

**Pope John XXII
and the
Franciscan Ideal of Absolute Poverty**

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Abstract

My thesis offers an investigation into Pope John XXII's view of the Franciscan poverty ideal and his reasons for rejecting the doctrine of the absolute poverty of Christ in the bull *Cum inter nonnullos* (1323). After establishing the state of the question in the introduction, the first two chapters situate John XXII's discussion of Franciscan poverty in the context of his pontificate and the process of decision-making at the curia. Chapter I presents a historical overview of the course of the poverty controversy and of the curial debate, while chapter II focuses on the development of the pope's approach to some of the issues he encountered during his pontificate. This chapter examines John's legal training, his suppression of the Franciscan Spirituals and the role of the Spiritual crisis in shaping his view of Franciscan poverty. I also compare the pope's treatment of the Spirituals to his reform of the order of Grandmont.

The Spiritual crisis can be interpreted as having focused the pope's attention on the implications of the Franciscan poverty ideal for the structure of the church, and chapter III therefore moves to a discussion of the ecclesiological implications of Franciscan poverty and John's reaction to this (potential) threat. It is shown, however, that the pope's unease about the Franciscan ideal went beyond the ecclesiological problems posed by the Franciscan order, and the final two chapters turn to a discussion of John's specifically theological and legal objections to the Franciscan poverty ideal as they are set out in his Franciscan bulls. Chapter IV examines the theological reasons behind the pope's condemnation of the Franciscan ideal and especially his discussion of the scriptural title of Franciscan poverty. It is demonstrated that the pope rejected the idea that evangelical and apostolic poverty could be defined as non-ownership of material goods. Chapter V then explores John's discussion of *dominium* and the Franciscan ideal from a legal perspective. John's definition of *dominium* as an essential part of the human condition marks his most fundamental disagreement with the Franciscan order, and I suggest that this disagreement over the role of *dominium* in the history of salvation was at the heart of John XXII's unease about the Franciscan poverty ideal.

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Abbreviations

- Baluze-Mansi, *Miscellanea* *Miscellanea novo ordine digesta et non paucis ineditis monumentis opportunisque animadversionibus aucta*, ed. by Etienne Baluze, rev. by Johannes Dominicus Mansi, 4 vols (Lucca: Vincent Junctinius, 1761-64)
- Bullarium Franciscanum* *Bullarium Franciscanum Romanorum pontificum constitutiones, epistolas, ac diplomata continens tribus ordinis minorum, clarissarum et poenitentium*, 7 vols (Rome: various publishers, 1759-1904)
- Chronica* *Nicolaus Minorita: Chronica. Documentation on Pope John XXII, Michael of Cesena, and the Poverty of Christ with Summaries in English: A Sourcebook*, ed. by Gedeon Gál and David Flood (St. Bonaventure, NY: Franciscan Institute Publications, 1996)
- CIC *Corpus Iuris Canonici*, ed. by Emil Richter, rev. by Emil Friedberg, 2 vols (Leipzig: Tauchnitz, 1879-81)
- CICiv *Corpus Iuris Civilis*, ed. by Paul Krüger, Theodor Mommsen and Rudolf Schöll, 3 vols (Berlin: Weidmann, 1900-1904)
- GCN *Gallia Christiana Novissima: histoire des archevêchés, évêchés et abbayes de France*, ed. by J. H. Albanés, Ulysse Chevalier and L. Fillet, 7 vols (Montbéliard and Valence: Société anonyme d'imprimerie Montbéliardaise and Imprimerie Valentinoise, 1899-1920)
- MGH *Monumenta Germaniae Historica*
 Const. *Constitutiones et acta publica imperatorum et regum*
 SS rer. germ. *Scriptores rerum germanicarum nova series*

Introduction

It was the basis of the Franciscan way of life that the order, following in the footsteps of Christ and the apostles, had no individual or communal property, and that the renunciation of property rights was an integral part of evangelical perfection.¹ This ideal of absolute poverty was called into question by Pope John XXII in 1322, and, after about a year and a half of debate at the curia, was condemned by him in November 1323. During this debate, both the opponents and the supporters of John XXII used a wide array of scriptural, theological, legal and ecclesiological arguments in order to support their views on the poverty of Christ and the status of the Franciscan order within the church. The pope's decision to declare the concept of the absolute poverty of Christ heretical in 1323 undermined the Franciscan way of life as well as the order's claim to occupy a unique position in the church, and it caused a dangerous rift between the Franciscan leadership and the papacy. The Minister General of the Franciscan order, Michael of Cesena, together with a number of prominent Franciscans, broke with John XXII and, seeking refuge in Munich with Emperor Ludwig the Bavarian, became embroiled in a prolific and acrimonious exchange of treatises, pamphlets, accusations and counter-accusations that lasted for decades.²

¹ The seminal work and standard discussion of the Franciscan concept of absolute poverty is Malcolm Lambert, *Franciscan Poverty: The Doctrine of the Absolute Poverty of Christ and the Apostles in the Franciscan Order 1210-1323*, 2nd rev. edn (St. Bonaventure, NY: Franciscan Institute Publications, 1998).

² General studies of the theoretical poverty controversy include Ulrich Horst, *Evangelische Armut und päpstliches Lehramt: Minoritentheologen im Konflikt mit Papst Johannes XXII. (1316-34)* (Stuttgart: Kohlhammer, 1996) and Andrea Tabarroni, *Paupertas Christi et apostolorum: L'ideale francescano in discussione (1322-1324)*, *Nuovi Studi Storici*, 5 (Rome: Istituto Storico Italiano per il Medio Evo, 1990), as well as Malcolm Lambert, 'The Franciscan Crisis under John XXII', *Franciscan Studies*, 32 (1972), 123-43; Thomas Turley, 'John XXII and the Franciscans: A Reappraisal', in *Popes, Teachers, and Canon Law in the Middle Ages*, ed. by James Ross Sweeney and Stanley Chodorow (Ithaca: Cornell University Press, 1989), pp. 74-88; and John Oakley, 'John XXII and Franciscan Innocence', *Franciscan Studies*, 46 (1986), 217-26. Detailed discussions of various aspects of the controversy can also be found in Brian Tierney, *The Origins of Papal Infallibility 1150-1350: A Study on the Concepts of Infallibility, Sovereignty and Tradition in the Middle Ages*, *Studies in the History of Christian Thought*, 6 (Leiden: Brill, 1972), especially pp. 171-204; Gordon Leff, *Heresy in the Later Middle Ages: The Relation of Heterodoxy to Dissent, c. 1250-c. 1450* (Manchester: Manchester University Press, 1967), especially pp. 230-55; Virpi Mäkinen, *Property Rights in the Late Medieval Discussion on Franciscan Poverty*, *Recherches de théologie et philosophie médiévales: Bibliotheca*, 3 (Leuven: Peeters, 2000), especially pp. 143-90; and Johannes Schlageter, 'Wurde die Armutsauffassung des Franziskus von Assisi von der "offiziellen Kirche" schließlich abgelehnt? Francisci Armutverständnis und der Streit über "dominium Christi" und "paupertas Christi" unter Papst Johannes XXII. (1316-1334)', *Franziskanische Studien*, 60 (1978), 97-119.

This highly dramatic event within Franciscan history had far-reaching consequences even outside the order. The theoretical poverty controversy played an important role in the development of later medieval ecclesiological, political and legal theory, and it has always attracted a lot of attention from modern scholarship. The debate between John XXII and the Franciscan order has been discussed from a wide variety of angles, and studies have variously examined its significance for the history of the order itself,³ the participants in the controversy and their contributions to the debate,⁴ and the influence of the debate on the development of natural rights theories, the doctrine of papal infallibility, later medieval economic thought and conciliar theory.⁵ While valuable in themselves,

³ See especially John Moorman, *A History of the Franciscan Order from its Origins to the Year 1517* (Oxford: Clarendon Press, 1968), Duncan Nimmo, *Reform and Division in the Medieval Franciscan Order: From Saint Francis to the Formation of the Capuchins* (Rome: Capuchin Historical Institute, 1987) and Raphael M. Huber, *A Documented History of the Franciscan Order: From the Birth of St. Francis to the Division of the Order under Leo X, 1182-1517* (Milwaukee: Nowiny Publishing Apostolate, 1944). There is also a brief account of the controversy in Philip Mulhern, *Dedicated Poverty* (Staten Island, NY: Alba House, 1973), especially pp. 105-107. This, however, suffers from a problem shared by a number of more general accounts of the controversy, in that the author does not distinguish between the Spiritual Franciscans and the Michaelists (see especially pp. 106-107).

⁴ Some studies of the participants of the debate and their contributions include Jürgen Miethke, 'Das Votum *De paupertate Christi et apostolorum* des Durandus von Sancto Porciano im theoretischen Armutsstreit: Eine dominikanische Position in der Diskussion um die franziskanische Armut', in *Vera Lex Historiae: Studien zu mittelalterlichen Quellen. Festschrift für Dietrich Kurze zu seinem 65. Geburtstag am 1. Januar 1993*, ed. By Stuart Jenks, Jürgen Sarnowski and Marie-Luise Laudage (Cologne: Böhlau, 1993), pp. 149-96; Patrick Nold, *Pope John XXII and his Franciscan Cardinal: Bertrand de la Tour and the Apostolic Poverty Controversy*, Oxford Historical Monographs (Oxford: Clarendon Press, 2003); Eva Luise Wittneben, *Bonagratia von Bergamo. Franziskanerjurist und Wortführer seines Ordens im Streit mit Papst Johannes XXII.*, Studies in Medieval and Reformation Thought, 90 (Leiden: Brill, 2002); Ulrich Horst, 'Raimundus Bequin OP und seine Disputation "De paupertate Christi et apostolorum" aus dem Jahr 1322', *Archivum Fratrum Praedicatorum*, 64 (1994), 101-18; Sigismund Brettler, 'Ein Traktat des Königs Robert von Neapel *De evangelica paupertate*', in *Abhandlungen aus dem Gebiete der mittleren und neuesten Geschichte und ihrer Hilfswissenschaft: Eine Festgabe zum siebzigsten Geburtstag Geh. Rat Prof. Dr. Heinrich Finke*, Vorreformationsgeschichtliche Forschungen: Supplementband (Münster: Aschendorff, 1925), pp. 200-208; and Charles T. Davis, 'Ubertino da Casale and his Conception of *altissima paupertas*', *Studi medievali*, ser.3, 22 (1981), 1-56.

⁵ Examples of investigations into the impact of the controversy on later medieval ecclesiology include the works of Brian Tierney who has interpreted the theory of infallibility as a by-product of the Spiritual crisis and of the theoretical controversy: see especially Tierney, *Infallibility* and Brian Tierney, *Foundations of the Conciliar Theory: The Contribution of the Medieval Canonists from Gratian to the Great Schism* (Cambridge: Cambridge University Press, 1955), as well as the response of James Heft, *John XXII and Papal Teaching Authority*, Texts and Studies in Religion, 27 (Lewiston, NY: Mellen, 1986). For legal developments, see especially Annabel S. Brett, *Liberty, Right and Nature: Individual Rights in Later Scholastic Thought*, Ideas in Context, 44 (Cambridge: Cambridge University Press, 1997), and Maximiliane Kriechbaum, *Actio, ius und dominium in den Rechtslehren des 13. und 14. Jahrhunderts* (Ebelsbach: Aktiv, 1996). For economic thought, see especially Langholm who has focused on the foreshadowing of modern economic theories in the controversy: Odd Langholm, *Economics in the Medieval Schools: Wealth*,

most of these studies have not focused specifically on the arguments of the participants of the debate or the context in which these arguments were made. Rather, they examined the arguments employed by the opposing sides in the controversy in order to establish their significance for later developments. This means that despite the vast amount of literature on the controversy very little work has been done on the question of how the various arguments functioned within the debate, and the occasion of the controversy is still better known than its reasons.⁶

The person of John XXII himself has been curiously absent from many of these studies, and there have been few attempts to discover what exactly John XXII objected to when he condemned the Franciscan view that Christ and the apostles had held no communal property. Few studies have tried to place the pope's arguments into the context of his relationship with the Franciscan order, and John's bulls have generally been used as a source and starting point for discussions of later developments in law, political theory and ecclesiology rather than having been studied as a coherent set of documents within their context in the poverty debate. While the question of John XXII's motivation has repeatedly been raised in studies of the controversy, there have been few systematic attempts to investigate the pope's reasons for raising the question of Franciscan poverty and for attacking the order's ideal.⁷

Most modern discussions of John's intentions can be grouped into two main strands of opinion: one has attributed the outbreak of the poverty controversy essentially to John's dislike of the Franciscan order and its poverty ideal. This follows largely the account and character portrait of the pope given by Michaelist sources, and it is closely linked to the view that the pope was heavily

Exchange, Value, Money and Usury according to the Paris Theological Tradition, 1200-1350 (Leiden: Brill, 1992).

⁶ This assessment by Gordon Leff from 1967 still holds true: see Leff, *Heresy in the Later Middle Ages*, p. 162.

⁷ See for instance Oakley's view that not enough attention has been paid to John's reasons for opening the question of Franciscan poverty to discussion (Oakley, 'Franciscan Innocence', p. 216) as well as Lambert's statement that nothing is known of John's motives; although he has since presented a more nuanced view of the pope's motives and aims (see Lambert, 'Franciscan Crisis', especially pp. 137-38), he expressed this view especially forcefully in the first edition of his work on Franciscan poverty (see Malcolm D. Lambert, *Franciscan Poverty: The Doctrine of the Absolute Poverty of Christ and the Apostles in the Franciscan Order 1210-1323* (London: Clowes, 1961), p. 243. Future references to Lambert's work will be to the second version of *Franciscan Poverty* unless otherwise noted). Thomas Turley has provided a review of the modern discussion of the possible reasons for the outbreak of the poverty controversy up to the year 1989: Turley, 'John XXII and the Franciscans', especially pp. 77-80, although he has not attempted to give a

influenced by his Dominican advisors, by their hostility to the Franciscans and (potentially) by the ecclesiology of Thomas Aquinas.⁸ However, Ulrich Horst has drawn attention to the fact that John's animosity against the Franciscan order, even if it ultimately derived from Dominican hostility, does not suffice as an explanation for the controversy.⁹

The second major set of explanations has focused on the implicit or explicit challenge to the established structure of the church posed by the Franciscan order and its poverty ideal. The Franciscan doctrine of the absolute poverty of Christ and the apostles has often been interpreted as a challenge to the authority of the church and its possessions,¹⁰ although Gordon Leff has also pointed out that the Franciscan renunciation of all property rights depended in practice on a propertied papacy, and that the order could therefore not successfully attack the fact that the papacy had property.¹¹ The Franciscan ideal could be seen as a challenge to episcopal status and papal authority, however, and ecclesiological concerns have in many respects come to be regarded as the main impetus behind John's dealings with the Franciscan order, especially when linked

comprehensive answer of his own. On the question of John's intentions, see also Nold, *John XXII and his Franciscan Cardinal*, pp. 141-42.

⁸ See for instance Turley, 'John XXII and the Franciscans', p. 86 who has claimed that the key factors in John's treatment of the Franciscans were the hostility of the Dominicans and their influence on the pope. This idea had first been proposed in the early fourteenth century in the chronicle of John of Winterthur: see *Die Chronik Johannis von Winterthur*, ed. by Friedrich Baethgen, MGH SS rer. germ., 3 (Berlin: Weidmann, 1924), especially pp. 95 and 98. While very few recent studies have gone so far as to ascribe John's actions entirely to the influence of Dominican hostility, the questions of the influence of John's Dominican advisors, his knowledge of Dominican theories of poverty and of Thomism are still being debated: see for instance Lambert, *Franciscan Poverty*, p. 241, Lambert, 'Franciscan Crisis', p. 127 and Oakley, 'Franciscan Innocence', p. 219.

⁹ Horst, *Evangelische Armut und päpstliches Lehramt*, p. 23.

¹⁰ This can sometimes take the form of a fairly general assumption of Franciscan subversiveness: see John Moorman's assessment of Franciscan poverty as a 'dangerous and tendentious statement' and his conclusion that the dispute was bound to happen eventually (Moorman, *History of the Franciscan Order*, pp. 313-14). See also Gordon Leff's argument that the Franciscan poverty ideal could serve as a 'rallying point' for opposition to the church (Leff, *Heresy in the Later Middle Ages*, p. 162), as well as Brian Tierney, 'From Thomas of York to William of Ockham: The Franciscans and the Papal "Sollicitudo omnium ecclesiarum", 1250-1350', *Communio*, 13 (1972), 607-58 (especially p. 634), Thomas Turley, 'Ab apostolorum temporibus: The Primitive Church in the Ecclesiology of Three Medieval Carmelites', in *Studia in honorem eminentissimi Cardinalis Alphonsi M. Stickler*, ed. by Rosalius Josephus Castillo Lara, *Studia et Textus Historiae Iuris Canonici*, 7 (Rome: Libreria Ateneo Salesiano, 1992), pp. 559-80 (especially pp. 568-70) and Turley, 'John XXII and the Franciscans', p. 84.

¹¹ Gordon Leff, 'The Bible and Rights in the Franciscan Disputes over Poverty', in *The Bible in the Medieval World: Essays in Memory of Beryl Smalley*, ed. by Katherine Walsh and Diana Wood (Oxford: Blackwell, 1985), pp. 225-35 (p. 229). This had already been pointed out in a slightly different context by Yves Congar, 'Aspects écclesiologiques de la querelle entre mendiants et séculiers dans la seconde moitié du XIIIe siècle et le début du XIVe', *Archives d'histoire doctrinale et littéraire du Moyen Age*, 36 (1961), 35-151 (p. 107).

to the practical problems posed by the order for the papal administration.¹² The reality of the threat posed to the structure of the church and the authority of the pope by the Franciscan poverty ideal has never been established satisfactorily; this, however, is less important to this study than the question of whether John XXII perceived this to be a threat.

The ecclesiological dimension is particularly prominent in those studies which have interpreted the theoretical poverty controversy as a logical progression from the Spiritual crisis.¹³ The assumption that John XXII moved almost naturally from his suppression of the Spirituals to an attack on the Franciscan poverty ideal which he regarded as the Spirituals' main inspiration can, implicitly or explicitly, be found in many discussions of early fourteenth-century Franciscan history. The Spiritual controversy has thus been interpreted as having focused the attention of the papacy on the underlying theology and ecclesiology not just of the Spirituals, but of the Franciscan poverty ideal as a whole. The work of Petrus Johannis Olivi (1247/48-97) provided the link between the two, and the investigation into Olivi's work has often been interpreted as one of the main factors that prompted John XXII to investigate the more general problem of the absolute poverty of Christ and the apostles,¹⁴ although arguably the pope soon recognised it as an important

¹² See especially the work of Ulrich Horst and his emphasis on the ecclesiological problems posed by the Franciscan order: Horst, *Evangelische Armut und päpstliches Lehramt*, as well as Ulrich Horst, *Evangelische Armut und Kirche. Thomas von Aquin und die Armutskontroversen des 13. und beginnenden 14. Jahrhunderts*, Quellen und Forschungen zur Geschichte des Dominikanerordens, NF 1 (Berlin: Akademie-Verlag, 1992). On the primacy of practical thinking and administrative experience in John's approach to the Franciscans, see also John Oakley, 'John XXII, the Franciscans, and the Natural Right to Property' (unpublished doctoral dissertation, Cornell University, 1987), p. 14 and Lambert, 'Franciscan Crisis', p. 126.

¹³ See for instance Nimmo, *Reform and Division*, pp. 191-92, Moorman, *History of the Franciscan Order*, p. 314 and Lambert, *Franciscan Poverty*, pp. 238-40 (this view can also be found in the first version of Lambert's book: Lambert, *Franciscan Poverty*, 1st edn, pp. 243-44, as well as in Lambert, 'Franciscan Crisis', especially pp. 134-35). Gordon Leff has additionally drawn attention to the potentially dangerous link between poverty and prophecy in much of Spiritual thought: Leff, *Heresy in the Later Middle Ages*, pp. 159-60. For modern scholarship, the idea originated in the work of Franz Ehrle: see especially his 'Die Spiritualen, ihr Verhältnis zum Franciscanerorden und zu den Fraticellen (Schluss): 2. Die verschiedenen Gruppen der Spiritualen und ihre Schicksale. 3. Das Verhältniss der Spiritualen zu den Fraticellen. 4. Das Verhältniss der Spiritualen zu den Anhängern der Observanz', *Archiv für Litteratur- und Kirchengeschichte*, 4 (1888), 1-190 (especially pp. 45-50).

¹⁴ The first proponent of this theory was Joseph Koch who went so far as to argue that the poverty controversy was essentially a by-product of John XXII's attempt to condemn the work of Olivi as the pope realised that the prerequisite of a thorough condemnation of Olivi was a condemnation of the Franciscan ideal of the absolute poverty of Christ: see Joseph Koch, 'Der Prozess gegen die Postille Olivis zur Apokalypse', *Recherches de théologie ancienne et médiévale*, 5 (1933), 302-15 (especially p. 308). See also Turley, 'John XXII and the Franciscans', who offers a re-examination of Koch's theory and evidence, Lambert, *Franciscan Poverty*, 1st edn, p. 223, and Jean Dunbabin's view that the condemnation of Olivi's postill on the Apocalypse made the conflict

issue in its own right and went on to pursue it independently from his interest in Olivi.¹⁵

Other issues that may have influenced John XXII's decision to investigate and later condemn the Franciscan ideal of the absolute poverty of Christ have received comparatively little attention, despite the fact that it will not be possible to reconstruct John's aims and intentions in the poverty controversy before his arguments have been discussed in any detail. Jean Dunbabin has briefly referred to the pope's unease about the legal problems posed by the Franciscan order as well as by the order's claim to be unique in their imitation of Christ,¹⁶ but other than that, John's exact legal objections to the Franciscan ideal have rarely been investigated in any detail.¹⁷ Even less attention has been paid to the theological background to John's decision, although Gordon Leff has argued that the real issue was the scriptural title of poverty in the life of Christ, and Johannes Schlageter has drawn attention to the christological differences between John XXII and the Franciscan order.¹⁸ Ulrich Horst, though generally focusing on

about poverty in practice spread to a debate about the Franciscan poverty ideal more generally: Jean Dunbabin, *A Hound of God: Pierre de la Palud and the Fourteenth-Century Church* (Oxford: Clarendon Press, 1991), p. 153. See also Wittneben's argument that the beginning of the theoretical debate has to be seen in the context of the proceedings against Olivi since 1317: Wittneben, *Bonagratia*, pp. 107-108.

¹⁵ David Burr, 'The Persecution of Peter Olivi', *Transactions of the American Philosophical Society*, n.s. 66:5 (1976), 3-98 (p. 87) and David Burr, *The Spiritual Franciscans: From Protest to Persecution in the Century after Saint Francis* (University Park: Pennsylvania State University Press, 2001), p. 264. See also Turley's view that John XXII became aware of the problem of Franciscan poverty through the investigation of Olivi (Turley, 'John XXII and the Franciscans', especially p. 80). David Burr has, however, warned against overestimating the influence of the Spiritual crisis in John's decision-making about Franciscan poverty: Burr, 'Persecution of Peter Olivi', p. 89. For Olivi, see also more generally David Burr, *Olivi and Franciscan Poverty: The Origins of the 'usus pauper' Controversy* (Philadelphia: University of Pennsylvania Press, 1989) and Johannes Schlageter, *Das Heil der Armen und das Verderben der Reichen. Petrus Johannis Olivi OFM: Die Frage nach der höchsten Armut*, Franziskanische Forschungen, 34 (Werl: Coelde, 1989).

¹⁶ Dunbabin, *Hound of God*, p. 153.

¹⁷ Among the discussions of John's legal arguments are the studies of Mäkinen, *Property Rights*, especially pp. 162-73 and Kriechbaum, *Actio, ius und dominium*. The pope's legal case has also been discussed in some detail in Jürgen Miethke, *Ockhams Weg zur Sozialphilosophie* (Berlin: de Gruyter, 1969), pp. 365-414; Brett, *Liberty, Right and Nature*, especially pp. 50-68; Tabarroni, *Paupertas Christi*, pp. 73-112; and Giovanni Tarello, 'Profili giuridici della questione della povertà nel francescanesimo prima di Ockham. Scritti in memoria di Antonio Falchi', *Annali della Facoltà di Giurisprudenza (Università degli Studi di Genova)*, 3 (1964), 338-448 (pp. 411-22). On John's fluctuating reputation as a legal thinker, see also Oakley, 'Natural Right to Property', pp. 21-27.

¹⁸ Leff, 'Bible and Rights', p. 226 and Schlageter, 'Armutsauffassung', p. 99: 'die theologische Kernfrage zeigt sich dort, wo der Dissens über Eigentum (und Herrschaft) in eine christologische Auseinandersetzung übergeht.' See also Horst, *Evangelische Armut und päpstliches Lehramt*, p. 156 who argues that the main issue was the question of the scriptural title of the Franciscan renunciation of property rights.

ecclesiological questions, has also argued briefly that John wanted to destroy the theological and legal foundations of the Franciscan ideal.¹⁹

There are a number of reasons for this neglect of the theological foundations of John's discussion of Franciscan poverty. John XXII does not have a reputation for producing much original theological thought, and there is a fairly general assumption that the intellectual foundations of his objections to the Franciscan poverty ideal do not need to be scrutinised in too much detail. The pope's lack of a theological degree has often been interpreted as a lack of theological knowledge which prevented him from fully appreciating these aspects of the Franciscan ideal or the theological points made by his opponents, and his theological arguments are therefore easily disregarded as not being particularly interesting.²⁰ Additionally, the pope's expertise in administration as well as his personality have often seemed to preclude him from understanding the spiritual aspects or even value of voluntary poverty.²¹ Patrick Nold has also recently stressed the fact that Michaelist sources have provided a set of intentions for John XXII's actions, and that this has inhibited modern scholarship from investigating the pope's motivation too closely; the intentions attributed to John by his Franciscan enemies have generally been accepted by modern scholars of the controversy.²²

The fact that the pope had been trained as a lawyer has also led to a tendency to disregard his non-legal arguments and to assume that his legal education can be used as an explanation for his actions in the controversy.²³

¹⁹ Horst, 'Raimundus Bequin', p. 103.

²⁰ For this view of John's deficiencies as a theologian, see Tierney, *Infallibility*, p. 190: 'John was merely an irresponsible amateur as a theologian', as well as Lambert's assessment that 'age and the deficiencies of his early training made it difficult for him to grasp in full the background to doctrine' (Lambert, *Franciscan Poverty*, p. 241). Even if it could be established that John's thought was not particularly original from a theological perspective, however, this does not necessarily mean that theology was not a major impetus behind his objections to the Franciscan ideal.

²¹ See for instance Oakley's summary of the scholarly consensus on John XXII as being 'temperamentally incapable' of understanding Franciscan poverty (Oakley, 'Natural Right to Property', p. 20). See also the character assessments in Raoul Manselli, *Spirituali e beghini in Provenza*, Studi Storici, 31-34 (Rome: Istituto Storico Italiano per il Medio Evo, 1959), p. 137, Raoul Manselli, 'Un papa in un'età di contraddizione: Giovanni XXII', *Studi Romani*, 22 (1974), 444-56 (pp. 452-53) and Lambert, *Franciscan Poverty*, p. 238. A version of this idea can also be found in Oakley, 'Franciscan Innocence', p. 218 who inclines to the view that John XXII was not so much in favour of any particular position as simply against the Franciscan claim to occupy a special status within the church.

