos: in regno Boemie .i. in Oppauia et aliam, duas prouincie Tuscie, deinde inter suffragia pro defunctis pro domino, a tartaris et regina Boemie defuncta quilibet sacerdos .i. missam,)* 91 et matre] matre D sacerdos *om. DF* 92 sancto spiritu] spiritu sancto U fiat] faciat U ordinis *om. D*

1242 *ex actis huius capituli nihil habet A* 1 in nomine ... amen *om. D* 4 illud *om. et in marg. suppl. U, om. DFP* ueniant] ueniat F 6 rubricam in marg. habent BDFU, *om. P* 7 item *om. et in marg. suppl. U, om. DFP* 8 mortis *om. et in marg. suppl. U, om. DFP* 11 hec] hoc U 18 communem] communionem F 21-22 alia fratri data uel concessa (*cf. 1241.31-32 necnon const. antiqu. I 21 et const. I 16 et 17 in R*)] alia data uel concessa P, alia data uel concessa fratri DFU (alia data fratri uel concessa 1240.29-30 necnon const. I 16 in S et LM, *cf. etiam const. sororum de Monte Argi [AFP 17 (1947) 76]*) 22 alius] aliis P acceperit (*cf. 1240.30, 1241.32 et RS*)] receperit DFP U 23 et] in P

Item ubi dicitur Predicatores et alii fratres itinerantes contenti sint officio illorum ad quos quandoque declinant, residuum amoueat. Et hec 25
habet tria capitula.

Item ubi dicitur Predicare non audeat etc. nisi habeat generale mandatum, amoueat. Generale. Et hec habet tria capitula.

Item [ubi dicitur] Frater qui in aliam prouinciam ad legendum mittitur omnes libros suos glosatos, postillas, bibliam et quaternos secum deferat, et 30
si simpliciter illi prouincie ad quam mittitur assignetur libri quos habuit de prouincia de qua mittitur ipso mortuo ad illam prouinciam pertinebunt, alii uero omnes sint illius prouincie ad quam mittitur siue in uia siue in prouincia moriatur. Si uero ad tempus mittitur omnes libri ad prouinciam de qua 35
assumptus est reuertantur. Idem dicitur de missis de prouincia ad prouinciam non ad regendum, non tamen portent nisi bibliam, breuiarium et quaternos. Et hec habet tria capitula.

Item ubi dicitur quod socius obediat in omnibus predicatori, remoueat in omnibus. Et hec habet tria capitula.

Item remoueat quod dicitur de cisterciensibus non recipiendis absque 40
licentia domini pape. Et hec habet tria capitula.

Item generalem statum ordinis uel consuetudinem diu obtentam et communiter approbatam in ordine nec magister ordinis nec priores prouinciales aliquatenus ualeant immutare nisi per tria capitula fuerit approbatum. 45
Et hec habet tria capitula.

Item quod solus ebdomadarius capa serica utatur tam in choro quam in processione. Et hec habet tria capitula.

Item diffinitores excessum magistri corrigant seorsum et emendent, quod si preuaricator ordinis fuerit aut contemptor aut adeo negligens quod ordinis 50
dissolutionem inducat, moneatur a diffinitoribus ut magistratui cedat et locum ad manendum sibi eligat, alioquin amouendi ipsum ab officio liberam habeant potestatem. Et alia forma remoueat. Et hec habet tria capitula.

24-28 *om. et ad calc. suppl. U* 24 predicatorum] fratres predicatorum *DFP* sint] sunt *F* 29 ubi dicitur quod per nescio cuius incuriam in textum irrepsit (frater qui etc. ad uerbum neque in uetere constitutione occurrit neque in noua) *seclusi* 30 et ante quaternos *om. PU* deferat] deferet *B* 31 illi prouincie] ad illam prouinciam *D* assignetur] assignentur *F* 32 de qua (cf. 1240.36-37, 1241.40 et textum nouum insertum in *R* necnon const. II 14 in *LM*)] a qua *DFPU* 33 mittitur] mittuntur *U* 35 assumptus est (cf. 1240.39, 1241.43 et textum nouum insertum in *R* [const. II 14] necnon sumptus est in *LM*)] mittitur *DFPU* ad idem paragraphum statuit *U* 36 bibliam *om. F* breuiarium] et breuiarium *D* 37 hec] hoc *U* 38 predicatori] predicatorum *F* 39 hec] hoc *U* 40-41 *om. et in marg. suppl. U* 40 quod] ut *U* de *om. D* 42 generalem statum *scripsi*] generale statum *P*, generalem statutum *B*, generalem (in generale *corr.*) statutum *D*, generale statutum *FU* 46 ebdomadarius] ebdomarius *F*, episcopus *P* 48 emendent] mendent *F* 49 post negligens *deest* et remissus (cf. 1240.63, 1241.62 et textum nouum in *R* insertum necnon const. II 8 in *LM*) 51 ab officio *om. F*

Approbationes

55 Approbamus hanc additionem, Cessio magistri non admittatur a diffinitoribus nisi propter aliquod predictorum aut propter defectum aut inpotenciam que ipsum ab executione officii magistratus perpetuo inpediret. Et hoc precipimus firmiter obseruari. Et hec habet duo capitula.

60 Item ubi dicitur Mortuo priore prouinciali uel amoto donec prior eiusdem prouincie sit electus et confirmatus addatur Et ipse uel ille cui uices suas commiserit presens in prouincia extiterit. Et hec habet duo capitula.

65 Item ubi dicitur de subpriore Et in aliis quantum ei prior assignauerit uel permiserit addatur Idem autem subprior mortuo priore uel amoto uices eius in omnibus plenarie obtineat quousque prior fuerit electus et confirmatus et in domo presens extiterit uel prior prouincialis aliud ordinauerit. Et hec habet duo capitula.

Item ubi dicitur quod capitulum generale uno anno Parisius, alio anno Bononie celebretur addatur Nisi magistro ordinis et diffinitoribus ex causa legitima quandoque aliud uideatur.

*

1243 (*confirmationes tantum*)

In nomine patris et filii et spiritus sancti, amen.

Acta capituli generalis Parisius celebrati anno domini .m.cc.xliiii.

Confirmationes

5 Confirmamus hanc constitutionem, Cessio magistri [ordinis] non admittatur a diffinitoribus nisi propter aliquod predictorum aut propter defectum aut inpotenciam que ipsum ab executione officii magistratus perpetuo inpediret. Et hec habet tria capitula, et ponatur in constitutionibus post illud uerbum Liberam habeant potestatem.

10 Item confirmamus hanc: ubi dicitur Mortuo priore prouinciali uel amoto donec prior eiusdem prouincie sit electus et confirmatus addatur Et ipse uel ille cui uices suas commiserit presens in prouincia existat. Et hec habet tria capitula.

53 *rubricam approbationes in margine et iste sunt approbationes in textu habent DFPU, approbationes tam in textu quam in margine B 54 approbamus] probamus F 59 addatur] et addatur PU 62 permiserit] promiserit U 63 fuerit electus (cf. 1243.15 et const. II 2 in LM)] electus fuerit DFPU 66-67 uno anno ... celebretur] Bononie celebretur uno anno, alio anno Parisius F*

1243 *ex actis huius capituli nihil habet A 1 in nomine ... amen om. D 3 rubricam in marg. habent BDPU, om. F 4 constitutionem om. DFP, om. et in marg. suppl. U ordinis quod recte om. DFPU (cf. 1242.54 et const. II 8 in LM) seclusi 5 aliquod] aliquos P 9 confirmamus hanc ubi dicitur] hanc DFP, hanc (in marg. confirmamus ubi dicitur) U*

Item hanc: ubi dicitur de subpriori Et in aliis quantum prior ei assignauerit uel permiserit addatur Idem autem subprior priore mortuo uel amoto uices eius in omnibus plenarie optineat quousque prior fuerit electus et confirmatus et in domo presens extiterit uel prior prouincialis aliter ordinauerit. Et hec habet tria capitula. 15

Item hanc: ubi dicitur quod capitulum generale uno anno Parisius, alio anno Bononie celebretur addatur Nisi magistro et diffinitoribus ex causa legitima quandoque aliud uideatur. Et hec habet tria capitula. 20

*

3. *Some textual anomalies*

The years 1238-1241 are particularly significant in the history of the Dominican constitutions. In 1238 Raymund of Penyafort, compiler of Gregory IX's decretals, was elected master of the Order (1238.2-5), and either on his own initiative or at the request of the chapter he re-arranged its constitutions into a systematic body of law, giving them the structure they would retain until they were reshaped in the twentieth century in the image of the 1918 code of canon law. As Humbert says, 'Per eius diligentiam constitutiones nostre redactae sunt ad formam debitam, sub certis distinctionibus et titulis, in qua sunt hodie'.²⁴ His *ordinatio* was confirmed and came into force in 1241, having previously been approved 'per duo capitula continua' (1239.24-25, 1240.11-12, 1241.12-13) as required by Primitive const. II 6 (AFP 71 [2001] 60-61).

