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THE MS. LUDWIG XIV:2
(THE “GETTY GRATIAN”)
AND THE OLD FRENCH
DECRETUM TRANSLATION*

ABSTRACT

The MS Ludwig XIV:2 (Getty Center, Los Angeles), from ca. 1170–1180, is a luxury manuscript containing Gratian’s *Decretum*. The appearance of Ludwig XIV:2 have caused art historians to compare it with a group of manuscripts prepared in Sens for members of Thomas Becket’s exile court. The present paper focuses on the three texts preserved in Ludwig XIV:2: the main text, the marginal notes, and the interlinear annotations. It detects several details proper not only to confirm the art historians’ suggestion of the manuscript’s origin, but also to link the three texts to Thomas Becket. – Also, all three texts have ties to the Old French translation of *Decretum*.

KEY WORDS: Canon Law, Gratian’s *Decretum* and its Old French Translation, Thomas Becket’s exile court, Thomas Becket Controversy.

Gratian’s *Decretum* is a compilation of canon law texts from the times of early Church through the first decades of the twelfth century. It is organized and commented on around 1140 by Magister Gratianus, a teacher of law from Bologna.

The « Getty Gratian », MQ 163 : MS Ludwig XIV:2, dated to 1170–1180, preserves an early version of Gratian’s text. The manuscript is very well preserved and it barely shows any wear¹ : unfortunately some pages are missing.²

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¹ There are palm marks on the lower outer corners of the pages (the binding has been kept open by pressing the corners down). – Otherwise, no smudges or undue pen marks. – Some corrections using black ink are probably of later date, among them the corrections of several illuminated initials, e.g. D 7 c 2 *Querunt* has an *f* inside the *Q* to suggest the reading *fuertunt*; D 21 c 8 *Cummittitur* has an *s* inside the *C* to suggest the reading *summittitur* (i.e. *submittitur*). The illuminated initials of the marginal notes have similar corrections: at C 1 q 1 c 87 *Cupliciter* has a *d* inside the *C*.

² Ludwig XIV:2 has lost the end of the text at f. 239v; half of the folio 169; the folio between f. 78 and f. 79 is missing, as well as the folio between f. 119 and f. 120. The last lacuna is very regrettable for the present study, as the missing text includes C 12 q 2 c 8, the only passage versified in the translation.

The splendid appearance of the manuscript Ludwig XIV:2, its illuminations and decorations have caught the interest of art historians. Ludwig XIV:2 resembles several other manuscripts that were prepared in France for members of Thomas Becket’s exile court. England’s exiled archbishop lived between 1164–1170 first in Pontigny and then in Sens, and that is where the manuscripts may have been prepared.³ – Thomas Becket had been a student of Gratian’s and even from the time of his exile his continued interest in canon law studies is well documented.⁴ One might suppose that he and his circle of learned men, the *eruditi Thomae*, must have had a Gratian text to work on, and also, that they may well have needed a new copy of it. Getty Gratian, dated 1170–1180 (probably finished only after the murder in the cathedral in Dec. 1170) could be this new copy, and this could explain its appearance.

The text itself of Ludwig XIV:2 has received very little attention. This old luxury manuscript has not been used in any edition, except as Latin comparison material for an edition of an Old French translation of Gratian’s *Decretum* (Löfstedt 1992–2001), as the translation (preserved in only one – continental – ms., Bruxelles, BR 9084, from around 1280) corresponds (its later added canon rubrics excepted) very closely to the text of Ludwig XIV:2.⁵

In Ludwig XIV:2 the *Decretum* text is presented in two columns and, many annotations have been added **between the lines** of the main text. Also, surrounding the two-column text surface, there are numerous notes on the **outer and inner margins**, those in the inner margins often remaining partially illegible.

The (marginal) annotations in Ludwig XIV:2 were briefly studied by canon law specialists (Kuttner, Talbot) at a time when the manuscript still was in private ownership in England. According to Kuttner (1963: 535), the glosses of this manuscript represent the type two, i.e. show some development and consist not only of statements, but contain also some analysis and problem solving.⁶ Kuttner could recognize the sigles of several known glossators: Rufinus († 1192 or earlier; his *Summa* seems to be

³ Also Canterbury, Pontigny, and Paris have been suggested as birthplaces of the manuscript cluster. For a good account of earlier research on Ludwig XIV:2, see Anton van Euw and Joachim M. Plotzek, *Die Handschriften der Sammlung Ludwig* (Cologne, Schütgen-Museum der Stadt Köln, 1985), 4: 45–48. The authors see Sens as the likely place of origin of the manuscripts. Recently, Patricia Stirnemann (“En quête de Sens”, *Quand la peinture était dans les livres: Mélanges en l’honneur de François Avril*, Turnhout: Brepols, 2007, pp. 303–312) arrived to the same result.

⁴ Robertson, *Mat.* III: 523–530.

⁵ Even independently of Ludwig XIV:2, the translation supports the theory connecting the texts to the exile court of England’s archbishop: the Old French dialect used in the translation is Western, from late 12th c., with many uniquely Anglo-Norman terms (Roques 2007). The translation has been used in a Thomas Becket vita written between 1171 and 1174 (v. Löfstedt 1997 and forthcoming). – Unlike Ludwig XIV:2, however, the translation has omitted many passages of exclusively theological or ecclesiastical interest; the descriptions of heresies are simplified and there are several considerable *lacunae* in *De Consecratione* (Löfstedt 2001: 35).

⁶ Kuttner 1937: 4: “Der zweite Typus von Glossenschichten bringt den Uebergang von den primitiven Formen der ältesten Zeit zu einer den Dekrettext erklärenden, kommentierenden und analysierenden Tätigkeit. Eine Zunahme der Worterklärungen, ein Uebergang von der blossen Aufstellung von Allegationenreihen zur Auflösung der Parallel- und Konträrstellen durch distinguierende Solutionenglossen... bezeugen das Fortschreiten der wissenschaftlichen Durchdringung.”

finished by 1164), Cardinalis (active probably in the 1160s), Huguccio, († 1210), Johannes Faventinus (active 1171)⁷; and Kuttner found also some unsigned Rufinus notes.

In the following we examine the three texts of Ludwig XIV:2 (first, the marginal annotations, then, the interlinear annotations and last, the main text) comparing them with the French translation.

1. THE MARGINAL NOTES

The marginal notes to be discussed here are chosen by their appearance. They start with an illuminated initial⁸ which has the same shape and color as the illuminated initials in the *Decretum* text itself. They do not have any names or sigla to ascribe them to any author.⁹ If they consist of more than one line, such notes with an illuminated initial are presented in an artful triangular form.¹⁰ More than five hundred notes meet these criteria of color and shape; those that do not, will remain outside the scope of this study with the exception of a couple of non-triangular notes whose contents elucidate the problem signalled in the immediately preceding (triangular and) illuminated note, and whose handwriting is the same. They are taken to be mere continuations to the (triangular and) illuminated note.

While some of the annotations identified by Kuttner (esp. those by Huguccio † 1210) could have been added later directly onto the pages of Ludwig XIV:2 (dated to 1170–1180), the notes chosen for this study look as if they would have been copied and illuminated together with the main text. They seem to be intended to add beauty to the manuscript by their pre-designed form and the color of their initials. Besides, they even have errors that must be ascribed, not to a writer, but to a copyist.¹¹

⁷ All dates come from the *Lexikon des Mittelalters*. Some scholars date Rufinus's *Summa* to the late 1150s (Wikipedia); at any rate, it certainly precedes Ludwig XIV:2. Kuttner, l.c., mentions having recognized also unsigned glosses by Rufinus. The marginal note adjacent to C 7 Grat.: *Contingit quempiam ab episcopo recedere depositionis causa, infirmitatis, leuitatis, necessitatis, humilitatis, religionis* might represent one of them (cf. Rufinus' *Summa*, ed. Singer 1963: 287).

⁸ Their contents may not be unique: a note like *Ad multa* may occur with or without an illuminated initial.

⁹ The distinction is not always easy. In C 33 q 1 c 2, e.g., we find *Nota iugale C* and, right after it, *Nota rescindere C*, both starting with an illuminated initial of the same color and shape that is used for the triangular notes. Should one ascribe these observations to Cardinalis whose glosses Kuttner (1937: 10) finds marked with a *C* (Kuttner 1937:10)? These and several other notes starting or ending with a marking that could be (taken for) a sigle have been omitted in our study.

¹⁰ Only very few rectangular or square notes start with an illuminated initial. Conversely, notes lacking this type of an illuminated initial are seldom triangular.

¹¹ (In our emendations, we mark added text with <> and deleted text with [].)