²² Nold, *John XXII and his Franciscan Cardinal*, p. 141.

²³ See Oakley, 'Natural Right to Property', p. 22: 'In the past few decades John's training as a lawyer has come to be seen as an aspect of his character almost as much as a skill of his.' See also

Despite this, there have been few investigations of the pope's legal arguments for their own sake; the legal background of the controversy as well as the legal arguments of the debate are generally used as a source for discussions of later developments,²⁴ while most general studies of the poverty controversy have little interest in the specifically legal aspects of the debate.²⁵ Paradoxically, this has also led to a tendency to dismiss the Franciscan legal argument out of hand; because John XXII was a lawyer, he is often assumed to have had unanswerable legal arguments while the Franciscan case is generally seen to be weaker, even before the arguments of either side in the controversy have been assessed in any detail.²⁶

The assessment of John's intellectual abilities has not been exclusively negative, however, although the scholarly discussion of the Franciscan poverty crisis has generally been dominated by a fairly negative portrayal of John XXII and his actions. The pope has received most recognition in the spheres of administration, finance and, to a degree, law,²⁷ although Richard Southern has argued that the 'intellectual refinement and power of creative action' of John XXII are generally underestimated.²⁸ While not necessarily aiming for a reassessment of John's intellectual reputation, John Oakley has also drawn attention to the fact that the pope's Franciscan bulls inspired some of William of Ockham's most subtle arguments, and he has at least implied that this may have been due to the intellectual challenge posed by the pope's argumentation.²⁹

Lambert, *Franciscan Poverty*, pp. 264-65. For an assessment of John's character and the significance of his legal training, see also Lambert, *Franciscan Poverty*, pp. 240-41, Lambert, 'Franciscan Crisis', pp. 125-26, and John E. Weakland, 'John XXII before his Pontificate, 1244-1316: Jacques Duèse and his Family', *Archivum Historiae Pontificiae*, 10 (1972), 161-85 (p. 163).

²⁴ An example for this approach can be found in the works of Brian Tierney, whose focus is not so much on the legal context of John's argument as on their influence on later theories of rights. In general, studies discussing the role of the poverty controversy in the development of legal theory do not pay very much attention to the context in which John XXII first used these arguments, and they are concerned with his views on the Franciscans and their poverty ideal only incidentally (see for instance Kriechbaum, *Actio, ius und dominium* and Brett, *Liberty, Right and Nature*).

²⁵ These studies tend to concentrate on the Franciscan perspective without going into too much legal detail (for an example for that approach, see for instance the summary of John's legal case in Lambert, *Franciscan Poverty*, pp. 249-53).

²⁶ For this view, see for instance Lambert, *Franciscan Poverty*, p. 253.

²⁷ See for instance G. Mollat, *Les Papes d'Avignon (1305-1378)*, 9th rev. edn (Paris: Letouzey & Ané, 1950), pp. 45-46 or Bernard Guillemain, *La Cour pontificale d'Avignon 1309-1376: étude d'une société*, Bibliothèque des Écoles françaises d'Athènes et de Rome, 201 (Paris: Boccard, 1962), p. 100.

²⁸ Richard William Southern, 'The Changing Rôle of Universities in Medieval Europe', *Historical Research*, 60:142 (1987), 134-46 (p. 139).

²⁹ Oakley, 'Franciscan Innocence', p. 218. In a similar vein, Lambert has referred to the political works of William of Ockham as 'the most lasting memorial' to John's actions (Lambert,

It has never been established satisfactorily what this challenge consisted of, however, or even what exactly the main points of the pope's arguments were, partly because there have been very few attempts to investigate the entire corpus of John XXII's writings on the subject of Franciscan poverty. Any investigation into what exactly the pope thought was the problem with the view that Christ and the apostles had been absolutely poor has to start with the papal bulls that dealt with the question of Franciscan poverty. They are the main source for the pope's own views about the controversy, and they contain his longest and most detailed exposition of how he saw the matter. The specific context of each bull needs to be kept in mind, however, as well as the fact that, as legal documents, papal bulls did not necessarily provide the most appropriate forum for a discussion of John's true feelings about the spiritual value of voluntary poverty.

The poverty controversy started with the publication of the bull *Quia nonnumquam* in March 1322. This lifted the sanctions placed by Nicholas III's bull *Exiit qui seminat* (1279) on any further discussion of the Franciscan poverty ideal, and it made a formal debate at the curia possible. *Ad conditorem canonum* (December 1322/January 1323) abolished the existing property arrangements of the Franciscan order, while ostensibly introducing nothing more than an administrative change. *Cum inter nonnullos* (November 1323), on the other hand, declared the Franciscan view that Christ and the apostles had renounced all property rights to be heretical and settled the theological question at the heart of the dispute. While *Cum inter nonnullos* was very short, the pope had been much more expansive in the two versions of the bull *Ad conditorem canonum*, as well as in his later bulls *Quia quorundam mentes* (November 1324) and *Quia vir reprobus* (March 1329). *Quia quorundam mentes* defended both the pope's decision and his right to make this decision in his reply to Ludwig the Bavarian's criticisms in the appeal of Sachsenhausen (1323). *Quia vir reprobus* was the longest and last of John's bulls to deal with the problem of Franciscan poverty, and it was published as a response to Michael of Cesena's *Appellatio in forma minori*. *Quia vir reprobus* is particularly interesting as the pope explicitly discussed the intentions behind his previous bulls and expanded some of his previous arguments considerably. The bull has generally been neglected in

'Franciscan Crisis', p. 142). A more thorough investigation into the intellectual foundations of the pope's arguments remains a desideratum, however.

modern scholarship, partly because its late publication date has put it outside the scope of most studies of the poverty controversy, and partly because of its length and repetitive nature.

All of John's Franciscan bulls, with the exception of *Quia vir reprobus*, came to be included in the collection of his *Extravagantes*, and they have therefore been part of editions of medieval canonical collections, most notably in Emil Richter and Emil Friedberg's edition of the *Corpus Iuris Canonici*, and in Jacqueline Tarrant's more recent critical edition of John XXII's *Extravagantes*.³⁰ All of the bulls, including *Quia vir reprobus* and the first version of *Ad conditorem canonum*, were also included in the fourteenth-century compilation that is now generally known as the chronicle of Nicolaus Minorita. There has been a recent publication of the full text of the chronicle as a 'source-book'; it is the first complete edition of the text and therefore a valuable resource for any discussion of the controversy despite the fact that the editors have deliberately not produced a critical edition.³¹ The so-called chronicle of Nicolaus Minorita is the foundation for most modern discussions of the poverty controversy, and its compilation is generally attributed to a Franciscan friar, usually referred to as Nicolaus Minorita and sometimes identified with Nicholas of Freising who witnessed one of Michael of Cesena's appeals from Munich. The chronicle was

³⁰ See the edition of John's Franciscan bulls in CIC, II: *Quia nonnumquam*, col. 1224; *Ad conditorem canonum*, cols 1225-29; *Cum inter nonnullos*, cols 1229-30; and *Quia quorundam mentes*, cols 1230-36. See also Jacqueline Tarrant, *Extravagantes Iohannis XXII*, Monumenta Iuris Canonici, Series B: Corpus Collectionum, 6 (Vatican City: Biblioteca Apostolica Vaticana, 1983): *Quia nonnumquam*, pp. 217-21; *Ad conditorem canonum*, pp. 228-54; *Cum inter nonnullos*, pp. 255-57; and *Quia quorundam mentes*, pp. 257-87. I have used Tarrant's edition of the *Extravagantes* as it is based both on the versions of John's bulls found in canonical collections as well as the register copies and originals as published by the pope.

³¹ The chronicle has been edited in *Nicolaus Minorita: Chronica. Documentation on Pope John XXII, Michael of Cesena, and the Poverty of Christ with Summaries in English: A Sourcebook*, ed. by Gedeon Gál and David Flood (St. Bonaventure, NY: Franciscan Institute Publications, 1996). For the chronicle's texts of the papal bulls, see *Quia nonnumquam*, pp. 64-66; the first version of *Ad conditorem canonum*, pp. 83-88; the final version of *Ad conditorem canonum*, pp. 118-27; *Cum inter nonnullos*, pp. 128-29; *Quia quorundam mentes*, pp. 159-71; and *Quia vir reprobus*, pp. 553-613. On the rationale behind the edition of the text as a source-book rather than a critical edition, see the prolegomena in *Chronica*, especially, pp. 19*-21*. On the problems of this approach, see especially the review of Jürgen Miethke, 'Der erste vollständige Druck der sogenannten "Chronik des Nikolaus Minorita" (von 1330/1338). Bemerkungen zur Präsentation eines "Farbbuches" des 14. Jahrhunderts', *Deutsches Archiv für Erforschung des Mittelalters*, 54 (1998), 623-42 (especially pp. 633-37). As some of the texts included in the chronicle have never been published at all, or do not exist in readily available editions, I have used the editions in *Chronica* for texts such as the first version of *Ad conditorem canonum* and of *Quia vir reprobus*, as well as some of the major Franciscan writings, such as Bonagratia's appeal against *Ad conditorem canonum* (*Chronica*, pp. 89-117), the Franciscan excursus to the emperor's appeal of Sachsenhausen

probably compiled at Munich in the late 1330s, and it contains copies of most, but by no means all, of the documents published in the course of the controversy, such as the papal bulls, Bonagratia's appeal against *Ad conditorem canonum* and the later polemical treatises about Franciscan poverty, linked by brief introductory passages which provide a basic outline of the events.³² While the chronicle is a useful and accessible collection of contemporary texts dealing with the poverty debate, it has to be kept in mind that it was compiled to be a part of the controversy, and that this is reflected both in the links between the texts contained in the chronicle, as well as in the selection of the texts themselves.

In addition to the bulls, evidence for the pope's views can also be found in the compilation of written opinions submitted to him during the preparations for the publication of *Cum inter nonnullos*: MS Vat. lat. 3740 was compiled for the pope in 1322-23, and it contains the written opinions of more than 50 different people present at the curia, as well as a draft of *Cum inter nonnullos* and the pope's marginal annotations. This manuscript and the texts it contains shed light on both the decision-making process at the curia as a whole and on the way the debate developed.³³ Additionally, the pope's annotations show not only the way in which he approached the problem, but they also provide valuable insights into the arguments and themes he found most significant in these contributions, and into

(*Chronica*, pp. 120-58) and Michael of Cesena's *Appellatio in forma minori* (*Chronica*, pp. 227-424).

³² See Gedeon Gál's prolegomena to the edition of Nicolaus Minorita's *Chronica*, pp. 17*-19*, as well as Nold's discussion of the compilation in *John XXII and his Franciscan Cardinal*, especially pp. 4-8.

³³ For the role of MS Vat. lat. 3740 in the controversy and the process of decision-making more generally, see especially Louis Duval-Arnould, 'La Constitution *Cum inter nonnullos* de Jean XXII sur la pauvreté du Christ et des apôtres: rédaction préparatoire et rédaction définitive', *Archivum Franciscanum Historicum*, 77 (1984), 406-20; Louis Duval-Arnould, 'Les Conseils remis à Jean XXII sur le problème de la pauvreté du Christ et des apôtres (Ms. Vat. lat. 3740)', in *Miscellanea Bibliothecae Vaticanae III*, ed. by Leonard Boyle and others, Studi e Testi, 333 (Vatican City: Biblioteca Apostolica Vaticana, 1989), pp. 121-201; and Louis Duval-Arnould, 'Élaboration d'un document pontifical: les travaux préparatoires à la constitution apostolique *Cum inter nonnullos* (12 novembre 1323)', in *Le Fonctionnement administratif de la papauté d'Avignon: Actes de la table ronde organisé par l'École Française de Rome, avec le concours du CNRS, du Conseil Général du Vaucluse et de l'Université d'Avignon (Avignon, 23-24 janvier 1988)*, [ed. by Dean Favier], Collection de l'École Française de Rome, 138 (Rome: École Française de Rome, 1990), pp. 385-409. See also Nold, *John XXII and his Franciscan Cardinal*, pp. 34-42 and Anneliese Maier, 'Annotazioni autografe di Giovanni XXII in Codici Vaticani', *Rivista di storia della chiesa in Italia*, 6 (1952), 317-32 (p. 320); repr. in *Ausgehendes Mittelalter. Gesammelte Aufsätze zur Geistesgeschichte des 14. Jahrhunderts*, ed. by Anneliese Maier and Agostino Paravicini Bagliani, 3 vols (Rome: Edizioni di storia e letteratura, 1964-77), II (1967), pp. 81-96 and her addenda on pp. 492-95.

the question of how John responded to points made in the debate. There has been no edition of the manuscript as a whole, and the publication of the contributions of the various participants to the debate has been fragmentary and unsystematic; the editions are scattered and vary considerably in quality and accessibility, and there are still quite a number of reports contained in the manuscript that have never been published even in extracts.³⁴ Editions so far have for the most part focused on the more prominent participants to the debate, such as the Dominican theologian Durandus de Saint-Pourçain or Hervaeus Natalis, the Dominican Minister General.³⁵

The only (relatively) systematic publication of a manuscript linked to the poverty controversy is Felice Tocco's edition of MS Venice, Biblioteca Nazionale Marciana, lat. Z. 142, a copy of the manuscript compiled for the pope. This is still the most substantial edition of responses to the pope's question, but it does not include everything contained in MS Vat. lat. 3740, and while the text is fairly close to that of the original manuscript, there are some differences; however, the published text does give the reader a fairly good sense of the types of argument submitted to the pope.³⁶

While MS Vat. lat. 3740 is a working text, showing a specific stage of the controversy, John XXII's bulls as well as the chronicle of Nicolaus Minorita are carefully constructed documents, designed to be part of an ongoing and increasingly acrimonious controversy. Their largely polemical content needs to be kept in mind, and while such works are useful in marking the state of an intellectual development and in defining the relevant issues of the day, they also obscure reality to a certain extent: not only do they have a tendency to assume a life of their own, polemics also very easily become ritualised and are then drawn

³⁴ For a survey of the editions of *consilia* available up to the date of the publication of his article in 1989, see Duval-Arnould, 'Conseils', especially pp. 132-86. Duval-Arnould has also included transcriptions of some of the shortest contributions to the debate in his study, such as the reports of the Franciscans Monaldo Monaldeschi (p. 138) and Jerome of Caffa (p. 140), or of the archbishops of Arles (pp. 172-73) and Bremen (p. 173), and the bishop of Asolo (p. 175).

³⁵ See for instance the editions in Miethke, 'Durandus', pp. 169-96 and J. G. Sikes, 'Hervaeus Natalis: *De paupertate Christi et apostolorum*', *Archives d'histoire doctrinale et litteraire*, 12-13 (1937-38), 209-97. See also the edition of Ubertino da Casale's opinion in Davis, 'Ubertino da Casale', pp. 43-56.

³⁶ See Felice Tocco, *La quistione della povertà nel secolo XIV secondo nuovi documenti* (Naples: Perrella, 1910). On the relationship between this manuscript and MS Vat. lat. 3740, see especially Kerry E. Spiers, 'Four Medieval Manuscripts on Evangelical Poverty: *Vaticanus latinus* 3740 and its Copies', *Collectanea Franciscana*, 59 (1989), 323-49, especially pp. 323-24.

out longer than the occasion warrants.³⁷ In the case of the theoretical poverty conflict, this is even more complicated by the fact that the debate became ‘bogged down in a confusion of terms’ very early on, with all participants in the debate using a limited number of highly technical terms in a variety of very different meanings.³⁸

The problem of terminology presents also one of the main difficulties in discussing the content and context of John’s objections to the Franciscan poverty ideal. Most of the standard terms of the debate, such as *dominium*, *usus* and *ius*, had precise, very technical meanings but could also be used in a wider, more general sense. They meant very different things to the various participants of the debate, and the assumptions which lay behind a particular use of any of these terms were rarely made explicit. One of the central terms for the debate was *dominium*, the basic meaning of which covered both lordship and the ownership of material goods, although the term could also refer to quite a number of much more technical legal concepts. Both in its wider sense of lordship and its more narrow sense of property, dominion was a major theme in the *De potestate*-treatises of the early fourteenth century,³⁹ and it was one of a number of legal terms that had increasingly been discussed in thirteenth-century quodlibetal questions.⁴⁰ The term in all its meanings played a very important role in the debate about Franciscan poverty, and especially in John’s bulls dealing with the order’s ideals.

The other key issue for the debate was the Franciscan concept of the simple use of fact. It had its origins in the secular-mendicant controversy of the 1250s, and the term *usus facti* had first been used by Bonaventura in his *Apologia pauperum* in order to describe Franciscan practice. Nicholas III expanded the term to what became its standard form as *simplex usus facti* in his bull *Exiit qui*

³⁷ See Kurt Flasch, *Einführung in die Philosophie des Mittelalters* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1987), p. 120.

³⁸ See James Doyne Dawson, ‘Richard FitzRalph and the Fourteenth-Century Poverty Controversies’, *Journal of Ecclesiastical History*, 34 (1983), 315-44 (p. 324).

³⁹ Janet Coleman, ‘Poverty, Property and Political Thought in Fourteenth-Century Scholastic Philosophy’, in *L’Homme et son univers au Moyen Age: Actes du Septième Congrès Internationale de Philosophie Médiévale*, ed. by Christian Wenin, 2 vols (Louvain-la-Neuve: Éditions de l’Institut Supérieur de Philosophie, 1986), II, pp. 845-55 (p. 845).

⁴⁰ Janet Coleman, ‘Property and Poverty’, in *The Cambridge History of Medieval Political Thought c.350-c.1450*, ed. by James H. Burns (Cambridge: Cambridge University Press, 1988), pp. 607-48 (p. 640).

seminat.⁴¹ The *Apologia pauperum* and *Exiit* became seminal texts for the discussion of Franciscan poverty and standard reference-points for Franciscan apologists during the theoretical poverty controversy.⁴² The concept of the simple use of fact was used to describe the fact that, according to Franciscan theory, the order did not have any dominion over the goods used by its members; all property rights were vested in the papacy. The term *simplex usus facti* referred to this use of material goods without any legal rights. Both the concept and the property arrangements which made this possible were based on the 'Franciscan' passages of the Bible, which called for the renunciation of all worldly goods and seemed to provide the Franciscan order with evidence that Christ had told the apostles to practise absolute poverty and the Franciscan simple use.⁴³

When discussing Franciscan poverty in the 1320s, John XXII focused both on the question of the scriptural title of the poverty of Christ and on the legal, theological and administrative problems created by the simple use of fact. He questioned the scriptural basis of the Franciscan ideal as well as its theological validity and its legal foundations. The following chapters will examine John XXII's own discussion of the Franciscan poverty ideal, focusing on the pope's presentation of his case against the Franciscans. This study will therefore not be determined by the historiographical traditions surrounding the poverty controversy, and it will only incidentally refer to the question of whether any of John XXII's objections to, and concerns about, the Franciscan poverty ideal actually reflected Franciscan reality. The focus of the study will be on the pope's view of the ideal of the absolute poverty of Christ as it was presented in his bulls.

I will therefore first present a historical overview of the course of the poverty controversy and the process of decision-making at the curia which will be followed by an investigation into John XXII's approach to some of the problems he encountered during his time as pope. This will particularly focus on his

⁴¹ See Leff, 'Bible and Rights', pp. 229-30. For an edition of the *Apologia pauperum*, see *Doctoris Seraphici S. Bonaventurae S. R. E. Episcopi Cardinalis Opera Omnia*, ed. by Aloysius Lauer, 8 vols (Quaracchi: Collegium S. Bonaventurae, 1882-1902), VIII: *Opuscula varia ad theologiam mysticam, et res Ordinis Fratrum Minorum spectantia* (1898), pp. 233-330. The text of *Exiit qui seminat* can be found in CIC, II, cols 1109-21.

⁴² On the role of *Exiit* in Franciscan history, see especially Lambert, *Franciscan Poverty*, especially pp. 149-56.

suppression of the Spirituals and the role of the Spiritual crisis in shaping the pope's view of the Franciscan order more generally. By comparing the pope's dealings with the Spiritual Franciscans to his reform of the order of Grandmont, I hope to show that John's treatment of the Franciscan order was not as isolated as it is sometimes presented; the Franciscans were not the only objects of John's willingness to reform an order that did not see itself as requiring drastic papal intervention.

The study will then move on to a discussion of the ecclesiological implications of the Franciscan poverty ideal and the question to what extent the pope was motivated by ecclesiological concerns or a perceived Franciscan threat to the structure of the church in his decisions in the poverty controversy.

The last two chapters will look specifically at what John XXII himself had to say on the Franciscan ideal of absolute poverty, and what, according to the pope, was wrong with this ideal, looking first at his theological objections and then at his discussion of Franciscan poverty from a legal point of view. These chapters will show that John XXII's concerns about the Franciscan poverty ideal went much deeper than administrative dissatisfaction or unease about the definition of the simple use of fact, and will establish that at the heart of the pope's condemnation of the Franciscan poverty ideal was a fundamental disagreement with the order about the role and function of *dominium* in the history of salvation.

⁴³ See especially Mt 10:9-10 and Mt 19:21, as well as Lc 10:4. All references to biblical texts will be to the *Biblia sacra iuxta Vulgatam versionem*, ed. by Robert Weber and others, 2 vols (Stuttgart: Württembergische Bibelanstalt, 1969).

Chapter I

The Theoretical Poverty-Controversy: Historical Overview

The sequence of events leading up to the condemnation of the Franciscan poverty-ideal in *Cum inter nonnullos* and to the subsequent break between Pope John XXII and Michael of Cesena has been fairly well-established in modern scholarship.¹ The chain of events was set in motion in 1321 when the lector of the Franciscan convent of Narbonne appealed to the pope after the Dominican inquisitor Johannes de Belna condemned a beguine for claiming, among other things, that Christ and the apostles had had no communal property.² John detained the Franciscan lector at the curia and opened a general discussion on whether the assertion of the absolute poverty of Christ and the apostles was heretical in early 1322. The question was first discussed in a series of consistory meetings, and a few weeks later John XXII published the bull *Quia nonnumquam* which abrogated the penalty clauses contained in Pope Nicholas III's bull *Exiit qui seminat* (1279), thus paving the way for a more formal and permanent discussion of the topic.

The pope then requested written reports on the question of the poverty of Christ from bishops, abbots and masters of theology. These included some high-profile Franciscan contributions by the general chapter of Perugia and the order's procurator Bonagratia of Bergamo as well as statements from other members of the curia. In December 1322, John published the first version of the bull *Ad conditorem canonum* which revoked papal ownership over Franciscan goods, but which had to be re-published in a revised version in January 1323 after an official protest by Bonagratia. The final blow to the Franciscan ideal occurred in November 1323, with the publication of *Cum inter nonnullos* which condemned as heretical the assertion that Christ and the apostles had not owned anything, either individually or in common.

¹ See for instance the narrative in Lambert, *Franciscan Poverty*, pp. 238-69 and Miethke, *Sozialphilosophie*, pp. 365-99 and the more recent reconstruction of events in Nold, *John XXII and his Franciscan Cardinal*, especially chapter 1. Andrea Tabarroni has warned, however, that the chronology and sequence of events are less stable than is often assumed: *Paupertas Christi*, p. 21.

² The main source for this is the chronicle of Nicolaus Minorita, *Chronica*, pp. 62-63. For a thorough critique of the value of the chronicle, see Nold, *John XXII and his Franciscan Cardinal*, pp. 1-24.

While most of the events of this very brief account of the poverty controversy are not really in doubt, the reconstruction of the debate still presents a number of problems. The interaction between the pope, the curia and the Franciscan order as well as the curial context for John's decisions in the debate have rarely been discussed in any detail, and while the broad outline of the sequence of events does not present any difficulties, the exact circumstances of many aspects of the decision-making process and later political developments are far from clear. A detailed discussion of John's own views on the problem of evangelical and Franciscan poverty is therefore only possible after the circumstances in which he gave his opinions have been established, and this chapter aims to provide a survey of the events of the theoretical poverty controversy from its outbreak in Narbonne in 1321 until the arrival of the Michaelist dissidents in Munich in 1330.

I.1 The Start of the Controversy

In the year 1321, the Dominican inquisitor Johannes de Belna arrested a beguine on suspicion of heresy, accusing him, among other things, of claiming that Christ and the apostles, when following the way of perfection, had had no property or dominion, either individually or in common.³ Before sentencing him, the inquisitor presented the beguine's heretical statements to a meeting of priors, guardians and lectors in Narbonne, a group of people which included Berengar Talon, the lector of the Franciscan convent of Narbonne. When the list of suspect opinions was read out by Johannes, Berengar objected to the inclusion of the article on the poverty of Christ, arguing that far from being heretical, this statement was entirely orthodox, and that it had been approved of by Nicholas III's bull *Exiit qui seminat*. Johannes de Belna demanded a retraction, but Berengar refused to take his words back, and in the end, the Franciscan lector appealed to the curia.

John XXII heard the appeal of Berengar Talon in an open consistory meeting in early 1322, having already been informed of what had happened by the

³ *Chronica*, p. 62: 'Qui beguinus inter alia adserebat quod Christus et apostoli eius, viam perfectionem sequentes, nihil habuerunt iure proprietatis et dominii in speciali nec etiam in communi.'

Dominican inquisitor; the pope then had Berengar arrested and proposed a public debate on the question of whether it was heretical to assert that Christ and the apostles had owned nothing, either individually or in common. The question ‘*utrum pertinaciter affirmare Dominum Iesum Christum eiusque apostolos non habuisse aliqua in speciali nec etiam in communi foret haereticum censendum*’ was then sent to all prelates and masters of theology at the curia.⁴

This is the opening of the theoretical poverty controversy as it is presented in the chronicle of Nicolaus Minorita, and this account forms the basis of most modern reconstructions of the beginning of the conflict. The chronicle’s account has traditionally been accepted by most modern scholars, although with differing degrees of emphasis.⁵ While quite a number of scholars have expressed reservations about some of the chronicle’s judgements in discussing the sources of their own accounts of the opening of the controversy,⁶ this has not led to a more general reassessment of the value of the compilation as a source for the early stages of the debate. Only recently have there been attempts, especially by Patrick Nold, to re-evaluate the chronicle as a framework for the reconstruction of the controversy.⁷ It is particularly important to note that the exchange between Johannes de Belna and Berengar Talon is presented in the chronicle in the exact terms of the later written debate,⁸ although other sources show that even among the Franciscans the terminology and concepts of the debate had yet to be established.⁹

⁴ *Chronica*, p. 63.

⁵ See for instance Lambert, *Franciscan Poverty*, pp. 239-40, Miethke, *Sozialphilosophie*, pp. 365-66 and Horst, *Evangelische Armut und päpstliches Lehramt*, pp. 26-27.

⁶ See Wittneben, *Bonagratia*, p. 107 note 1, who draws attention to the partisan nature of the narrative of Nicolaus Minorita, and Tabarroni, *Paupertas Christi*, p. 13 who calls the chronicle’s story dubious. Horst, *Evangelische Armut und päpstliches Lehramt*, pp. 26-27 has also argued that the account in the chronicle is unlikely to represent the whole story.