There are two known manuscripts of the constitutions whose original text dates from 1241 or very soon afterwards: Porto, Bibl. Mun. 101 (R), which is complete, and Prague, Univ. Knihovna VIII B 23 (S), which has several pages missing.²⁵

13-14 prior ei assignauerit (cf. 1241.75)] ei prior assignauerit (cf. 1242.61) DFP
 15 prior om. et in marg. suppl. B, om. P 18 hanc om. et in marg. suppl. U, om. DFP
 ubi] ibi P

²⁴ *Cronica ordinis* (MOPH I 331, but I quote my own provisional edition); on Humbert's authorship see MOPH XXX 316-319. The older, quite different, arrangement is attested not only by the *constitutiones antiquae* in AGOP XIV A 4 but also by the constitutions of the Sack Friars edited from British Library Nero A XII in G.M.Giacomozzi, *L'Ordine della Penitenza di Gesù Cristo*, Rome 1962, 73-113, and those of the Penitents of Mary Magdalen edited in A.Simon, *L'Ordre des Pénitentes de Sainte Marie-Madeleine*, Fribourg 1918, 155-169, both of which were based on the Raymund Dominican constitutions.

²⁵ R.Creytens's reconstruction of Raymund's constitutions was based on R alone (AFP 18 [1948] 5-68); some of the passages he restored by conjecture are preserved in S (which he did not know).

In R and S parts of the original text were erased to accommodate later developments, but we may be confident that it did not antedate the general chapter of 1241. According to the testimony of both A and Gui that chapter confirmed Raymund's constitutions and two amendments, one 'quod non habeamus nisi unam campanam ad omnes horas', which was to go 'in fine capituli de officio ecclesie', and one giving the provinces of Poland, Dacia, Jerusalem and Greece the same rights as other provinces in the election of a master and the government of the Order during an interregnum. This tallies with the 1240 approbations which form part of the original collection in B, and with the inchoations Gui later discovered from 1239. RS have Raymund's arrangement of the constitutions, and they both have a chapter 'De officio ecclesie' (const. I 1);²⁶ it contains the clause on the single bell in the original text of R, but we do not know what was there in S since much of the last part of const. I 1 was rewritten to incorporate the reference to Humbert's edition of the liturgy which was confirmed in 1256 (MOPH XXX 587 T26a). In R and S the original text has a version of const. II 4 which gives all twelve provinces equal rights in an interregnum and in the election of a master.²⁷

The evidence for the terminus ante quem of their original texts is less clear, but there is good reason to believe that at any rate they antedate the chapter of 1243. Of the four explicit inchoations which A and Gui attribute to 1241 one is expressly revoked in Gui's text of the 1242 acts, the other three duly feature as approbations in 1242 and confirmations in 1243, as does one more whose inchoation is missing in A.²⁸ The original text of R and S was certainly not affected by the third or fourth changes reportedly

²⁶ The corresponding chapter in the primitive constitutions is called 'De matutinis' in AGOP XIV A 4, and this is corroborated by the Sack Friars; one manuscript of the Magdalens' constitutions (Vienna, Österreichische Nationalbibl. 4724) calls it 'De diuino officio', the Walloon translation in the manuscript belonging to Collège Saint-Quirin, Huy, calls it 'coment et quant on doit faire ses inclinations et ses prostracions alle diuine office', and there is no title in Budapest, Bibl. Univ. lat. 33.

²⁷ The changes required were simple: *priores dictarum prouinciarum* in Prim. const. II 9 (AFP 71 [2001] 72) became *priores prouinciales duodecim prouinciarum* (in S *duodecim prouinciarum* is no longer visible, having been erased to make way for a later amendment, but *priores prouinciales* agrees with R against Prim. const.), 'predicti ergo priores prouinciales predictarum octo prouinciarum' in Prim. const. II 10a became 'prouinciales igitur priores duodecim prouinciarum' (R has *ergo*, but S's *igitur* is in line with later manuscripts), and 10b was suppressed (AFP 71 [2001] 79-80); there is no trace of 10b in R or S.

²⁸ Gui alone reports the inchoation, approbation and confirmation of the amendment allowing the master and diffinitors to choose somewhere other than Paris and Bologna as the place for the next general chapter; it was certainly confirmed in time to allow the capitulars of 1244 to plan a chapter in Cologne (MOPH III 30.2-3), and almost certainly in time to allow those of 1243 to plan a chapter in Viterbo (cf. AFP 72 [2002] 137-145).

confirmed in 1243; because of erasures in both manuscripts and a missing page in S we cannot determine whether it was affected in either of them by the first two.

The acts of the general chapters of 1238-1243, as transmitted to us by Gui and A, do not derive from a continuous series of complete acts. 1241 was the only year between 1236 and 1243 for which the compiler of A found anything more than admonitions, which suggests that at least two different sources were involved, one which supplied him with admonitions, and another which provided more complete acts from 1241. Gui assembled his material from at least four different sources: after the original text of B was written (with full acts from 1240 and 1242-1243 and admonitions from 1241), he added admonitions from 1239, then constitutional amendments from 1239 and, possibly but not probably from the same source, amendments from 1241, and then (too late to be written into B) a handful of acts from 1238 which are certainly incomplete;²⁹ and it is likely that the acts which formed part of the original collection were similarly taken *ex diuersis antiquis rotulis et quaternis*, not from a single source.³⁰

All the manuscripts we have are at several removes from the original *rotuli*,³¹ so the text of the acts was subject to the usual hazards of scribal error, but this cannot explain all the anomalies found in the acts of early general chapters.

There is one divergence between A and Gui which is unsurprising and need not detain us: A is not entirely legible, but it and Gui clearly preserve different selections from the administrative acts of the 1241 chapter, and to some extent their choices obviously reflect local concerns.³²

More significantly, the constitutional amendments in the acts of 1239-1242 appear to be in some disarray, and the resulting confusion is not wholly clarified by R and S.

In Gui's text the acts from 1239 onwards have an apparently clear structure with rubrics such as *Approbationes* and introductory formulae such as 'Inchoamus has constitutiones', 'Admonemus' and so on. Before 1241 A only has admonitions and they begin 'Damus licentiam ...', 'Fratres non eligant ...' etc. with no introductory rubric or formula, but in the acts of

²⁹ Not only are they improbably meagre, but 1240.149-150 refers to an emphatic injunction from 1238 which is not in the surviving acts.

³⁰ Most obviously we may doubt whether a single source provided full acts for 1240 and 1242 but only admonitions for 1241.

³¹ B does not contain Gui's original transcriptions of acts, it is a fair copy of his collection which he got made in about 1302 and updated himself in 1303-1304 and then continued to work on for a time as he discovered more acts.

³² Suffrages for the king of France were of more interest in Provence than in central Italy; conversely *concessionnes domorum* including two in the Roman province were of greater interest in that province than in Provence.