In C 35 q 5 c 2 adjacent to a passage discussing the counting of generations for the right to inherit (of interest to secular authorities) or the right to marry (of interest to the canon law), there is a marginal note *Ratio qualiter aleges quam canones...*(that makes no sense) for *Ratio qua <a>liter [a]leges quam canones...*(‘reason why (secular) laws (count the generations) differently than the canons’). The copist inadvertently attached the (in his exemplar, line-beginning?) *a* of *aliter* to *leges* (in the beginning of the next line?). Further, in C 15 q 2 c 1 *Clericos pro impensis patrociniis non*

■ The contents of the illuminated, triangular, marginal notes: general characteristics

Consisting of nominal syntagms, often of *accusatiuus cum infinitivo* structures preceded or not by *Nota*, and exceptionally of full phrases, the notes frequently sum up the contents of a long passage of the main text or draw attention to some detail:

D 12 c 10 *Non pro locis res, sed pro rebus loca amanda esse;*

D 18 c 13 *Regiam preceptionem in episcopum preferendam esse mandato prelati* ‘Is the royal order to a bishop more important than his prelate’s (i.e. archbishop’s) order?’;

D 34 c 19 *Nota presbyteros non debere interesse conuiuiis nuptiarum.*

This type may well be the most frequent. According to Kuttner (1937: 3) it is characteristic of the very early glosses.¹² – Some details pointed out by the notes of this kind do not seem to have too much to do with canon law. C 26 q 7 c 16 *Prohibicio strennarum* draws attention to the fact that St. Augustin forbade New Year’s decorations and winter holiday gifts, although the custom, with the word, survives into the twelfth century (as it still does, as evidenced by French *étrenne* < *strena*); and C 24 q 1 c 24 *Nota Iohannem publica balnea lauandi gratia ingressum* ‘note that (apostle) John went to a public bath to wash himself’ could point out a detail considered as odd in the note-writer’s surroundings.

Among the numerous notes, we found only two clear references to the Bible:

D 13 c 2 *Hic in mola ; Hic in lecto ; Hic in agro* refers to Vulg. Luc.17. 34–35 and C 8 q 1 c 9 *Qui recte eligitur...* to Vulg. Num. 16.

A passage in the main text of *Decretum* can be marked as wrong: D 19 c 8 *Erroneum* (see *infra*). Some expression in a canon can be corrected:

At D 1 c 1 the canon text *Transire per agrum alienum... ius non est* ‘it is not a (self-evident) right to cross somebody else’s field’ is provided with a marginal gloss *Nisi ubi ager debeat seruitutem, id est iter actum uel uiam publicam* ‘unless the field carries an easement for a travel path or a public road’.

Even the formal presentation of the main text of *Decretum* has inspired notes. Some passages are analyzed as students might have done in a class of *rhetorica* or *dialectica*:

D 8 c 2 *Argumentum a minori(-e?)*; D 25 c 4 *Argumentum a contrario sensu*, etc. *Argumentum* comes up often. Kuttner (1937: 3) finds *argumentum* frequently in the first (earliest) gloss type.

posse exigere munera (on two lines, *muna-/-ra*), the last word seems to be wrongly copied from *mun'a* (*munera*), and there are several other abbreviation errors, like omitted or wrongly added nasals, e.g. D 89c 5 *ab eccl'am*; C 2 q 4 c 3 *Appellation est*. Other scribal errors include confusion of prefixes: C 2 q 5 c 11 *Obuitandum* (pro *euittandum*); C 1 q 1 c 71 *Verum sacrificium... quoad effectum* (pro *affectum*) or case endings: DP D 7 c 6 *baptizatos* (pro *baptizatis*).

Even the illuminator shows errors: D 100 c 1 *Rina* pro *Trina*; D 24 c 5 *Ardinandorum* pro *Ordinandorum* *genus*, and some missing initials.

¹² Kuttner (1937: 3) presents some characteristics of the gloss type 1: « die (häufig mit Schnörkeln und farbiger Initial versehenen) eigentlichen ‘Notabilia’, in denen auf allgemeine oder spezielle Rechtssätze mit dem Einleitungswort ‘Nota’, ‘Notandum...’ hingewiesen wird, bilden die Grundformen der späteren Sammlungen... ».

Details in the canons' style (as opposed to contents) are pointed out:

D 63 c 28 *Nota exemplum bonum* 'take notice of the good [well-chosen] example'; C 15 q 8 c 5 *Nota laudandam similitudinem* 'take notice of the praiseworthy simile'. C 23 q 4 c 38 *Gradatio*, and a little later, *Repeticio* analyze St. Augustin's style. Even Greek terms are used, although in Latin writing: C 23 q 3 c 2 *Tapinosis* 'depreciation'; and *Antropos patos* in two instances C 23 q 4 c 23 and 24 q 1 c 28 where God is presented as having human emotions.

Some texts or text units are perceived as illustrating a disputation, and the roles are identified: one finds C 15 q 1 c 11 *Impugnator*; *Assessor* and *impugnator* in C 29; DP D 1 c 87 *Defensor*.

The meaning or the use of a word or a syntagm in the main text of Decretum can be questioned:

D 1 c 1 *Quid sit lex diuina*; D 24 q 3 c 9 *Quid sit anathema*, even DC D 1 c 8 *Quid sit ecclesia*; C 15 q 1 Grat. *Que sit uoluntas*.

Conversely, a note can explain an expression in the main text: *vectigalium latores* 'tax collectors' in C 21 q 3 c 3 seems to translate *conductores*. Kuttner (1937: 4) finds questions and definitions of the meaning of a word already in early Gratian tradition.

Some notes indicate the practical use or value of a canon: e.g. six canons are considered to have value for a limited time only and are marked *temporale*, and conversely, several canons get the note *Ad multa* meaning that they can be used 'to many things'.

Gratian himself (if he is the person called *magister*) might have inspired some notes:

C 1 q 1 c 22 *Secunda oppositio pro simoniacis. Magister allegat*;
 C 3 q 1 c 6 *Ratio est hec, non auctoritas* ('this is only common sense!');
 C 12 q 1 c 27 *Consuetudinem iuri aduersam magister ut sui moris est, defendit* ('here the master defends again a custom that is contrary to law'), repeated in
 C 15 q 2 c 1 *Regula. Consuetudinem iuri aduersam magister, ut sui mos est, tuetur*;
 C 27 q 2 c 45 *Vacat exemplum* ('an example missing'; indeed the passage is very unclear!).

These examples which could represent the students' laughter at their teacher behind his back illustrate also early criticism and emerging canon law scholarship.

■ Some detail observations

▪ Secular experience

The note at D 1 c 1 introducing the concept of *seruitus* 'easement' (supra) indicates that at least one of the note-writers has lived in the secular world and knows about easements.

▪ Influence of Old French

In D 23 c 6, the marginal note gives the expression *De fidelitate facienda*, adjacent to a main text passage discussing ecclesiastical vows using the Latin phrase *uota spondere*. The phrase *fidelitatem facere* normally describes secular, feudal oaths of

fidelity (corresponding to and quite likely translating the frequent OFr expression *faire feauté*, cf. DMLBS 4, 937 ab; T–L 3, 1679, 7). Similar vernacular influence on the phraseology may be detected in the note D 95 c 1 *Nota presbyteros crisma inungere posse*. The corresponding *Decretum* text uses the expression *chrismate tangere*. The phrase *crisma inungere* corresponds word-for-word to OFr *enoindre de la creme*.

French influence on the syntax can be illustrated by C 8 q 1 c 9 *In omnibus publice prodesse priuate singulorum utilitati preferendus est* where the infinitive *prodesse*, defined by an adverb *publice*, is treated like a masculine noun, its predicate having the complement *preferendus*. In Latin the gender of infinitives is neuter and they are not very often used as nouns (v. Hofmann–Szantyr 1965: 343 § 190). The nominalization of infinitives is much more frequent in Old French where their gender is masculine (*le plaisir, le disner*, etc.).

- Knowledge of English practices

At C 8 q 1 c 7 the note *Contra anglicos* adjacent to a canon prohibiting the inheritance of ecclesiastical positions, *Apostolica auctoritate prohibemus, ne quis... ecclesiastica officia hereditario iure ualeat uendicare*, shows that the writer had information about a malpractice inside the English Church. No other non–biblical nationalities are named in the notes.¹³

- The writer’s title?

There is only one note using first person singular, C 9 q 2 c 3 *Quid declaro*, a question ‘what do I clarify?’. It is found adjacent to *Nullus primas nullus metropolitanus nullusque reliquorum episcoporum alterius audeat... possessionem accedere...* ‘No primas, no archbishop, and none of the other bishops should ever dare to enter an area possessed by another’. Who is the person who asks what he is to clarify? A *primas*, an archbishop, a bishop?

- Personal notes?

Six canons were marked as *temporale*: D 23 c 12 mentions a detail in the ordination of priests and deacons that the writer of the canon (pope Nicholas, a. 864) cannot recall ever having been observed. D 31 c 12 talks about the Nicene council still allowing priests to be married. D 31 c 13 reports that the sixth synod (7th c.) imposed continence for priests only when they were officiating. In D 63 c 16 Pope Leo IV is requesting the Frankish kings Lothar and Louis (the German) to allow that a certain deacon be ordained priest to fill a vacancy. This canon illustrates a pope’s dependence on secular rulers – in the marginal note it was judged *temporale nec ad consequenciam trahendum*. D 63 c 17 tells that this kind of permission had been granted by secular rulers. D 63 c 22 relates Charlemagne’s receiving the right and privilege to elect the

¹³ Let us mention one personal name than remains intriguing. The note C 10 q 2 c 2 *Nota illud esse guarnerii*, adjacent to §11 *Si yconomus ecclesie prospexerit expedire...*, seems to give the personal name (Guarnerius, Fr. Garnier) of an *yconomus*, i.e. procurator (a cleric responsible for the finances and management of the – note-writer’s? – church or religious house). At least one Garnier seems to have had access to Thomas Becket’s close entourage right after Thomas Becket’s death, even to his correspondence: his French biographer Guernes (short name of Garnier) Pont-Sainte-Maxence. A mere coincidence?

pope. These last two, signalled by *Temporale est* (and c 17 adding *et non perpetuum*), are also marked with an arrow (a ‘nota bene’ sign?). – While all of these six canons invalidated as it were by *temporale* illustrate some questionable rulings that definitely belong to the past at the time of the manuscript, we see that secular intervention in Church affairs is combatted three times.