⁷ Nold, *John XXII and his Franciscan Cardinal*, especially chapter 1. See also the discussion of the complex process of the compilation of the chronicle in Miethke, ‘Der erste vollständige Druck’, especially pp. 639-42, as well as his observation that the chronicle is only rarely considered as a whole (p. 625).

⁸ See Tabarroni’s discussion of the way the chronicle’s account is framed in the terms of the later debate, and his argument against taking the chronicle’s story at face-value: Tabarroni, *Paupertas Christi*, p. 12.

⁹ An especially vivid example of this can be found in an interpolation in the Italian translation of the chronicle of Nicolaus Minorita which relates the discussion of the consistory meeting of 6 March 1322: Francesco Zambrini, *Storia di fra Michele Minorita come fu arso in Firenze nel 1389 con documenti riguardanti i fraticelli della povera vita. Testi inediti del buon secolo*, Scelta di curiosità letterarie inedite o rare dal secolo XIII al XIX, 50 (Bologna: Romagnoli, 1864; repr. Bologna: Commissione per i testi di lingua, 1968), pp. 64-76. For a discussion of the interpolation, see below p. 22.

It has generally been accepted that Berengar's appeal to the pope and the events in Narbonne provided the occasion for the outbreak of the controversy rather than being its primary cause.¹⁰ The compiler of the chronicle himself did not have any hesitation in attributing a definite motive to John and in establishing the pope's intentions,¹¹ but neither his account nor the critique of its value as a source are of much help in establishing the causes of John's dissatisfaction with the Franciscan poverty ideal.

That the controversy originated in Narbonne is confirmed by Angelo Clarenò's *Historia septem tribulationum*, but this is the only independent evidence for any of Nicolaus Minorita's account of the outbreak of the controversy.¹² For the rest of the story of Berengar Talon and Johannes de Belna, we have only the *Chronica* as evidence. Only after the question had been referred to the curia is there more and independent information about the course of the controversy.

Once the question had been raised in Avignon, it was discussed in a series of consistory meetings in early 1322. These meetings have only recently been discussed in any detail; even so there have not been many attempts to fit them into the curial decision-making process as a whole. This is partly due to the fragmentary and contradictory nature of the evidence. While it is quite clear that there were several meetings in early 1322, it is surprisingly hard to say anything concrete about any of them. Most of our knowledge of these meetings derives from references to them in the later, written statements requested by the pope on the question of the poverty of Christ, as well as from references to the presence and advice of cardinals and prelates in John XXII's bulls.¹³ There has also been a

¹⁰ See for instance Tierney, *Infallibility*, p. 175, Lambert, *Franciscan Poverty*, p. 240 and Wittneben, *Bonagratia*, p. 109.

¹¹ Patrick Nold has drawn attention to the fact that the motives attributed by the author of the chronicle to the pope not only shape the selection of texts in the chronicle, but also still dominate modern interpretations of papal intentions in the conflict: see Nold, *John XXII and his Franciscan Cardinal*, p. 141.

¹² Angelo Clarenò, *Historia septem tribulationum ordinis minorum*, ed. by Orietta Rossini, *Fonti per la storia dell'Italia medievale: Rerum Italicarum Scriptores*, 2 (Rome: Istituto Storico Italiano per il Medio Evo, 1999), p. 303.

¹³ See for instance the contributions of Galhard Saumade, Archbishop of Arles: '[...] per ea que tam per s(ancitatem) u(estram) quam per plures dominos prelatos et magistros in theologia pridie in consistorio et alias alegata fuerunt [...]' (Duval-Arnauld, 'Conseils', p. 172) and Giacomo da Fusignano, Bishop of Lucera: '[...] quia congregationibus dominorum prelatorum et magistrorum in theologia infirmitate grauatus interesse non potui, ipsorum responsiones non audiui [...]' (Duval-Arnauld, 'Conseils', p. 158). See also the report by the archbishop of Bremen which begins with the words: 'Superfluum reputans que tam copiose tacta sunt in consistorio repetere'

tendency in modern scholarship to assume that John XXII's mind was already made up on the subject of evangelical poverty, and therefore to discount the elaborate process of oral discussions and written opinions which accompanied the pope's decision-making in the debate about Franciscan poverty.¹⁴

The evidence provided by references to meetings in the later written statements does allow us to reconstruct some of the details of the discussions in consistory meetings. While the exact number, dates and participants of these consistory meetings are not easily determined, it is clear that there were several meetings during which the pope and his prelates discussed the question of the poverty of Christ.¹⁵ It is also clear that the pope actively took part in these debates; several of the later, written opinions on the question refer to points made by the pope and other prelates in the context of the curial discussions.¹⁶ Another recurring feature of the debate is the Franciscans' insistence that the papal question had already been answered by *Exiit*, and that even having the debate contravened the penalty clauses of Nicholas III's bull.¹⁷

One of the participants of at least one of the meetings, and the author of a rather enigmatic statement on the poverty of Christ and the state of the

(Duval-Arnould, 'Conseils', p. 173), and the introduction to *Quia nonnumquam*: 'in fratrum nostrorum ac multorum archiepiscoporum episcoporum et aliorum prelatorum necnon multorum professorum utriusque iuris et multorum sacre theologie magistrorum presentia, dum consistorium teneremus [...]' (*Quia nonnumquam*, in Tarrant, *Extrauagantes*, p. 220).

¹⁴ See Lambert, *Franciscan Poverty*, p. 266: 'despite the apparatus of consultation, it was a highly personal set of decisions.' See also Lambert, *Franciscan Poverty*, pp. 240-41 and Miethke, *Sozialphilosophie*, p. 368 as well as the discussion in Tabarroni, *Paupertas Christi*, pp. 21-23.

¹⁵ There are conflicting accounts of participants, dates and outcomes of the debates; most information can be found in the opinions collected in MS Vat. lat. 3740, the Italian interpolation to the chronicle of Nicolaus Minorita, Michael of Cesena's appeals of 1328 and the recollections of Ubertino da Casale. Drawing mostly on the evidence of MS Vat. lat. 3740, the most comprehensive modern account of the consistory meetings is Duval-Arnould, 'Élaboration'. On the problems of reconciling the various accounts into a sequence of meetings, see also Nold, *John XXII and his Franciscan Cardinal*, pp. 17-19.

¹⁶ See for instance Daniel Vigier, Bishop of Naples: 'Suppositis et habitis pro repetitis protestationibus factis a uenerabili magistro sacri palatii et a domino summo pontifice' (Duval-Arnould, 'Conseils', p. 162), and Gui Cattaneo, Archbishop of Arborea: 'prout patet per auctoritates et rationes inductas per s(anctitatem) u(estram) et per venerabiles patres [...]' (Duval-Arnould, 'Conseils', p. 164).

¹⁷ Zambrini, *Storia di fra Michele*, pp. 69 and 75. See also some of the Franciscan written contributions such as those of Simon of Badajoz (Tocco, *Quistione della povertà*, p. 62) or Arnaud Royard (Tocco, *Quistione della povertà*, p. 74). The chapter at Perugia also saw *Exiit* as an obstacle to the debate as can be seen from its plea to the pope not to remove the sanctions imposed by Nicholas III: see the edition of the chapter's letter in Karl Müller, 'Einige Aktenstücke und Schriften zur Geschichte der Streitigkeiten unter den Minoriten in der ersten Hälfte des 14. Jahrhunderts', *Zeitschrift für Kirchengeschichte*, 6 (1884), 63-112 (pp. 106-108, especially p. 107).

Franciscan order, was Ubertino da Casale, one of the leading figures of the Franciscan Spirituals, who had been transferred to the Benedictine order by John XXII in 1317.¹⁸ Ubertino had been requested to give an opinion by the pope or possibly by Cardinal Napoleone Orsini.¹⁹ We also know from Ubertino's own recollections that he presented a statement on the poverty of Christ to a consistory meeting.²⁰ In contrast to some of the earlier meetings, where discussion seems to have been free and unscripted, Ubertino's opinion must have been prepared in advance; his report was read out to the assembled prelates although it is not entirely clear whether this was done by Ubertino himself. A summary of his answer is contained in the Italian interpolation to the chronicle of Nicolaus Minorita.²¹ This version of Ubertino's answer is very detailed and, despite his very idiosyncratic opinions, his statement is, in tone, length and argument, very close to the written contributions requested by John XXII later in the controversy. He later supplied a longer and more elaborate version of this speech as part of the written consultation at the curia. This was included in the manuscript compiled for the pope, although Ubertino's contribution in the manuscript remained anonymous.²²

In his speech, Ubertino distinguished between two different states of Christ and the apostles, and between two different types of having. As prelates, Christ and the apostles would have had goods, such as the *loculi*, for dispensation and administration, but when it came to the apostles as individuals, they would have had things either by secular or by natural law. All types of having, apart from having goods by natural law, involved some form of legal rights, and Christ and the apostles only had temporal goods by natural law.²³ Apparently all the cardinals present were highly impressed with the speech, and even the pope said that he did not want to hear anything more, as the question had been answered

¹⁸ On Ubertino and his involvement in the theoretical poverty controversy, see Davis, 'Ubertino da Casale', Duval-Arnould, 'Élaboration', pp. 407-409 and Burr, *Spiritual Franciscans*, pp. 267-75.

¹⁹ See Duval-Arnould, 'Élaboration', p. 394.

²⁰ See Ubertino's statement about his involvement in the controversy: Baluze-Mansi, *Miscellanea*, II, pp. 279-80 (p. 280). On the role of Ubertino during the consistory meeting, see Davis, 'Ubertino da Casale', especially pp. 7-15.

²¹ See the edition in Zambrini, *Storia di fra Michele*, pp. 77-80.

²² Ubertino's written contribution to the debate can be found on fols 238^{ra}-243^{va} in MS Vat. lat. 3740, and is edited in Davis, 'Ubertino da Casale', pp. 43-56.

²³ Zambrini, *Storia di fra Michele*, pp. 77-80.

well. We only know this from Ubertino's own recollections of the meeting, however, and it might therefore have been a later embellishment.²⁴

Ubertino probably spoke during a meeting held on 26 March 1322, and even apart from his own recollections, we do have another account of this particular consistory meeting and of the one preceding it. An interpolation in the Italian translation of the chronicle of Nicolaus Minorita describes the meeting at which Ubertino spoke as well as an earlier one on 6 March 1322, during the course of which John XXII asked several Franciscan prelates about their opinions on the poverty of Christ.²⁵ This is a very vivid account of the meeting, and it portrays John XXII in a very unflattering light: he is shown as interrupting the presentations of the Franciscan prelates, accusing them of hypocrisy and lying, and generally insulting their order. The interpolation is as hostile to John XXII as the chronicle of Nicolaus Minorita to which it was added, and it is therefore generally assumed that its author was a Franciscan or Franciscan sympathiser. The Italian translation of the chronicle which contains the only version of this account cannot have been compiled before the 1380s, but the interpolation itself has usually been interpreted as being based on an eyewitness report, partly because, despite its hostility to the pope, its portrayals of some of the Franciscan prelates are less than flattering. There has been very little discussion of the identity of the author of the Italian interpolation, however, or of its relationship to the chronicle of Nicolaus Minorita.²⁶

According to the interpolation, John first lifted *Exiit*'s sanctions on further debate for the duration of the meeting and explicitly denied that he was trying to undermine Nicholas III's bull as a whole. The greatest part of the account of the meeting on 6 March is, however, devoted to the contribution of the

²⁴ See Ubertino's recollections in Baluze-Mansi, *Miscellanea*, II, p. 280: 'Haec cedula fuit lecta in consistorio; concorditerque utraque opinio respondit. Nos non resistimus isti cedulae, fratres Minores allegantes id quod est ibi pro sua parte. Item Pontifex laetus dixit: Nolumus plus audire, quia bene responsum est quaestioni. Et tunc id quod dixit frater Ymbertinus fuit commendatum approbatum antequam aliquid statueretur in contrarium.'

²⁵ The account of the meeting on 6 March has been edited in Zambrini, *Storia di fra Michele*, pp. 64-76. A loose English translation of this part of the interpolation can also be found in Nold, *John XXII and his Franciscan Cardinal*, pp. 12-17.

²⁶ Karl Müller has suggested that the interpolation is at least based on an eyewitness account, especially as the story it presents is, in its main outlines, confirmed by the chronicle of Nicolaus Minorita, and he has speculated that the interpolation may have been transferred into the Italian translation from another (lost) account of the poverty controversy: see Müller, 'Einige Aktenstücke', pp. 66-67. Müller's account is still the most extensive discussion of the text (see 'Einige Aktenstücke', pp. 65-67).

Franciscan Bishop Jerome of Caffa who defended the Franciscan poverty ideal in a rambling and rather incoherent speech; while he used some of the traditional Franciscan arguments, his speech was, both in tone and in content, very different from most of the later discussion.

Jerome attempted to defend the Franciscan ideal by pointing to the missionary successes of his order, arguing that their unique blend of absolute poverty and preaching not only made them successful as missionaries, but that this success in turn validated the poverty ideal of the order itself. Here John XXII, who had already interrupted the Franciscan prelate more than once, did so again, countering that there were other successful missionary orders, particularly the Dominicans. Jerome answered this by claiming that all those who had been martyred for preaching the Christian faith to the infidels in his lifetime had been Franciscans. This provoked an angry retort from Gui Cattaneo, the Dominican Archbishop of Arborea, who pointed out that his order had reached Mongolia first. Jerome, however, claimed that this was irrelevant because in the eighty years since the Franciscans had reached Mongolia, they had established forty churches and convents, while the Dominicans had only managed to come up with five.²⁷

It was the pope who interrupted the squabble between the two bishops by accusing the Franciscan order of claiming to observe absolute poverty while appropriating everything to themselves, and who later tried to steer the debate back to the question of the scriptural title of Franciscan poverty by arguing, with reference to Acts 4:32, that Christ and the apostles had had communal property.²⁸ The level of debate had already deteriorated, however, and John did not necessarily help matters by remarking that the Franciscans had caused more

²⁷ Zambrini, *Storia di fra Michele*, pp. 69-70: 'imperò che nonn'è rengno, nè lingua, nè nazione, nelle quali non sieno, o vero sieno stati, frati minori predicando la fede della santa madre chiesa; e in ongni luogo il sangue loro è sparso, incominciando da Morroccio, infino in India. Allora il papa disse: li predicatori, e gli altri religiosi eziandio spandono quivi il sangue loro, e predicano quivi la parola di Dio. Frate Gieronimo rispuose: salva la riverenza della santità vostra, già mai non fu niuno predicatore, o vero alcuno religioso morto per Cristo tra gli infedeli, se non frate minore, perciò che nel tempo mio ne sono stati nove martirizzati (e disse i luoghi dove, e li nomi delli frati), nè per altri, che per frati minori, è quivi fatto frutto, nè conversione d'anime. Allora si levò su uno dell'ordine delli frati predicatori, il quale era arcivescovo d'Alborea, dicendo: santo padre, io posso dimostrare, che innanzi che i frati minori fossono in Tarteria, papa Innocenzio mandò là due frati predicatori. Allora frate Gieronimo rispuose e disse: santo padro, io posso mostrare che, otanta anni sono, che li frati minori andarono in Tarteria, e ànno già per quello paese bene quaranta luoghi o vero chiese, ma gli predicatori ànno solamente cinque luoghi presso al mare, e intra tutti quelgli luoghi ànno forse quindici frati.'

²⁸ Zambrini, *Storia di fra Michele*, pp. 70-71.

trouble to the church than any other religious order.²⁹ The pope grew increasingly irritated, sarcastic and rude throughout the meeting, and after Jerome of Caffa had finished his statement, he also called on other Franciscans at the consistory meeting, such as Arnaud Royard, the Archbishop of Salerno, Enrico de Carreto, the Bishop of Lucca, and Cardinal Vital du Four, to give their opinions, while collectively insulting all Franciscans present.³⁰ He was particularly rude to Vital du Four, to the extent that the other cardinals interceded with the pope on his behalf. Vital did not, in the end, give an opinion on this occasion, but all the cardinals and prelates present apparently commended the four Franciscans for their wisdom, patience and constancy.³¹

The level of debate at this particular meeting does not seem to have been particularly high, and there is therefore a certain justification for John's irritation, especially as the meeting went on. It is also clear that the pope was actively involved in the debate on a very personal level. He accused Jerome of buying and selling goods without a procurator and Arnaud Royard of lying.³² The Italian interpolation is very ambivalent in its portrayal of the pope: it is clearly not meant to present a sympathetic account of John who is described as unreasonably severe. Particularly the pope's attacks on Vital du Four seem to have been completely unprovoked and cannot have been conducive to a free debate. On the other hand, John's reaction to Jerome's contribution seems more justifiable; it seems unreasonable to expect John not to react irritably to a squabble over the number of convents founded in Mongolia in the context of a debate on the poverty of Christ. It also has to be stressed that Jerome, for one, does not seem to have been intimidated by the pope's approach to the debate, and if we are to believe the Italian interpolation, neither was anyone else.

The various accounts of, and references to, consistory meetings show that they played an important role in the process of decision-making. From the point of view of the cardinals, and in the case of the poverty controversy, from the

²⁹ Zambrini, *Storia di fra Michele*, p. 71: 'Allora il papa disse: li frati minori dànno più vessazioni e persecuzioni alla chiesa e alli prelati che gli altri religiosi.'

³⁰ Zambrini, *Storia di fra Michele*, p. 75: 'La qual cosa ditto [by Arnaud Royard], il papa disse a lui molte ingiurie; e con molte vituperazioni lui e tutti li frati e stato loro vituperò, dicendo, che li frati minori sono uomini fitti e simulate, e di stato ipocritale e oscuro, e incerto, e colgliono largamente vivere e apparere più perfetti che gli altri, concio sia che poco abbiano di veritate [...]'.
³¹ Zambrini, *Storia di fra Michele*, p. 76.

³² Zambrini, *Storia di fra Michele*, pp. 71 and 74.

point of view of the Franciscan order, they were important as places where dissent could be expressed and arguments could be exchanged.³³ Certainly in the early meetings there does not seem to have been much pressure on the participants to conform to the pope's perceived personal opinion. John's rather unpleasant behaviour in the consistory meeting of 6 March does not necessarily contradict this. When Duval-Arnould has argued that although John was at first content to let the people in the consistory meetings speak, but that he then became increasingly irritated and more and more insulting, he attributes John's hostility to the fact that the pope did not like the resistance he was encountering.³⁴ But it has to be taken into account that the Italian interpolation is hostile to John and certainly not unbiased. And even if it were no more than the transcript of the meeting, there still remains the fact that there was considerable provocation for at least some of John's rudeness. John may also have deliberately taken on the role of devil's advocate in the debate.³⁵

From the papal point of view, the discussions in consistory were a good way of gauging the mood of his advisers, and the idea that John XXII may have been genuinely interested to hear people's opinions about the various interpretations of the poverty of Christ should not be too readily discounted. If he was not aware of it beforehand, the discussions would have certainly alerted him to the fact that the penalties in *Exiit* were a considerable obstacle to a more extensive and permanent debate. The oral discussions in consistory meetings were one of John's tools in the process of collective decision-making even if he retained the ultimate right to make the decision.

One of the main points that emerged during the oral discussions was the Franciscan insistence that the sanctions placed by Nicholas III's bull *Exiit qui seminat* on any further discussion of Franciscan poverty precluded the debate as it was happening at the time. In fact, John had already explicitly lifted Nicholas III's ban at least once,³⁶ and this may have been a customary procedure during the oral

³³ See Duval-Arnould, 'Élaboration', p. 406.

³⁴ Duval-Arnould, 'Élaboration', pp. 393-94.

³⁵ For this suggestion, see Nold, *Pope John XXII and his Franciscan Cardinal*, p. 143.

³⁶ In the meeting on 6 March described by the Italian interpolation: 'poi disse: la sentenza della scomunicazione di quella dicretale rivochiamo, acciò che disputare si possa la quistione' (Zambrini, *Storia di fra Michele*, p. 65).

debates in consistory meetings. To formalise the curial debate, a more permanent solution was needed, however.

Oral discussion of Franciscan poverty at the curia finished at the end of March 1322, with the publication of the bull *Quia nonnumquam* which lifted Nicholas III's ban on discussing the Franciscan ideal once and for all. There has been considerable debate in modern scholarship about the status of *Quia nonnumquam* and the question of whether the publication of the bull was a direct attack on the Franciscan order or whether John's statement that he only wanted to facilitate discussion can be taken at face-value.³⁷

In the bull itself, John XXII argued that the true meaning of *Exiit* was not easy to determine, as different meanings could hide under the same word, and that the best way of resolving these difficulties was through scholarly debate. The restrictions placed by Nicholas III on a discussion of his bull had thus proved to be counter-productive rather than beneficial. In the interests of clarifying the issue, the pope had therefore decided to remove the penalties that had been attached to discussing *Exiit*.³⁸ While later Michaelist writings (including the chronicle of Nicolaus Minorita) contended that in *Quia nonnumquam* the pope had revealed his true intention of destroying *Exiit* and with it the Franciscan poverty ideal, it is worth noting that Bonagratia, in his *Tractatus* of summer 1322, seems to have been more ready to accept John's claim that the pope was only attempting to enable a free discussion.³⁹ The pope himself made it quite clear in

³⁷ The bull was published on 26 March 1322. See the editions in CIC, II, col. 1224, Tarrant, *Extravagantes*, pp. 217-21 and *Chronica*, pp. 64-66. Tierney, *Infallibility*, p. 179 has interpreted the bull as an assertion of papal sovereignty and thus as the first step in the pope's campaign against the Franciscan poverty ideal. Lambert, *Franciscan Poverty*, p. 243 has argued that even if this was not the intention of the pope, the order perceived it as such. Against this interpretation of *Quia nonnumquam* see Nold, *John XXII and his Franciscan Cardinal*, pp. 144-48 who has argued that John's stated intentions in the bull ought to be accepted.

³⁸ *Quia nonnumquam*, in Tarrant, *Extravagantes*, pp. 219-20: 'Nos autem attendentes quod argumentis frequenter et collationibus latens veritas aperiat, quodque sub eadem littera saepe latet multiplex intellectus, necnon esse difficile uolentibus constitutionem predictam perfecte legere ac intelligere penas adiectas in constitutione huiusmodi deuitare, uiam ueritati aperire uolentes, ac periculis que ex predictis possent literate persone precipue scolastice incurrere salubriter obuiare, presertim cum de nouo suborta sint aliqua dubia, circa que posset periclitari ueritas et erroribus uia pandi, nisi liceret conferre super contentis in constitutione huiusmodi et etiam disputare, prohibitiones et penas predictas, tam latas quam comminatas, et earum effectus, in fratrum nostrorum ac multorum archiepiscoporum episcoporum et aliorum prelatorum necnon multorum professorum utriusque iuris et sacre theologie magistrorum presentia, dum consistorium teneremus, auctoritate apostolica duximus usque ad sedis apostolice beneplacitum suspendendos.'

³⁹ See the assessment of the chronicle of Nicolaus Minorita, *Chronica*, p. 63: 'Volens igitur dictus dominus Ioannes papa de dicta quaestione et quibusdam aliis definire oppositum eorum quae in dicta decretali *Exiit* exstitit definitum, ut postea patuit per effectum, primo suspendit sententiam

the bull that the lifting of the ban on discussing the Franciscan ideal did not mean that the enemies of the order were now free to attack the Franciscans with impunity,⁴⁰ although this does not necessarily mean that the Franciscans were reassured by this.

Most modern scholarship has followed the Michaelist interpretation of *Quia nonnumquam*.⁴¹ There is a general assumption that John used the bull to state what he perceived to be his rights as pope, and that part of the bull's purpose was to prepare the ground for further changes to *Exiit*. Whenever the bull is actually discussed in any detail, most scholarship has focused on its implications for the development of theories of papal power and sovereignty. The emphasis in works like that of Brian Tierney is on John's stated intention of changing previous papal legislation.⁴² In this interpretation, the main point of the bull is its assertion of John's freedom to contradict the provisions made by *Exiit* and, by extension, the rest of Nicholas III's bull as well as all other previous papal legislation.

However, in his study of the ecclesiological aspects of the poverty controversy, Ulrich Horst has argued that the content of the bull would have been unremarkable in a less contentious situation.⁴³ And Patrick Nold has recently made a case for taking seriously the pope's claim that *Quia nonnumquam* was meant to put the debate onto a secure legal footing, drawing particularly on the evidence of the bull *Quia in futurorum* (16 September 1316) which contains almost exactly the same opening section, but which, because it dealt with

excommunicationis latam in dicta decretali *Exiit* contra glossantes, docentes seu dogmatizantes aliter quam sit eo modo quo continetur in ea, ad hoc ut praelati, magistri et alii litterati quicumque possent libere definitioni et determinationi Ecclesiae contradicere et ipsam ad libitum impugnare.' Michael of Cesena's assessment in his long appeal was similar (see the *Appellatio in forma maiori*, in *Chronica*, pp. 311-12), while Bonagratia was a bit more ambivalent: 'Preterea cum ex facto domini pape, scilicet ex suspensione sententie excommunicationis prolata in dicta decretali *Exiit qui seminat* in dicentes sive scribentes contra ea vel aliquid eorumque in ipsa decretali continentur, ut ex his que dicta sunt in consistorio de intencione ipsius domini pape, qui dictam proposuit questionem, pateat, scilicet quod intencionis eius est querere: Utrum asserere quod Christus et apostoli non habuerint aliquid in communi per modum domini et proprietatis sive iuris, sit hereticum.' See the edition in Livarius Oliger, 'Fr. Bonagratia de Bergamo et eius Tractatus de Christi et apostolorum paupertate', *Archivum Franciscanum Historicum*, 22 (1929), 292-335 and 487-511 (pp. 326-27).

⁴⁰ *Quia nonnumquam*, in Tarrant, *Extravagantes*, p. 220: 'Per suspensionem autem huiusmodi nequaquam licentiam cuiquam intendimus impertiri, quod contra fratrum predictorum dogmatizare, scribere seu determinare, predicare seu prave loqui liceat publice uel occulte, quinimmo hoc omnibus et singulis auctoritate apostolica districtius inhibemus.'

⁴¹ See Tabarroni, *Paupertas Christi*, p. 20 note 13, as well as Lambert, *Franciscan Poverty*, pp. 244-45 and Attilio Bartoli Langeli, 'Il manifesto francescano di Perugia del 1322 alle origini dei fraticelli "de opinione"', *Picenum Seraphicum*, 11 (1974), 204-61 (p. 212).

⁴² Tierney, *Infallibility*, p. 173. See also Lambert, *Franciscan Poverty*, p. 244.