1241 the first confirmation begins 'Confirmamus hanc constitutionem' (as it does in Gui), there is a rubric *Approbationes* followed by 'Approbamus has constitutiones' (as in Gui, and in the same place), there is a series of inchoations all beginning 'Inchoamus' (as in Gui, but apparently without his rubric, though these pages are worn and rubrics may have disappeared), and the first admonition begins 'Admonemus' (as in Gui, but apparently without his rubric). The fact that A and Gui have the acts of 1241 structured in the same way suggests that it was not Gui who imposed a similar structure on the acts of 1239 and 1240,³³ though it is likely enough that marginal or embedded rubrics were inserted to make collections of acts easier to use and that they were not present in the *rotuli* of the acts themselves.³⁴

Gui's presentation of the amendments of 1238-1239 is coherent: the one inchoation he quotes under 1238 was approved in 1239 and revoked in 1240, three of the 1239 inchoations were confirmed in 1241,³⁵ one was revoked in 1240, and the other was partially approved in 1240 but was evidently not confirmed (it does not feature among the 1241 confirmations or in any text of the constitutions). The only hint of disorder is the presence of a *declaratio* among the 1239 admonitions; it is not in A, but there must have been such a *declaratio* since A agrees with Gui that its revocation came at the end of the 1240 acts, and there is no reason to dispute its attribution to 1239.

It is in 1240 that we run into trouble. Despite the apparently clear structure of the acts, there seem to be inchoations under the heading *Approbationes*, before the rubric *Inchoationes*. The first three items under the heading *Approbationes* correspond to the third, fourth and fifth inchoations from 1239; the first is introduced with 'Approbamus quod', the second with 'Item quod', the third, the approbation of Raymund's *ordinatio*,

³³ It is not *per se* impossible that A and Gui obtained the 1241 acts from the same intermediary: Gui was his province's diffinitor at the general chapter in Padua in 1308 (Toulouse 490 f.400^r) and it would not be surprising if he took the opportunity to look at manuscripts as he did in 1316/7 when John XXII sent him to Italy (cf. the brief life of Gui edited in Delisle, *Notices et Extraits* XXVII i 427-431 at 428) and he profited from his time there to look for material on church councils (ibid. 301-303). He could have discovered some of the chapter-acts he was missing in Lombardy in 1308, and it is not inconceivable that the compiler of the A-collection had recourse to Lombardy for some of the acts; but the acts of 1240 were in B before this.

³⁴ It is particularly unlikely that the rubric in 1240.158 derives from the original acts, and, for what it is worth, we may note that the 'Directory' from about 1300 which R. Creytens edited in AFP 26' (1956) 98-126, in its section on how acts of general chapters should be arranged, prescribes *tituli* of the form 'Confirmamus has constitutiones' and 'Iste sunt approbationes' rather than rubrics such as we find in Gui and in A (ibid. 114).

³⁵ According to Gui's text the constitution about only having one bell was inchoated in 1239 as part of a more comprehensive amendment, but the rest of it was explicitly revoked in 1240.

with 'Item approbamus quod'. After this there is a clause introduced with 'Hoc tamen addimus' (1240.13), followed by fourteen clauses each of which begins with a simple 'Item' (1240.14-50), and we are then told 'Et hec additio et subtractio habet unum capitulum' (1240.51); there is then another explicit approbation (1240.52-55), followed by the rubric *Inchoationes*.

Only one of the amendments in 1240.13-50 involves both an addition and a subtraction and that is in 1240.17-19, so unless 1240.51 is seriously misplaced it must mean that '(all) this adding and subtracting "has one chapter"' and indicate that at least some of the preceding items are really inchoations despite coming before the rubric *Inchoationes*, and this is consonant with the fact that none of them features in the inchoations attributed to 1239.

On the face of it, a whole chunk of text is misplaced in the 1240 acts; but the problem is repeated in those of 1241, and this time it straddles both manuscript traditions.

In Gui and A there are three explicit confirmations which 'have three chapters' (1241.4-13), and they correspond to explicit approbations in Gui's text of the 1240 acts;³⁶ after the rubric *Approbationes* (which is in A as well as in Gui) there are three explicit approbations corresponding to items which follow the rubric *Inchoationes* in the 1240 acts.³⁷ It is the items which fall between the explicit confirmations and the rubric *Approbationes* which are problematic (1241.14-51), as in 1240 except that they have moved on by a chapter and appear to belong with the confirmations. The substitution of *hoc addito* in 1241.13-14 for the previous chapter's *hoc tamen addimus* implies that *addimus* should be taken at its face value, the subject being the capitulars of 1240, with the further implication that the clause it introduces was not inherited from 1239.

This time, instead of a general equivalent to 'Hec additio et subtractio habet unum capitulum', each item in 1241.14-51 except those in lines 14-17 and 31-33 has its own 'hec habet N capitula', the first known instance of this formula being attached to individual amendments; its placing is the same in Gui and in A, but whereas in Gui's text the number indicated is always *duo capitula*, in A it varies between *duo* and *tria capitula*.

Gui is at least consistent inasmuch as all the items in 1241.18-51 feature among the confirmations he attributes to 1242, and this consistency is impressive since he took the acts of these chapters from different sources. Furthermore, the evidence of R is consonant with Gui being correct, in that its original text has absorbed all the undisputed confirmations from 1241 but,

³⁶ The order is not quite the same: the amendment giving all provinces equal rights during an interregnum comes first in 1239, last in 1240 (and separated from all the other approbations), and in the middle in 1241.

³⁷ Again the order is not quite the same: the second and third items have swapped places; in Gui's text of the 1242 confirmations they are in the same order as in 1241.

as far as we can tell, none of the items in 1241.18-51, nor was it affected by amendments certainly approved in 1241 and confirmed in 1242 (1242.42-52).

S's position is less clear in that its original text has absorbed items in 1241.18-51 which affect the first distinction of the constitutions but seemingly not those which affect the second distinction. However, since the same is true of the clearly marked approbations in 1241.52-65,³⁸ S was presumably copied from a manuscript in which, for some reason, the first distinction had been updated in 1242, but not the second; even so, it to some extent corroborates the distinction between amendments confirmed in 1241 and those which Gui attributes to 1242.

It is difficult to see how scribal error could explain why a whole block of text appears under the wrong rubric in the acts of two successive chapters which Gui took from different sources at different times; and even if we conjecture that Gui and the compiler of A both found the acts of 1241 somewhere in Lombardy, the fact that A attests the same apparent muddle as Gui's text of the 1240 amendments (which eluded the compiler of A) implies that it occurred in copies of the acts in at least two different provinces.³⁹ It looks as if the problem goes back to the way the acts were produced by the chapters themselves.

³⁸ As has been mentioned, the end of const. I 1 was largely rewritten, but 'ca utatur tam in choro quam in processione' survived from the original text at the top of a new page, so 1241.58-59 was undoubtedly already there. 1241.54-57 was not there (the original end of const. II 9 was erased to make way for it). Most of II 8 is missing, so the fate of 1241.60-65 is unknown.

³⁹ We have no reason to believe that Gui visited Lombardy, let alone the Roman province, before 1304, by which time the original text of B, including the acts of 1240, was already written. Gui was professed on 16 Sept. 1280 (MOPH XXII 184 app. crit.), and between then and 1283 he must have been a *studens logice* (such students were chosen by their convents, not by the provincial chapter [Douais, *Acta* 138-139, 194]). From 1283 to 1290 we have year-by-year evidence of his studies, from his first assignation to a *studium naturarum* to his final assignation to Montpellier as a theology student, including a one-year stint teaching logic (Douais, *Acta* 267, 278, 287, 295, 305, 314, 324, 334, 351). He was appointed second lector of Limoges in 1291 and lector of Albi in 1292 (ibid. 351, 360), and he was still lector of Albi on 5 July 1293 (MOPH XXIV 199.6-7), and he presumably remained there until someone else was appointed in 1294 (Douais, *Acta* 373-374, 384); in 1294 the provincial chapter, held at Whitsun after the general chapter, named him lector of Carcassonne (ibid. 384), but he was elected prior of Albi and confirmed on 23 July 1294 (MOPH XXIV 199). He was still prior of Albi when he was elected and confirmed as prior of Carcassonne in 1297 (MOPH XXIV 102-103); he was absolved by the provincial chapter in 1301 and appointed lector of Carcassonne (Douais, *Acta* 457-458), but on 16 August 1301 his election as prior of Castres was confirmed, and he remained in office there until he was absolved in 1305, whereupon he was promptly elected prior of Limoges and confirmed on 23 Aug. 1305 (MOPH XXIV 154, 67). Since he was not sent to study outside his province, he would have had no obvious occasion to visit Italy unless he

The capitulars of 1241 should have been clear about the intentions of the previous chapter. Provincials who were there to elect a master also played a full part in the diffinitory with the normal diffinitors (Primitive const. II 11, AFP 71 [2001] 90); there had been a provincials' chapter in 1240,⁴⁰ and at least some of the same people should have been there again in 1241.⁴¹ Since they retained the apparent muddle from the acts of 1240 they could presumably make sense of it; we must try to do likewise.