The above examples – suggesting knowledge of secular customs (*seruitus*), French mother tongue, knowledge of English practices, high position in Church hierarchy, and a desire to deny secular powers any right to intervene in Church – fit into the framework of Thomas Becket’s exile court. They seem to allow us to apply to Thomas Becket the following examples of the practical use of five canons. All examples present excommunication sentences, some *date* some *dande*.

The descriptions *sententia data* and *sententia danda* resemble the technical terms *sententia lata* ‘an « automatic » sentence’ and *sententia ferenda* ‘a sentence that needs to be « proved »’. While the general incorporation into the canon law of the principle of *sententia lata* seems to be dated only to a time following Gratian¹⁴, the concept of ‘automatic’ excommunication is certainly found in Gratian.¹⁵ In the marginal notes of Ludwig XIV:2, the use of *sententia data* instead of *s. lata* and *sententia danda* instead of *s. ferenda* could, perhaps, be considered as just two more examples of French influence on the annotator’s Latin and compared to *de fidelitate facienda* (v. supra), *ferre* (in *sententiam ferre*) being very often translated by *donner*.

In the context of Thomas Becket, the opposition *sententia lata/ sententia ferenda* is in any case somewhat blurred by the fact that he was given free hands to exercise ecclesiastical power by pope Alexander III already in April or May 1166 (the pope, however, did not grant Becket a mandate concerning Henry II).¹⁶

Here are the notes of the sentences, some already given, *date*, some to be given in the future (if proved ?), *dande*:

D 19 c 5 *Canon non date sed dande sentencie* (‘a canon (to be used as the basis) for a sentence not yet given but that will be given (if proved)’)

adjacent to

¹⁴ See *Lexikon des Mittelalters* 4: 170. – In the early Gratian the terms *sententia lata* and *sententia ferenda* do not seem to be used as technical terms (where *lata* and *ferenda* are adjectival as opposed to verbal, like in C 2 q 6 c 29 *ex die sententiae latae – del jor que la sentence fu donnee*; C 23 q 4 c 31 *non est ferenda sententia – ne doit pas sentence estre donnee*; we have used the *Wortkonkordanz zum Decretum Gratiani* by T. Reuter and G. Silagi, 1990, München, *Monumenta Germaniae Historica*).

¹⁵ E.g. C 24 q 1 c 1 *Achatus non est inuentor factus noui erroris, sed ueteris imitator, atque ideo non erat necessarium, ut aduersus eum noua scita prodirent sed antiqua tantummodo renouarentur – Achacius ne fu pas troverres de nouvelle erreur, ainz suivi la vielle, et por ce n'estoit il pas mestiers que novel establissement fussent fet contre li, mes li encian fussent renouvelé.*

¹⁶ Duggan 2004: 103. Thomas Becket was appointed to be “legate of the Apostolic See for the whole England”. The important papal letters are published by Duggan 2000: 271–281: numbers 69 (*de persona regis speciale tibi mandatum non damus*), 70, and 71 (*te legatum sedis apostolice per totam Angliam excepto episcopatu Eboracensi... statuimus*). See also the presentation in <http://conclarendon.blogspot.com/2012/12/excommunications-at-vezelay.html> (used by us September 2015).

... *maioris excommunicationis deiectione est abiciendus... qui non solum... sancte ecclesie iussionibus parere debuit sed etiam aliis ne preterirent insinuare. Sitque alienus a diuinis... offitiis*¹⁷ *qui noluit preceptis obtemperare apostolicis,*

a canon prescribing the more severe excommunication to a person who not only was himself disobedient to the Church's commands, but even told others that they should not obey. He should be forbidden from all divine service since he was not observant of the pope's orders. (According to Friedberg's editorial apparatus the original text comes from pope Gregory IV, a. 833.)

C 1 q 1 c 7 *Hic est canon date sententie* ('this is the canon for a sentence given'), in the middle of a long canon dealing with simony (*Reperiuntur quamplurimi negociatione muneris mercari uelle gratiam Sancti Spiritus ... see infra*), adjacent to

... *huic uulneri... ignitum... inicimus ferrum decernentes omnino, ut quicumque deinceps pro accipienda diuini doni dignitate quodlibet premium fuerit detectus obtulisse ex eodem tempore se nouerit anathematis opprobrio condempnatum...* ('... we insert into this wound a burning iron decreeing that whoever is found to have given whatever payment in order to obtain a dignity involving a sacred gift shall consider himself to be excommunicated from that very moment').

(Original text ascribed to St. Ambrose. Found at least in « conc. Toletano VIII », a. 653.)

C 7 q 1 c 40 *Canon date s<e>n<enti>e* adjacent to

Eum (manuscript has *Cum*) *qui contra iusticie regulam in archidiaconatum alterius se prouehi consensit ab eiusdem archidiaconatus honore deponimus. Qui si ulterius in loco eodem ministrare presumpserit se participatione sacre communionis nouerit esse priuatum* ('we remove from the position of archdeacon the person who has allowed himself to be promoted into somebody else's archdeaconry. If he is arrogant enough to continue functioning in that position, let him know that he is deprived of holy communion').

(Original text by Saint Gregory, a. 592.)

C 9 q 2 c 7 *Canon dande sentencie non date cum econtra uideatur* ('canon for a sentence to be given but not given since it was not warranted') adjacent to

the beginning of the canon *Episcopum non debere in alienam irruere ciuitatem que illi probatur non esse subiecta decernimus* (last word not in Friedberg's text), *neque in regionem que ad eius curam minime noscitur pertinere* ('We decree that no bishop is allowed to intrude in another city (= the administrative center of another diocese) that is proved not to be subject to him, nor into a region that is not acknowledged to belong to his care').

(Original text from « Concilium Antioecenum », a. 332.)

and

C 23 q 5 c 26 *Canon dande sentencie* ('canon for a sentence to be given') adjacent to

Amministratores plane secularium dignitatum, qui ad ecclesiarum tuitionem pupillorum ac uiduarum protectionem rapaciumque refrenationem constituti esse proculdubio debent, quotiens ab episcopis et ecclesiasticis uiris conuenti fuerint, eorum

¹⁷ Friedberg's text; Ludwig XIV:2 has *eccsiis*.

querimonias attentius audiant et secundum quod necessitas expetierit absque negligentia examinent et diligenti studio corrigant. Quod si dei timorem pre oculis non habentes negligere post II. et III. ammonitionem inuenti fuerint, nouerint se omni communione... priuatos ('Administrators of the clergy's clearly secular dignities – who no doubt are to take care of churches, protect orphans and widows, refrain the rapacious – whenever they are called by bishops and clergy, have to listen attentively to their complaints, examine the cases carefully, as the occasion demands, and diligently correct them. If they do not fear God and are found to be negligent after two or three admonitions, let them know that they are deprived of all communion').

(Original text « Iohannes VIII », Friedberg: « imo c. 13 Conc. Ravennat. hab. ao. 877 »).

In the context of Thomas Becket this last passage could have been used to excommunicate Randuf and Robert del Broc and other lay administrators responsible for the mismanagement of the archbishop's estates and for the deprivation and suffering inflicted on lay people close to him (among them the archbishop's family members) during his exile. The excommunication, planned, as it seems, in this note, was then pronounced by Thomas Becket after his return to Canterbury in his Christmas sermon in 1170 (Froidmont, ed. P.G. Schmidt, 1991: 152¹⁸; Robertson, Mat. V: 392; VieSThomasW 2581 sq, 4952, 4961 sq; Barlow 1986: 147–148; 215–216; 233).

Which excommunication could have been based on C 9 q 2 c 7 although it was never pronounced, *cum econtra uideatur*, because it was not warranted? Roger of York, Gilbert Foliot of London and Jocelin of Salisbury had illegally « intruded in Canterbury » by taking over the coronation rights belonging to the see of Canterbury – and to the Archbishop – and crowning young prince Henry (Henry the Young King) in June 1170. Rather than by Thomas Becket himself, these persons were excommunicated by the pope and the excommunication was made known in Advent 1170, when Thomas Becket was returning to England (Froidmont 132, 148; VieSThomasW 2761sq, 4692sq).

The sentence based on D 19 c 5 could have been planned to be used in this Advent 1170 excommunication pronounced by the pope. It could also have been reserved to excommunicate King Henry II concerning whom Becket was not granted any mandate by the Pope in 1166 (supra) who otherwise gave him the right to exercise ecclesiastical justice, when he judged it to be called for. Pope Alexander III had warned¹⁹ Henry II, when the English king wanted his son to be crowned by bishops who had no coronation rights and whom he made unlawfully to claim a privilege belonging to the see of Canterbury.