⁴³ Horst, *Evangelische Armut und päpstliches Lehramt*, p. 28.

tournaments, has attracted practically no attention.⁴⁴ Taken in isolation, the bull therefore did not necessarily contain much controversial material, and it seems unlikely that John XXII deliberately used *Quia nonnumquam* as a forum in which to discuss his real opinion of his own authority over the legislation of his predecessors. This does not mean, however, that the bull was not perceived as a threat by the Franciscan order, especially those members who were not involved in the curial debate.⁴⁵

Whether Nold's interpretation of *Quia nonnumquam* as a 'simple instrument to facilitate debate' is accepted or not,⁴⁶ the publication of the bull did mark a new stage in the controversy, and whatever its effect on the peace of mind of the Franciscans, it did accomplish John's stated intentions for the bull: now that the ban on the discussion of Franciscan poverty was lifted, the pope could ask for written contributions on the question of whether it was heretical to claim that Christ and the apostles had no individual or communal property. The publication of the bull marked the establishment of a permanent and formal discussion of evangelical poverty.

Written opinions about the question were collected almost immediately after the publication of *Quia nonnumquam* – Louis Duval-Arnould has dated one of them, the statement of Galhard Saumade, the Archbishop of Arles, to 27 March 1322, and most of the written statements had probably been submitted by the summer of 1322.⁴⁷ Some of the *consilia* were later than that, however; Cardinal Guillaume Teste, for instance, referred to *Ad conditorem canonum* in his opinion which therefore cannot have been written before December 1322.⁴⁸ The reports were copied into a single manuscript for John XXII (MS Vat. lat. 3740) which the pope used as the basis for his decisions on the problem of Franciscan poverty. This manuscript was almost certainly finished by the spring of 1323, as it must

⁴⁴ Nold, *John XXII and his Franciscan Cardinal*, pp. 146-47.

⁴⁵ In his almost contemporary commentary on the bull, the canonist Jesselinus de Cassagnes also does not seem to have viewed the bull as particularly contentious although it is interesting to note that he frequently referred to John XXII's later bulls (and especially *Ad conditorem canonum*) in his explanations of terms used by the pope in *Quia nonnumquam*: see *Extravagantes .XX. Iohannis. XXII. [...] Apparatus domini Gecellini de Cassanhis iuris vtriusque professoris domini pape capellani: In .xx. extravagantes Iohannis vigesimisecondi* (Paris: Jehan Petit, 1524), fols 42^{va}-43^{vb}.

⁴⁶ See Nold, *John XXII and his Franciscan Cardinal*, p. 145.

⁴⁷ See Duval-Arnould, 'Conseils', p. 172 and Duval-Arnould, 'Élaboration', p. 402.

⁴⁸ Duval-Arnould, 'Conseils', pp. 152-53.

have reached the pope in time for John XXII to read and annotate the reports contained in it before the publication of *Cum inter nonnullos* in November 1323.⁴⁹

It is one of the characteristics of John's pontificate that he routinely discussed important decisions with his advisors and other experts,⁵⁰ and to some extent, the consultation about the problem of evangelical poverty is unusual only in its scope. Rather than the usual ten to twenty opinions sought by, and submitted to, the pope, John XXII collected the opinions of more than 50 individuals, in addition to three anonymous statements and some additional material by individuals who submitted more than one text.⁵¹ In a question like that of the scriptural title of apostolic poverty, consultation of the cardinals and curial lectors would seem like an obvious choice, but the pope seems to have been interested in as broad a base of opinion as possible, independent of the quality of the contribution, and he seems to have expected a written contribution from practically everyone who happened to be at the curia in 1322 and 1323, regardless of their expertise or interest in the matter.⁵²

If availability rather than expertise or competence was one of the key factors in the choice of contributors, this is reflected in the quality and quantity of the contributions as well. Patrick Nold has argued that the difference in length of the opinions in the manuscript reflects a time-lag in the composition of the texts: the shorter reports were generally written soon after one of the consistory

⁴⁹ On the dating of MS Vat. lat. 3740, see Spiers, 'Four Medieval Manuscripts', pp. 324-25, Duval-Arnould, 'Élaboration', pp. 401-402, and Maier, 'Annotazioni autografe', p. 320, and especially her addenda in *Ausgehendes Mittelalter*, II, pp. 492-93. Nold, however, has proposed a later date for at least one of the texts in the manuscript, arguing that the *Dicta* of the cardinal-bishop of Tusculum cannot have been written before the end of June 1323. This particular *consilium* has a very special status, however, for which see pp. 41-42 below.

⁵⁰ See Maier, 'Annotazioni autografe', p. 319 and Anneliese Maier, 'Eine Verfügung Johannes XXII. über die Zuständigkeit der Inquisition für Zaubereiprozesse', *Archivum Fratrum Praedicatorum*, 22 (1952), 226-46; repr. in *Ausgehendes Mittelalter*, II, pp. 59-80 (p. 62). Contemporary evidence for the discussion of the need for deliberation before important decisions can also be found in Jesselinus's commentary on John's *Extrauagantes*, although Jesselinus rejected the idea that the pope was under a legal obligation to seek advice: see J. A. Watt, 'The Constitutional Law of the College of Cardinals: Hostiensis to Joannes Andreae', *Mediaeval Studies*, 33 (1971), 127-57 (pp. 147-48). A personal account of being involved in one of John XXII's consultations by the later Benedict XII (as well as of his unsuccessful attempts to avoid having to give an opinion) is edited in Maier, 'Verfügung über Zauberei', pp. 62-63.

⁵¹ Duval-Arnould, 'Élaboration', p. 395. The authors of two of the anonymous sections have been identified as Ubertino da Casale (see Davis, 'Ubertino da Casale', especially pp. 34-56) and Raymond Bequin (see Horst, 'Raimundus Bequin', pp. 101-103). The people consulted included cardinals, bishops, abbots, masters of theology (including several curial lectors), as well as Franciscans, Dominicans, Augustinian Hermits, Carmelites, Benedictines, Cistercians, regular canons and members of the secular clergy: see Duval-Arnould, 'Élaboration', pp. 396-97.

⁵² See Duval-Arnould, 'Élaboration', pp. 397-99.

meetings, and therefore the authors tried to avoid (sometimes explicitly) repeating any of the arguments that had been discussed already.⁵³ The longer contributions, according to this theory, were further removed from the oral debates and therefore had to give fuller arguments.⁵⁴

The argument is compelling, but there may be another aspect to consider when it comes to the varying length, quality and coherence of the written contributions to the debate, and that is the fact that for some of the contributors the topic seems to have been rather opaque – it seems highly unlikely that all the people asked by the pope to give an opinion in this matter had one, or were necessarily aware of all the implications a decision in this matter could have for the Franciscan order, the papacy and the church as a whole. Not everyone seems to have been interested in participating in the debate, and some of the opinions given clearly show that their authors tried to avoid committing themselves.⁵⁵

It is also possible that, at least in some cases, the participants were not entirely sure what the problem was. An example of this can be seen in the contribution of Cardinal Pierre Tessier whose report came to the conclusion that the assertion of the absolute poverty of Christ was heretical because it contradicted scripture, apostolic law, canon law and the rule of St. Augustine.⁵⁶ He also discussed the question of episcopal status, arguing that it was clear that bishops were the successors to the apostles, and anything that was allowed or forbidden to the predecessors was automatically allowed or forbidden to the successors as well. Therefore, as the contemporary episcopate legitimately had communal property, the apostles must have had communal property as well.⁵⁷ This example of circular reasoning was not very helpful to the pope, even when it came to the discussion of the implications of the Franciscan poverty ideal for episcopal status, much less the question of the nature of apostolic poverty.

⁵³ As in the *consilia* of Augustin Kažotić and the archbishop of Bremen where both authors stated that they did not want to repeat things that had been said previously. See Nold, *John XXII and his Franciscan Cardinal*, p. 40 note 21. See also Duval-Arnould, ‘Conseils’, 173 for a transcription of part of the statement of the archbishop of Bremen.

⁵⁴ Nold, *John XXII and his Franciscan Cardinal*, p. 41.

⁵⁵ Such as Johannes Gaetani Orsini who argued that his knowledge of scripture was not enough to give an opinion: ‘nec me sufficere uideo in ipsis ualeam prout optarem debitum consilium impertiri, maxime cum in diuina pagina non adeo sum imbutus [...]’ (Duval-Arnould, ‘Conseils’, p. 156) and Arnaud de Pellegrue, the Franciscan Cardinal Protector, who declared that he did not have an opinion and trusted the pope to make the right decision. In the margin of the table of contents, the pope drily remarked: ‘Iste non dedit consilium’ (Duval-Arnould, ‘Conseils’, p. 155).

⁵⁶ Tocco, *Quistione della povertà*, pp. 109-10.

⁵⁷ Tocco, *Quistione della povertà*, p. 112.

One further (and generally neglected) problem in assessing the written contributions to the debate is the question as to whether these statements reflected the true opinions of their authors. It is far from clear to what extent and how accurately the various participants in the debate were able to second-guess the pope's real intentions, and it has to be kept in mind that not all statements in a broad-based consultation such as this, whether or not they reflected the true opinions of their authors, would have been intended to please the pope. Forty years ago, Bernard Guillemain drew attention to the fact that Cardinal Napoleone Orsini's championship of the Spirituals and of Ubertino da Casale had more to do with Orsini's wish to irritate the pope rather than any sympathy for Spiritual ideas.⁵⁸

John XXII's own views on some of the issues discussed can be deduced from his marginal annotations in the manuscripts he worked with. These marginalia are interesting because they show the pope at work and therefore provide some clues about the way the process of decision-making worked.⁵⁹ His annotations in all the manuscripts he read for his work range from simple underlining to fairly substantial comments; for the most part, however, they highlight or repeat important parts of the text or the authorities cited. Anneliese Maier has drawn attention to the fact that the pope's marginalia very rarely criticise the text they are accompanying, but rather are the marks of a careful and attentive reader who occasionally corrected scribal errors as well.⁶⁰ The manuscript containing the *consilia* about the poverty of Christ is no exception. It is annotated throughout, although the pope's main attention was focused on the contributions of four of the most prominent participants in the debate: the Franciscan Cardinals Vital du Four and Bertrand de la Tour, the Dominican theologian and Bishop of Puy Durandus de Saint-Pourçain, and the Dominican Minister General Hervaeus Natalis. Most of the pope's annotations only repeated authorities cited in the text. Other

⁵⁸ See Guillemain, *Cour pontificale*, p. 244.

⁵⁹ For a discussion of the pope's annotations, see especially Duval-Arnould, 'Élaboration', pp. 404-405, Maier, 'Annotazioni autografe', pp. 320-22 and Nold, *John XXII and his Franciscan Cardinal*, pp. 165-69.

⁶⁰ Maier, 'Annotazioni autografe', pp. 318-19. See also Nold's argument that John's annotations should be interpreted 'less as indicators of his opinion than as markers where important concepts or ideas were discussed: a sort of tabular index' (Nold, *John XXII and his Franciscan Cardinal*, p. 169).

marginal comments repeated key concepts of the text and amount to a table of contents of those things the pope found most interesting; comments in the margins of Durandus's contribution include marginalia such as *quid est heresis, de dominio pro tempore status innocencie, nota de duplici gratia, que fuit in statu innocencie* or *de efficacio originalis iustitie*.⁶¹

Some of the marginalia show the active engagement of the pope with the text in front of him, and very occasionally John also engaged in a direct critical debate with the text: when the Franciscan Cardinal Bertrand de la Tour argued in his contribution that the apostles (and therefore the Franciscan order) had returned to the original state of innocence and therefore enjoyed the use of material goods without any dominion, John's marginal comment contains a reference to Genesis which he expanded into a full-blown argument for the existence of private property even before the fall in one of his later bulls.⁶²

When it comes to the question of the influence of the written contributions on the pope's decisions, it seems reasonable to assume that quite a number of the opinions presented to the pope did not contain exactly what he was looking for. The arguments, quality and wording of the answers varied widely, but most participants agreed that there were some ways of asserting the absolute poverty of Christ and the apostles which were clearly heretical.⁶³ This meant that the pope could be fairly sure that there was enough of a consensus about the potentially heretical nature of Franciscan poverty (and no substantial opposition) for him to proceed with the drafting and then publication of *Cum inter nonnullos*. Anneliese Maier has made a similar case for the outcome of the consultation witnessed by MS Borghese 348: the opinions presented to the pope on the question of whether certain forms of sorcery were manifestly heretical and therefore under the jurisdiction of the inquisition did not answer this question directly; rather, the pope received ten long discussions of the nature of heresy, all of which argued that sorcery could sometimes be heretical, depending on the

⁶¹ See fols 124^{ra}, 125^{va} and 125^{vb} in MS Vat. lat. 3740.

⁶² Maier, 'Annotazioni autografe', p. 321 on fol. 50^{tb}. A similar instance of direct engagement with the text can be found in the pope's marginal comment on fol. 127^{ra}, dealing with the *consilium* of Durandus de Saint-Pourçain (see Maier, 'Annotazioni autografe', p. 322). On John XXII's commentary on Bertrand de la Tour's contribution, see p. 223 (section V.4).

⁶³ If Nold's re-attribution of the *consilium* of the Cardinal of Tusculum to Bertrand de la Tour is accepted, this group includes one Franciscan prelate who also believed that the assertion of the absolute poverty of Christ and the apostles could be heretical in some circumstances: see Nold, *John XXII and his Franciscan Cardinal*, especially pp. 119-39.

circumstances. This, however, gave John XXII enough of a mandate to proceed, as, although there was no agreement about which aspects of sorcery and witchcraft were heretical or on how to proceed in these cases, there was a consensus that in most cases the suspicion of heresy was justified.⁶⁴

While written opinions from the curial experts were collected in Avignon, the general chapter of the Franciscan order met at Perugia in June 1322.⁶⁵ The proceedings at Perugia seem to have been dominated by curial events; John XXII had apparently not consulted the Franciscan Minister General, Michael of Cesena, in the discussion about evangelical poverty.⁶⁶ The official reaction of the chapter consisted in the publication of three documents dealing with the Franciscan poverty ideal.⁶⁷ The first one of these was a letter to the pope, asking him to reinstate the sanctions of *Exiit*, not to introduce novelties, and to continue protecting the Franciscan order.⁶⁸ The chapter also published two longer and much more controversial letters addressed to all of Christendom, the *Littera capituli* (published on 4 June 1322, on the same day as the chapter's letter to the pope) and the *Declaratio magistrorum* (published three days later, on 7 June), and these two letters provided the order's official answer to the pope's question about evangelical poverty.⁶⁹ Both letters (sometimes collectively called the declaration or manifesto of Perugia⁷⁰) argued that the pope's question had already been answered decisively by *Exiit* and by the inclusion of Nicholas III's bull in canon law, and that there was therefore no need for any further debate on the subject; the

⁶⁴ Maier, 'Verfügung über Zauberei', p. 75.

⁶⁵ Detailed discussions of the chapter of Perugia and its results can be found in Bartoli Langeli, 'Manifesto francescano', pp. 104-61, Nold, *John XXII and his Franciscan Cardinal*, pp. 91-118 and Lambert, *Franciscan Poverty*, pp. 245-47.

⁶⁶ Lambert, *Franciscan Poverty*, p. 245 and Bartoli Langeli, 'Manifesto francescano', p. 213.

⁶⁷ See, however, Nold, *John XXII and his Franciscan Cardinal*, pp. 147-48 who has rejected the theory that the documents issued by the general chapter were a reaction against *Quia nonnumquam* rather than an answer to the pope's question about evangelical poverty.

⁶⁸ The letter to the pope was published on 4 June, and it is edited in Müller, 'Einige Aktenstücke', pp. 106-108. It is not normally discussed in any detail in modern scholarship, partly because it is not nearly as controversial as the following documents issued by the chapter. It is also omitted from the collection of documents provided by the chronicle of Nicolaus Minorita. For brief discussions of the letter, see Nold, *John XXII and his Franciscan Cardinal*, p. 91, Lambert, *Franciscan Poverty*, p. 245 and Miethke, *Sozialphilosophie*, p. 370.

⁶⁹ The two letters have been edited in the chronicle of Nicolaus Minorita: see *Chronica*, pp. 67-70 and 71-82.

⁷⁰ The term 'manifesto' was introduced by Stanislao da Campagnola in 1971: see Bartoli Langeli, 'Manifesto francescano', p. 205 note 6. For a critique of the term, see Nold, *John XXII and his Franciscan Cardinal*, p. 92 note 5.

second, longer letter (the *Declaratio magistrorum*) then proceeded to support this argument with a more lengthy discussion of evangelical poverty and a great number of scriptural and canonistic authorities.⁷¹

The letters published by the general chapter at Perugia introduced some of the arguments that were to play an important role in the controversy: the argumentation in the letters emphasised the role of total renunciation in removing *sollicitudo* from the hearts of the Franciscan friars, and for the first time in an official publication, the Franciscan concept of a use of material goods devoid of any civil property rights was transferred to Christ and the apostles.⁷² The *Declaratio magistrorum* also argued that as Christ and the apostles were the *exempla* and measure of evangelical perfection, and as communal poverty was the highest form of perfection, practising complete renunciation (and ascribing it to Christ and the apostles) could not be heretical.⁷³ Additionally, the *Declaratio magistrorum* devoted a great deal of space to the refutation of the ‘classical’ anti-Franciscan arguments from the Bible, especially the problem of the *loculi* carried by the apostles. The term *loculi* refers to the bag carried by Judas in two passages in the gospel of John, and as this seemed to show that the apostles had a purse with money, the two passages had always been a problem for Franciscan apologists.⁷⁴ The accepted Franciscan answer to this could be found in Bonaventura’s doctrine of Christ’s condescension to the imperfect, actions performed by Christ out of charity for his weaker followers in order to reassure them that their way of life did not condemn them.⁷⁵ The letters of Perugia relied heavily on both *Exiit* and on Bonaventura’s *Apologia pauperum*; in contrast to their sources, however, the texts focused on the idea of *dispensatio* in dealing with the *loculi*. In this explanation, Christ and the apostles carried the *loculi* not so much out of condescension for the imperfect but rather as a model for the

⁷¹ See Miethke, *Sozialphilosophie*, p. 371 and Nold, *John XXII and his Franciscan Cardinal*, pp. 92-93.

⁷² On the transfer of this specifically Franciscan form of poverty to Christ and the apostles, see the *Declaratio magistrorum* in *Chronica*, pp. 76-77. See also Lambert, *Franciscan Poverty*, p. 246.

⁷³ *Declaratio magistrorum*, in *Chronica*, pp. 72-73.

⁷⁴ The two passages are Io 12:6 and Io 13:29. On the problem of the *loculi* and their usual interpretation as constituting the communal possessions of the apostles, see Lambert, *Franciscan Poverty*, pp. 68-69. On Aquinas’s view of this, see Horst, *Evangelische Armut und Kirche*, pp. 81-82 and Ulrich Horst, ‘Mendikant und Theologe: Thomas von Aquin in den Armutsbewegungen seiner Zeit (zu “Contra retrahentes” c. 15)’, *Münchener theologische Zeitschrift*, 47 (1996), 13-31 (p. 28).

⁷⁵ See Lambert, *Franciscan Poverty*, p. 143.

dispensation and administration of ecclesiastical goods. This explanation was more respectful of ecclesiastical privileges than the *condescensio*-model, and it also avoided the awkward questions that tended to arise from the attribution of less than perfect acts to Christ and the apostles.⁷⁶

The use of the *dispensatio*-model in the two texts highlights the fact that they can be partly interpreted as an attempt by the order to find new and alternative interpretations; it is important to note here that the question of the real meaning of the *loculi* was by no means uncontroversial and did not have a generally accepted answer in the Franciscan order at this time.⁷⁷ On the other hand, Eva Luise Wittneben has argued that the inclusion of some of the arguments used by Olivi for the interpretation of the Acts of the Apostles (particularly Act 4:32) reflected the growing influence of radical forces within the order, even in what was meant to be the official statement of the position of the Conventual Franciscans.⁷⁸ The status of the so-called ‘Declaration of Perugia’ is still contested; it has been characterised as having been written not in the form of a contribution to an ongoing debate but rather as the final judgement on the matter which served to inflame the situation even further.⁷⁹ What is certainly clear is that the order regarded the documents issued at Perugia as extremely important, as there were hundreds of copies in circulation by the end of the year,⁸⁰ and in later Michaelist accounts of the break with the papacy, the chapter of Perugia played a crucial role.

The problem of the status and role of the declarations of Perugia is further complicated by the question of their authorship and of the driving force behind their composition. The chronicle of Nicolaus Minorita attributed the inspiration for the two documents to some cardinals and ‘other people’ who had asked the chapter to issue a statement about the poverty of Christ which reflected the opinion of the Franciscan order.⁸¹ The involvement of Bertrand de la Tour and

⁷⁶ See Wittneben, *Bonagratia*, pp. 113-16 and Tabarroni, *Paupertas Christi*, pp. 36-39.

⁷⁷ See Wittneben, *Bonagratia*, p. 122.

⁷⁸ Wittneben, *Bonagratia*, p. 123. On the influence of Olivi, see pp. 70-71 (section II.2).

⁷⁹ Lambert, *Franciscan Poverty*, pp. 245-46.

⁸⁰ Miethke, *Sozialphilosophie*, p. 371. See Michael Bihl, ‘Formula et documenta e cancellaria Fr. Michaelis de Cesena, O.F.M. ministri generalis 1316-1328’, *Archivum Franciscanum Historicum*, 23 (1930), 106-71 (p. 123).

⁸¹ *Chronica*, p. 67. After the break with the papacy, Michael of Cesena explicitly blamed Bertrand de la Tour and Vital du Four for the texts issued by the general chapter: see his *Replicatio*

Vital du Four as the driving force behind the chapter has generally been accepted by modern scholars,⁸² but recently, both Ulrich Horst and Patrick Nold have suggested that there are a number of problems with this account. Part of the problem is the fact that the statements submitted by the two cardinals to the pope are much more cautiously worded than the letters issued by the general chapter of Perugia, especially on the status of *Exiit* and the question of whether a denial of the Franciscan interpretation of the poverty of Christ could be heresy – something that the documents of Perugia implied, although no official Franciscan document made that implication explicit before 1328.⁸³ Ulrich Horst has proposed that this could imply a ‘double game’ on the part of the two cardinals who attempted to remain on good terms with the pope while urging the chapter to take a hard line.⁸⁴ Patrick Nold, on the other hand, has argued that the polemical character of both the chronicle of Nicolaus Minorita and the equally polemical context of later statements about the involvement of the two cardinals need to be taken into account, and he has suggested that the more polemical tone of the Perugia documents probably did not derive from any direct influence of the cardinals, but represented an attempt to formulate a coherent and precise Franciscan opinion on the question proposed by the pope. The curial debate had certainly shown that there was no uniform Franciscan position, and one of the aims of the Perugia documents may have been to ‘homogenise’ the very different opinions held by members of the order into an official Franciscan position.⁸⁵

Another result of the chapter at Perugia was the confirmation of Bonagratia of Bergamo as the procurator of the order at the curia, and over the course of the summer, he proceeded to write his first contribution to the debate, the *Tractatus de Christi et apostolorum paupertate*.⁸⁶

Michaelis ad litteram Geraldii, in *Chronica*, pp. 975-1008 (especially p. 990). See also Nold, *John XXII and his Franciscan Cardinal*, pp. 94-95.

⁸² See for instance Bartoli Langeli, ‘Manifesto francescano’, p. 214.

⁸³ Even Michael of Cesena’s secret appeal against John XXII of 13 April 1328 only implicitly accused the pope of heresy: see Wittneben, *Bonagratia*, p. 284. See also Nold, *John XXII and his Franciscan Cardinal*, p. 114 for a discussion of this point.

⁸⁴ Horst, *Evangelische Armut und päpstliches Lehramt*, p. 28.

⁸⁵ For a thorough discussion of these issues, see Nold, *John XXII and his Franciscan Cardinal*, pp. 93-118, especially pp. 117-18.

⁸⁶ See Oligier, ‘Tractatus’, pp. 292-335 and 487-511. For Bonagratia’s role in the debate and his other writings see Miethke, *Sozialphilosophie*, pp. 371-75 and especially Wittneben, *Bonagratia*, pp. 111-23, 164-85, 277-79 and 282-85.

Bonagratia's *Tractatus* discussed the question of evangelical poverty by first explaining that John XXII's question could not have been referring to Christ as prelate or Christ as lord of the world, but only to Christ as man. He then distinguished between three different types of having: it was possible to have something as property with all the rights of dominion, and this type of having was mainly characterised by the ability to defend the property associated with it in a court of law. It was also possible to have something in trust for somebody else, as an administrator or *dispensator*. Christ and the apostles in their role as prelates held money for the poor, and the contemporary church held money to be used for alms-giving. In this he echoed the point made by the *Declaratio magistrorum* about the interpretation of the *loculi*, downplaying the old argument from condescension. The contentious point was the last type of having: the simple use of material goods without any legal property rights. This was the way in which Christ and the apostles held goods when they were showing the way to perfection, and this was also the way in which the Franciscan order, following the example set by the apostles, used and held material goods.⁸⁷

Bonagratia's treatise was a concise summary of what was to become the official Franciscan position, and his text provided the basis for most Franciscan arguments in the next few years. It is also important because he relied almost completely on legal and canonical authorities in the treatise and during the rest of the debate; like the pope, he was a lawyer rather than a theologian, and his written reflections on the subject of evangelical and Franciscan poverty, like those of the pope, were framed in predominantly legal terms. Andrea Tabarroni has even suggested that the *Tractatus* could essentially be characterised as a legal gloss on the opening sections of *Exiit*.⁸⁸ The overwhelmingly legalistic character of the debate should therefore not be attributed exclusively to the pope, and it should not be assumed too readily that the Franciscan legal case was the weaker of the two.⁸⁹

It is, however, unclear whether John XXII ever saw the *Tractatus*.⁹⁰ It was not included in the manuscript of written opinions about Franciscan poverty compiled for the pope, and Eva Luise Wittneben has recently argued that the treatise may not have circulated outside the Franciscan order because it became

⁸⁷ See Oligier, 'Tractatus', pp. 324-26.

⁸⁸ Tabarroni, *Paupertas Christi*, p. 40.

⁸⁹ For this view, see for instance Lambert, *Franciscan Poverty*, p. 253.

⁹⁰ Horst, *Evangelische Armut und päpstliches Lehramt*, p. 42.

obsolete once Bonagratia's appeal against the first version of *Ad conditorem canonum* had been published in January 1323. It is quite probable, however, that even if the *Tractatus* was not ever officially published or available outside the order, it was used as a source of Franciscan arguments later on in the debate.⁹¹

I.2 Papal Decisions: *Ad conditorem canonum* and *Cum inter nonnullos*

While the pope was still collecting the opinions of the cardinals and other prelates present at the curia, he also published his next bull dealing with the subject of Franciscan poverty: the first version of *Ad conditorem canonum* (8 December 1322).⁹² As in *Quia nonnumquam*, John XXII began by arguing that it was the right and duty of any legislator to revise laws that had proved to be useless or counterproductive. This had been the case, the pope argued, with Nicholas III's provisions for the Franciscan order. When his predecessor had confirmed the papacy's ownership over the goods used by the Franciscans, his intention had been to benefit the order, but experience had shown papal ownership to be a problem rather than the solution.⁹³

John argued that the property arrangements of *Exiit* had harmed both the Franciscan order and the church as a whole. As far as the Franciscans were concerned, these arrangements had led to a preoccupation with material goods in the order that was actually stronger than in orders which allowed communal property. One of the ways to achieve perfection was paved by contempt for, and renunciation of, material goods, but when anxiety about temporalities remained even after the renunciation of property, as it had done in the case of the Franciscans, it could not contribute to the Franciscans' state of perfection.⁹⁴ The pope also advanced the argument that the Franciscan order could not claim to be absolutely poor in its own definition as it still had the right to dispose of the goods owned on its behalf by the papacy; instead, it was the papacy's dominion over these goods that was poor and naked. In any case, property and use could not be

⁹¹ Wittneben, *Bonagratia*, p. 124.