The inchoations of 1238 and 1239 have one thing in common with two of those which follow the rubric *Inchoationes* in the acts of 1240: they all propose innovative legislation without specifying how or where or even in what exact words it is to be incorporated into the constitutions. By contrast, the items in 1240.13-50, including even the apparent bald prescriptions in 1240.13-14 and (more or less) that in 34-41, propose verbally precise modifications to the text of the constitutions, most of which could properly be described as *additio* or *subtractio*, as indicated in 1240.51.

was required to attend a general chapter. We do not know who was nominated diffinitor or socius for the 1281 chapter in Florence (Douais, *Acta* 242), but the 1280 chapter began two days before Gui was professed, and in any case if he had himself been nominated he would have been able to supply one of the missing names (his own). Thereafter we know who was appointed for every general chapter in Italy before 1308 and Gui is not named once (ibid. 282, 310, 338, 358, 410, 481; Toulouse 490 f.391^v); the only gap is that, because news of Munio's deposition arrived after the 1291 provincial chapter, we do not know who the province's electors were at the 1292 chapter in Rome, but it is exceedingly unlikely that someone like Gui, who had just been given his first appointment as a lector, would have been chosen.

⁴⁰ According to a report which reached Bernard Gui the general chapter of 1242 absolved all the provincials who had accepted Raymund's resignation as master (see AFP 72 [2002] 106). It was in 1240 that Raymund was allowed to resign, to the great consternation of the Order (MOPH I 331), so there must have been a provincials' chapter in 1240. From 1252 onwards we have regular, coherent evidence of the composition of general chapters thanks to provincial chapters' appointments of diffinitors or provincials' socii, and 1252 was a provincials' chapter (MOPH XX 12.10-11); by 1236 the constitutions made it clear that the election of a master did not disrupt the regular cycle of chapters (AFP 71 [2001] 90-91), so, working back from 1252, there should have been provincials' chapters in 1249, 1246, 1243 and 1240 (there was an election in 1241). According to A the 1243 Roman provincial chapter nominated a provincial's socius for 1244 (MOPH XX 2.4), but there are grounds for redating these acts to 1242 (AFP 72 [2002] 137-146, esp. 144), which would confirm that there was a provincials' chapter in 1243.

⁴¹ Provence and France still had the same provincials, and John of Wildeshausen went to both chapters as provincial of Lombardy, though in 1241 he was elected master; Germany and Poland had changed provincials since the general chapter of 1240, but it is unlikely that all the other provinces had done so too, though we have no clear information on the matter (cf. AFP 72 [2002] 106-123).

Despite the variants in 1240.13 there can be no doubt about what was meant: the brethren were to follow an older practice with regard to sitting at Psalm 116, which only has two verses. In the ordinary way the two sides of choir took it in turns to be seated during psalmody in the office,⁴² but in 1236 the most general chapter added 'Quando dicitur Laudate dominum omnes gentes fratres non sedeant, et eo finito sedeat chorus ille qui prius sedere debuerat' to the constitutions (MOPH III 8.35-36). The effect of 1240.13 was to take this clause out again.

The significance of 'Item fratres nostri laici quingenta pater noster dicant' (1240.14) is obscured by uncertainty about the text of Primitive const. II 36, but it is not unlikely that its purpose was to restore a traditional text which had been altered in Raymund's edition of the constitutions either deliberately or because of inherited corruption;⁴³ unless Raymund entirely failed to specify any suffrages for laybrothers to say, 1240.14 does not exactly call for *additio* or *subtractio*, but it was certainly calling for some kind of textual modification or rectification in the new const. I 3.

1240.34-41 represents a substantially enlarged version of Primitive const. X 18, which was taken over by Raymund and included in const. II 14 with minimal alteration, as can still be seen in R (AFP 71 [2001] 143); but it is an *additio* to a pre-existing text, not a new creation, even if it is not quoted exactly (both before and after this amendment the actual constitution began 'Cum frater de prouincia ad prouinciam').

The constitutional amendments of the most general chapter of 1236 (MOPH III 6-8) are a mixture of bald prescription, such as 'Magister aut priores prouinciales non mutant acta ...' (6.2-3), and verbal modification, such as 'Ubi dicitur Fratres non utantur lineis ad carnem addatur Nec etiam infirmi ...' (6.14-15), but the situation in 1240 was different since one of the chapter's tasks was to consider whether or not to continue the ratification of a new edition of the constitutions as a whole. It would be understandable if the diffinitors decided to add a codicil to their approval of this edition, indicating that they wanted certain things added or suppressed, and to keep these modifications separate from their proposals for brand new legislation which they put under the heading *Inchoationes*. If we take everything in 1240.13-50 as framed between *Hoc tamen addimus* in 1240.13 and *Et hec additio et subtractio habet unum capitulum* in 1240.51, the placing of the final approbation in 1240.52-55, though awkward, is intelligible; it forms part of the same series of approbations as 1240.9-12 despite the long interruption constituted by the codicil to the third member of the series.

⁴² 'Ad primum psalmum sedeat unus chorus, ad secundum stet et similiter sedeat alter chorus ... et sic faciant ad omnes horas' (Primitive const. I 1, later const. I 2).

⁴³ According to AGOP XIV A 4 'laici quingenta pater noster' was already in Prim. const, but the Magdalens and the Sack Friars prescribe different numbers of Paternosters, so the reading is not guaranteed (cf. AFP 71 [2001] 110).

If this reading of the 1240 acts is correct, the chapter was not trying to sneak uninchoated changes into the constitutions by attaching them to its approbation of Raymund's *ordinatio*, it was merely differentiating innovations which involved altering his text of the constitutions from those which were radically new and would have to be found a place in the text.⁴⁴

The diffinitors of 1241, including at least some who had been present in 1240 as provincials, apparently wished to make a further distinction within the items inherited from 1240.13-50. The four with an unspecified number of chapters have one thing in common: each of them would effect the restoration of an older text or practice. We have already seen how this applies to 1241.14-15, and it is equally true of 1241.16-17 and 31-33.

The insertion of 'Si quis in proclamatione sua iudicium fecerit' into the constitution on light faults after *Vindicando clamare presumpserit* (1241.16-17) would restore a traditional fault to the place it had in Primitive const. I 21 (const. I 16 in Raymund's edition). *Iudicium* had apparently already been corrupted to *iurgium*, making the fault rather more serious, and this is presumably why Raymund transferred it to the grave faults (his const. I 17). Whatever the capitulars of 1240-1241 intended, the grave fault with *iurgium* was destined to remain in the text, but what was originally the same fault, with *iudicium*, was successfully restored to const. I 16, though before long *iudicium* was again corrupted to *iurgium* with the absurd result that in many manuscripts the same fault appears as *leuis* and *gravis*.

1241.31-33, making it a *leuis* rather than a *gravis culpa* to purloin someone else's clothes, is another instance of a fault being restored to its traditional category, though not in this case to its original place.⁴⁵

It could plausibly be claimed that the amendments in 1241.15-17 and 31-33 did not need to pass through three chapters since their purpose was to restore the original text of the constitutions where it had been altered in Raymund's edition in ways which had not previously been confirmed. This was not true of 1241.14, which involved the revocation of a constitution inserted on the authority of a most general chapter, but the capitulars of 1241 may have overlooked this since here too the aim was to restore an older practice.

If the 1241 diffinitors intended these restorative amendments to be covered by the confirmation of Raymund's *ordinatio* as a whole they failed

⁴⁴ Presumably 1240.62-66 was felt to be so different from Primitive const. II 9 (AFP 71 [2001] 68) that it was tantamount to a new constitution, and the amendment was therefore presented as an *inchoatio* rather than as a modification of an existing text. The unaltered text of Raymund's version of this constitution in II 8 is lost to erasure in R and a missing page in S.