The canon C 1 q 1 c 7 presents excommunication as an immediate ('automatic') punishment of simony: *quicumque... pro accipienda diuini doni dignitate quodlibet*

¹⁸ Froidmont 152 *excommunicauit quosdam... precipue familiam illam que dicitur de Brois*.

¹⁹ Froidmont 132 *Filium suum primogenitum Henricum apud Londoniam que est prouincie Cantuariensis, a Rogero Eboracensi archiepiscopo etiam post prohibitionem domini pape in odium archiepiscopi fecit inungi contra dignitatem Cantuariensis ecclesie et antiquam consuetudinem* (Schmidt refers to William of Canterbury, Robertson Mat. I:82);

premium fuerit detectus obtulisse, ex eodem tempore se nouerit anathematis opprobrio condemnatum. Simony, ‘traffic in sacred things’ (OED), was a very broad concept. The gift can be C 1 q 3 c 5 *data uel promissa pecunia* or, according to St. Augustin C 1 q 3 c 6 *quicquid homines habent in terra...seruus ..., uas, ager, arbor, pecus*, and what is expected in return is not only an ecclesiastical dignity, but ‘things belonging to the Church’, C 1 q 3 c 5 *in sacris ordinibus uel in ecclesiasticis rebus*. The opposite action, the sale of ecclesiastical dignities or things belonging to the Church is also simony punishable by excommunication (C 1 q 3 c 1; C 1 q 3 c 10).

The canon C 7 q 1 c 40 excommunicates a person who has allowed himself to be wrongfully installed in an ecclesiastical function and continues to act in that function although he has been removed from it.

It seems that these two canons, C 1 q 1 c 7 and C 7 q 1 c 40, both marked *canon date sententiae*, could have been used by Thomas Becket in the Vézelay excommunications (Whitsuntide, June 12, 1166). By accepting the deanery of Salisbury offered to him by the bishop without a correct election, John of Oxford had indeed committed a crime to which C 7 q 1 c 40 could be applied. His appointment had been overruled by Pope Alexander III on June 8, 1166. However, John of Oxford’s and Richard of Ilchester’s main crime was to approach the German emperor Frederic Barbarossa and Rainald of Dassel, bishop of Cologne, a staunch supporter of the antipope (Froidmont 130; Robertson 1859:186–187), in order to promise, on behalf of England’s Henry II, to attach the English bishops and archbishops to the antipope and the Germans, if the emperor swore himself free from obedience to pope Alexander.²⁰ Indeed, they seem to have been negotiating a deal involving the entire English Church, not just individual dignities. These excommunications were quickly ratified by the pope (August 1166).

All *sententiae* mentioned in the marginal notes of Ludwig XIV:2 can be placed in the context of Thomas Becket’s life. The dates of the excommunications pronounced (*date*) and to be pronounced (*dande*) would place the original annotations (whose elegantly executed copies are being studied here) between 1166 and 1170 and point to Thomas Becket’s exile court as their birthplace. They identify the Getty Gratian as a copy of a text used at the exile court.²¹

²⁰ Froidmont 130 (Henry II) *clericos suos, Iohannem scilicet de Exemfod et Ricardum de Yvelcestre misit ad imperatorem Alemanniae Fredericum... mandans quod, si nomen et obedientiam Alexandri pape abiuraret, participem se scismatis haberet cum episcopis et archiepiscopis suis.*

²¹ There are notes that seem to mirror some excommunication planning: at C 23 q 5 c 48 a canon intitled *Pax ecclesie mesticiam consolatur perditorum* and presenting the Church’s peace as more important than the suffering of those rebelling against her, one finds the note *Ad cautelam*. A warning to whom? – The correction of D 19 c 8 (see *infra*) must have been important as well: excommunicated clergy should not function as clergy.

Recently, Dr. Jennifer Jahner called my attention to one more *Canon date sentencie*, this annotation adjacent to C 17 q 4 c 29, a canon anathematizing any person who *in clericum uel monachum uiolentas manus iniecerit*. The canon could have been used, in June 1166, to excommunicate Randuf de Broc who had imprisoned Canterbury clerics (Duggan 2004 :113).

■ The marginal notes of Ludwig XIV :2 and the Old French translation

The translation whose text corresponds quite closely to Ludwig XIV:2 does not have any similar marginal notes. However, many of Ludwig XIV:2's marginal notes seem to indicate modifications in the translation text itself: rather than translating solely some passage in the *Decretum* text, the Old French text can reflect the contents of some marginal notes, too. In the following, a few examples taken from the beginning, the middle, and the end of the translation.

Some mistakes observed in the marginal notes of Ludwig XIV:2 have been corrected in the translation:

D 19 c 8 *Erroneum* (+ arrow) marks as wrong a canon passage discussing the sacraments given by a heretic by the name Achatius who was excommunicated by pope Felix. The writer Anastasius II states that holy sacraments (here Holy Orders) have their effect independently of the quality of the person giving them. *Erroneum* is found adjacent to the concluding sentence:

Quod quidem generaliter uerum est nisi... imagnetur, prolato a Felice papa iudicio, postea inefficaciter in sacramentis, quecumque Achatius usurpauit, egisse ('and this is generally true unless one thinks / imagines that Achatius acted invalidly in whatever sacraments he performed illicitly after pope Felix's sentence')

This passage is corrected in the translation:

Ce est voir generalment, se aucuns ne dit par aventure que il donna les sacremenz puis que li apostoiles Felix ot donné la sentence contre lui ('... unless somebody says perchance that he [Achatius] gave sacraments after pope Felix had pronounced the sentence against him').

While the Latin text seems to question the value of sacraments given by an excommunicated person, the Old French text worries about an excommunicated person giving sacraments.²²

A definition proposed in the marginal notes of Ludwig XIV:2 has been taken into account for the translation:

In C 15 q 1 Grat., the transmitted text is clumsy:

*Est autem uoluntas, ut Augustinus ait in li<bro> .i. Retractationum, animi motus ad aliquid uel non imitandum uel adipiscendum*²³ ('...movement of the mind either not to imitate something or to strive to it')

²² Another correction: In Ludwig XIV:2 there is some disorder in the presentation of C 10 q 2 c 1–2. A few lines belonging to the early part of C 10 q 2 c 1 are presented at the very end of c 2. Adjacent to the end of C 10 q 2 c 1 a marginal note *Capitulum quod est in fine huius legis quod continuum est huc* seems to call for a correction. In the translation the order is corrected according to the note (cf. Friedberg 617–8, ad C 10 q 2, note 9: the latin mss. E and F present a text similar to the translation, but still different from Friedberg's text).

²³ This seems to be the text quoted by Gratian: it is transmitted by all mss. used by Friedberg. Editio Romana adds after *motus* the words *cogente nullo*, taken from St Augustin's text, according to the correctors' notes, and the same notes quote St Augustin having *amittendum* instead of *imitandum*

here, *uoluntas* is passive, only *animi motus*, and dependent on some model not to imitate or to strive to, the negative alternative oddly preceding the positive. Adjacent to it, one finds the illuminated note *Que sit uoluntas (?)* The curious text is not explained, but rather called attention to by the immediately following phrase, *Cum non imitan<te>s uel adipiscen<te>s pariter uoluntatem habeant*. Thereafter, one finds two more practical definitions to the word *uoluntas* presented in two quadrangular fields:

Aliter : solus uolens dicitur quia is efficiendo quod uult uoluntatem quam <ha>bu<er>it declarat quasi : inquam aliter non fiat... and id est quando uolumus aliquid esse uel non esse, fieri uel non fieri

In the first one, the *uoluntas* is active; it is illustrated by an independent person (*solus*) who declares the will that he has by accomplishing what he wishes, ‘as if he would say: may it not be otherwise’. In the second one, *uoluntas* is depicted as either positive or negative, directed to the present or to the future. – The translation replaces, after *animi motus*, the Gratian text by a text combining these two phrases; *volonté* is active, ready to be implemented and there are two alternatives for its action, first a positive, ‘to do’, *fere*, then a negative, ‘not to do’, *lessier*:

Volonté est, si comme dist Augustins, movemenz de corage a fere aucune chose ou a lessier.

Friedberg does not have exact Latin parallels to this French text. The translation gives a text if not mirroring, at least clearly inspired by a marginal note found in Ludwig XIV:2.²⁴

The translation gives a silent answer to a problem presented in a marginal note:

The note *Utilitatis causa dispensationem admittendam esse* stands adjacent to a passage taken from a papal letter

DC D 1 c 6 *Cum enim decreta... nos... custodire nitamur, ac sine eorum dispendio etiam illa que pro alicuius utilitatis fortasse conpendio uideantur laxanda cedamus...*²⁵

(Cf. Friedberg 743–746, *Notationes Correctorum*). The variant *imitandum* does not figure in the edition of *Retractiones* (CSEL 36, 1902) by P.Knöll in the quoted passage, Retr. 1, 14,4 (given by Friedberg as 1.15). In the interlinear space above *a-nimi motus* Ludwig XIV:2 has the gloss *admittendum*: it is a variant quoted from several Augustinian manuscripts at Retr. 1,14,4 by Knöll who also gives the Augustinian variants *ammittendum* and *committendum*.