⁹² An edition of the first version of *Ad conditorem canonum* can be found in *Chronica*, pp. 83-88.

⁹³ *Ad conditorem canonum* I, in *Chronica*, p. 83.

⁹⁴ *Ad conditorem canonum* I, in *Chronica*, pp. 84-85.

separated in perpetuity, and in the case of consumables, there was no practical difference between simple use and ownership.⁹⁵

Additionally, the pope argued that *Exiit* had harmed the Franciscan order because the bull's property arrangements lay at the heart of the internal Franciscan conflicts between Spirituals and Conventuals, and the bull had been harmful to the church as a whole because it had led the Holy See to be involved in an ever-increasing amount of litigation on behalf of the order.⁹⁶ John XXII then renounced papal ownership over Franciscan goods other than those rights which the papacy also had over the goods of the other mendicant orders, notwithstanding any previous papal legislation that might have said the opposite.⁹⁷

At a consistory meeting on 14 January 1323, Bonagratia of Bergamo formally protested against the bull on behalf of the Franciscan order. His appeal was read out in the meeting, and it repeated quite a number of the arguments of his *Tractatus*, although he was now more concerned with the judicial problems and consequences of the transfer of property to the Franciscan order rather than the establishment of the exact nature of the poverty of Christ.⁹⁸

Bonagratia objected to John's reasoning and conclusions in the case of the problem of *dominium* and use, quoting both canon and civil law in an attempt to show that the pope's view of the legal status of consumables was not universally accepted. He argued that the separation of *dominium* and use was possible in law, and that legal texts arguing against this, such as the laws of usufruct alluded to by John XXII, did not deal with the Franciscan concept of the simple use of fact and were therefore not really relevant.⁹⁹

Bonagratia also claimed that both the church and the order itself had actually profited by the Franciscan renunciation of communal property, and that the pope had been misled by the enemies of the Franciscan order. In fact, the order was not any more anxious about temporalities than other mendicant orders,

⁹⁵ *Ad conditorem canonum* I, in *Chronica*, pp. 85-86.

⁹⁶ *Ad conditorem canonum* I, in *Chronica*, pp. 86-87.

⁹⁷ *Ad conditorem canonum* I, in *Chronica*, p. 87.

⁹⁸ The appeal has been edited as *Appellatio Bonagratiae de Pergamo*, in *Chronica*, pp. 89-117. See also Wittneben, *Bonagratia*, pp. 164-85, Miethke, *Sozialphilosophie*, pp. 379-84 and Horst, *Evangelische Armut und päpstliches Lehramt*, pp. 44-48. Despite discussing Bonagratia's appeal, Horst does not mention the revised version of *Ad conditorem canonum*, however.

⁹⁹ *Appellatio Bonagratiae de Pergamo*, in *Chronica*, pp. 105-107.

and *Exiit* had not caused any internal conflicts. The internal conflicts that had occurred in the order had had other reasons, and they had all been resolved by John XXII.¹⁰⁰

Bonagrata's main emphasis was on the problem of *dominium* and use, however, and he cited numerous legal precedents for the Franciscan point of view; all other points that John had made were denied, but with no real attempt to support this with evidence or examples to the contrary. Bonagrata also stressed the formal faults of the bull, arguing that the bull rested on rumours and the insinuations of the enemies of the Franciscan order, and that the Franciscans had been given no chance to defend themselves.¹⁰¹

John XXII responded to the appeal by imprisoning Bonagrata for nearly a year,¹⁰² and by preparing a revised version of the bull which was published with the same date as the original bull.¹⁰³ He made numerous small modifications to the wording and argument of the bull, but there were essentially four major changes. He toned down some of the *ad hominem*-arguments he had used in the first version of the bull, such as the accusation that the property arrangements of *Exiit* had led to idle boasting on the part of the order. These omissions are often interpreted as a softening of the personal criticisms contained in the first version,¹⁰⁴ but the text is certainly no less polemical, and while some personal comments were taken out, some new ones were added as well.¹⁰⁵

The pope also removed all references to the internal problems and controversies within the Franciscan order. Bonagrata's appeal had asserted that the property arrangements of *Exiit* had not been harmful to either the order or the church, but he had not actually provided any evidence for his claim that the

¹⁰⁰ *Appellatio Bonagratae de Pergamo*, in *Chronica*, p. 115.

¹⁰¹ *Appellatio Bonagratae de Pergamo*, in *Chronica*, pp. 115-16.

¹⁰² According to Ulrich Horst, this reaction of the pope is explicable because of the subtle (and according to Horst, deliberate) distinction made between *sancta mater Ecclesia* and the person of the pope in the appeal by Bonagrata, the danger of which John recognised immediately: see Horst, *Evangelische Armut und päpstliches Lehramt*, pp. 47-48. For the imprisonment of Bonagrata, see also *Chronica*, p. 118, Lambert, *Franciscan Poverty*, p. 252 and Wittneben, *Bonagrata*, p. 164. Independent confirmation about the imprisonment of Bonagrata can also be found in the curial accounts: K. H. Schäfer, *Die Ausgaben der apostolischen Kammer unter Johann XXII. nebst den Jahresbilanzen von 1316 bis 1378*, Vatikanische Quellen zur Geschichte der päpstlichen Hof- und Finanzverwaltung 1316-1378, 2 (Paderborn: Schöningh, 1911), pp. 437 and 452.

¹⁰³ Edited in CIC, II, cols 1225-29, Tarrant, *Extrauagantes*, pp. 228-54 and *Chronica*, pp. 118-27.

¹⁰⁴ See Lambert, *Franciscan Poverty*, p. 252.

¹⁰⁵ John characterised the Franciscans as acting under a 'perverse pretence' ('tam peruerse simulacioni'): *Ad conditorem canonum*, in Tarrant, *Extrauagantes*, p. 250.

internal problems in the order had other reasons.¹⁰⁶ It is therefore not entirely clear what had caused the pope to remove these references from the second version of the bull.

Additionally, John expanded the legal section of the bull, discussing the question of the simple use of fact and the relationship between *dominium* and use against a background of civil law references. John argued that the use of anything that destroyed the substance of the thing used (such as the consumption of food or firewood) implied *dominium* or some other form of property right. The main focus was John's attempt to prove that the simple use of fact in the Franciscan definition did not exist at all, and that even if it did, it would be unjust.¹⁰⁷

In the final section of the bull, the pope conceded to the order that all churches, books and liturgical equipment would remain under the ownership of the papacy.¹⁰⁸ In the pope's definition, this still left the Franciscans with ownership over their consumables, and it could therefore still be interpreted as invalidating their ideal of absolute poverty.

The discussion at the curia continued in the winter of 1322/1323, but by then most of the written contributions to the debate had been finished and submitted to the pope. John XXII seems to have begun preparations for his final bull on poverty and circulated a draft version of *Cum inter nonnullos* among at least some of the cardinals at about the time of the publication of *Ad conditorem canonum*.¹⁰⁹

We know of at least two different versions of the bull, apart from the final version which was eventually published in November 1323. One of these versions has survived on the last folio of MS Vat. lat. 3740, and one of the written contributions to the debate in the same manuscript contains not an answer to the pope's question about evangelical poverty, but a detailed discussion of an early

¹⁰⁶ *Appellatio Bonagratiae de Pergamo*, in *Chronica*, p. 115: 'Et quamvis aliquae quaestiones et dissensiones inter fratres dicti Ordinis super observantia dictae regulae hactenus fuerint aliquando subortae, quibus Sanctitas Vestra, Deo inspirante, per saepe dictas Vestras determinationes laudabilem finem dedit, non tamen propter malos et perversos fratres bonorum status debuit nec debet aliquo modo immutari aut etiam in aliquo perturbari, immo potius propter bonos mali sunt tolerandi [...].'

¹⁰⁷ *Ad conditorem canonum*, in Tarrant, *Extrauagantes*, p. 245.

¹⁰⁸ *Ad conditorem canonum*, in Tarrant, *Extrauagantes*, p. 251.

¹⁰⁹ We do know that the draft version was read out in a consistory meeting, and it may have been circulated among the cardinals more generally, but Patrick Nold has recently argued that it seems unlikely that the draft version of *Cum inter nonnullos* was subject to a broad-based formal consultation of all cardinals. See Nold, *Pope John XXII and his Franciscan Cardinal*, pp. 136-37 and Duval-Arnould, 'Constitution', p. 410.

version of *Cum inter nonnullos*.¹¹⁰ This text is interesting for its detailed, predominantly legal discussion of the points made by the pope in the draft version of the bull, and also because it provides one of the few examples where we may have tangible evidence of the influence of one of John's advisors on his actions. While it may not be possible to say with any certainty that it was the influence of this cardinal that changed John's mind, it is suggestive that the surviving draft of the bull included a paragraph explicitly condemning the *simplex usus facti*, that the cardinal's commentary did not think this advisable, and that there is no mention of the simple use of fact in the final version of the bull.¹¹¹

Even more intriguingly, the commentary has recently been reattributed by Patrick Nold from the canonist Berengar Frédol to the Franciscan Cardinal Bertrand de la Tour who succeeded Berengar Frédol as Cardinal-Bishop of Tusculum in June 1323. Patrick Nold has argued that the reattribution explains several oddities in the text itself as well as the curious situation that the commentary would otherwise be the only non-Franciscan text in the debate to support Franciscan ideas.¹¹²

Before the actual publication of *Cum inter nonnullos*, there was another development whose significance for the controversy tends to be assumed rather than analysed: the canonisation of Thomas Aquinas in July 1323. There has been some debate about the extent to which the pope was influenced by Thomism, and there is a tendency in modern scholarship of the poverty conflict to link the canonisation to the controversy, and to interpret it as another piece of anti-Franciscan legislation: the canonisation of a Dominican saint whose arguments for the primacy of charity and the instrumental nature of poverty had been used by the pope in *Ad conditorem canonum* can be interpreted as a blow to the

¹¹⁰ The text of the draft can be found on fol. 261^{va-vb}; it has been edited by Duval-Arnould, 'Constitution', pp. 418-20. The text of the cardinal's *consilium* can be found in MS Vat. lat. 3740 on fols 103^{va}-106^{ra} and has been edited from MS. Venice, Biblioteca Nazionale Marciana, lat. Z. 149 by Tocco, *Quistione della povertà*, pp. 143-52. See also Duval-Arnould, 'Constitution', p. 409, Nold, *John XXII and his Franciscan Cardinal*, p. 135 and Tabarroni, *Paupertas Christi*, p. 84.

¹¹¹ For a discussion of the cardinal's *consilium*, its influence on the outcome of the debate and on the publication of *Cum inter nonnullos*, see Tabarroni, *Paupertas Christi*, pp. 83-87, Duval-Arnould, 'Constitution', pp. 409-10, and especially Nold, *John XXII and his Franciscan Cardinal*, pp. 126-35.

¹¹² Nold, *Pope John XXII and his Franciscan Cardinal*, pp. 119 and 122-25. The text would still have a special status, however, as it would be the only Franciscan text that conceded the possibility that the ideal of the absolute poverty of Christ might be heretical in some circumstances.

Franciscan order.¹¹³ John Oakley, however, has drawn attention to the fact that for one Franciscan chronicler at least, the canonisation of Aquinas was one of the few good points of John's pontificate.¹¹⁴ The author of the Franciscan treatise *Responsiones ad oppositiones* of 1324 used the canonisation to argue that John XXII could not have been attempting to abolish *Exiit* because in Thomas Aquinas, the pope had canonised a theologian and saint whose teachings about evangelical poverty were in line with Nicholas III's bull.¹¹⁵ On the other hand, there is also some evidence that the Dominicans experienced or at least expected some Franciscan hostility to the canonisation of Aquinas; there is a miracle story in a manuscript in the Bavarian State Library in Munich which describes the sudden death of a Franciscan friar who had tried to prevent the canonisation.¹¹⁶

When the bull *Cum inter nonnullos* was published on 12 November 1323, it was very concise, and there was no need for any revisions.¹¹⁷ It condemned the ideal of absolute poverty by making it heretical to claim that Christ and the apostles had renounced both individual and common possessions. The bull was very short and argued that as Christ and the apostles could be shown

¹¹³ See Horst, *Evangelische Armut und päpstliches Lehramt*, pp. 49-50, Lambert, 'Franciscan Crisis', p. 127 and Oakley, 'Franciscan Innocence', p. 219. See also Angelus Walz, 'Papst Johannes XXII. und Thomas von Aquin: Zur Geschichte der Heiligsprechung des Aquinaten', in *St Thomas Aquinas 1274-1974: Commemorative Studies*, 2 vols (Toronto: Pontifical Institute of Mediaeval Studies, 1974), I, pp. 29-47. In his sermon on the day before the canonisation, John XXII praised Aquinas's concept of poverty and called it 'truly apostolic': see M.-H. Laurent, 'Processus canonizationis S. Thomae, Fossae Novae', in *Fontes Vitae S. Thomae Aquinatis notis historicis et criticis illustrati*, ed. by D. Prümmer and M.-H. Laurent (Toulouse: [no publ.], [1911-37]), pp. 511-18 (pp. 513-14).

¹¹⁴ See Oakley, 'Natural Right to Property', pp. 9 and 171 with reference to John of Winterthur (*Chronik Johans von Winterthur*, p. 106) although the chronicler was by no means uncritical of John XXII's pontificate. Not all contemporary voices are even as cautiously positive about Aquinas's canonisation as John of Winterthur, however: there seems to be a 'kritischer Unterton' in the chronicle of Nikolaus Glassberger (Horst, *Evangelische Armut und päpstliches Lehramt*, p. 50 note 81). See the *Chronica fratris Nicolai Glassberger*, ed. by the Collegium S. Bonaventurae, *Analecta Franciscana*, 2 (Quaracchi: Collegium S. Bonaventurae, 1887), p. 133: 'Eodem anno, II. idus Augusti, canonizavit dominus Iohannes XXII. beatum Thomam de Aquino in favorem Fratrum Praedicatorum sibi adhaerentium [...]'.
¹¹⁵ *Responsiones ad oppositiones*, in *Bullarium Franciscanum*, V, no. 518, pp. 256-59 note 2 (p. 258). It has to be said, however, that this was in the context of an attempt to reconcile the bulls of John XXII with *Exiit*: see Miethke, *Sozialphilosophie*, p. 397 and Tabarroni, *Paupertas Christi*, p. 101.

¹¹⁶ According to the story, a certain Friar Minor attempted to prevent the canonisation *ex invidia, que est mos dyaboli*, and ended up dying suddenly and by the hand of God in the night before the canonisation. See Martin Grabmann, 'Hagiographische Texte in einer Hs. des Kirchenhist. Seminars der Univ. München', *Archivum Fratrum Praedicatorum*, 19 (1940), 379-82 (p. 382).

¹¹⁷ The bull has been edited in CIC, II, cols 1229-30, Tarrant, *Extravagantes*, pp. 255-57 and *Chronica*, pp. 128-29. On the publication of the bull, see also Emil Göller, 'Die Publikation der Extravagante "Cum inter nonnullos" Johans XXII.', *Römische Quartalschrift für christliche Altertumskunde und für Kirchengeschichte*, 22 (1908), 143-46.

to have used material goods, they must have had the right to use them. To claim that Christ and the apostles had renounced all property rights would be to claim that they did not actually have the right to use the material goods in the way they could be shown to have used them in the Bible; this would in turn ascribe to Christ and the apostles ‘*usum et gesta [...] non iusta*’, which was plainly impious and heretical.¹¹⁸

Without actually mentioning the terms *dominium*, *proprietas* or *simplex usus facti*, or explicitly condemning the definition of Franciscan poverty proposed by *Exiit*, the bull made it very hard for the order to uphold their ideal of absolute poverty. While not ascribing full dominion to Christ and the apostles,¹¹⁹ John made it clear that the (legitimate) use of material goods by Christ and the apostles had involved some form of legal right to use them.

I.3 The Early Reactions to John’s Franciscan Bulls

Cum inter nonnullos had presumably been intended by John XXII to put an end to the discussion and the problem of Franciscan poverty. But while there were no immediate reactions from the Franciscan order, the debate was not yet over and soon took on a new and more overtly political dimension. The first official reaction to the pope’s bull on evangelical poverty came not from any source officially associated with the Franciscan order but from the German King and Emperor-Elect, Ludwig the Bavarian. He was already in conflict with the pope, mainly over the question of imperial rights in Italy and the papal appointment of Robert of Naples as vicar of the Italian *regnum*.¹²⁰ John XXII had started judicial

¹¹⁸ *Cum inter nonnullos*, in Tarrant, *Extrauagantes*, pp. 256-57: ‘Rursusque imposterum pertinaciter affirmare quod Redemptori nostro predicto eiusque apostolis hiis, que ipsos habuisse scriptura sacra testatur, nequaquam ius ipsis utendi competierit, nec illa uendendi seu donandi ius habuerint aut ex ipsis alia acquirendi, que tamen ipsos de premissis fecisse scriptura sacra testatur, seu ipsos potuisse facere supponit expresse, cum talis assertio ipsorum usum et gesta euidenter includat in premissis non iusta, quod utique de usu gestis seu factis Redemptoris nostri in dei filii sentire nefas est sacre scripture contrarium et doctrine catholice inimicum, assertionem ipsam pertinacem de fratrum nostrorum consilio deinceps erroneam fore censendam merito ac hereticam declaramus.’

¹¹⁹ See for instance a passage in the *Responsiones ad oppositiones* (in *Bullarium Franciscanum*, V, p. 258) where the pope is quoted as explicitly denying any intention to do this. See also Miethke, *Sozialphilosophie*, pp. 393-95.

¹²⁰ Since 1245, the papacy had assumed that in the absence of a crowned emperor, the pope could exercise imperial rights as vicar in the kingdom of Italy. After the battle of Mühldorf (18

proceedings against Ludwig in 1323, accusing him of claiming to be king despite an invalid election and the lack of papal approbation, of illegally exercising royal prerogatives in Germany and Italy, and of favouring the Lombard heretics.¹²¹

Ludwig responded by publishing three appeals in which he tried to prove not only the validity of his claims to the throne and to imperial rights in Italy, but also the unsuitability of John XXII for the pontificate. While the appeal of Nürnberg (18 December 1323) listed excessive papal sponsorship of the Franciscans as one of the proofs of John's unsuitability to be pope,¹²² the third appeal, published on 22 May 1324 in Sachsenhausen, dropped these accusations, and in one of the two versions of the appeal, included instead charges of heresy because John XXII had attacked the Franciscan poverty ideal.¹²³

This charge of heresy for denying a doctrinal truth about the poverty of Christ established by a previous pope is now normally referred to as the 'Franciscan excursus.' The problem of Franciscan poverty was not Ludwig's main concern, and there has been considerable debate about the author(s) of the excursus, the extent of Franciscan involvement in the drafting of it, and the various redactions of the text.¹²⁴ The excursus consists of several distinct parts which may have been compiled into a single text by Ludwig's chancery rather than by a Franciscan source,¹²⁵ and it includes not only passages which probably

September 1322) and his victory over Friedrich von Habsburg, Ludwig's claim to the German throne was reasonably secure, and even before he had secured papal approbation for his title, he appointed Berthold von Marstetten as imperial vicar for Italy. This led the pope to institute legal proceedings against Ludwig. See Roland Pauler, *Die deutschen Könige und Italien im 14. Jahrhundert: Von Heinrich VII. bis Karl IV.* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1997), pp. 134-43. For a discussion of the poverty debate which situates both John's attempts to solve the Spiritual crisis and the theoretical poverty controversy in the political context of John's pontificate, see Giovanni Tabacco, 'Il papato avignonese nella crisi del francescanesimo', *Rivista storica italiana*, 101 (1989), 317-45, especially pp. 331-45.

¹²¹ Hans-Jürgen Becker, *Die Appellation vom Papst an ein allgemeines Konzil: Historische Entwicklung und kanonistische Diskussion im späten Mittelalter und in der frühen Neuzeit*, *Forschungen zur kirchlichen Rechtsgeschichte und zum Kirchenrecht*, 17 (Cologne: Böhlau, 1988), p. 83. For John's legal case, see the first proceedings against Ludwig in MGH Const., V, no. 792, pp. 616-19.

¹²² The appeal of Nürnberg is edited in MGH Const., V, no. 824, pp. 641-47, and the appeal of Frankfurt in MGH Const., V, no. 836, pp. 655-59. See Becker, *Appellation*, pp. 84-85 and Miethke, *Sozialphilosophie*, p. 405. On the question of Ludwig's appeals, see also Alois Schütz, 'Papsttum und römisches Königtum in den Jahren 1322-1324', *Historisches Jahrbuch*, 96 (1976), 245-68.

¹²³ The two versions of the appeal are published in MGH Const., V, no. 909, pp. 722-44 (this version includes the Franciscan excursus on pp. 732-41) and MGH Const., V, no. 910, pp. 745-54 (which omits the excursus). The appeal with its Franciscan excursus is also edited in Nicolaus Minorita's *Chronica* as *Appellatio Ludovici de Sachsenhausen*, pp. 130-55.

¹²⁴ For a brief summary, see Wittneben, *Bonagratia*, pp. 230-35.

¹²⁵ Wittneben, *Bonagratia*, p. 234.

derived from the works of Bonagratia, but also the complete text of Olivi's eighth question on poverty which would probably not have been quoted by any Franciscan involved in the current debate at the curia.¹²⁶ The excursus soon circulated independently of the imperial appeal as well,¹²⁷ and according to the chronicle of Nikolaus Glassberger, the pope immediately accused the Franciscan order of being responsible for its production.¹²⁸

One of the most influential themes introduced by the appeal of Sachsenhausen was the question of the power of the keys. The author/compiler of the excursus argued that any papal definition in faith and morals, using the key of knowledge, could not be revoked by succeeding popes, while definitions made with the key of power could be altered or even abolished.¹²⁹ This was a novel interpretation of the types of authority invested in the sacerdotal power of the keys which traditionally had been defined as juridical authority and the sacramental power to remit sins,¹³⁰ and it was not an interpretation that the pope accepted. The question of papal power over doctrine became an important part of the controversy from then on, and it still forms a major topic of scholarly debate.¹³¹

It seems likely that this was not a subject John XXII would have chosen to bring up himself, but he clearly felt that the emperor's appeal needed a detailed answer, and he provided this answer in another bull, *Quia quorundam mentes* (24 November 1324).¹³² In the bull, he not only proposed an alternative theory of the keys of knowledge and power, but he also referred back to the original question of the poverty of Christ and the status of the Franciscan order. The pope was aware that the theory of the keys proposed by the author of the Sachsenhausen excursus

¹²⁶ See Wittneben, *Bonagratia*, pp. 233 and 236. Wittneben, *Bonagratia*, p. 253 has also argued that the line of argument employed in the Franciscan excursus directly contradicts the political stance taken by the Franciscan leadership up to 1328.

¹²⁷ Wittneben, *Bonagratia*, p. 230 and Johannes Hofer, 'Zur Geschichte der Appellationen König Ludwigs des Baiern', *Historisches Jahrbuch*, 38 (1917), 486-531 (pp. 501-502, especially note 2).

¹²⁸ See *Chronica fratris Nicolai Glassberger*, p. 148 and Wittneben, *Bonagratia*, p. 253.

¹²⁹ *Appellatio Ludovici de Sachsenhausen*, in *Chronica*, pp. 149-50.

¹³⁰ Tierney, *Conciliar Theory*, pp. 32-33 and Heft, *Papal Teaching Authority*, pp. 49-50, especially note 19.

¹³¹ See especially Tierney, *Infallibility*, pp. 186-96 and Heft, *Papal Teaching Authority* as well as the discussion in the *Journal of Ecumenical Studies*: James Heft, 'John XXII and Papal Infallibility: Brian Tierney's Thesis Reconsidered', *Journal of Ecumenical Studies*, 19 (1982), 759-80, Brian Tierney's rejoinder in the same volume: 'Sovereignty and Infallibility: a Response to James Heft', 786-93 as well as James Heft, 'A Rejoinder to Brian Tierney', *Journal of Ecumenical Studies*, 20 (1983), 111-17.

¹³² The bull has been edited in CIC, II, cols 1230-36, Tarrant, *Extrauagantes*, pp. 257-87 and *Chronica*, 159-71; the most comprehensive discussion of the bull can be found in Heft, *Papal Teaching Authority*.

was a novelty, and he objected to it very strongly.¹³³ Apart from his outright rejection of the imperial theory, John XXII pursued two main argumentative strategies in *Quia quorundam mentes*: he argued that it would have been possible for him to change previous papal legislation, but that he had not actually done so, as all of his decisions in the debate about Franciscan poverty had been purely disciplinary and had not involved any article of faith.¹³⁴ John additionally argued that Franciscan poverty had never been approved of by the whole church,¹³⁵ and that if the supporters of the Franciscan ideal were right in their interpretation of Nicholas III's bull, it would have been Nicholas who had reversed the legislation of his predecessors, while John XXII himself had only restored the state of affairs that had existed prior to Nicholas's interventions.¹³⁶

The argument that John XXII had not actually changed a doctrinal statement of an earlier pope in *Cum inter nonnullos* can also be found in some Franciscan circles: rather than accusing John XXII of promoting heresy as the author(s) of the Franciscan excursus had done, there were also a number of attempts to reconcile John's bulls and *Exiit qui seminat*, arguing that there was no fundamental difference between them.¹³⁷ The most notable of these treatises was the anonymous *Responsiones ad oppositiones* which was probably published in 1324.¹³⁸

The *Responsiones* attempted to show that *Cum inter nonnullos* and *Exiit* could be reconciled, focusing on the traditional Franciscan distinction between different ways of having material goods, and arguing that John XXII could only have meant that Christ and the apostles had had goods as prelates or *quantum ad*

¹³³ See Tierney, *Infallibility*, pp. 185-86.

¹³⁴ See for instance *Quia quorundam mentes*, in Tarrant, *Extravagantes*, pp. 282-83 and 285. See also Tabarroni, *Paupertas Christi*, p. 107 and Tierney, *Infallibility*, pp. 189-90.

¹³⁵ *Quia quorundam mentes*, in Tarrant, *Extravagantes*, p. 283.

¹³⁶ *Quia quorundam mentes*, in Tarrant, *Extravagantes*, pp. 280-81.

¹³⁷ The earliest of these attempts were two treatises by Richard Conyngton and Walter Chatton, edited in Decima L. Douie, 'Three Treatises on Evangelical Poverty by Fr. Richard Conyngton, Fr. Walter Chatton and an Anonymous: From MS V.III 8 in Bishop Cosin's Library, Durham (*Tractatus de paupertate evangelica editus a fratre Waltero de Chatton 'Oxon'*)', *Archivum Franciscanum Historicum*, 24 (1931), 341-69 and 25 (1932), 36-58 and 210-40. See also Miethke, *Sozialphilosophie*, pp. 386-92. Tabarroni, *Paupertas Christi*, p. 103 has additionally drawn attention to the fact that the appeal of Sachsenhausen supported its accusation of heresy against John XXII by reference to the pope's sermons, and that the appeal therefore (tacitly) acknowledged that *Cum inter nonnullos* did not actually contradict Nicholas III.