⁴⁵ 'Si indumenta uel alia fratri data uel concessa sine ipsius fratris licentia per se alius acceperit' is among the light faults in Primitive const. I 21, but AGOP XIV A 4 and the Sack Friars have it after 'Si oculos uagos per plateas uel uillas eundo ad uanitates frequenter direxerit'.

to make this entirely clear, particularly with regard to 1241.31-33, but they seem to have been partly successful. If we may trust Gui's text, the items in 1241.14-17 were not confirmed in 1242 but that in 1241.31-33 was (1242.21-23). The procedure for sitting and standing during psalmody laid down in const. I 2 is in accordance with 1241.14 in the original texts of R and S, and they both have 'laici quingenta pater noster dicant' in const. I 3; they diverge, however, in their treatment of *Si quis ...* with *iudicium* (1241.16-17) and *Si indumenta ...* (1241.31-33): both are fully integrated into const. I 16 (*de leui culpa*) in the original text of S, but they are marginal updates there in R, and R still has *Si indumenta ...* in I 17 (*de graui culpa*), which S does not. As we have seen, S appears to have inherited a text in which the first distinction was updated in 1242, so its evidence neither corroborates nor contradicts the status of 1241.16-17 implied by the lack of a confirmation in 1242. Nor is R's evidence decisive, since the lack of clarity in the acts of 1241 could have resulted in copyists failing to appreciate that 1241.16-17 was meant to be covered by the general confirmation of the new edition of the constitutions.⁴⁶

The amendment making provision for all provinces to be informed of the master's death (1241.18-21) should logically have been introduced at the same time as the one giving all twelve provinces equal rights in an interregnum, but whereas the latter is taken into account in the original text of const. II 4 in R and S, this is not true of the former in either manuscript. This implies that the amendments were not confirmed together, that Gui is right to have the one in 1241.18-21 confirmed in 1242 (1242.8-11), and that A is wrong to have *tria* in 1241.21.

Of the other amendments which A credits with 'having' three chapters that in 1241.26-30 is not reflected in the original text of const. II 3 in R or S, and those in 1241.37-49 are not in the original text of const. II 14 and II 12 in R (S's text is missing); that in 1241.50-51 is reflected in S, and too much of this part of I 13 was erased in R for its original text to be retrievable. Bearing in mind that S incorporates first-distinction amendments confirmed in 1242, this suggests that in each case A is wrong to have *tria*, and that Gui was right to defer confirmation until 1242.

The amendments which A and Gui credit with 'having' two chapters were all reportedly confirmed in 1242. The words suppressed in const. II 13 by 1241.34-36 are still in the original text of R (the text of S is missing); the words added to II 5 by 1241.22-25 are not in the original text of S and they are written over an erasure in R.

The treatment of 1241.18-51 in Gui's text is convincingly vindicated. We may infer with some degree of confidence that 1241.16-17, like 1241.13-

⁴⁶ People making copies of the new edition of the constitutions in 1241 had to do so, as likely as not, on the basis of the text prepared by Raymund (as amended in 1240) together with the acts of the 1241 chapter.

15, was taken to be covered by the confirmation of Raymund's *ordinatio* as a whole and so not in need of further confirmation in 1242, and that this is what the diffinitors of 1241 intended; if so, R's failure to absorb it was indeed caused by a misunderstanding of the 1241 acts. If the diffinitors of 1241 wanted 1241.31-33 to be privileged in the same way this was not appreciated by the 1242 chapter or by the copyist responsible for the text of R.

In the case of unambiguous confirmations the diffinitors of 1241 indicated how those in 1241.4-11 were to be incorporated into the text of the constitutions, and—perhaps for the first time—their own inchoations were all formulated as verbally precise modifications of the text.

Only two ambiguous items from 1240 do not recur in 1241, suggesting that they were de facto inchoations which failed to win approval in 1241.

In the case of 1240.50, 'Benedictio post completorium non detur', this poses no problem. 'Det benedictionem qui preest' in Primitive const. I 9 passed to Raymund's const. I 1 as 'det qui preest benedictionem' (found in R and S), and it survived in this form until the twentieth century, all of which is perfectly compatible with an unsuccessful inchoation to drop it.

By contrast 1240.47-48, 'In suffragiis defunctorum remoueat quod dicitur de sociis magistri et priorum prouincialium', is puzzling. If such an inchoation was unsuccessful the result ought to be that whatever was said about these *socii* remained in the text, but the only *socii* allotted suffrages in Primitive const. II 21 are those of diffinitors at the general chapter;⁴⁷ and the one salient change in Raymund's const. I 3 is that there is no longer any explicit mention of provincials qua diffinitors: 'Idem etiam fiat per totum ordinem pro diffinitore generalis capituli uel socio eius si aliquem illorum'⁴⁸ in uia mori contigerit'.⁴⁹ *Socii magistri* do not feature in any known version of const. I 3, nor do *socii priorum prouincialium* except those appointed to go to general chapters, nor is there anything anywhere else in the constitutions to which 1240.47-48 could refer.

As Humbert was aware, Dominican legislators were sometimes careless;⁵⁰ even so, it is hard to believe that the provincials assembled in

⁴⁷ 'Idem etiam fiat pro diffinitoribus generalis capituli, siue prioribus prouincialibus siue aliis fratribus, et eorum sociis si eos in uia mori contigerit' (AFP 71 [2001] 110).

⁴⁸ S has *illorum* which recurs in later manuscripts; R has *eorum*.

⁴⁹ An explicit reference to suffrages *pro socio prioris prouincialis euntis ad capitulum generale* was reintroduced by an amendment confirmed in 1256 (MOPH III 79.9-13).

⁵⁰ In his *Expositio super constitutiones* he notes the unsuitable placing of 'Volumus et declaramus ut constitutiones nostre non obligent nos ad culpam sed ad penam nisi propter preceptum aut contemptum' in the prologue and comments 'Quando facta fuit ista constitutio non fuit appositura cura diligens ubi insereretur dummodo scripta esset' (Bologna, Bibl. dell'Archiginnasio A 214 f.67^v; Berthier II 45).

Bologna with Raymund in 1240 solemnly deleted a text which was not in the constitutions anyway.⁵¹ It is more likely that Raymund attached *socii* to the clause prescribing suffrages for the master and provincials, that the 1240 chapter proposed taking them out again, and that in 1241 the diffinitors reckoned that this was sufficient since their presence in the text had never been confirmed. There is no trace of them in R or S.

4. *Admonitions*

We have made more sense of the constitutional amendments of 1240-1241 than seemed likely at first sight, and the consistency of the texts we have suggests that both Gui and the compiler of A took them from *rotuli*; but we should not infer that the admonitions necessarily came from the same source. It is clear that Gui found the admonitions of 1239 and 1241 before the other acts from these years, and there is no reason why the same should not be true of 1240 even if he was able to assemble the complete acts in time to get them copied into the primitive text of B; it is equally possible that the source which supplied the compiler of A with admonitions from before 1241 also supplied those of 1241. This is important because of the likelihood that *quaterni* were the main source of admonitions from early chapters, in which case the texts we have of them are proportionately further removed from the original *rotuli* than those of constitutional amendments. We must also be prepared for them to be in greater disarray, as a few examples will show.

V's collection of admonitions begins in 1234; if we compare its text with Gui's we find that V has two admonitions which Gui lacks, and Gui has four which V lacks. There are also minor variations in the wording which do not effect the sense. For example, in one admonition V has 'non predicetur', Gui 'admonemus ne fratres predicent' (MOPH III 4.23)⁵²; in another the word-order is different and Gui has an extra relative clause (MOPH III 5.1-3):

V

Item per seculares non mittantur littere continentes cuiusquam fratris aliquid inhonestum, set nec fratres nostri nisi prius inspexerint eas portent litteras alicuius.

B

Item non mittantur littere per seculares continentes cuiusquam aliquid inhonestum, set nec fratres nostri portent litteras alicuius qui non sit de ordine nisi prius eas inspexerint.