²⁴ Likewise, the explanation of a difficult word in a marginal note, may have been helpful in the translation of C 21 q 3 c 3 *Placuit ut... clerici non sint conductores aut procuratores*. The word *conductor* had occurred twice before, but the translator had rendered it using a phrase (*conductor esse* being translated by *avoir en garde* in D 28 c 10) or omitted it (C 13 q 2 c 5 *Ampliatu conductor – Emplet*). At C 21 q 3 c 3 there is a marginal note *Vectigalium uel inheri(+illegible, text lost in the inner margin) latores*, and the translation gives *Il nos plest que... clerc ne soient fermier ne procureor de besognes seculers*. DMLBS gives *conductor* in the sense ‘tax-farmer’ from Beda.

²⁵ This text figures in the manuscripts BCEGH used by Friedberg and, as the original text, in Ludwig XIV:2. *Credamus* is the reading in Friedberg’s text (from ms. A?). In Ludwig XIV:2 there is an added *r* on top of *cedamus*, probably by a later corrector (v. note 1 supra) and not by the first interlinear annotator (who writes full words). It seems that *laxanda cedamus*, referring to a relaxation that could already be under way, is more likely to have caused the marginal note. We prefer to take *illa* as an independent pronoun (not referring to *decreta*) and interpret the passage ‘... we strive to

(‘Since we strive to keep the decrees, and without their detriment, even those details that we may allow to be relaxed for some consideration of utility’...).

The marginal note *Utilitatis causa dispensationem admittendam esse* could mark a discussion topic asking whether it ever can be useful, for the Church, to allow relaxations of a respected rule. The translation

Qar nus volons tenir fermement les encians establissementz ne ne volons riens dire qui soit contre les saintes ruelles ‘we keep firmly the old establishments and we will not say anything that could be against the holy rules’

does not even mention the possibility. Gratian’s text had suggested that some milder application of canon law could be possible and a note in Ludwig XIV:2 draws attention to that passage as if indicating that the door had been left ajar. The translation omits the entire question of relaxation. A reader of the French text of Gratian would ignore that the Church can slacken some rules. This example illustrates a recurring feature in the translation: the translator does not leave debatable passages in the church law he presents, probably to discourage any outside interference.²⁶

2. THE INTERLINEAR ANNOTATIONS

The interlinear annotations of Ludwig XIV:2 are carefully placed between the lines and, as a rule, written in a handwriting maybe smaller, but similar to that used in the marginal notes. Their neat and flawless presentation makes it likely that (most of) these notes, too, have been copied from some earlier text. Normally consisting of individual words or syntagms rather than phrases, they are only very seldom marked with colored

keep the decrees (unchanged) and *sine eorum dispendio* (preserving the entire decree text intact) even those details/things that we may allow to be relaxed, when it is deemed useful.’ – The reading *credamus* gives a text that does not refer to any actual relaxation taking place.

²⁶ Similar examples can be found in all parts of the text. Adjacent to D 18 c 13 *Si episcopus metropolitanus ad comprounciales episcopos epistolas direxerit in quibus eos... ad synodum inuitet, postpositis omnibus excepta graui infirmitate corporis ac preceptione regia ad constitutam diem adesse non differant*, one finds a triangular note at *Regiam preceptionem in episcopum preferendam esse mandato prelati* ‘A king’s order to a bishop to be considered as more important as his prelate’s order’. It seems to present a question discussed in the following rectangular addition *Ad antiquum tempus referendum est, in quo magis regibus cogebatur obedire quam metropolitanis. Immo forte et hodie inter legitimas excusationes hec una est, maxime si non in contumeliam ecclesie, sed quia eius opera ac cura regni sollicitudo indigeat, rennuerit*, where the canon passage is considered as antiquated and the royal authority is restricted. The translation does not even mention any royal orders: *Se li arcevesques envoie ses lettres as esvesques de sa province... il doivent venir au jor qui leur sera mis, sanz nule essoine, se ce n’est de griefmaladie*. - Adjacent to C 10 q 3 c 3 *si terciis sibi debitas unusquisque episcopus assequi uoluerit, facultas illi omnino erit, ita uidelicet, ut citra ipsas tercias nullus episcoporum quippiam pro regiis inquisitionibus a parrochitanis ecclesiis exigat* one finds a marginal note *Pecuniarias exactiones a regibus in episcopo fieri*. Instead of royal exactions (*regiae inquisitiones*), the translation talks about the country’s defense (leaving all budgetary decisions to the bishop?): *se li esvesques vult avoir la tierce part des offrendes... il la porra bien avoir en tel maniere: qu’il ne demant rien plus as eglises parroissials por desfendre le roiaume*. (See also Löfstedt 2001: 36 sq; eadem 2009 and 2011).

initials (exception: C 10 q 3 c 6, first col. last line). They can be found throughout the manuscript and they are particularly frequent in C 27 (discussing marriage).

The interlinear annotations of Ludwig XIV:2 (= L-interlinear in the following) were sometimes used as supporting material for the edition of the Old French translation of *Decretum*. They provided a text corresponding to the translation in several instances where the translation differed from the text of Friedberg’s edition and even from the main text of Ludwig XIV:2.²⁷

In most cases, the interlinear annotations seem to **explain** words or passages in the transmitted text and these explanations are found in the translation:

D 50 c 16 (Friedberg) *A capite itaque incipientes usque in quartum altaris ministerium*; L-interlinear *id est ab **episcopo** and **id est subdiacono***; translation *Nos commençons donc **a l’esvesque** et irons jusqu’**au sozdiacre**.*

C 8 q 1 c 21 (Friedberg) *lectores, editui, acoliti*; Ludwig XIV :2 *lectores, acoliti, editui* and L-interlinear, in the space above *editui*, **custodes edium**; translation *li liteur, li acolite, **li huissier**.*²⁸

C 30 q 3 c 5 (Friedberg) *Post susceptum uero de fonte filium uel filiam spiritualem, qui ex conpatre uel conmatre nati fuerint, matrimonio coniungi non possunt*; L-interlinear, in the space above *matrimonio*, **uidelicet filie aut filio spirituali**; translation *Cil qui sont né del <com>pere ou de <la> commere après ce que li uns a receu l’emfant a l’autre de sainz fonz, ne pueent pas estre joint par mariage **a celi de qui il sont compere**.*

The information necessary for the translation of C 32 q 4 Grat. seems be recorded by L-interlinear, but mainly in C 24 q 3 c 10, and only a part of it in C 32 q 4 Grat.:

in C 24 q 3 c 10 *ancillarum liberi*, L-interlinear gives, above *ancillarum*, the names **dale et zelphe**; here, the translation mirrors Gratian’s text *li enfant as chamberrieres*, and

in C 32 q 4 Grat. *Item Iacob, cum ex Rachele filios... habere non posset, ex ancilla eius sibi filios suscitauit; non solum propter sterilitatem, sed etiam propter fecunditatem cessantem legitur intrasse ad ancillam Lie, et ex ea filios genuisse*, L-interlinear, has written **bala** (? difficult to read) above *ancilla*, (and some illisible text above *suscitauit*).

Using (also) the information given by L-interlinear at C 24 q 3 c 10, the translation gives their names to both servant girls in:

C 32 q 4 Grat. *E por ce qe Jacob ne pooit avoir emfanz de [I] Rachel, il en engandra de **Bala**, sa chamberiere; non pas tant seulement por ce que Lya fust brehagne, mes por ce que elle n’avoit pas planté d’amfanz, compagna il o **Zelpha**, sa chamberiere, et en engandra emfanz.*

²⁷ The examples given here have been taken from our work on the edition of the Old French translation. The interlinear annotations have not been systematically studied: it is a time-consuming work that could be very rewarding. Unfortunately, even with a magnifying glass, the reading of the interlinear text demands exceptionally good eye sight and a strong back. We hope to get an enlarged photocopy of Ludwig XIV:2 in a very near future.

²⁸ Many more examples can be found passim in Löfstedt 2001, see e.g. D 4 c 2.

Exceptionally, L-interlinear and the translation have similar variant texts, without L-interlinear being the creator of the variant:

L-interlinear and the translation may encounter and signal the same problem in the *Decretum* text, and both deal with it, but in different ways and independently of each other.