¹³⁸ See *Bullarium Franciscanum*, V, pp. 256-59 note 2. On the question of authorship and date of composition, see Miethke, *Sozialphilosophie*, pp. 393-94.

usum facti, while the doctrinal decision of *Exiit* that Christ had had nothing according to positive law remained valid.¹³⁹ Additionally, the author of the *Responsiones* argued that *Exiit* and the *simplex usus facti* had not been mentioned, let alone condemned in *Cum inter nonnullos*, and that Nicholas III's bull was therefore not invalidated by recent papal legislation.¹⁴⁰

The *Responsiones* have often been discussed as part of a general tendency in the Franciscan order to achieve some form of reconciliation between John's bulls and traditional definitions of Franciscan poverty.¹⁴¹ These attempts at *concordantia* were made easier by the very careful wording of *Cum inter nonnullos* which made it possible for the order to accept the papal position officially, while remaining faithful to the traditional interpretation of *Exiit*.¹⁴²

John's bulls were also scrutinised from a very different angle. The commentary by Jesselinus de Cassagnes on the *Extravagantes* is important in this context not only because it is the earliest legal commentary on the bulls of John XXII (up to and including *Quia quorundam mentes*), but also because it shows what the problem of Franciscan poverty looked like from the legal perspective of someone close to the curia, but not involved in the controversy. Jesselinus had probably been at the curia since 1323, in the service of John XXII's nephew, Cardinal Jacques de Via, and he completed his commentary on the *Extravagantes* in 1325, only a few months after the publication of *Quia quorundam mentes*.¹⁴³ Jesselinus's

¹³⁹ *Responsiones ad oppositiones*, in *Bullarium Franciscanum*, V, 256-57.

¹⁴⁰ *Responsiones ad oppositiones*, in *Bullarium Franciscanum*, V, p. 257. See also Miethke, *Sozialphilosophie*, pp. 395-96, Horst, *Evangelische Armut und päpstliches Lehramt*, pp. 80-81 and Tabarroni, *Paupertas Christi*, pp. 99-100.

¹⁴¹ Miethke, *Sozialphilosophie*, p. 397 and Tabarroni, *Paupertas Christi*, p. 99.

¹⁴² Wittneben, *Bonagratia*, p. 194. The policy has been characterised by Miethke, *Sozialphilosophie*, p. 398 as 'Politik des dissimulierenden Ausgleichs'.

¹⁴³ Brief overviews over Jesselinus's life and works can be found in Paul Fournier, 'Jesselin de Cassagnes, canoniste', in *Histoire Littéraire de la France*, 42 vols (Paris: various publishers, 1865-1995), XXXV, ed. by Charles-Victor Langlois (Paris: Imprimerie Nationale, 1926), pp. 348-61 and Jacqueline Tarrant, 'The Life and Works of Jesselin de Cassagnes', *Bulletin of Medieval Canon Law*, n.s. 9 (1979), 37-64. One of the problems with the assessment of Jesselinus's works in general is that his commentary on the *Extravagantes* remains the only one of his works to be printed in full, and most modern discussions of the glosses suffer from a rather random use of quotations from the manuscripts and sixteenth-century printed editions, and this makes it hard to come to any firm conclusions about Jesselinus's opinions and arguments. There has never been a critical edition of Jesselinus's commentary on the *Extravagantes*. Additionally, Jacqueline Tarrant has drawn attention to the fact that the available editions all contain too many interpolations and misreadings to be of much help in reconstructing Jesselinus's thought, a problem exacerbated by the fact that all editions contain the revised version of Jesselinus's apparatus rather than his original text. See Tarrant, 'Jesselin de Cassagnes', p. 57. I have used the edition of Jehan Petit

commentary is the only contemporary, non-Franciscan gloss on John's bulls,¹⁴⁴ and it has attracted quite a bit of attention, both from contemporaries and from modern scholarship.¹⁴⁵ This is mostly due to his strong views on papal power over articles of faith: in one of his glosses on *Cum inter nonnullos*, Jesselinus seemed to be arguing that the pope had the power to create an article of faith, and he was forced to publish a revised version of the gloss. We know the wording of the original version from a papal letter absolving Jesselinus from all sanctions and blame he incurred by publishing the first version of his gloss; the papal letter included both versions of the passage in full.¹⁴⁶ Similarly, we know of the strong reactions to Jesselinus's gloss from a complaint made by Michael of Cesena in his *Appellatio in forma maiori* (1328) that despite the heretical views contained in Jesselinus's gloss, and despite Bonagratia of Bergamo's campaigning against him, Jesselinus had not been properly brought to task for his views.¹⁴⁷

Jesselinus's commentary shows that it was not only the enemies of the pope who felt that John's dealings with the Franciscan order called for a discussion of the nature and limits of papal power. For the most part, however, Jesselinus's discussion of John XXII's Franciscan bulls focused on questions of the definition of property, dominion and use in civil and canon law. He presented

(Paris, 1524) as it was the oldest one available to me, and the only one of those available at the British Library which included John's bulls, but no other glosses interspersed in Jesselinus's commentary: *Extravagantes .XX. Iohannis. XXII. [...] Apparatus domini Gecellini de Cassanhis iuris vtriusque professoris domini pape capellani: In .xx. extrauagantes Iohannis vigesimisecondi* (Paris: Jehan Petit, 1524).

¹⁴⁴ See Oakley, 'Natural Right to Property', p. 11.

¹⁴⁵ See for instance Tarrant, 'Jesselin de Cassagnes', pp. 44-45, Miethke, *Sozialphilosophie*, pp. 409-13, Tierney, *Infallibility*, pp. 194-96 and the reaction of Michael of Cesena in his long appeal: *Appellatio in forma maiori*, in *Chronica*, pp. 415-16.

¹⁴⁶ See *Jean XXII (1316-1334): Lettres communes analysés d'après les registres dits d'Avignon et du Vatican*, ed. by G. Mollat, 16 vols (Paris: various publishers, 1904-46), VI (Fontemoing, 1910-12), no. 28199, p. 483: 'Gesselino de Cassanhis [...] abolitur quaecumque culpa, paena, nota seu infamia facti vel juris quae ei possit impingi ex eo quod super constitutione a Papa edita contra eos qui pertinaciter affirmabant Christum et Apostolos non habuisse in speciali aliquid nec etiam in communi, per se ipsum fecit et in scriptis redegit ac publicavit glosam tenoris sequentis: "Collige hic principem ecclesie Christique vicarium posse etiam super fide catholica declarationem facere, ut dixi supra in glosa *tanquam*, cum etiam novum articulum fidei facere posit [...]"'; quae quidem glosa fuit per ipsum revocata et alia in ejus locum scripta in hae verba: "[...] Potest etiam articulum fidei facere si sumatur articulus non proprie sed large, pro illo quod credere oporteat, cum prius ex precepto ecclesie necessario credere non oporteret; [...] Per jam dicta vero non credas Papam posse facere articulum novum, per quem nova fides inducatur aut veritati fidei detrahatur aliquid vel accrescat quo ad substantiam, vicesima quinta questione primo capitulo *Sunt quidem* et capitulo sequenti, et capitulo *Si ea destruerem* et capitulo *Que ad perpetuam*.'" The letter also provides evidence for Tierney's theory that John XXII was hostile to the view that a pope could create articles of faith (see Tierney, *Infallibility*, p. 194).

¹⁴⁷ *Appellatio in forma maiori*, in *Chronica*, pp. 415-16.

the problem of consumables as well as the question of the separation of dominion and use as straightforward and uncontroversial, and he took it for granted that there could be no use without dominion in the case of consumables.¹⁴⁸ In quite a number of cases, he confined himself to a simple explanation of the terminology, grammatical references and the addition and clarification of legal authorities alluded to, but not cited by, the pope,¹⁴⁹ although in some cases, he added a number of legal authorities to support his explanation and interpretation of the papal bulls.¹⁵⁰

Although Jesselinus's commentary was written within the context of the poverty controversy, he only explicitly engaged with the contemporary curial debate once. Whatever the pope's own feelings were about treatises such as the *Responsiones ad oppositiones*, Jesselinus did not like the Franciscan attempts to reconcile *Cum inter nonnullos* with *Exiit*. He argued that since John XXII had published *Ad conditorem canonum* and *Cum inter nonnullos*, *Exiit* had to be read in the light of these later bulls. John XXII had conclusively shown that the simple use of fact in the Franciscan definition could not exist, and that therefore the *usus facti* discussed by *Exiit* had to be re-interpreted in the light of John XXII's bulls.¹⁵¹ In his gloss on *Cum inter nonnullos*, he argued that no *concordantia* was possible between John's bulls and Nicholas's decretal, and he attacked all those who attempted to find common ground between the bulls. Jesselinus summarised the arguments of those advocating a concord between the bulls, and he condemned them, arguing that they were only trying to evade the new situation

¹⁴⁸ See one of the briefer examples in his commentary on the term *usu consumptibiles* in *Ad conditorem canonum* (fol. 46^{vb}): 'illis enim in sua substantia remanentibus nulla inducitur vtilitas: cum ipsa non insurgat nec proveniat nisi ex talium rerum consumptione. insti. de vsufu. § constituitur.'

¹⁴⁹ See for instance his commentary on *Ad conditorem canonum* and the terms *consumptibilibus* (fol. 46^{ra}): 'i. quod per usum consumuntur', on *de talibus rebus* (fol. 46^{ra}): 's. vsu consumptibilibus: et quarum vsus potest ad ipsos fratres pertinere.' Another example can be found in his commentary on *usu consumuntur* (fol. 45^{vb}): 'Ut sunt res ad victum humanorum necessarie. institu. de vsufu. §. constituitur. ff. de vsufruct. earum rerum que vsu consumuntur l. si tibi vini. de verbo. signifi. l. victus.'

¹⁵⁰ See for instance the commentary on the term *conceditur* (fol. 47^{ra}): 'vt est videre in commodatario cui ad certum vsum res conceditur. ff. commodati. l. in commodato. §. sicut extra eo. titu. ca. j. vel creditori vel depositario quibus vsus rei obligate vel deposite permissus est expresse in creditore: vel tacite in depositario. ff. depositi l. die. §. j. et C. e. titulo. si depositi.'

¹⁵¹ See Jesselinus's commentary on the second *declaramus* in *Cum inter nonnullos* (fol. 53^{ra}): 'nisi enim dicta decretalis intelligatur de se esset impossibilis in hoc quod dicit de vsu facti si diceretur esse absque omni iure: cum talis vsus de se sit impossibilis vt in decre. ad conditorem. et ibidem. et. supra clare probauit. intelligere autem illam super impossibili esset expresse contra capitulum erit autem lex iiii. dist. vbi lex habet esse clara et possibilis.' See also Tabarroni, *Paupertas Christi*, pp. 104-105, especially note 55 (p. 105).

created by John's constitution. In this context, he could be very scathing, and was quick to accuse his opponents of promoting heresy.¹⁵²

What is particularly interesting about Jesselinus's commentary here is not only his insistence that *Cum inter nonnullos* superseded *Exiit*, but his discussion of the methods of legal interpretation. In his refutation of the *Responsiones*, he used John's bulls as an interpretative yardstick for Nicholas III's decretals.¹⁵³ This is in contrast to the legal principle used by the author of the *Responsiones* who had argued that as *Cum inter nonnullos* did not name, let alone condemn *Exiit*, it did not actually abrogate the earlier bull.¹⁵⁴ The position of the *Responsiones* was consistent with legal tradition: while it was true that more recent laws were seen to revoke older legislation, this was only the case if the new constitution specifically abolished the older one. If no such reference to the older law existed, then interpretation of the new law had to try and reconcile the apparent conflict.¹⁵⁵ Jesselinus's insistence on re-interpreting *Exiit* in the light of John's bulls and his conviction that no concord was possible between the two bulls could be seen as an admission that the combination of *Ad conditorem canonum* and *Cum inter nonnullos* had effectively abrogated *Exiit* even if John's bulls did not specifically say so. It has to be kept in mind, however, that John

¹⁵² See especially the commentary on the second *declaramus* in *Cum inter nonnullos*, fols 52^{va}-53^{vb} and particularly fol. 52^{vb}: 'Videtur etiam ex predictis ab incauta assertione seu affirmatione et de iure non probabili reputata excusari non posse illos qui secundum premissarum modorum habendi distinctionem nituntur modum praesentis constitutionis euadere ex quo enim per decre. ad conditorem reprobatus est et confusus simplex vsus facti absque aliquo iure vtendi subsistens in persona christi et apostolorum. et in c. ad conditorem statutum est quod decre. exijt. §. porro. de tali vsu facto debet intelligi quia competat ratione alicuius iuris saltem personalis: asserere extunc contrarium qualiter quem ab imperitia poterit excusare non videtur. cum (vt supra dixi) peccatum ariolandi sit non obedire: et scelus idolatrie non acquiescere. xj. q. iij. c. qui restitit.' See also Miethke, *Sozialphilosophie*, p. 397 and Tierney, *Infallibility*, p. 200, especially note 1. The discussion seems to have been directed especially against the author of the *Responsiones ad oppositiones*, as can be seen from Jesselinus's discussion and rejection of the Franciscan theory of the three modes of having which followed the exposition in the *Responsiones* very closely: see especially fol. 53^{ra-b}. See also Tabarroni, *Paupertas Christi*, p. 105.

¹⁵³ Tabarroni, *Paupertas Christi*, p. 108.

¹⁵⁴ A principle quoted by the author of the *Responsiones ad oppositiones*, in *Bullarium Franciscanum*, V, p. 257, with reference to X 1.29.27 (in CIC, II, cols 171-72), Cod. 8.10.13 (CICiv, II, p. 338) and Dig. 34.4.30 (in CICiv, I, pp. 491-92): 'Sed promptum esse debet iura iuribus concordare (c. De insuffic. dotibus *Licet una* cum similibus) et constitutio subsequens secundum praecedentem exponenda et intelligenda est (extra: De officio et pot. iudi. deleg. cap. *Super quaestionum* in principio) nec constitutioni praecedenti per subsequentem derogatur, nisi in quantum invenitur expressum (cap. De aedif. priv. l. ult. et ff. De adimendis et transferendis legatis, l.: *Alumpnae scilicet qui filias* et in ant. de administrandis officiis in sacris appellationibus ad finem, et in iuribus vulgaribus: quod non mutatur, stare minime prohibetur, cap. De testamentis l. *Sancimus* et cap. De appellat. l. *Praecipimus*).' See also Miethke, *Sozialphilosophie*, p. 396.

¹⁵⁵ See James A. Brundage, *Medieval Canon Law* (London: Longman, 1995), p. 170.

XXII himself always denied that he had attempted to condemn Nicholas III's bull, arguing that he had only modernised its administrative arrangements which had proved to be harmful to the order.¹⁵⁶

Jesselinus de Cassagnes's assessment of Franciscan policy after *Cum inter nonnullos* was fairly negative. He accused the author of the *Responsiones* of following the letter rather than the sense of the *Glossa ordinaria* in his discussion of the origin of *dominium*.¹⁵⁷ And in his gloss on *Cum inter nonnullos*, Jesselinus stated categorically that if in doubt, one ought to turn to the proper meaning of words rather than one which was *impropriam vel abusiua*.¹⁵⁸ The generally accepted canonistic view was that judges ought to consider the meaning of passages as a whole rather than to lose sight of this overall meaning through too strong an emphasis on individual words.¹⁵⁹

John XXII had also appealed to both common sense and Nicholas III's real intentions when discussing *Exiit*, as in his rhetorical question whether anyone could really believe that Nicholas III wanted to reserve to the curia the property rights over a loaf of bread or an egg used by the friars.¹⁶⁰ Jesselinus's commentary on this passage of *Ad conditorem canonum* glossed the term *intentio* with the comment that it was the pope's intention that was decisive in establishing the correct meaning of the passage.¹⁶¹ This was a fairly common interpretative principle among canonists, according to which the interpretation of laws ought to be guided by the legislator's reason for making the law in the first place. It was

¹⁵⁶ See Zambrini, *Storia di fra Michele*, p. 65 and *Responsiones ad oppositiones*, in *Bullarium Franciscanum*, V, p. 258. John also did not act against any of the attempts to reconcile his bulls and *Exiit* before 1328: see Schlageter, 'Armutsauffassung', p. 98.

¹⁵⁷ The *Responsiones* had claimed, following the *Glossa ordinaria*, that *dominium* came into the world *ex iniquitate*: 'Alio modo dicitur quis habere dominium et proprietatem de iure scilicet positivo, scilicet de iure imperatorum, quod per iniquitatem extitit introductum, scilicet ut homines dicant: *hoc meum proprium, hoc tuum proprium*; et in iudicio etiam contendant, ut dicitur in praeallegatis capitulis VIII di. *Quo iure*, et XII, q. I *Dilectissimis*.' (*Responsiones ad oppositiones*, in *Bullarium Franciscanum*, V, p. 257). See Tabarroni, *Paupertas Christi*, p. 106 and Miethke, *Sozialphilosophie*, p. 395. For Jesselinus's views on this position see his discussion of *declaramus* in the commentary on *Cum inter nonnullos* (fol. 53^{va}): 'Non videntur etiam recte sapere in hoc quod dicunt iura imperatorum quibus dicitur aliquid proprium fore per iniquitatem introducta adherentes cortici litterae dicti capituli dilectissimis non sensum non mentem non virtutem eius amplectentes: contra iura expresse contrarium statutaria.'

¹⁵⁸ See his commentary on *asserit* (fol. 51^{va}): 'In dubio autem ad propriam verbi significationem non autem ad impropriam vel abusiua sanus referendus est intellectus.'

¹⁵⁹ See Brundage, *Medieval Canon Law*, p. 169.

¹⁶⁰ *Ad conditorem canonum*, in Tarrant, *Extrauagantes*, p. 236.

¹⁶¹ See fol. 46^{ra} on *intentio*: 'Ad quam est pre omnibus recurrendum.'

improper to twist terms in order to avoid compliance.¹⁶² And it was exactly this type of evasion that Jesselinus accused the Franciscans of, especially the author of the *Responsiones*.¹⁶³ Later, John XXII also accused the Michaelists of misrepresenting his works, and attempted to establish more clearly his intentions in publishing *Ad conditorem canonum* and *Cum inter nonnullos*.¹⁶⁴

There was no immediate official reaction from the Franciscan order to *Cum inter nonnullos*, in the way that the letters of Perugia could be, and have been, interpreted as a reaction to *Quia nonnumquam*. Most modern discussions of the controversy suggest that the two Franciscan cardinals submitted immediately to papal judgement.¹⁶⁵ The first (and for quite a long time the only) response of Michael of Cesena did not emerge until about a year and a half later: at the Franciscan general chapter in Lyon in 1325, he demanded obedience to the bulls of John XXII from the rest of the order, and urged the friars to speak of the pope and his constitutions with due reverence and sobriety.¹⁶⁶

There is also some evidence that the Franciscan leadership attempted to prove their orthodoxy and obedience to the papacy by renewed attacks on the remaining Spirituals: Bonagratia devoted a great deal of time to the prosecution of Ubertino da Casale for heresy, and was involved in the curial investigations of,

¹⁶² Brundage, *Medieval Canon Law*, p. 168. See also Heft, *Papal Teaching Authority*, p. 80 note 67.

¹⁶³ This position is shared by quite a number of modern scholars as well: see Miethke, *Sozialphilosophie*, p. 398, Wittneben, *Bonagratia*, p. 194 and Tabarroni, *Paupertas Christi*, pp. 99 and 101.

¹⁶⁴ See *Quia vir reprobus*, in *Chronica*, p. 586 (on *Ad conditorem canonum*): ‘Profecto, iste haereticus, ut praevaricator legis notoriae, verba constitutionis praedictae truncate recitat, illa quae eius defectum manifeste insinuant omittendo. Intendit enim probare [...]’. See also *Quia vir reprobus*, in *Chronica*, pp. 589-90 (on *Cum inter nonnullos*).

¹⁶⁵ See for instance Decima L. Douie, *The Nature and the Effect of the Heresy of the Fraticelli*, Publications of the University of Manchester, 220: Historical Series, 61 (Manchester: Manchester University Press, 1932), p. 164 and Miethke, *Sozialphilosophie*, pp. 392-93. But see Patrick Nold’s argument that the careful preparation and wording of *Cum inter nonnullos* meant that it was not necessary for any member of the Franciscan order to submit to the pope: *John XXII and his Franciscan Cardinal*, p. 138 (and especially note 72).

¹⁶⁶ Miethke, *Sozialphilosophie*, pp. 397-98. The constitutions of the chapter at Lyon have been edited as an appendix in Armandus Carlini, ‘Constitutiones generales ordinis Fratrum Minorum anno 1316 Assisii conditae’, *Archivum Franciscanum Historicum*, 4 (1911), 269-302 and 508-36 (pp. 526-36). See especially p. 533: ‘Monet insuper generali minister cum generali capitulo universo omnes fratres et singulos ac per obedientiam salutarem eis mandat quatenus de sancta romana ecclesia et sanctissimi domini nostri pape persona ac de constitutionibus eius cum debitis reverentia et sobrietate loquantur. Et quicumque huius mandati fuerit transgressor inventus per ministrum suum statim pena carceris puniatur.’ See also *Bullarium Franciscanum*, V, no. 667, pp. 325-26 note 2 (p. 326).

and proceedings against, both Ubertino and the writings of Petrus Johannis Olivi.¹⁶⁷

I.4 The Break with the Papacy

In June 1327, the pope summoned Michael of Cesena to Avignon in order to discuss disciplinary problems in the order, but Michael was delayed through illness and did not actually arrive in Avignon until 1 December.¹⁶⁸ The pope received him cordially, however, although he did demand the deposition of the provincial ministers of Umbria and Aragón and asked the minister general not to leave Avignon without papal consent. But relations between the pope and Michael of Cesena soured when John refused to grant Michael permission to attend the Franciscan general chapter which was to be held in the spring of 1328 in Bologna. Instead, he sent Cardinal-Legate Bertrand du Poujet with the order to prevent the re-election of Michael.¹⁶⁹

Rumours about a link between Michael and Ludwig the Bavarian had been current at least since the summer of 1327 and may have played a role in John's decision to recall Michael to the curia. There had also been some speculation about Michael's possible ambitions to become pope himself.¹⁷⁰ It is unclear to what extent the pope took these rumours seriously, although Jürgen Miethke has argued that the pope may have suspected Michael of Cesena as early as the publication of the appeal of Sachsenhausen.¹⁷¹ While there is no extant evidence for any link between Ludwig and Michael prior to the flight of the

¹⁶⁷ See Wittneben, *Bonagratia*, pp. 277-79.

¹⁶⁸ For a general overview of the events leading to the break between Michael of Cesena and the pope see Miethke, *Sozialphilosophie*, pp. 413-26, Wittneben, *Bonagratia*, pp. 280-91 and, very briefly, Moorman, *History of the Franciscan Order*, pp. 317-19.

¹⁶⁹ See Miethke, *Sozialphilosophie*, p. 414 and John's letters to Bertrand and the chapter in *Bullarium Franciscanum*, V, no. 706, pp. 341-43.

¹⁷⁰ See Horst, *Evangelische Armut und päpstliches Lehramt*, p. 77, and especially Miethke, *Sozialphilosophie*, p. 413 and Nold, *John XXII and his Franciscan Cardinal*, p. 106. See also H. Otto, 'Zur italienischen Politik Johanns XXII.', *Quellen und Forschungen aus italienischen Archiven und Bibliotheken*, 14 (1911), 140-265 (p. 166 and especially note 5) and Heinrich Finke, *Acta Aragonensia. Quellen zur deutschen, italienischen, französischen, spanischen, zur Kirchen- und Kulturgeschichte aus der diplomatischen Korrespondenz Jaymes II. (1291-1327)*, 3 vols (Berlin: Rothschild, 1908-22), II (1908), pp. 675-77 (letter 427 of 28 August 1328). Gordon Leff has suggested that Michael of Cesena had been secretly negotiating with the emperor early on, but without providing any evidence for the claim: Leff, *Heresy in the Later Middle Ages*, p. 244.

¹⁷¹ Miethke, *Sozialphilosophie*, p. 408.

Michaelists from Avignon, it is clear that the entire controversy had acquired a political dimension with the publication of the appeal of Sachsenhausen, and we have already seen that at the curia, the Franciscan leadership had been accused of masterminding the excursus on Franciscan poverty.¹⁷² If the pope did indeed suspect a link between the German king and Michael of Cesena, Michael's position would not have been made any easier by the fact that Ludwig had been crowned emperor by Sciarra Colonna in Rome in January 1328.¹⁷³

Things came to a head in yet another consistory meeting: on 9 April 1328, John XXII accused Michael of Cesena of promulgating heresy in publishing the letters of Perugia. It is not clear what caused the pope's sudden outburst. All Michaelist sources agree that the letters published by the general chapter of Perugia were at the centre of the pope's accusations against Michael of Cesena, and this account that has generally been followed by most modern scholars.¹⁷⁴ It seems likely that there was more behind the pope's outburst at the meeting than Michael's (perceived) role in the publication of the letters of Perugia although none of the accounts of the meeting are very clear on this point. Bertrand de la Tour was also present, and he provided his own version of the meeting when he pronounced the sentence of excommunication against Michael of Cesena and his followers after their flight from Avignon. Bertrand only referred to Michael's crimes in very general terms, however, as well as to Michael's presumptuous answers during the meeting on 9 April.¹⁷⁵

Four days after the meeting, on 13 April 1328, Michael of Cesena secretly appealed against the pope in the Franciscan convent in Avignon in the presence of William of Ockham and Francesco d'Ascoli among others.¹⁷⁶ The appeal gave an account of the poverty controversy and, for the first time in an

¹⁷² See Nold, *John XXII and his Franciscan Cardinal*, p. 108 and Wittneben, *Bonagratia*, p. 253.

¹⁷³ Miethke, *Sozialphilosophie*, p. 419.

¹⁷⁴ *Chronica*, p. 180. See also the summary of some of the Michaelist opinions in Nold, *John XXII and his Franciscan Cardinal*, p. 105 (and notes 39-41). For modern assessments of the role of the chapter of Perugia in the Michaelist break with the papacy, see also Horst, *Evangelische Armut und päpstliches Lehramt*, pp. 82-83 and Miethke, *Sozialphilosophie*, p. 415.

¹⁷⁵ See the edition of the excommunication of Michael of Cesena in Bonaventura Giordani, 'Novum documentum in controversiam Ordinis tempore Fr. Michaëlis de Caesena, anno 1328', *Archivum Franciscanum Historicum*, 8 (1915), 672-75 (p. 673). See also Nold, *John XXII and his Franciscan Cardinal*, pp. 108-109.