⁵¹ Would they have appreciated the old rhyme, 'The other day upon the stair / I met a man who wasn't there, / He wasn't there again today, / O how I wish he'd go away?'

⁵² There is a similar discrepancy between Gui and A at 1239.49-50.

A different kind of malaise is apparent in the admonitions of 1245, whose sequence diverges considerably between A and Gui: if we number them as they are arranged in Gui (MOPH III 32.1-33.2) the order in A is 1, 6, 2, 3, 7, 8, 4, 9, 10, 11, 5, 12, 13, 14; and the wording is sometimes significantly different. For example, one admonition tells priors not to penalize anyone who has denounced them at a chapter, 'eo quod in capitulo generali uel prouinciali acusauerit uel litteras contra ipsos miserit' (A) or 'pro eo quod eos in capitulo generali uel prouinciali proclamauerit uel scripserit contra eos' (Gui, MOPH III 32.8-9); the meaning is the same, but it is differently expressed. According to Gui the chapter said 'nec ordo personis inutilibus honeretur' (MOPH III 32.11), which ignores *mandamus quod* at the beginning of the admonition; in A this is still syntactically dependent on *mandamus* and appears as 'et quod ordo fratribus inutilibus non grauetur'. In the admonition forbidding anyone who cannot travel without a *uectura* to be sent out to preach further than he can go on foot (MOPH III 32.31-33.2) A has *inhibemus*, Gui has *prohibemus*, A has 'nisi quantum pedes sufficuerit ire', Gui has 'nisi quantum comode poterit ire pedes'.

In 1249 and 1250 there are admonitions which are notably more concise in A than they are in Gui (MOPH III 47.18-21, 53.5-7):

A	B
(1249) Studentes missi Parisius uel ad alia sollempnia studia nulla contrahant debita nisi de speciali et expressa licentia prelatorum suorum, sed nec etiam alii fratres.	Item studentes missi Parisius uel ad alia sollempnia studia nulla contrahant debita nisi concessionem a suis prouincialibus per patentes litteras sibi factam set nec alii fratres debita contrahant nisi de speciali et expressa licentia prelatorum suorum.
(1250) Item quod seculares persone in refectorio de facili non admittantur nec in dedicacionibus et in festis ecclesiarum et beati Dominici ad prandium inuitentur.	Item quod seculares persone in refectorio et in domo hospitem de facili non admittantur nec in dedicacionibus et festis ecclesiarum et beati Dominici ad prandium inuitentur.

In 1251 the two admonitions which come first in Gui's text (MOPH III 58.10-15) come last in A.

Divergences like this do not arise from everyday scribal inaccuracy; but neither are they attributable to deliberate tampering such as we find in

A's politically motivated toning down of an admonition from 1247 (MOPH III 39.17-23):⁵³

B

Admonemus fratres singulos et uniuersos et in remissionem peccatorum iniungimus ut negocia ecclesie et uerbis et factis tam inter se quam inter alios fideliter foueant et promoueant, et contraria non attemptent aliquatenus, et caueant diligentissime ne de factis domini pape obloquantur uel Frederico deposito in aliquo uerbo uel facto auxilium prebere uideantur. Si qui uero contra fecerint uolumus quod per priores suos uel uisitatores acrius puniantur.

A

Admonemus fratres singulos et uniuersos et in remissionem peccatorum iniungimus quod <nullus> frater Frederico det auxilium, consilium uel fauorem uel partem eius defendat; ecclesiam omnes defendant, et dominum papam adiuuent et excusent quantum possunt salua conscientia.

Ideologically insignificant variation may perhaps to some extent be explained by the fact that, judging by Humbert's advice to the provincial on how he should prepare for the provincial chapter, the acts of general chapters were dictated to the people responsible for making copies of them at the provincial chapter.⁵⁴ Reading and writing were not automatically twinned in the thirteenth century as they are now, writing, like sewing, being seen

⁵³ 'Quod frater Frederico det ...' in A is linguistically awkward as well as yielding the improbable sense that the brethren should support Frederick rather than opposing him; supplying *nullus*, as Reichert does, is the easiest solution, and its omission can be regarded as an innocent copyist's error.

⁵⁴ 'Prouidere debet quod acta capituli generalis et littere magistri et si que alie littere uel scripta emanarunt a capitulo generali per prouinciam habenda legantur ante electionem diffinitorum, et ordinetur quod certo loco certo tempore conueniant qui habent transcribere *et per aliquem uel aliquos legantur*, et necessaria ad scribendum ibidem eisdem ministrentur de domo, ita quod ante diffinitionem capituli omnia huiusmodi sint transcripta, et tunc acta capituli et si qua alia mittenda sunt in scriptis per prouinciam ab eodem capitulo celeriter secundum modum eundem scribantur' (Berthier II 200). The first *legantur* certainly means that material emanating from the general chapter is to be read out to the members of the provincial chapter; Humbert's advice is cited in the 'Directory' edited by Creytens, and this clause is paraphrased unambiguously: 'Prior prouincialis ... faciat legi acta capituli generalis et per diffinitorem exponi, et, postea uel ante, littera magistri legatur et cum diligencia et reuerencia audiatur' (AGOP XIV A 4 p.14, AFP 26 [1956] 112). Unless Humbert's use of words is unwontedly misleading, the second *legantur* must have the same meaning and not refer, for example, to people appointed to read through transcripts to check their accuracy.

as a practical skill which some friars might have.⁵⁵ Granted that the people taking dictation at the provincial chapter may not always have been proficient *scriptores*, it would not be surprising if on occasion some of them contented themselves with getting the gist of admonitions, whose verbal exactness could be considered far less important than that of constitutional amendments, or if particularly slow writers missed some admonitions altogether and either left them out or copied them later (in the wrong place) from someone else's text. This could be one reason why the number, order and wording of admonitions can vary in different manuscripts, though no doubt later scribes contributed their share of error too.

Whether or not this explanation is correct, the phenomenon it is meant to explain is real; we must therefore not be overconfident in the reliability of Gui's text of the admonitions of 1239-1240 with which we are particularly concerned in this article.

5. *The admonitions of 1239 and 1240*

This whole examination of chapter-acts was undertaken in the hope of clarifying the status of 1240.71-74, 'Item frater qui dum esset in seculo prouinciam in qua natus est omnino dimiserit et ad aliam se transtulerit domicilium commutando sit illius prouincie in qua domicilium habuit nisi de eo per magistrum ordinis uel generale capitulum aliter ordinetur'. This is not in A (which only has admonitions from 1240), and in all manuscripts of Gui it precedes the first explicit admonition; in B it follows the formal

⁵⁵ This was how the *ars scribendi* was seen by Humbert: 'Cum sunt aliqui fratres qui sciunt artes aliquas mechanicas ut suere, scribere, radere uel dolare et huiusmodi, debent hoc facere prout eis iniungitur, sed hec non computantur inter officia' (Berthier II 181). The 'Directory' already quoted implies a presumption that the presiding superior at a provincial chapter and the local prior and subprior would be incapable of writing down the votes in the election of diffinitors: 'Prelatus cum priore <et> supprior in scrutinio procedat, assumptis duobus scriptoribus uel uno ueloci et tabulis pluribus ad hoc paratis, nisi predicti scirent scribere' (AGOP XIV A 4 p.12, AFP 26 [1956] 110), which surely does not mean that they might not be able to write at all, but that they were unlikely to be able to do so quickly and clearly enough; cf. the reduction of *qui sciunt bene scribere* to *qui scribere sciunt* when the 1330 provincial chapter of Aragón reaffirmed an ordination from the previous year (EV 22 [1992] 158 and 165). We may contrast *scribere scire* with the different point at issue in 1318 when the general chapter penanced the brethren of Clermont for allowing a fourth *scrutator* in their pre-chapter tractatus when the three official *scrutatores* were *potentes ad scribendum* (MOPH IV 111.23-26), thereby improperly revealing the vote to an extra person in violation of const. II 7 as emended in 1283 (MOPH III 221.24-30); the regular *scrutatores* were the prior and the two 'antiquiores in ordine de conuentu presentes in capitulo', and the point of *potentes ad scribendum* is not that in Clermont these three were competent *scriptores* but that they were not prevented from writing by any bodily infirmity such as might beset *antiquiores*.

conclusion of the inchoations, but in other manuscripts it comes before it (implying that it too was an inchoation, as maintained by Mothon).