The Latin text in

C 27 q 2 c 49 *Lex illa praeteritorum principum ibi raptum dixit esse commissum, ubi puella, de cuius ante nuptiis nichil actum fuerat* (so Ludwig XIV:2; Friedberg *fuerit*), *uideatur abducta*

is repeated in C 36 q 1 c 2 (where even Ludwig XIV:2 has *fuerit*) and then commented on by Gratian who distinguishes several sexual crimes, among them

Stuprum autem proprie uirginum est illicita defloratio, quando uidelicet non precedente coniugali pactione utriusque uoluntate uirgo corrumpitur and *Raptus admittitur cum puella a domo patris uiolenter ducitur ut corrupta in uxorem habeatur, siue puelle tantummodo* (Friedberg *solummodo*), *siue parentibus tandem siue utrisque uis illata consisterit; hic* (Friedberg: Ludwig XIV:2 *Sic*) *morte mulctatur.*

One may take from this passage that, if a girl is taken from her home against her own will only (*tantummodo*) by a man who then sleeps with her and wants to keep her as wife, the man has deserved the death penalty. Read in this way – and understanding that the event (in opposition to *stuprum* defined earlier), should have been preceded by a marriage-pact between the man(‘s father) and the girl’s father – the passage describes the old Anglo-Saxon ‘marriage by elopement’, which however was not punishable by death. This action carried a fine in king Æthelberht’s laws from the seventh century: according to §82 (Liebermann I: 8) the man is to pay 50 shillings to the girl’s ‘owner’ (usually her father or some other male relative), whereafter he still has to pay a bride-price to the ‘owner’ to acquire the right to have the girl as his wife. And §83: If the ‘owner’ had already promised the girl to somebody else who had paid (bridal) money, the abductor has to pay 20 shillings more. The same verb, *nydnumen*, ‘take a woman by force to keep her as a wife’ is used regarding a widow in king Canute II’s laws in the eleventh century. A widow should live in absolute continence the first year following her husband’s death, after which she is free to marry. If she is taken by force to be somebody else’s wife during her widow’s year (§73.2, Liebermann I: 360), she loses everything she inherited from her first husband, unless she refuses to ever become this new man’s wife. But (§73 a and §73.1) if she still prefers to marry this new man and lose everything she had from the previous marriage, her new husband is to pay his *were*²⁹ to the king. In neither case does the *nydnumen* ‘taking a woman by force to keep her as a wife’ seem to be punished *per se* (the woman’s personal feelings were not taken into account); in Æthelberht’s laws it is rather the lack of the ‘owner’s’ consent and non-payment of bridal money, in Canute’s laws it is rather the premature breaking of the widow’s year that carry the fine. According to Lieber-

²⁹ The Germanic word *were* (Anglo-Saxon also *wer-gild* ‘man-payment’) means the social value of a person, Lat. *pretium natiuitatis*, on the basis of which his financial responsibilities and his compensations are calculated.

mann (II:368c), the marriage by elopement was practised until the end of the Anglo-Saxon times: it was not a form of clandestine cohabitation since the man’s family (and neighbors) had been informed, and the children born to the couple were not bastards. – Of the early twelfth-century Latin translations of Canute’s laws, *Instituta Cnuti* (the earliest? dated by Liebermann to 1095–1135, « wohl 1103–1120 ») and *Quadripartitus* (1114) understand the passage §§73–73.2 correctly (cf. Liebermann II: 155c)³⁰, whereas *Consiliatio Cnuti* (1110–1130) only says that the widow has been ‘taken by force’ (§73.2 *si ui rapta sit*). The *Leges Henrici Primi* (§10.1) still distinguish *uiolentus concubitus* ‘rape’ and *raptus*, this latter translated by Liebermann (II: 181a) ‘Frauenraub behufs Ehe’³¹, and provided with a more cautious commentary (II: 369b): « ...*raptus* nicht... Notzucht... vielleicht: Entführung ». The insular meaning of *rat* (< **rattu* < *raptus*; also written *rap* – probably under Latin influence) is still known at the end of the 13th century to Andreas Horn, the putative author of *Mireur a Justices* (Trotter 2007: 265sq; Löfstedt 2001: 357) who writes *Rap est proprement alopement de femme pur desir del mariage* and distinguishes it from *stupre*, the latter meaning *despucceler felounesment*. Against this background of old insular customs³², the death penalty for ‘marriage by elopement’ in the *Decretum* seems appalling.

Both L-interlinear and the translation show the writers’ disapproval of Gratian’s text. The two texts distinguish two different actions, an elopement (an Anglo-Saxon custom, later considered to be a misdemeanor, maybe subject to a fine) and a rape (subject of more severe punishment).

L-interlinear distinguishes the actions by identifying their perpetrators. The transmitted text in Ludwig XIV:2

³⁰ Inst. §73.1 *uir autem post acceptus sit reus pretii sui...*; §73.2 *Et quamuis coacta fuisset illum accipere, nisi ab illo omnino recedat...careat...*; Quadr. §73.1 *et sit ipse maritus were sue reus...*; §73.2 *Et licet ... per uim capiatur*.

³¹ The Latin *raptus* for the Anglo-Saxon ‘marriage by elopement’ seems to be due to a misunderstanding; see Liebermann (II: 599a s.v. *Notzucht*): “Da Frauenraubehe dem französischen Klerus 12. Jhs. unbekannt war, so missverstanden die Lateiner *niednæme, niednumen* (gewaltsam zur Ehefrau nehmen...) als Notzucht”; this may be shown by the gloss *wifa nydnimung: stuprum, raptum*, quoted by Liebermann (II: 369a) and Bosworth – Toller s.v. *nidniman*. Bosworth-Toller do not mention any marriage plans in the translations of *nidnæm, nidnime* and derivatives; according to their dictionary, the word means ‘taking by force’, even ‘rapine’. On the other hand, they do not give the word *niedhæmed* translated (only) by *Notzucht* ‘rape’ by Liebermann (II:155c) and found in king Alfred’s laws (§ 25: even the rape of a female slave being punishable by 65 shillings or castration, depending on the perpetrator’s status).

³² Similar customs seem to have existed in Scandinavia. According to *Kulturhistorisk Leksikon for Nordisk Middelalder* (2 oplag, 1982. Viborg, Rosenkilde og Bagger) 20: 486 sq s.v. *Ægteskab, Sverige*, one finds that the oldest Swedish laws prescribe ‘that a man has to ask for a wife, not take her by force’; allowing, however, elopement in the case her *giftoman* ‘giver-in-marriage’ (=‘owner’) refuses to let her go, against his own promise. *Kvinnofrid* (‘women’s peace’, i.e. inviolability) was included, in mid-thirteenth century, by Birger Jarl in his laws, and in 1274 pope Gregory X ordered secular authorities to make sure that women were not taken to marriage by force. – The concept of clandestine marriage, unknown in the early Swedish laws, was introduced only by church laws: proclamation of marriage was prescribed by Innocentius III in 1216. Other forms of marriage became thereby punishable, although they remained valid (ibid. 11: 30 s.v. *Lysning för äktenskap*).

C 27 q 2 c 49 *Lex illa praeteritorum principum ibi raptum dixit esse commissum, ubi puella, de cuius ante nuptiis nichil actum fuerat* (Friedberg *fuerit*), *uideatur abducta*

has caused L-interlinear to write, above the two last words, ...*cum raptore siue* (?), difficult to read) *cum* (?) *sponso*. In C 36 q 1 c 2, where the text of C 27 q 2 c 49 is repeated, L-interlinear writes *cum* (?) *raptore* above *nichil... fuerit*. Later, in C 36 q 1 c 2 § 5, where the *raptor* is judged punishable by death, a (non-illuminated, non-triangular) marginal annotation in Ludwig XIV:2 pardons the man if the girl is his ‘promised one’:

Gratiam (sc. *promeretur*) *si sponsa eius sit quam rapuerit si<ue> uolentem siue nolentem*.

The translator seems to have had two different Anglo-Norman terms for the two actions, *rat* being ‘elopement’, and *ravisement*, ‘rape’.

C 27 q 2 c 48 *Raptus quoque est illicitus coitus a corrupendo dictus* is translated *Ravisement est compaignier a fame et corrompre la contre droit*.

Translating

C 27 q 2 c 49 *Lex illa praeteritorum principum ibi raptum dixit esse commissum, ubi puella, de cuius ante nuptiis nichil actum fuerit* (Friedberg; L has *fuerat*), *uideatur abducta*

he seems to be troubled by the terminology:

La loi au princes qui jadis furent dit que ce est ravisementz (que l'en apele ‘rat’!) quant la pucele de qui mariage l'en avoit porparlé³³ devant, est prise a force.

In C 36 q 1 c 1, where C 27 q 2 c 48 is repeated (the manuscript³⁴ of) the translation does not have any name for the crime:

L'en apele <...> quant fame est corrompue contre droit.

In C 36 q 1 c 2 the word *rat* is used for *raptus*.

The most important annotation of L-interlinear is in C 11 q 1 c 45 *quod si de criminali causa litigium emerit tunc... competentes interpellati consentaneum legibus terminum cause imponant* where L-interlinear has written *iudices* above *interpellati* (causing the text to mirror the translation ... *lors aille l'on a convenables juges qui terminent la cause selonc droit*). In the same interlinear space, preceding *iudices*, there is also *s tome*, to be read *S<anct> T<h>om<a>e*, attributing, or so it seems, the addi-

³³ My emendation: the manuscript gives *pourparle*, maybe *pointparle*. *Po(u)rparler* would signify a preparatory action of sorts. The word *point* without *ne* can be found to signify ‘the smallest amount’ (T-L 7, 2119, 17 has two examples, one from the *Chevalier au lyon*). Guided by the Latin *nichil*, the emendation *de qui mariage l'en <n>avoit point parlé* would be easy (haplography *nn > n*) as well; this third possibility would give a text describing a *ravisement*. In any case, the debatable text tells its reader that in the translator’s language *rat* (<*raptus*) and *ravisement* are not synonyms.

³⁴ Some of the confusion may be due to the fact that Bruxelles BR 9084 is copied, around 1280, on the continent and the scribe was quite likely not aware of the old insular distinction of *rat* and *ravisement*.

tion *iudices* to St Thomas. The passage has already been presented and discussed (Löfstedt 2015: 152), but some details invite more research.