¹⁷⁶ See Miethke, *Sozialphilosophie*, p. 416. The appeal has been edited in *Bullarium Franciscanum*, V, no. 706, pp. 341-43 note 5 and Baluze-Mansi, *Miscellanea*, III, pp. 238-40. Two surviving drafts of the secret appeal have also been discussed in Hans-Jürgen Becker, 'Zwei unbekannte kanonistische Schriften des Bonagratia von Bergamo in Cod. Vat. lat. 4009', *Quellen und Forschungen aus italienischen Archiven und Bibliotheken*, 46 (1966), 219-76.

‘official’ Franciscan document, implicitly accused the pope of heresy.¹⁷⁷ Later, Michael of Cesena justified the secrecy of the appeal by claiming that he had been in fear of his life, and he stressed the fact that he had lodged a formal and valid appeal within the appropriate time-frame.¹⁷⁸

In the meantime, Ludwig the Bavarian had deposed Pope John XXII, and a (short-lived) Franciscan anti-pope had been elected in the emperor’s presence on 17 April 1328. Shortly afterwards, the Franciscan general chapter at Bologna confirmed Michael of Cesena as minister general, despite papal attempts to secure the election of another candidate. By the time the news of Michael’s re-election reached Avignon, however, this was of only academic interest, as Michael of Cesena, together with Bonagratia of Bergamo, Heinrich of Thalheim, Francesco d’Ascoli and William of Ockham, had secretly left the town and fled to Pisa. The text of the secret appeal was nailed to the doors of the cathedral of Avignon on the day of the flight (26 May 1328).¹⁷⁹ The fugitives reached Pisa on 9 June, and at this point, if not before, the Michaelists must have contacted the emperor.

The reaction of the pope was swift: as soon as the flight of the Michaelists became known, John XXII deposed Michael of Cesena, appointed Bertrand de la Tour as vicar general of the order until a new minister general was found, deposed 20 out of 34 provincial ministers, and ordered the Franciscan inquisitor Michel le Moine to confiscate the property of the fugitives in the convent of Marseille.¹⁸⁰

¹⁷⁷ See the secret appeal, in *Bullarium Franciscanum*, V, p. 342: ‘ex quibus sequitur manifeste, quod, si ipse dominus Ioannes illud, quod tam solemniter approbavit, nunc haereticum asserit, se ipsum de haeresi proprio iudicio iudicat et condemnat’. See Wittneben, *Bonagratia*, p. 284 and Becker, *Appellation*, p. 76.

¹⁷⁸ See the secret appeal, in *Bullarium Franciscanum*, V, p. 343: ‘[...] protestor coram religiosis vobis et honestis personis, quod ego praefatus Michael iusto metu ductus (tali videlicet, qui possit cadere in constantem virum) non sum ausus, hanc appellationem et provocationem coram ipso domino Ioanne facere sive interponere nec eam sibi porrigere et praesantare, unde nunc coram vobis religiosis et honestis viris personaliter constitutus de isto metu iusto protestor [...]’. On the problem of secret appeals in general, see Wittneben, *Bonagratia*, pp. 282-83 and Becker, *Appellation*, pp. 76-77.

¹⁷⁹ Becker, *Appellation*, p. 77.

¹⁸⁰ See the edition of John’s letters in *Bullarium Franciscanum*, V, nos 713, 714 and 716 (pp. 346-50). The letter ordering the confiscation of the fugitives’ property can also be found in *Lettres secrètes et curiales du pape Jean XXII (1316-1334) relatives à la France*, ed. by Auguste Coulon and Suzanne Clémencet, 4 vols (Paris: various publishers, 1899-1972), III (Boccard, 1961-62), no. 3597 (p. 93). See also Wittneben, *Bonagratia*, p. 286 and Miethke, *Sozialphilosophie*, pp. 423-25. The role of Michel le Moine in the conflict between John and the Franciscan order has generally been overlooked: he had been instrumental in convicting the five Franciscan Spirituals burned at

In Pisa, Michael of Cesena published the last major Franciscan texts of the controversy before he and the Franciscan dissidents arrived in Munich. In addition to a letter to his order, the *Littera excusatoria* in which the deposed minister general attempted to justify his actions and his flight from Avignon,¹⁸¹ he published two appeals: the *Appellatio in forma maiori* (18 September) and the *Appellatio in forma minori* (12 December).¹⁸²

Michael of Cesena's long appeal also provided a justification of his actions, accusing the pope of undermining all attempts to find common ground between his bulls and *Exiit qui seminat*.¹⁸³ While both appeals, as well as most other Michaelist texts produced from then on, repeated the old arguments about Christ's poverty, the focus of the polemical writings now shifted to a defence of the actions of the dissident Franciscans and to an attempt to prove the heresy of the pope.¹⁸⁴ The appeals listed and discussed nine dogmatic errors on the part of the pope in detail.¹⁸⁵ The author of the chronicle of Nicolaus Minorita recounts that the short appeal was circulated in multiple copies, as well as being nailed to the doors of the cathedral in Avignon.¹⁸⁶

Ludwig the Bavarian arrived in Pisa on 21 September, and in addition to the other polemical writings produced by the Franciscan dissidents in Pisa, they collaborated with the emperor on a revised version of Ludwig's deposition of Pope John XXII – and this time, the pope's heresy and the question of evangelical poverty provided the main focus of the text.¹⁸⁷

Marseille in 1318, and he remained a loyal and staunch defender of the pope throughout his career. See Burr, *Spiritual Franciscans*, pp. 197 and 204-06. On the role of Michel le Moine, see also p. 80 (section II.2).

¹⁸¹ *Littera excusatoria*, in *Chronica*, pp. 207-11. See also Wittneben, *Bonagratia*, pp. 287-90.

¹⁸² The *Appellatio in forma maiori* is edited in *Chronica*, pp. 227-424, the *Appellatio in forma minori* in *Chronica*, pp. 429-56.

¹⁸³ See Horst, *Evangelische Armut und päpstliches Lehramt*, p. 79. This is also where the former minister general complained about the preferential treatment of Jesselinus de Cassagnes despite his many 'manifest heresies': see *Appellatio in forma maiori*, in *Chronica*, p. 415.

¹⁸⁴ See Wittneben, *Bonagratia*, p. 290 for a discussion of this point with special reference to Michael's *Littera excusatoria*.

¹⁸⁵ See Becker, *Appellation*, p. 77. For a discussion of the content of the long version in particular, see Horst, *Evangelische Armut und päpstliches Lehramt*, pp. 82-93.

¹⁸⁶ *Appellatio in forma minori*, in *Chronica*, p. 429. On affixing bulls and appeals on church doors in creating publicity, see Wittneben, *Bonagratia*, p. 219 and Martin Kaufhold, 'Öffentlichkeit im politischen Konflikt: Die Publikation der kurialen Prozesse gegen Ludwig den Bayern in Salzburg', *Zeitschrift für Historische Forschung*, 22 (1995), 435-54 (pp. 453-54).

¹⁸⁷ The text is edited as *Sententia imperatoris correcta* in *Chronica*, pp. 457-68. See Horst, *Evangelische Armut und päpstliches Lehramt*, p. 78 and Becker, *Appellation*, p. 78.

Ludwig and the Michaelists in his entourage reached Munich in 1330, after the Franciscan general chapter had met in Paris in June 1329, had confirmed the deposition of Michael of Cesena as minister general, and had elected Guiral Ot as the new head of the order.¹⁸⁸ Their arrival in Munich also marked a new phase in the controversy as a public event: once the Michaelists and the imperial publicists joined forces, they began a propaganda war of pamphlets, letters and treatises directed against John XXII.¹⁸⁹ The pope excommunicated the fugitives and began a lengthy correspondence with a number of European rulers in an attempt to persuade them from aiding any of the dissident Franciscans.¹⁹⁰

His main reaction to the Franciscan dissidents and specifically Michael of Cesena's short appeal, however, was the longest and last papal bull produced in the controversy. *Quia vir reprobus* was published on 16 November 1329; it was directed specifically against Michael of Cesena, and is generally considered a point-by-point refutation of Michael's *Appellatio in forma minori*.¹⁹¹ In fact, the bull consists of three parts, each amounting to a defence of one of John's previous bulls against Michael's criticisms. In the case of *Ad conditorem canonum*, John XXII did provide a point-by-point refutation of all of Michael's arguments, and in the third part of the bull, he dealt (very briefly) with the criticism of *Quia*

¹⁸⁸ Miethke, *Sozialphilosophie*, p. 425.

¹⁸⁹ See Miethke, *Sozialphilosophie*, pp. 426-27. On the role of the Michaelists at Ludwig's court, see Hilary Seton Offler, 'Meinungsverschiedenheiten am Hof Ludwigs des Bayern im Herbst 1331', *Deutsches Archiv für Erforschung des Mittelalters*, 11 (1954-55), 191-206; Carl Pfaff, 'Die Münchner Minoriten – Ratgeber Ludwigs des Bayern', in *Zur geistigen Welt der Franziskaner im 14. und 15. Jahrhundert. Die Bibliothek des Franziskanerklosters in Freiburg/Schweiz. Akten der Tagung des Mediävistischen Instituts der Universität Freiburg vom 15. Oktober 1993*, ed. by Ruedi Imbach and Ernst Treppe, *Scrinium Friburgense*, 6 (Freiburg: Universitätsverlag, 1995), pp. 45-57, and Dick E. H. de Boer, 'Ludwig the Bavarian and the Scholars', in *Centres of Learning: Learning and Location in Pre-Modern Europe and the Near East*, ed. by Jan Willem Drijvers and Alasdair A. MacDonald (Leiden: Brill, 1995), pp. 229-44. For some of the works produced by the Munich Franciscans (other than the political works of William of Ockham), see also Felice Accrocca 'Concerning the Case of the Heretical Pope: John XXII and the Question of Poverty: Ms XXII of the Capestrano Convent', *Franciscan Studies*, 54 (1994-97), 167-84; Hilary Seton Offler, 'Zum Verfasser der "Allegaciones de potestate imperiali" (1338)', *Deutsches Archiv für Erforschung des Mittelalters*, 42 (1986), 555-619; and Anneliese Maier, 'Zwei unbekannte Streitschriften gegen Johann XXII. aus dem Kreis der Münchner Minoriten', *Archivum Historiae Pontificiae*, 5 (1967), 41-78; repr. in *Ausgehendes Mittelalter. Gesammelte Aufsätze zur Geistesgeschichte des 14. Jahrhunderts*, ed. by Anneliese Maier and Agostino Paravicini Bagliani, 3 vols (Rome: Edizioni di storia e lettura, 1964-77), III (1977), pp. 373-414 and 612.

¹⁹⁰ See Sigmund Riezler, *Vatikanische Akten zur deutschen Geschichte aus der Zeit Ludwigs des Bayern* (Innsbruck: Wagner'sche Universitätsbuchhandlung, 1891), especially letters 1039 and 1040 (p. 388) and 1056 (p. 392) to the kings of Aragón and France and the queen of England. See also the letters to the queen of France edited in Coulon and Clémencet, *Lettres secrètes*, III, nos 3598 (p. 94) and 3640 (p. 101; for this letter, see also Riezler, *Vatikanische Akten*, no. 1069, p. 395).

¹⁹¹ See Wittneben, *Bonagratia*, p. 291 and Oakley, 'Franciscan Innocence', p. 224.

quorundam mentes.¹⁹² The middle section of the bull was a defence of *Cum inter nonnullos*, and here John XXII did not go through the Michaelist criticisms one by one, but provided an almost completely self-contained treatise on the origin and nature of *dominium* as it was portrayed in Scripture.¹⁹³ This structure, the uneven weight given to the three sections, and the equally uneven treatment of the objections raised by the Franciscans, make the bull seem fairly disjointed and almost incoherent. While it was intended as a crushing response to Franciscan claims about the poverty of Christ, John Oakley has argued that it was in fact a synthesis of Franciscan and legal traditions.¹⁹⁴

Quia vir reprobus has received less attention in modern scholarship than any of the other bulls published by the pope in the course of the controversy; this may be partly due to its length, repetitiveness and the rather tedious nature of some of its arguments. The text also has a rather strange status. It is normally described as a bull,¹⁹⁵ but it does seem to be too long and unwieldy to have been intended as a public declaration. Gordon Leff has argued that it was essentially a learned treatise in which the pope's case was argued in detail.¹⁹⁶ Only some sections of the bull have been discussed in any detail in modern scholarship, and the text has very rarely been treated as a whole.

The bull was concerned with two major points: a refutation of the Michaelist position and a defence of John's concept of dominion. Modern discussions of the bull have tended to concentrate on the papal view of dominion,¹⁹⁷ and his attempt to prove that private property pre-dated human law

¹⁹² *Quia vir reprobus* is edited in *Chronica*, pp. 553-613. The refutation of the criticism of *Ad conditorem canonum* can be found on pp. 555-88 and the discussion of *Quia quorundam mentes* on pp. 609-13. The text of *Quia vir reprobus* can also be found in *Bullarium Franciscanum*, V, no. 820, pp. 408-49.

¹⁹³ *Quia vir reprobus*, in *Chronica*, pp. 588-609.

¹⁹⁴ Oakley, 'Franciscan Innocence', p. 225.

¹⁹⁵ Bernhard Töpfer, 'Die Anschauungen des Papstes Johannes XXII. über das "dominium" in der Bulle "Quia vir reprobus"', in *Folia diplomatica, 1 (Festschrift Jindrich Sébanek zum 70. Geburtstag)*, ed. by Sáša Dušková, Opera Universitatis Purkynianae Brunensis: Facultas Philosophica, 158 (Brno: Univerzita J. E. Purkyne v. Brne, 1971), pp. 295-306 (p. 295) has argued that it is formally a bull, and this view has generally been accepted although there have been no studies of the remaining archival copies of the text in order to verify this.

¹⁹⁶ Leff, *Heresy in the Later Middle Ages*, p. 247. Miethke, *Sozialphilosophie*, p. 76 also draws attention to the fact that the pope 'läßt sich in einem [...] überraschend hohen Grade auf eine argumentierende Diskussion ein'. The bull is also discussed in Oakley, 'Franciscan Innocence', pp. 224-26.

¹⁹⁷ See Leff, *Heresy in the Later Middle Ages*, pp. 247-249.

and was a divine institution.¹⁹⁸ For the first time in the controversy, the pope used a wealth of canonical and biblical references to make his point, not only referring to the standard ‘non-Franciscan’ biblical texts, but also offering a thorough and detailed (if one-sided) exegesis of references to dominion and property in both the Old and New Testaments. The most striking part of the bull (and, again, the only part that has been discussed very much in modern scholarship) is his attempt to prove that private property was an essential part of the human condition, arguing that as Adam had been offered dominion over the earth before the fall and before the creation of Eve, the natural state of innocence did include private property.¹⁹⁹ The bull has, in fact, been described as a ‘sanctification of property rights’.²⁰⁰ It was only in *Quia vir reprobus* that John XXII addressed the christological implications of his concept of dominion, and it was only here that he addressed the Franciscan argument from innocence.²⁰¹

While this was not the end of the controversy, it was John’s last official statement in the debate, and his last detailed discussion of the questions of evangelical poverty, the status of dominion and the ecclesiological implications of the Franciscan ideal. While both his supporters and his opponents continued to write and publish pamphlets and treatises, the pope did not revisit the question of Franciscan poverty and its implications after 1329. The publication of *Quia vir reprobus* therefore marks the last document which can be used in an investigation into John’s personal views on the question of apostolic and Franciscan poverty. Before these views can be studied in any detail, it is, however, necessary to establish not only the sequence of events that led to his decisions in the matter of Franciscan poverty, but equally his manner and method of dealing with these events and the way he approached the problem as a whole.

¹⁹⁸ Oakley, ‘Franciscan Innocence’, p. 224, Leff, *Heresy in the Later Middle Ages*, pp. 247-48 and Miethke, *Sozialphilosophie*, p. 468. Miethke, *Sozialphilosophie*, p. 517 note 301 has additionally drawn attention to the fact that John also discussed the dominion of Christ in at least two sermons. For a comprehensive study of John’s concept of Christ’s dominion, a thorough study of his unpublished sermons (most of which have never been published) would be a necessity; this is outside the scope of this study, however, which is primarily concerned with John’s objections against the Franciscan ideal as it was represented in his bulls. On John’s description of the poverty of Christ in some of his sermons, see also pp. 144-45 (section IV.1).

¹⁹⁹ See also Leff, *Heresy in the Later Middle Ages*, pp. 247-48, Miethke, *Sozialphilosophie*, p. 468 and Oakley, ‘Franciscan Innocence’, pp. 224-25. On the pope’s discussion of the origin of dominion, see pp. 219-23 (section V.4).

²⁰⁰ Leff, ‘Bible and Rights’, p. 231.

²⁰¹ See Schlageter, ‘Armutsauffassung’, p. 114 and Oakley, ‘Franciscan Innocence’, p. 224.

Chapter II

The Pontificate of John XXII

The investigation of the curial debate has shown the important role of consultation in the process of decision-making. John's views on the validity of the Franciscan poverty ideal need to be set not only into the context of the curial debate and the political events that surrounded the theoretical poverty controversy, however, but also into the more general context of John's pontificate. The pope's manner of dealing with the Franciscan poverty ideal cannot be seen in isolation from his approach to other issues he was faced with during his pontificate, most notably the Spiritual crisis. John XXII had a very distinctive way of handling problems, and an examination of his approach to some of the other questions and controversies he encountered (or raised) can shed light on his handling of the poverty controversy and provide a more general context for his views on the Franciscan ideal. This chapter will therefore discuss the question of the pope's approach to problems by looking at various factors that may have influenced the pope's outlook, such as his legal training, early career and the impact of the Spiritual crisis on his later handling of the dispute about Franciscan poverty, as well as his approach to the constitutional crisis in the order of Grandmont.

II.1 Legal Training

The fact that John XXII had been a lawyer is usually stated as a very significant factor in his decisions about Franciscan poverty,¹ but despite this, the impact of his legal training and career on his personality and decisions is generally assumed rather than investigated. There has never been any systematic study of his training or of the theories of property that were part of his education.

¹ For an assessment of the significance of John's legal training and its influence on his character, see for instance Lambert, *Franciscan Poverty*, pp. 240-41, Lambert, 'Franciscan Crisis', pp. 125-26, Oakley, 'Natural Right to Property', p. 22, Weakland, 'John XXII', p. 163 and Tierney, *Infallibility*, pp. 190 and 193.

Jacques Duèse, the future John XXII, was probably born around 1245. He was first educated in his hometown of Cahors, and he went on to study civil and canon law at the law school of Orléans, receiving the degree of *doctor utriusque iuris* and teaching at the school for some time.² He also spent some time studying at the theological faculty of Paris, but without qualifying for a degree.³

In the thirteenth century, Orléans was the pre-eminent law school in France, and it played an important role in the diffusion of Roman civil law,⁴ both through its influence on the teaching and interpretation of legal texts and through the graduates it prepared for a career in ecclesiastical or secular administration and government.⁵ Among these graduates were not only John XXII, but also Pope Clement V, the Cardinals Bertrand de Montfavez (earlier believed to have been one of the teachers of John XXII⁶), Pietro Peregrossi and Pierre de la Chapelle, a number of chancellors of the house of Anjou (such as Geoffroi de Beaumont and Simon of Paris, as well as Jacques Duèse himself) and also a number of

² Weakland, 'John XXII', pp. 163-64, Noël Valois, 'Jacques Duèse, pape sous le nom de Jean XXII', in *Histoire Littéraire de la France*, 42 vols (Paris: various publishers, 1865-1995), XXXIV, [ed. by Noël Valois] (Paris: Imprimerie Nationale, 1914), pp. 391-630 (pp. 393-94) and E. M. Meijers, 'L'Enseignement du droit dans trois universités du XIIIe siècle', in *Études d'histoire du droit: le droit romain au Moyen Age*, ed. by R. Feenstra and H. F. W. D. Fischer, 3 vols (Leiden: Universitaire Pers, 1959), III, pp. 3-208 (pp. 24 and 174). The exact dates for his time at the university of Orléans are unclear; we only know that he must have completed his law degree before joining Louis of Toulouse in 1297.

³ See Valois, 'Jacques Duèse', pp. 393-94 and Weakland, 'John XXII', pp. 163-64. The evidence for his time at Paris comes mostly from a letter written by John XXII to the university of Paris on 5 September 1316: 'nimirum ad prosperitatem ipsius ex eo etiam specialiori affectu dirigimur quod olim, dum nos minor status haberet, in ejus laribus obversati de ipsius dulcedine grata libavimus per aliquantos annos secus decursus sedentes ipsius' (*Chartularium Universitatis Parisiensis*, ed. by Heinrich Denifle, 4 vols (Paris: Delalain, 1889-97), II (1891), no. 783, pp. 234-36 (p. 235)). See also Valois, 'Jacques Duèse', p. 394 note 2. John's lack of a theological degree is the basis for most modern assumptions that the pope was incapable of understanding the theological aspects of the Franciscan case. John XXII himself alluded to his lack of a theology degree in a letter to the French king about the beatific vision: 'quia [...] forsan dicitur quod nos non sumus in theologia magister, audi quod unus sapiens dicat: *Non quis, inquit, sed quid dicat intendite*' (Coulon and Clémencet, *Lettres secrètes*, IV (Boccard, 1965-72), no. 5325, pp. 129-30 (p. 130)).

⁴ Meijers, 'L'Enseignement', p. 5 and Hastings Rashdall, *The Universities of Europe in the Middle Ages: Italy – Spain – France – Germany – Scotland etc.*, rev. by F. M. Powicke and A. B. Emden, 3 vols (Oxford: Clarendon Press, 1936), II, p. 143.

⁵ Kees Bezemer has warned against overestimating the literary influence of Orléans, however: Kees Bezemer, 'The Law School of Orléans as a School of Public Administration', *Tijdschrift voor Rechtsgeschiedenis*, 66 (1998), 247-77 (pp. 265 and 277). For the role of the Orléans as a school for administrators, see Meijers, 'L'Enseignement', p. 6.

⁶ An assumption proved to be groundless by Henri Gilles, 'Juristes languedociens au service de la papauté', in *La papauté d'Avignon et le Languedoc (1316-1342)*, ed. by M.-H. Vicaire, Cahiers de Fanjeaux, 26 (Toulouse: Privat, 1999), pp. 113-25 (p. 115).

chancellors of the French kingdom, most notably Petrus de Bellapertica (d. 1308), one of the dominant figures of the law faculty at Orléans.⁷

One of the characteristics of the teaching of the law-school of Orléans was its emphasis on private law,⁸ and, linked to that, a strong interest in property law, as can be seen from the great number of surviving writings from Orléans dealing with the problems of possession, dominion, *ususfructus* and related topics.⁹ The correct definition of *dominium*, its applicability in various types of legal situations and proceedings, and the differences between *dominium* and other forms of property relationships would be one of the main topics of discussion between John XXII and Bonagratia of Bergamo.

Another aspect of the work of the school at Orléans which may have influenced the outlook of the later John XXII is the fact that the school's teachings tended to be based on practical problems which then gave rise to theoretical discussions.¹⁰ It is important to bear in mind that the work of civilian lawyers in general was rooted in procedural problems and in the requirements for a successful lawsuit – the starting point for a general discussion was usually a concrete case rather than an interest in legal theory.¹¹ There was rarely any systematic treatment of a legal concept in one chapter, but scattered references to procedural problems and the question of the admissibility of lawsuits and legal actions throughout any given work. The definition of terms such as *dominium* in these texts was therefore given in terms of legal procedure and the question of whose claims took precedence in the case of a lawsuit involving holders of different types of property rights. Answers to these procedural questions were

⁷ For the careers of Orléans graduates, see particularly Meijers, 'L'Enseignement', pp. 8 and 24, and P. Leupen, 'Philippe le Bel et l'Université d'Orléans', in *Études néerlandaises de droit et d'histoire présentées à l'université d'Orléans par le 750e anniversaire*, ed. by Robert Feenstra and Cornelia M. Ridderikhoff, Bulletin de la Société Archéologique et Historique d'Orléanais, n.s. 9:68 (Orléans: Société Archéologique et Historique d'Orléanais, 1985), pp. 107-17 (p. 114).

⁸ This is also the area of the school's teachings that has attracted most scholarly attention so far: see Robert Feenstra, 'L'Enseignement du droit à Orléans: État des recherches menées depuis Meijers', in *Études néerlandaises de droit et d'histoire présentées à l'université d'Orléans par le 750e anniversaire*, pp. 13-29.

⁹ See for instance William M. Gordon, 'Going to the Fair – Jacques de Révigny on Possession', in *The Roman Law Tradition*, ed. by A. D. E. Lewis and D. J. Ibbetson (Cambridge: Cambridge University Press, 1994), pp. 73-97 (pp. 73-74) and the general discussion in Kriechbaum, *Actio, ius und dominium*, particularly pp. 147-54 and 167-71. See also Bezemer, 'Law School at Orléans', pp. 265 and 276, and R. Feenstra and M. C. I. M. Duynstee, 'Orléans, III: Rechtsschule/Universität', in *Lexikon des Mittelalters*, 9 vols (Munich: various publishers, 1980-98), VI (Munich: Artemis & Winkler, 1993), cols 1464-65 (col. 1465).

¹⁰ Bezemer, 'Law school at Orléans', p. 253.

¹¹ Kriechbaum, *Actio, ius und dominium*, pp. 419-20.

neither clear-cut nor consistent, and in many cases, contradictory definitions could exist side by side in the same text.¹²

The school in Orléans also relied heavily on logical argument and the extension of the *ratio* of a text through analogy rather than the ingenious citation of authorities.¹³ This led to an early introduction of new concepts and terms, such as the notion of the *persona repraesentata*, developed at Orléans by the jurist Jean de Monchy (d. ca. 1266), which denoted the legal personality of a community (such as a monastery) that existed independently from the people who belonged to it.¹⁴

The work of Jacques de Révigny (1230/40-1296) was particularly important in the development of the school's teaching on property law. Not much is known about him, but he was professor in Orléans until about 1280,¹⁵ and John XXII is sure to have been in contact with him in some form although it is not clear whether that was as a student or colleague or both. Jacques de Révigny's work is particularly important in relation to the status of the *dominium utile*, and the question of the relative rights and responsibilities of the *dominus directo* and the *dominus utiliter* in court cases.¹⁶ The question of the status of the *dominium utile* had important implications for the later discussion about the legal status of the Franciscan theories of the *simplex usus facti* in relation to other legal rights of use.¹⁷

While it may never be possible to draw any firm conclusions about the extent to which John XXII was influenced by his education at Orléans, it might still be worth noting some points about the (possible) overlap between what is known about the school at Orléans and the argumentation of the pope. A large number of French law schools in the thirteenth century had adopted the idea that private property was not a punishment for the fall or an immediate result of sin;

¹² For a thorough discussion of this see Kriechbaum, *Actio, ius und dominium*, chapters 5 and 6 (especially pp. 339 and 371).

¹³ See Peter Stein, *Roman Law in European History* (London: Pearson Education, 1992), p. 68.

¹⁴ As a legal idea, it had its origins in canon law, but it was transferred and applied to civil law by Jacques de Révigny, one of Jacques Duèse's most influential contemporaries at Orléans: Bezemer, 'Law school at Orléans', p. 249 and Feenstra and Duynstee, 'Orléans', in *Lexikon des Mittelalters*, VI, col. 1464. On the discussion of the Franciscan order as a represented rather than real person, see pp. 223-27 (section V.5).