As has already been mentioned, B is Gui's own manuscript in which his collection of acts of general and provincial chapters was first put together; this means that at least its original text has a good claim to be regarded as the archetype of those parts of the collection which it contains.⁵⁶

The 1240 acts are part of the original text of B, and B has some readings which are manifestly superior to those of other manuscripts of Gui, most obviously at 1240.150-154, where P jumps from the beginning of one penance in line 150 to the end of another in line 154,⁵⁷ and the penance imposed on the prior of Reggio and his associates is omitted entirely in other manuscripts or supplied in the margin. B's text is undoubtedly correct at 1240.24, 36, 58, 80 and 151, and almost certainly so at 118 (where its reading is corroborated by A) and at 127-128 (where again B is supported by A, *inde* in other manuscripts being an emendation to compensate for the loss of *ex illa pecunia*). It also probably has the correct form of the *concessionibus domorum* and *suffragia* in 1240.165-177, in which case other manuscripts attest not only the early loss of line 170 but also an adjustment of the formulae to bring them into line with later norms; B's formulae are certainly closer to those found in the 1241 *suffragia* and *concessionibus domorum* preserved in A (see the apparatus criticus on 1241.91-93). And Gui was wrong to abandon his original text at 1240.15 (it was *iudicium facere*, not *iurgium facere*, which was meant to be included among the *leues culpe*).

In view of all this it should be safe to follow B's placing of 'Et iste constitutiones habent unum capitulum' in 1240.70.⁵⁸ But this still leaves the question why 1240.71-74 comes before the rubric *Monitiones* and the first explicit admonition, and its exclusion from the admonitions is to some extent corroborated by its absence in A whose text probably came from a collection of admonitions. Its placing in B might suggest that Gui found 1240.75-151 in a similar collection and only later discovered 1240.3-74 in a *rotulus* of the complete acts from 1240; but this would tend to confirm that 1240.71-74 was not included among the admonitions.

It does not follow, however, that it must after all have been an inchoation. Unlike the explicit admonitions it is not a disciplinary admonishment, and

⁵⁶ Its rôle as archetype is illustrated by the chapter of 1226. In P, the earliest known apograph of the collection of general chapters, which lacks material added in B, there is a single admonition from 1226 fully integrated into the text: 'Admonemus quod fratres non exeant ad mortuos defferendos extra cepta domus nisi pro rege uel episcopo uel domino terre uel patrono uel patrona' (f.41^r, not in MOPH III); this was not entered in B and does not feature in the rest of the tradition.

⁵⁷ The copyist's eye no doubt skipped from *pane et aqua* in line 150 to the same words in line 154.

⁵⁸ He presumably shifted it in later manuscripts because *Admonemus* in 1240.75 suggested that the admonitions began there, in which case 'Item frater qui dum esset in seculo ...' must belong with the preceding inchoations.

it would not necessarily have been considered appropriate to introduce it with *admonemus ut*; but unlike the *declaratio* in 1239.67-71 it does not interpret a constitution, and general chapters had not yet started using *ordinare* in connection with edicts which were not meant for the constitutions. Maybe it lacks an introductory verb to make its status clear simply because there was no obvious verb to hand and the diffinitors saw no need for one anyway. When compilers of acts such as Bernard Gui added rubrics, it would be natural to place *Monitiones* beside or in front of the first text beginning *Admonemus*; and this particular edict was not one of which it would be useful to keep reminding the brethren, so we can easily appreciate why it might not have been included in collections of admonitions.

We may infer, then, that 1240.71-74 was not intended as an inchoation.

A more radical question, whether the same admonition was genuinely issued by two successive chapters, is raised by the fact that, whereas in Gui's version of the acts all but one of the admonitions ascribed to the 1239 general chapter recur in 1240, there is no such repetition in A, whose text of the 1239 admonitions ends at 1239.79—it has the one in 1239.80-82 only under 1240 (1240.119-120), and it lacks both 1239.83-86 and 1240.71-74 (precisely the text which interests us)—and it begins the 1240 admonitions at 1240.115.⁵⁹

We know that Gui found the acts of 1239 later than those of 1240, so he had not seen 1239.27-86 and 1240.71-151 together until they were juxtaposed in his own collection. He also appears to have found the admonitions of 1239 before he discovered the rest of the acts, and this is certainly true of 1241, and we have no guarantee that he took all the acts of 1240 from a single source; it is thus quite possible that he took the admonitions of all three chapters from collections of admonitions in at least two different *quaterni*, and in such an environment they were less securely tethered to particular chapters than they were in more complete sets of acts. One moment's inadvertence on the part of a copyist could result in the loss or misplacing of an indication where the admonitions of one year ended and those of the next year began.

If A's deployment of the admonitions between 1239 and 1240 is correct, the source from which Gui took those of 1240 wrongly incorporated thirteen admonitions which belonged to the previous year's chapter, and the source from which he later took those of 1239 wrongly appended at least one which properly belonged to 1240. If Gui's text of both year's acts is correct, then (for the moment discounting other discrepancies) A has lost two admonitions from the end of the 1239 acts and the first thirteen admonitions from 1240,

⁵⁹ The fact that it launches straight into the admonition ('Fratres studentes qui sunt Parisius ...') with no heading or introductory formula does not imply that the text is incomplete, as the same is true in A's version of the admonitions of preceding chapters.

and we must believe that the 1240 chapter took the unusual step of repeating fourteen of the previous chapter's fifteen admonitions as well as issuing fourteen more of its own.⁶⁰

If we compare the admonitions from the two chapters as transmitted by Gui, we find that the only one attributed to 1239 which is entirely absent from the acts of 1240 is 'Item ut festum beati Vincentii fiat decetero semiduplex' (1239.34); A does not have it under either year. Substantial parts of three others are also missing (contrast 1239.29-33, 35-37 and 42-45 with 1240.76-79 and 82-83); A lacks 1239.31-35 (another liturgical directive) in its entirety, but it has 1239.29-33 and 42-45 in full. A also lacks a substantial part of 1239.54-59. These discrepancies between Gui's two texts and between him and A are no more impressive than that between the contents of the 1234 admonitions as found in V and in Gui.

The order of the admonitions is also different. If we number them according to their arrangement in Gui's text of 1239 (which is supported by A) the sequence in 1240 is 2, 4, 6, 7, 8, 9, 1, 5, 10, 11, 12, 13; such a divergence is less extreme than that in the case of the 1245 admonitions in A and in Gui. And if the 1240 chapter really wished to re-issue the previous chapter's admonitions it would have had no reason to change their order.

There are also verbal differences and minor omissions or additions which do not seriously affect the meaning, but that too is a phenomenon

⁶⁰ According to both A and Gui one admonition from 1238 (1238.12-13) was echoed in 1240 (1240.121), calling for the establishment of prisons; but, unlike the 1239 admonitions, this could not be obeyed without trouble and expense on the part of convents which did not already have prisons, so it would not be surprising if the capitulars of 1240 considered it necessary to repeat the message. In both cases it was also left unclear whether the provision of prisons was a provincial or conventual responsibility. In 1274 the general chapter was more explicit: 'Monemus quod priores prouinciales faciant fieri carceres in omnibus conuentibus sue prouincie ubi eis uidebitur expedire' (MOPH III 176.7-8; *ut* in Reichert's text is a misinterpretation of abbreviated *ubi*). The chapter of 1296 unambiguously demanded that every convent should have a prison (MOPH III 280.13-14), but this was toned down in 1302 when the chapter decreed 'quod quilibet conuentus securum habeat carcerem nisi loci impediatur notabilis arctitudo' (MOPH III 315.7-8). The difficulty of getting prisons constructed is illustrated by the Roman province: in 1256 the provincial chapter ordered all priors to get prisons built, but this was clearly not done, and in 1264 the chapter tempered its demand and required eight named convents to construct prisons if they did not already have them; the creation of prisons was still being called for in 1282 and with increasing signs of impatience in 1284 and 1286, but once again the chapter had to tone down its demands and in 1289 it obliged the provincial to force priors who had 'conuentus sufficientes' to construct prisons, though it resumed its attempt to put pressure on all priors in 1291, 1300 and 1318 (MOPH XX 20.3-7, 28.31-29.9, 60.13-17, 68.22-29, 74.19-28, 92.1-3, 97.10-17, 136.21-26, 205.26-33).