In the previous interlinear space, above *criminali*, L-interlinear has marked *et forensi* (for which there is no equivalent in the translation). This *forensi* is reminiscent, however, of some work on the *Decretum* passage C 11 q 1 c 45 by other, contemporary, decretists. Rufinus, for instance, who according to Kuttner is quoted in many notes in Ludwig XIV:2, even unsigned ones, writes, in his *Summa* (likely to be finished by 1164³⁵):

in the passage corresponding to C 11 q 1 c 45 (Singer 1902: 307): *Denique in criminali causa forensi³⁶ multa differentia adhibenda est in his, qui conueniunt uel conueniuntur. Refert hic enim, utrum clericus clericum, uel laicus laicum, uel laicus clericum uel clericus laicum conueniat...*

Stephen of Tournai, influenced by Rufinus, developed the analysis of the *Decretum* passage C 11 q 1 c 45 in his *Summa* (written 1166/69³⁷), trying especially to reconcile Church law (*Canones*) with Roman law (*Authenticum*, i.e. a collection of Justinian’s *Nouellae Constitutiones*).³⁸

In a manuscript of Stephen of Tournai’s *Summa* there is a note added to C 11 q 1 c 45 « Sanctus Thomas volens facere autenticum consonare sic exponebat quod hic dicitur ‘competentes iudices’ i.e. clericus clericum et laicus laicum iudicem ». Kuttner³⁹ identified ‘Sanctus Thomas’ as Saint Thomas Becket. Already L-interlinear presented the actual addition *iudices* to C 11 q 1 c 45 *competentes*, and the qualification of the addition as *s tome* ‘of St. Thomas’ is found in the same interlinear space. The syntagm

³⁵ See *Lexikon des Mittelalters* 7: 1089.

³⁶ Rufinus defines the term slightly earlier on the same page (307) *Forensis criminalis, ubi crimen forense intenditur; est autem crimen forense illud cuius examinatio et condemnatio ad secularem iudicem pertinet, ut crimen lese maiestatis et incendiorum et alia, quorum exempla sunt infinita.*

³⁷ See *Lexikon des Mittelalters* 8: 129.

³⁸ Quoting from the edition of v. Schulte 1891: 212: ... *in criminali forensi secundum authenticum ante iudicem ciuilem debet reus clericus conueniri et pronuntiare potest ciuilis iudex, sed punire non potest, nisi prius condemnatum clericum episcopus ordine et gradu spoliauerit. Canones non permittunt id, cum in omni crimine prius sit ante iudicem ecclesiasticum conueniendus, et condemnatus ab eo curiae tradendus sit, i.e. relinquendus, ut curia puniat eum secundum quod leges praecipiant. Sed quaero: utrum degradatus a iudice ecclesiastico iterum sit accusandus pro eodem crimine ante ciuilem? Quidam dicunt nec accusandum nec ab eo puniendum, ne saepius de eodem crimine quaeratur, quod lex prohibet. Alii dicunt non esse opus ut accusetur ante ciuilem iudicem, sed ex quo condemnatus et degradatus est ab ecclesiastico statim sine ulla cognitione potest puniri a ciuili. Sed melius dicitur non puniendus, nisi iterum inscribatur et a ciuili iudice legitime cognoscatur et sic secundum leges damnatio uel absolutio sequatur, ut in authent. Collat. XXI de sanctissimis episcopis § si uero crimen... – The *Authenticum* text referred to be found in CIC III *Nouellae Constitutiones*, 123 c 21 § 2 (edd. R. Schoell and W. Kroll, 1895. Berlin, Weidmann, p. 610).*

³⁹ Kuttner 1951: 285, note 5: “an interpretation given by St. Thomas of C 11 q 1 c 45 is quoted in the glosses of the French school on Stephen of Tournai’s *Summa* (Berlin, Staatsbibliothek MS lat. qu. 193), printed by F. Thaner ‘Zwei anonyme Glossen...’ *Sitzungsberichte der kais. Akademie der Wiss., Philos.-hist. Klasse [=SB Vienna]* 79 (1875), 231, 221, n. 1 ‘...Sanctus Thomas volens facere autenticum consonare sic exponebat quod hic dicitur “competentes iudices” i.e. clericus clericum et laicus laicum iudicem...’

competentes iudices is mirrored in the translation: C 11 q 1 c 45 *lors aille l'on a convenables juges* (without any equivalence for *s tome*).

The above note in the manuscript of Stephen of Tournai's *Summa* seems to ascribe *iudices* correctly to Saint Thomas (Becket). The same note explains the addition as due to Roman law (cf. *volens facere autenticum consonare*) where indeed the syntagm *competens iudex* is very frequent⁴⁰. If *competentes iudices* is inspired by Roman law, is the French syntagm *convenables juges* only a translation of the syntagm (found in Ludwig XIV:2)?

We examined (Löfstedt 2015, *NM* in proofs) the question with the help of French syntax. In the twelfth century, the indefinite article was only developing in French, the plural (*des*) being of even later date than the singular (*un*) (Buridant 2000: §§81-84). To render an indefinite plural of a nominalized adjective the translator uses a supporting noun, e.g.:

D 2 c 5 *Fuerunt quidam prudentes... qui instituciones... ediderunt – Quar jadis furent home... sage qui firent les establissementz*; D 2 c 6 *ne quis plus extraneis testamento legaret quam... – 1. 7 ... que nus ne lessast en son testament a estranges genz tant...*⁴¹

For the translation of *competentes* the translator needed to add a noun – this seems to be a grammatical constraint proper of Old French; and rather than some neutral *homes* or *genz*, he chose *juges* – this is his personal choice, maybe guided by a Latin expression in the Roman law (present also in L-interlinear).

When attributing the syntagm *convenables juges* partly to French syntax, we have to ask whether it is possible that L-interlinear *iudices* be inspired (also) by the French translation, rather than (only) by some passage in the Roman law? Can we see elsewhere this kind of influence of the French translation on the Latin *uariae lectiones* of Ludwig XIV:2? We come to this question shortly.

3. THE MAIN TEXT

The main text of Ludwig XIV: 2 is presented in two columns. The first part, the *Distinctiones*, is marked with a *P* and an *I*, both illuminated, in the upper margins of two opposing pages; the second part, the *Causae*, is marked with *Ca* and the Roman numeral corresponding to the actual *causa*, both illuminated, in the upper margins of two opposing pages. The secondary units (the *Distinctiones* in the first part, the *Questiones* in the second) have their illuminated markings on the side margins, *D* or *Q*, followed by the respective Roman numerals. The smallest units, the canons, start as a rule with an illuminated initial. The canons did not have numbers in Ludwig XIV:2 nor in the translation.

⁴⁰ See *Heumanns Handlexikon zu den Quellen des römischen Rechts*, in neunter Auflage neu bearbeitet v. E. Seckel (Jena, Fischer), 1907: 293 : a *competens iudex* could be assigned to various specific functions.

⁴¹ If the plural is taken as definite and easily identifiable, the definite article is used: D 82 c 1 *infirmis – as malades*; D 82 c 2 *mundis – as nez* (v. Löfstedt 2015: *NM* in proofs).

The main text has variant readings that may be attributed to vernacular French influence, lexical or grammatical.

▪ **Lexical** influence on religious vocabulary:

In C 1 q 1 c 17 (Friedberg) *Qui perfectionem Spiritus quam acceperant, perdiderunt*, the received *Spiritus* is Holy Ghost, for which Old French normally uses *Saint Esp(e)rit* (v.T-L 3, 1186, 46 sq). The translation has *Cil qui ont perdu la perfection del Saint Esperit*, and we read in Ludwig XIV :2 : *Qui perfectionem S’ci Spiritus perdiderunt*.

The Church (of Rome) is normally *Sainte Eglise* in Old French. For C 2 q 7 c 8 (Friedberg) *ministri ecclesiae* the translation gives *ministre de Sainte Eglise*, Ludwig XIV:2, *sacre ecclesie ministri*.

– and on everyday vocabulary:

C 11 q 1 c 34 (Friedberg) *Aliud... est debita iusta reposcere (aliud propria... contempnere)* – translation *Autre chose est de demander ce qui deu par droit (et autre chose de lessier aller le suen...)* – Ludwig XIV :2 ... *debita iuste reposcere*.

Indeed, the verbatim translation of *debita iusta* would have been difficult, since the Old French participle corresponding to *debita* is very seldom treated as a noun⁴² and it is not accompanied by an adjective (T-L 2, 1894, 12 sq). In the translation the (not nominalized) participle is followed by an adverb, *par droit*, not by an adjective ; Ludwig XIV:2’s *iuste*⁴³ is an adverb corresponding to *par droit*.

C 32 q 7 c 27 (Friedberg) *socialis uinculum* – translation *li lians de mariage* – Ludwig XIV:2 *uinculum coniugale*.

The word *socialis* has not survived into Old French (it comes up as a loan word in the fourteenth century, first in a translation of Livy, FEW 12,16b) Here, *socialis uinculum* refers to a marriage, and the translator renders the adjective by (*li lians*) *de mariage* mirroring Ludwig XIV:2’s *coniugale*.

▪ **Grammatical** influence

The morphology of Old French being much poorer than that of Latin, its syntax is less free. For instance, the subject (noun) group and the predicate (verb) group have to be separated:

D 25 c 4 *Qualis hinc quisque egreditur* is rendered *Tiex comme aucuns ist de ci*. Same word order in Ludwig XIV:2 *Qualis quisque hinc egreditur*.

C 31 q 1 c 7 (Friedberg) *Si qua fuerit uidua mechata* becomes *Si aucune weve fame a fet avoutire*. Same word order in Ludwig XIV :2 *Si qua uidua fuerit mechata*.

The subject of the phrase needs to be explicated in Old French:

⁴² C 14 q 1 c 2 *Peccat qui exigit ultra debitum* is translated *cil peche qui demande plus que l’en ne li doit* and in the Lord’s Prayer *Dimitte debita nostra* (variant given by Friedberg e.g. in DP 3, c 20 and c 32), *debita* is replaced rather than translated by (DP 3, c 20) *pechiez* or (c 32) *mesfez*.

⁴³ *Iuste* is to be found also in the Editio Romana.

D 62 c 2 Grat. (Friedberg) *Nisi autem canonice electus fuerit, consecrari non debet* : the subject ‘a bishop’ could be taken from the context. The translation exhibits the subject *Se esvesques n'est esleuz selonc les canons* and so does Ludwig XIV:2 *Nisi autem episcopus canonice electus fuerit*.

Adjectival markers cannot be separated from their nouns:

D 16 c 13 (Friedberg) *Viginti tantum capitula* – translation *Vint chapistre... tant seulement* – Ludwig XIV:2 *Viginti capitula tantum*.

D 24 c 2 *Nullus ordinetur clericus* – translation *Nus clers ne soit ordenez* – Ludwig XIV:2

Nullus clericus ordinetur.

Article-like words are added:

C 33 q 5 c 19 *Mulier debet uelare caput* – translation *Fame doit covrir son chief* – Ludwig XIV :2 *Mulier debet uelare caput suum*.

Some Latin verb forms do not survive into Old French, for instance *-erit*, futurum exactum or perfect subjunctive. It has been translated with a present form:

C 6 q 1 c 21 (Friedberg) *qui nesciens heresim incurrerit* – translation *qui chiet en heresie et ne le set pas* – Ludwig XIV:2 *qui nesciens in heresim incurrit*.

A Latin participle construction is replaced by a finite verb:

C 16 q 1 c 3 (Friedberg) *De monachis qui diu morantes in monasteriis, si postea ad clericatus ordines peruenerint, (statuimus...)* – translation *Des moines qui demeurent as <a>baies et puis revienent a ordre des clers, (establissons nos...)* – Ludwig XIV:2 *De monachis qui diu morantur⁴⁴ in monasteriis, si postea ad clericatus ordinem peruenerint, (statuimus...)*

The direct object is attached to its verb:

C 1 q 1 c 15 (Friedberg) *Gratiam, cum ordinareris, non suscepisti* - translation *Quant tu fus ordenez, tu ne receuz pas grace* - Ludwig XIV :2 resembles the French text *Cum ordinareris, gratiam non suscepisti*.

How should one explain this obviously vernacular influence on the Latin of Ludwig XIV:2? And how is this similarity of expressions in Ludwig XIV:2 and the French translation to be explained? It has to be kept in mind that the mother tongue of Ludwig XIV:2's scribe(s) was certainly not Latin and that it was quite likely French, causing some French influence to slip into the copied Gratian text even without any interference of an explicit French translation of the text. It is also possible that the French translator has had access to the modifications preserved in Ludwig XIV:2, and that he used them (adding several similar modifications of his own).

Some *incipits* present serious opposition to this theory. As mentioned above, the canons were not numbered : they were quoted by their *incipits*, by their first word(s).

⁴⁴ Friedberg gives *morantur* also from the thirteenth-century manuscripts EGH.

To facilitate its use, even the French translation has Latin *incipits*.⁴⁵ The *incipits* seem to correspond to the first words of the exemplar. They may not mirror the first words of the translation, if the word order of the translation differs from that of the Latin text.

In D 25 c 4 (Friedberg) *Qualis hinc quisque egreditur...*, the words *Qualis hinc* constitute the *incipit*. They are preserved in the translation before the actual French text *Qualis hinc. Tiex comme aucuns ist de ci...* Ludwig XIV:2 follows the word order of the French translation *Qualis quisque hinc egreditur*, thereby losing the *incipit*.

Similarly elsewhere:

D 50 c 16 (Friedberg) *Tua sanctitas requisivit...* – the translation preserves the *incipit*: *Tua sanctitas. Por ce que tu nos as requis...*, but Ludwig XIV:2 has *Quia* (corresponding to *Por ce que*) *sanctitas tua requisivit*.⁴⁶

D 56 c 10 (Friedberg) *Si gens Anglorum (sicut... nobis in Francia inproperatur...)* – translation *Si gens. Il nos a esté pueploié en France... : les genz d’Engleterre...* – Ludwig XIV:2’s text corresponds to the translation *Diuulgatum est nobis in Francia quod gens Anglorum...*⁴⁷

Why would Ludwig XIV:2 preserve a retranslation into Latin of a French translation, or bits of it, rather than a simple transcription of a Latin *Decretum* text? Or rather: what kind of text has been copied into this luxury manuscript known as Ludwig XIV:2?

CONCLUSION

Ludwig XIV :2’s three texts, the main text in two columns, the interlinear additions, and the marginal additions, seem all of them to be copied from some earlier text(s).

The *uariae lectiones* (in comparison with Friedberg’s standard text) in the Latin of the main text show influence of French.

The interlinear and the marginal notes give evidence of the manuscript’s connection with Anglo-Norman England (comments on *raptus* in the interlinear notes; *contra Anglicos* in the marginal notes); and, more precisely, with Thomas Becket (identification of an addition *iudices* as originating from St. Thomas (Becket), in the interlinear notes; recording of several excommunications apparently pronounced by him, in the marginal notes).

All three texts have also some connection with the Old French translation of Gratian.

⁴⁵ Most of them are still preserved in Bruxelles BR 9084 although with many scribal errors. They are used in the French text: C 11 q 2 Grat. *le chapistre del concile qui commence “Inolita”* refers to C 11 q 1 c 42, e.g.

⁴⁶ Ludwig XIV:2’s text is echoed by the Editio Romana.

⁴⁷ Similarly in the thirteenth-century manuscripts EGH collated by Friedberg. – Ludwig XIV:2 and the translation sometimes share the same exceptional *incipit*: if it is erroneous, it mars Ludwig XIV:2’s text (e.g. in D 26 c 2; D 12 c 8; C 7 q 1 c 40; C 27 q 1 c 29). The exceptional *incipit* may show French word order: C 5 q 3 c 1 Friedberg *Si aegrotans fuerit episcopus* – transl. *Si episcopus. Se evesques est malades* – Ludwig XIV:2 *Si episcopus aegrotans fuerit*. See also the discussion in Löfstedt 2001: 52 sq. No systematic study of the *incipits* has been done.

The *uariae lectiones* in the Latin of the main text that show influence of French correspond strikingly well to the translation. The addition *iudices* attributed to St. Thomas (Becket) in the interlinear notes corresponds to *juges* in the translation where it can be motivated, in part, by a grammatical constraint of Old French. Signalled as problematic in the interlinear notes, the word *raptus* has caused some confusion also in the translation, but the two texts deal differently with the problem. Several marginal and interlinear notes have left their mark in the translation.

The three texts of Ludwig XIV:2 could all mirror different stages in the translation of Gratian's *Decretum* into Old French. The main text could be a copy of the translator's exemplar, already containing some suggestions for the translation, especially some syntactic reorganization of Latin phrases to facilitate the work. Many interlinear notes could add some suggestions (*iudices*, not *uiri* or *homines* where a supporting noun is needed) or some information for the translation.⁴⁸ The marginal notes report some observations and topics for discussion as the work proceeded, discussions that may have modified the translation, too (*uoluntas*).

Ludwig XIV:2's interlinear *iudices* and the identification of its source support the attribution of also the translation to Thomas Becket. The relative dating of the excommunications (pronounced and to be pronounced) mentioned in the marginal notes gives the time frame 1166–1170 for the work documented by the texts studied here and guides the reader to the place where all the work was done: Sens, where Thomas Becket was exiled during those years and where he met regularly with his *eruditi Thomae* to study canon law (and, incidentally, where manuscripts comparable to Ludwig XIV:2 were prepared at the time).

The elegance of the translation was worth all the work recorded in Ludwig XIV:2. However, the question remains: Why was the translation made? The translation is characterized by systematic omission of theological details: it was probably prepared for readers outside the clergy. Further, it advocates for the autonomy of the Church as it is characterized by a strong tendency to avoid or to combat secular interference: Did the lay audience oppose this autonomy? In the twelfth century, French vernacular was not used in law texts, with the exception of Crusader laws (*Assises de Jerusalem*) and some laws written in England (*Leis Willelme*): Was the book meant for an English prince? Did Thomas Becket intend to give it to Henry II or to the Young King? One does not forget that Thomas Becket's and Henry II's meeting at Clarendon was marred by their differing interpretations of Gratian's *Decretum* (C 11 q 1 c 18).

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⁴⁸ Some interlinear notes have to be dated to a period after the translation: *s tome* must be posterior to the canonization of Thomas Becket in 1173.

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