we have found elsewhere. For what it is worth we may also notice that A's readings are sometimes closer to Gui's text of 1240 than to that of 1239.⁶¹

The most significant apparent modification of the text between 1239 and 1240 concerns the *O lumen* (and neither version of the admonition can be confirmed from A): according to 1239.32 the antiphon for the *memoria* of Dominic at second vespers was *O decus Hyspanie*, but in 1240.77 it has become *O lumen*; the difference has been used to date the substitution of *O lumen ecclesie* for *O decus Hyspanie* (cf. A. Dirks, AFP 49 [1979] 30). It is true that in this period liturgical changes were made on the strength of a single general chapter's ordination,⁶² but it is hard to believe that an alteration such as this would have been signalled so indirectly, especially as the antiphon in question was not only used for the festal *memoria* of Dominic but also for his feast day. If it was the intention of the 1240 chapter to alter the opening words of the antiphon, why did it not do so more explicitly? If on the other hand the new version was already being taken for granted, we can only wonder how and on whose authority it had been promulgated in the interval since the previous general chapter.

There does not appear to be any other evidence for the introduction of *O lumen* in 1240 or between the general chapters of 1239 and 1240, and there is some evidence against it. Thanks to A we know that *meritis et doctrinis* was substituted for *meritis et exemplis* in the collect for St Dominic in 1244,⁶³ and the old form of the antiphon and the new form of the collect are juxtaposed in Pelagius's fourth sermon on St Dominic:⁶⁴

Docuit enim duo, in quibus consistit tota doctrina fidei christiane, scilicet: primo fidei ueritatem; unde: O decus Hyspanie, doctor ueritatis. Secundo morum siue iusticie honestatem; unde: Deus qui ecclesiam tuam beati Dominici illuminare dignatus es meritis et doctrinis etc.

It should be noted that *doctrinis* in the collect is relevant to the point being made (*docuit ...*), so it is probably not due to a copyist's error. *O decus* might have lingered in people's minds in the peninsula after it had officially

⁶¹ At 1239.40-41 A's text is closer to 1240.80-81 in having *instituat* and in the order of the words which follow. At 1239.47 *frequentare presumant* is closer to 1240.85. At 1239.50 *non transformet* is closer to 1240.87. At 1239.65 A is closer to 1240.105 in having *in uia*.

⁶² Cf. 1239.34 and MOPH III 27.12-13 (from 1243).

⁶³ The ordination requiring the diffinitors of the following chapter to bring liturgical books with them *pro concordando officio* (MOPH XXX 581 T6) has an extra clause in A: 'et in oratione beati Dominici dicatur meritis et doctrinis'. There are other instances of A having items which are lacking in Gui and vice versa, and there is no reason to suspect that this is due to anything more sinister than accident; we have no cause to doubt A's evidence on this point.

⁶⁴ Lisbon, Bibl. Nacional, Alcobaca 5 f.123^r.

been abandoned, but since the collect contains the verb *illuminare* it would have been appropriate to quote the antiphon in the form *O lumen* if it was already known.

This rather suggests that *O lumen* may have been introduced in the four friars' revision of the Order's liturgical books rather than in 1239/40.

As we have noted, the *quaterni* in which chapter-acts were meant to be preserved had a practical rather than an archival purpose, so it would not be surprising if a copyist substituted the modern version of the antiphon for *O decus*, or if a reader noted *O lumen* in the margin and this was later mistaken for a correction.

In A the 1240 admonitions begin at 1240.115, the first of those in Gui which has no counterpart in 1239. 1240.119-120 corresponds to 1239.80-82 in Gui, but it is not in A's version of the 1239 acts; Gui and A agree that the remaining admonitions belong only to 1240. In these circumstances we must ask ourselves whether the 1239 admonitions and the version of them which Gui included in the 1240 acts differ enough to exclude the possibility that they both really derive from a single chapter, and that Gui first found them in a *quaternus* which gave the impression that they belonged to 1240 and later found a different version of them dated 1239.

The value of A's evidence would be clearer if we knew whether the admonitions of 1239 and 1240 were taken from the same source, since someone making a collection of admonitions might have decided to omit 1240.76-114 on the grounds that the proper place for 1240.76-77 was in liturgical books and that there was no need to copy the rest since it was merely a repetition of admonitions already transcribed under 1239. But this would not explain why repetition is avoided in the case of 1240.119-120 by confining it to 1240 and not allocating it to 1239 as Gui does (1239.80-82); and the placing of 1240.119-120 is the same in A and in Gui, after the first admonition which is undisputedly original to 1240. A's testimony should not be discounted too lightly.

Furthermore, there is no other instance of such wholesale repetition of admonitions in two successive chapters from this period,⁶⁵ or of a single

⁶⁵ The 1240 chapter was unique inasmuch as it was the second and last chapter presided over by Raymund of Penafort; since he was not present at the chapter which elected him master in 1238 (MOPH I 331) it was the only one at which he could get admonitions repeated which had previously been issued under his own auspices. This might be relevant if Raymund shared the opinion that admonitions lapsed after a year and if he convinced the capitulars of 1240 that it was therefore necessary to repeat those of 1239; but in that case they ought not to have penanced people for contravening an admonition evidently issued in 1238 and not repeated in 1239 (see 1240.147-151). It would also have to be supposed that only one other admonition from 1238 was considered worth reiterating (the one concerning prisons), and that all earlier admonitions were to be allowed to lapse; if Raymund, compiler of the Decretals and

chapter issuing anything like the number of admonitions which Gui attributes to 1240.⁶⁶

The evidence does not warrant a definite conclusion, but in my judgment it is at least slightly more probable that A is right and that the 1239 admonitions were not repeated in 1240.

Unfortunately the admonition or clarification or whatever we should call it which allocates recruits to the provinces where they had been living before they joined the Order (1239.83-86, 1240.71-74) is not in A at all; but if A is right not to have 1239.80-82 under 1239 but only under 1240, the attribution of 1239.83-86 to 1239 is necessarily called into doubt.

I have already argued that the clarification was intended to answer a question raised at the general chapter of 1240 (*supra* 125), and its placing in B's text of the 1240 acts in a no-man's-land between the inchoations and the admonitions gives us another reason for dating it to that year: if Gui found it with the chapter's constitutional amendments rather than in a collection of admonitions such as might have been the source of 1240.76-151, it was probably taken from a *rotulus* of the complete acts; if so its attribution to 1240 is more reliable than the inclusion of 1239.83-86 among the admonitions of 1239 which Gui found independently of the complete acts, presumably in a *quaternus* of admonitions.

We may tentatively conclude that the text we are concerned with was only issued once, and that it emanated from the chapter of 1240, not that of 1239.

systematizer of the Dominican constitutions, really believed that admonitions lost their force after a year, it is more likely that he would have collected and arranged those he deemed valuable and presented them as a set which successive chapters could endorse or purge or add to. It should not have been too difficult to do this in 1240; some ten years later, in reply to the argument that if admonitions remained indefinitely valid they would soon amount to an *intolerabilis multitudo*, Humbert retorted that he had made a collection of almost all the admonitions of general chapters *ab initio ordinis* and a great many of those issued by the provincial chapter of his province and it scarcely filled three folios (*Questiones* 2, AFP 21 [1951] 209).

⁶⁶ The most general chapter of 1236 issued fifteen (MOPH III 9); we have insufficient evidence from 1238, but there are fifteen from 1239 (1239.27-66 and 72-86), twenty-nine from 1240 if Gui's text is right (1240.71-148), two from 1241 (1241.88-90), thirteen from 1242, fourteen from 1243, twelve from 1244, and sixteen from 1245 (MOPH III 23.32-24.29, 26.8-27.13, 28.35-29.28, 36.6-37.13). It could, of course, be argued that the chapter of 1241 issued an unusually small number of admonitions in reaction to the unusually large number issued in 1240.