¹⁵ Feenstra and Duynstee, 'Orléans', in *Lexikon des Mittelalters*, VI, col. 1464. For a discussion of the research on Jacques and the school at Orléans in general, see Feenstra, 'L'Enseignement du droit à Orléans', particularly pp. 18-21.

¹⁶ Kriechbaum, *Actio, ius und dominium*, p. 339.

¹⁷ For a full discussion of the legal concept of *dominium*, see especially pp. 188-92 (section V.1).

rather, they argued that sin was not the cause of private property, but only its prerequisite.¹⁸ In this view, private property came after the fall but not necessarily because of the fall, and property was linked to sin only in so far as the fall changed the appearance of human society, including its property relationships. It was a much more positive view of property than the one which had been common before the thirteenth century.

Although it may almost certainly be impossible to trace any direct influence of this view in the work of John XXII, he certainly did share other French lawyers' view of the essentially positive nature of property, and in his discussion of the origin of property and *dominium* in *Quia vir reprobus* (1329), John denied the existence of a link between private property and sin. Not only did he deny a causal relationship between the fall and the institution of private property, John even argued that private property and human *dominium* predated the fall, and that, in fact, God had given dominion over the earth to Adam in paradise.¹⁹ This goes far beyond the idea that dominion was not linked to sin, but the idea that there was no causal relationship between the fall and the institution of private property can be interpreted as a first step on the way.

If one of the characteristics of the school at Orléans was a reliance on logical argument rather than on the citation of authorities, then this tendency is reflected in John's Franciscan bulls (and the second version of *Ad conditorem canonum* in particular) whose arguments frequently appealed to the reader's common sense rather than (or at least in addition to) legal authorities. Similarly, while John XXII did not propose a general, unified theory of *dominium* in his bulls, he did follow the pattern set by his teachers and colleagues at Orléans by discussing the nature of *dominium* in detail in the context of the poverty debate, and by discussing it in contradictory terms as well as using differing definitions of the term in the same text. John's exposure to the ideas and types of argument of Orléans, especially in the case of property law and the procedures needed for successful lawsuits dealing with different types of property relationships, will almost certainly have had an influence on his response to the Franciscan ideal,

¹⁸ This notion had been current in France for most of the thirteenth century: see Rudolf Weigand, *Die Naturrechtslehre der Legisten und Dekretisten von Irnerius bis Accursius und von Gratian bis Johannes Teutonicus*, Münchener Theologische Studien, 26 (Munich: Hueber, 1967), p. 345.

¹⁹ See Leff, 'Bible and Rights', p. 231 and Oakley, 'Franciscan Innocence', p. 224. On the pope's discussion of the origin of dominion, see pp. 219-23 (section V.4).

especially in his determination to put the Franciscan order onto a ‘proper’ procedural footing.²⁰

John XXII had an interest in, and admiration for, straightforward legal and procedural regulations, which he may have acquired during his time at the law school of Orléans, although the remainder of his career in ecclesiastical and secular administration probably had an important and strengthening influence in this regard. It is certainly a good example of the type of career open to a graduate of Orléans, and while the later John XXII was exceptionally successful in finding employment both with secular governments and the church, the fact that he did so was nothing out of the ordinary; both his experience in ecclesiastical as well as secular government and the apparently effortless move between the two spheres were repeated by a number of other graduates on a less exalted level.

In Jacques Duèse’s case, he first appears in contemporary sources at the court of Louis of Anjou, the Franciscan bishop of Toulouse,²¹ and later as legal advisor to Louis’s father, Charles II of Anjou.²² His career in the service of the Angevin royal house culminated in his appointment as chancellor of Sicily from 1307-1309.²³ After having been appointed bishop of Fréjus by Boniface VIII and then transferred to the see of Avignon in 1310,²⁴ Jacques Duèse began the second

²⁰ An example for John’s interest in putting things onto a proper procedural footing can also be seen in his reorganisation of the order of Grandmont: see pp. 92-97 below.

²¹ The first reference to the late John XXII in a contemporary document was actually as witness to a testament in July 1293; in this document, he is described as ‘Jachobi Duesa, officialis Carcass.’ (GCN, VII, no. 804, col. 273). However, there are no further contemporary references to him until he became a member of the retinue of Charles II of Anjou. Most of the information about Jacques Duèse’s association with Louis of Anjou derives from his testimony in the canonisation proceedings for the bishop of Toulouse: see *Processus canonizationis et legendae variae Sancti Ludovici O.F.M. episcopi Tolosani*, ed. by the Collegium S. Bonaventurae, *Analecta Franciscana*, 7 (Quaracchi: Collegium S. Bonaventurae, 1951), pp. 1-254. See also Margaret Toynbee, *S. Louis of Toulouse and the Process of Canonisation in the Fourteenth Century*, *British Society of Franciscan Studies*, 15 (Manchester: Manchester University Press, 1929), pp. 126-32. The association between the future Pope John XXII and Louis of Toulouse has largely been ignored by the scholarship on the poverty controversy; the most detailed discussion of it can be found in Oakley, ‘Natural Right to Property’, pp. 92-99. It has also been briefly discussed in Lambert, ‘Franciscan Crisis’, pp. 129-31 and Samantha Kelly, ‘King Robert of Naples (1309-1343) and the Spiritual Franciscans’, *Cristianesimo nella storia*, 20 (1999), 41-80 (pp. 49-50). For a more detailed discussion of Louis of Anjou and of John XXII’s view of the spiritual value of poverty, see pp. 141-45 (section IV.1).

²² There are a number of references to Jacques at the court of Charles II which show him in a variety of capacities: he is referred to as *professor utriusque iuris* in, for instance, GCN, VII, nos 805-809, col. 273, as *conciliaris* in GCN, VII, nos 814 and 819, cols. 275-76, and as *familiaris* in GCN, VII, no. 819, col. 276 as well as in Weakland, ‘John XXII’, p. 165 note 15.

²³ He was first mentioned as chancellor on 30 November 1307 (GCN, VII, no. 834, col. 282) and last referred to by that title on 12 February 1309 (GCN, I, no. 32, col. 228).

²⁴ The *instrumentum electionis* for his elevation to the bishopric of Fréjus is published in GCN, I, no. 31, cols 225-28 under the date 4 February 1300, while his transfer to Avignon can be found in

phase of his career in ecclesiastical rather than secular administration: he was involved in the trial of Boniface VIII, which seems to have been linked to at least one high-profile diplomatic mission to the court of Philip the Fair,²⁵ in the canonisation of Celestine V,²⁶ and in the preparations for the Council of Vienne,²⁷ as well as being acting vice-chancellor of the curia for a brief period at the end of the pontificate of Clement V.²⁸ He was appointed cardinal-priest of San Vitale and cardinal-bishop of Porto just before the death of Clement V,²⁹ three years before his own election to the papacy as John XXII.

II.2 The Spiritual Crisis

One of the first and most urgent problems John XXII had to face after his election to the pontificate was the Spiritual crisis in the Franciscan order. It seems reasonable to assume that this crisis and John's suppression of the Spirituals had some impact on his perception of the Franciscan order as a whole, but the extent to which the Spiritual crisis led to John's disapproval of the Franciscan poverty

Regestum Clementis papae V ex Vaticanis archetypes sanctissimi domini nostri Leonis XIII pontificis maximi iussu et munificatio nunc primum editum, cura et studio monachorum ordinis S. Benedicti, 9 vols (Rome: Typographica Vaticana, 1885-88), V (1887), nos 5391 and 5426 (pp. 108 and 118).

²⁵ For the trial of Boniface see *Tables de registres de Clément V publiés par les Bénédictines*, ed. by Yvonne Lanhers and Robert Fawtier (Paris: Boccard, 1948), no. 10469 (p. 78), GCN, VII, no. 849 (col. 285); for the mission to France see *Regestum Clementis*, V, no. 6334 (pp. 437-38) and GCN, VII, no. 850 (col. 285). For an account of the speculation about his mission, see also Tilmann Schmidt, *Der Bonifaz-Prozess. Verfahren der Papstanklage in der Zeit Bonifaz' VIII. und Clemens' V.*, Forschungen zur kirchlichen Rechtsgeschichte und zum Kirchenrecht, 19 (Cologne: Böhlau, 1989), p. 232 and Weakland, 'John XXII', p. 169.

²⁶ See Schmidt, *Bonifaz-Prozess*, p. 433.

²⁷ See Ewald Müller, *Das Konzil von Vienne 1311-1312. Seine Quellen und seine Geschichte*, Vorreformationsgeschichtliche Forschungen, 12 (Münster: Aschendorff, 1934) and Leonard Boyle, 'A Committee Stage at the Council of Vienne', in *Studia in honorem eminentissimi Cardinalis Alphonsi M. Stickler*, ed. by Rosalius Josephus Castillo Lara, *Studia et Textus Historiae Iuris Canonici*, 7 (Rome: Libreria Ateneo Salesiano, 1992), pp. 25-35.

²⁸ See Paul Maria Baumgarten, *Von der apostolischen Kanzlei. Untersuchungen über die päpstlichen Tabellionen und die Vizekanzler der Heiligen Römischen Kurie im XIII. XIV. u. XV. Jahrhundert*, Görres-Gesellschaft zur Pflege der Wissenschaft im Katholischen Deutschland, Sektion für Rechts- und Sozialwissenschaft, 4 (Cologne: Bachem, 1908), p. 94.

²⁹ The first reference to him as cardinal of San Vitale can be found in GCN, VII, no. 864, col. 287. After 5 May 1313 he is consistently referred to as bishop of Porto (*Regestum Clementis*, VIII (1888), no. 10006, pp. 444-46). Otherwise the chronology of the transfer from the cardinalate of San Vitale to that of Porto is rather confused, with Jacques alternately being referred to by both titles between 18 April 1313 and 5 May 1313 (*Regestum Clementis*, VIII, nos 9981, 9982, 10054, 10055 and 9994, pp. 412, 471 and 429-30).

ideal in general has never been solved satisfactorily.³⁰ John's measures to suppress the Spiritual crisis and his discussion of the more theoretical aspects of Franciscan poverty in the 1320s can not be seen in isolation from each other, and Malcolm Lambert has suggested that all of John's Franciscan bulls (*Quorundam exigit* in October 1317, *Sancta Romana* in December 1317, *Gloriosam ecclesiam* in January 1318, as well as *Quia nonnumquam*, *Ad conditorem canonum* and *Cum inter nonnullos*) should be treated as part of a coherent attempt by John XXII to reform the Franciscan doctrine of poverty as well as the order itself.³¹ Particularly important in this context are not so much the details of the Spiritual crisis, but the way the pope dealt with the crisis as it presented itself to him, and the question of the extent to which his experience of the crisis influenced his views of the Franciscan poverty ideal. This question, however, is largely bound up with John's view of, and reaction to, *Exiit qui seminat* and its role in Franciscan history.

Nicholas III's bull *Exiit qui seminat* (1279) is crucial for the later development of the Spiritual crisis and John XXII's reaction to the Franciscan order, and it had been the last official definition of Franciscan poverty before the outbreak of the theoretical poverty controversy. It was both an attempt to clarify the Franciscan rule regarding its content and the legal obligations it entailed for the order, as well as a defence of the Franciscan ideal against its outside critics.³²

In the bull, Nicholas III seemed to accept the Franciscan claim of a fundamental identity of their rule with the gospels. This did not only mean an equation of the Franciscan way of life with that of Christ and the apostles, it also extended the Franciscan ideal of absolute poverty as a life without property rights to Christ and the apostles. Even if some Franciscans tended to over-interpret the extent of Nicholas III's approval of this identification, *Exiit* did confirm the evangelical basis of Franciscan life, arguing that absolute poverty was in accordance with the teaching and example of Christ, and that there was a correspondence between the Franciscan life and that of Christ and the apostles.³³

³⁰ For a discussion of the state of research on this question, see especially Turley, 'John XXII and the Franciscans', pp. 74-87. See also Lambert, *Franciscan Poverty*, pp. 238-40.

³¹ Lambert, 'Franciscan Crisis', p. 137. For a similar view, see also Wittneben, *Bonagratia*, pp. 107-108.

³² See Helmut Feld, *Franziskus von Assisi und seine Bewegung* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1994), p. 458 and Lambert, *Franciscan Poverty*, pp. 149-150.

³³ *Exiit*, in CIC, II, col. 1110: 'Hi sunt illius sanctae regulae professores, quae evangelio fundatur eloquio, vitae Christi roboratur exemplo fundatoris militantis ecclesiae, Apostolorum eius sermonibus actibusque firmatur. Haec est apud Deum et Patrem munda et immaculata religio,

According to the Franciscans, and now according to *Exiit*, evangelical poverty consisted of the renunciation of property as practised by the Franciscans.³⁴

The second important feature of *Exiit* was its warning to the order to exercise moderation in the use of material goods. It was the first time a papal document contained such a warning. Nicholas's recommendation of an *usus moderatus* to the order was to have far-reaching consequences, partly because the bull did not discuss the relation of this moderate or restricted use to the vow,³⁵ and this is where disputes in the order first arose.

Exiit was based on an exclusively legal definition of poverty as the renunciation of property rights. The legal concept of the *simplex usus facti* had been based by Nicholas III on the life and teaching of Christ. But it remained a legal definition that did not include questions of use or consumption, and evangelical poverty remained primarily defined by a lack of possessions.³⁶ The focus was on the renunciation of property rights, and while the moderation in use which Nicholas III recommended was important, it was not central or essential to his definition. And this concentration on the renunciation of property was not enough for some Franciscans whose most influential spokesman was the Provençal friar Petrus Johannis Olivi.³⁷

quae, descendens a patre luminum, per eius filium exemplariter et verbaliter Apostolis tradita, et deinde per Spiritum Sanctum beato Francisco et eum sequentibus inspirata, totius in se quasi continet testimonium Trinitatis.' See also Lambert, *Franciscan Poverty*, pp. 150-51, Feld, *Franziskus*, pp. 459-60, Schlageter, 'Armutsauffassung', p. 98 and Sean Kinsella, 'The Poverty of Christ in the Medieval Debates between the Papacy and the Franciscans', *Laurentianum*, 36 (1995), 477-509 (pp. 492-93).

³⁴ It is important to keep in mind, however, that there were enormous differences in the views of members of the Franciscan order on the question of the relationship between the rule and the gospel: see the discussion of the views of Michel le Moine and Bonagratia of Bergamo on p. 160 (section IV.4).

³⁵ *Exiit*, in CIC, II, col. 1113; see also Burr, *Spiritual Franciscans*, p. 140.

³⁶ Following Bonaventura's *Apologia pauperum*: see *Opuscula varia ad theologiam mysticam*, chapter 8, particularly p. 273. See also Janet Coleman, 'The Two Jurisdictions: Theological and Legal Justifications of Church Property in the Thirteenth Century', in *The Church and Wealth: Papers Read at the 1986 Summer Meeting and the 1987 Winter Meeting of the Ecclesiastical History Society*, ed. by W. J. Sheils and Diana Wood, *Studies in Church History*, 24 (Oxford: Blackwell, 1987), pp. 75-110 (p. 83); and Conal Condren, 'Rhetoric, Historiography and Political Theory: Some Aspects of the Poverty Conflict Reconsidered', *Journal of Religious History*, 13 (1984), 15-34 (p. 17).

³⁷ For a fuller discussion of Olivi, see Burr, *Olivi and Franciscan Poverty*, Schlageter, *Heil der Armen*, and the review of both works in David Flood, 'Recent study on Petrus Johannis Olivi', *Franziskanische Studien*, 73 (1991), 262-69. See also David Flood, 'Recent Study on Petrus Johannis Olivi', *Franciscan Studies*, 58 (2000), 111-19 and Burr, *Spiritual Franciscans*, especially pp. 50-65.

Olivi argued in his *Quaestio de usu paupere* that moderation in the use of material goods was an integral part of the Franciscan vow of poverty.³⁸ Poverty should not only mean not owning anything, it also had to involve material consequences in the daily life of the friars. The reaction of the order's leadership was overwhelmingly negative, and Olivi's theory engendered fierce opposition and caused a major crisis in the order that lasted for decades. David Burr has suggested that the reaction within the order was to a great extent due to the Franciscans' fear of the reaction outside the order. One of the main criticisms previously leveled against the order had been the charge that the Franciscan rule was impossible to observe because the standard of observance it demanded from the friars was far too high.³⁹ In this situation (the secular-mendicant controversy was far from over at the time when Olivi wrote), his insistence on restricted use as a part of the vow made things even harder for the Franciscans by binding the order not only to an impossibly high standard, but also to a standard that could not be determined objectively.⁴⁰ While the extremes of restricted/poor and excessive/rich use were fairly easy to determine, most of the Franciscans would have lived their life somewhere in the middle, where the line dividing correct behaviour from violations of the rule was very thin and easy to cross. This would make things very hard for the consciences of individual friars and could then impede spiritual growth and even be spiritually dangerous for the members of the order.⁴¹ The spiritual dangers of such an indeterminate vow were very great, as any violation of a religious vow was seen as constituting a mortal sin – one of the reasons why, as Thomas Aquinas had argued, the Dominicans vowed not to observe all that was in the rule, but obedience according to the rule.⁴²

³⁸ Edited in David Burr, *Petrus Ioannis Olivi: De usu paupere: the Quaestio and the Tractatus*, Italian Medieval and Renaissance Studies, 4 (Florence: Olschki, 1992).

³⁹ Burr, *Olivi and Franciscan Poverty*, p. 156.

⁴⁰ Burr, *Olivi and Franciscan Poverty*, pp. 46 and 156.

⁴¹ Burr, *Olivi and Franciscan Poverty*, pp. 68, 156 and 192. A similar argument was used by the Conventuals in the pamphlet 'Circa materiam' published at the time of the Council of Vienne. See Albanus Heysse, 'Ubertini de Casali opusculum *Super tribus sceleribus*', *Archivum Franciscanum Historicum*, 10 (1917), 103-74; the edition of 'Circa materiam' is on pp. 116-22 (see especially pp. 118-19), and Lambert, *Franciscan Poverty*, pp. 205-206.

⁴² See Aquinas's criticism of the Franciscan position regarding vows in the *Summa Theologiae* 2.2.186.9 resp: 'ille qui profitetur regulum, non vovet servare omnia quae sunt in regula: sed vovet regularem vitam' (in *Sancti Thomae Aquinatis Doctoris Angelici Ordinis Praedicatorum Opera Omnia*, ed. by Vernon J. Bourke, 25 vols (Parma: Fiacadori, 1852-73; repr. New York: Musurgia, 1948-50), III: *Summa Theologica complectens Secundam Secundae* (1853; repr. 1948), p. 639). See also Lambert, *Franciscan Poverty*, p. 166, Burr, *Olivi and Franciscan Poverty*, p. 148 and Burr, *Spiritual Franciscans*, pp. 54-57.

There was an additional problem with the *usus pauper* which became a real issue only after Olivi's death, when the conflict had already escalated. In an almost inevitable clash between an individual friar's attempt to observe the *usus pauper* and the order's (or at least its leadership's) desire for a uniform observance, the implications for discipline within the order were enormous.⁴³ The problem of a possible clash between obedience and poverty was exacerbated by the link between the Franciscan rule and the gospels. If there was such a fundamental identity between the rule of St. Francis and the gospels (and in the eyes of at least some Franciscans, Nicholas III had confirmed just that), and if the rule was seen to demand the *usus pauper*, then any attempt to introduce a uniformity of observance based on a rejection of poor use would undermine the gospels and would therefore have to be resisted – and resistance in this instance was, according to Olivi, not only a right but a duty.⁴⁴

Even during Olivi's lifetime, and more especially after his death, factions started to develop within the order. At first, the division between the factions was neither clear-cut nor obvious, and both the viewpoints and the chains of argument only became clear in the course of the debate. However, the positions of the Spirituals, who supported Olivi's theory of the *usus pauper*, and their opponents, the Conventuals or Community, began drifting further and further apart, with splinter groups of Spirituals breaking away from the main order in order to be able to observe a life of apostolic poverty. The most notable of these were the Celestinians under Brother Liberato whose group had been authorised by Pope Celestine V.⁴⁵ Some other groups of Spirituals remained within the order but set themselves apart through their clothing and behaviour, sometimes withdrawing into separate convents, and in extreme cases holding these convents against the Conventuals by force of arms.⁴⁶ In Italy, there had been occasional outbreaks of

⁴³ Burr, *Olivi and Franciscan Poverty*, p. 192.

⁴⁴ Burr, *Olivi and Franciscan Poverty*, p. 170, Burr, *Spiritual Franciscans*, pp. 64-65 and Lambert, *Franciscan Poverty*, p. 179.

⁴⁵ See Lambert, *Franciscan Poverty*, pp. 176-80 on the Celestinians and their fate.

⁴⁶ The convents in question were those of Narbonne and Béziers: Lambert, *Franciscan Poverty*, pp. 216-18. For disturbances in Tuscany, Provence and the March of Ancona, see Lambert, *Franciscan Poverty*, pp. 157-95 and Burr, *Spiritual Franciscans*, pp. 67-110. See also Luke Wadding, *Annales minorum seu trium ordinum a S. Francisco institutorum*, 3rd edn, rev. by Joseph Maria Fonseca, 16 vols (Quaracchi: [n. pub.]. 1931-33), VI (1931), p. 299 for a similar problem in 1317 and *Chronica fratris Nicolai Glassberger*, p. 124 for a general account of Franciscan splinter groups trying to secede from the order after 1310.

violence followed by severe punishments since the 1270s.⁴⁷ This breakdown in the discipline and the danger of an irrevocable split were exactly what the Community was trying to prevent, and whatever the original reasons for resisting Olivi's theory of the *usus pauper* had been, by the beginning of the fourteenth century, the focus of the controversy had shifted from a theological (and to a certain extent legal) discussion to a conflict over discipline and obedience.

The clashes between the two groups within the order were so frequent and occasionally so violent that Pope Clement V felt compelled to intervene in 1309 by setting up a papal commission to enquire into the question of Franciscan poverty.⁴⁸ Representatives of the Spirituales as well as spokesmen for the Community were invited to the papal residence outside Avignon, a meeting which resulted in Clement's bull *Dudum ad apostolatus* in April 1310.⁴⁹ It exempted the Spiritual spokesmen from the authority of their superiors and warned the order not to take any further action against them.⁵⁰ The bull was followed quickly by a new round of recriminations and pamphlets, and by the time of the Council of Vienne (1311-12), the problem of the Franciscan order was still of such an explosive nature that it became one of the major issues of discussion at the council.⁵¹ The bull *Exivi de paradiso*, published as a result of those debates, upheld Spiritual complaints about deteriorating standards; although it pointed out that the Community had argued that transgressions of the rule were legislated against and punished, the bull then also listed a number of offences committed by members of

⁴⁷ Franz Ehrle, 'Die Spirituales, ihr Verhältnis zum Franciscanerorden und zu den Fraticellen: 3. Die *Historia septem tribulationum ordinis minorum* des fr. Angelus de Clarino', *Archiv für Literatur- und Kirchengeschichte des Mittelalters*, 2 (1886), 106-64 and 249-336 (pp. 301-304) and *Chronica fratris Nicolai Glassberger*, p. 121. See also Lambert, *Franciscan Poverty*, pp. 168-69 and Burr, *Spiritual Franciscans*, pp. 43-46 (on the province of Ancona).

⁴⁸ On the papal investigation of the Franciscan order, see particularly Lambert, *Franciscan Poverty*, pp. 197-208, and Michael F. Cusato, 'Whence "the Community"?', *Franciscan Studies*, 60 (2002), 39-92 (pp. 56-64).

⁴⁹ Cusato, 'Whence the Community?', pp. 60-62. An edition of *Dudum ad apostolatus* can be found on pp. 85-89 of Cusato's article.

⁵⁰ For the exemption see *Dudum ad apostolatus*: 'nos de fratrum nostrorum consilio et assenso fratres Raymundum, Guillelmum de Cornelione, Guidonem, Ubertinum, Bartolomaeum, Guillelmum de Agantico, Petrum Raymundi et Petrum Malodii supradictos ab omni obedientia et iurisdictione vestra, filii minister et praelati, ac successorum vestrorum prorsus eximimus durante negotio supradicto' (Cusato, 'Whence the Community?', p. 86). On the prohibition of further persecution: 'nolumus tamen fratres ipsos sic sentientes propter hoc maiori libertate gaudere nec maioris correctionis subesse rigori, auctoritate apostolica statuantes, quod dicti fratres praemissi occasione negotii vel ex causis aliis praetextu ipsius per suos praelatos gravius nullatenus puniantur nec tractentur [...]' (Cusato, 'Whence the Community?', p. 87).

⁵¹ For the Council of Vienne, see Müller, *Konzil*, and Lambert, *Franciscan Poverty*, pp. 211-14.

the order which closely mirrored the lists of Spiritual grievances.⁵² Clement V implied (and in a number of cases stated explicitly) that these offences were still taking place.⁵³ But the bull did not exonerate the Spirituals completely, and it did specifically reject the *usus pauper* in the definition of Olivi. It also attempted to suppress the internal conflicts within the order by rejecting any imputation of heresy in connection with the *usus pauper*: neither the assertion that it was part of the vow nor the denial of this assertion could be said to be heretical.⁵⁴ Clement did also state, however, that the Franciscan vow of poverty had to involve more than a renunciation of property rights, and that all those restrictions on the use of material goods which were explicitly enjoined on the friars by the rule fell under the vow. Still, the bull implied a rejection of Olivi's theory, as it only allowed for a set of very specific *usus pauperes*, rather than a general, undefined *usus pauper*.⁵⁵ But although these papal interventions halted the spread of the crisis to a certain extent, they did not bring about a solution to the problem or a reconciliation of the two parties in the order, partly because both Clement V and the Franciscan Minister General Alexander of Alexandria died soon afterwards, and both the papacy and the generalate remained vacant for two years.

Jacques Duèse (the later John XXII) had been in contact with Spiritual ideas before he was elected pope, although it is not at all clear what opinion he formed of them at the time. He certainly knew quite a number of Franciscans, including some high-profile Spirituals. His first known contact with Franciscan ideas and personalities occurred at the court of Bishop Louis of Toulouse in 1297.⁵⁶ The association between Jacques Duèse and Louis of Toulouse can only be clearly

⁵² The text of the bull is published in CIC, II, cols 1193-2000. See also Lambert, *Franciscan Poverty*, pp. 211-14 and Burr, *Spiritual Franciscans*, pp. 144-50. For the close correspondence between Clement's list of abuses and Ubertino da Casale's *Rotulus*, see Lambert, *Franciscan Poverty*, p. 212, especially note 72.

⁵³ *Exivi de paradiso*, in CIC, II, cols 1196-98, especially col. 1197: 'Tamen communitas fratrum, et specialiter rectores ipsius ordinis asserebant, quod praedicta seu plura ex ipsis in ordine non fiebant, quod et, si qui reperiuntur rei in talibus, rigide puniuntur, nec non contra talia, ne fiant, sunt facta pluries ab antiquo statuta in ordine multum stricta.'

⁵⁴ *Exivi de paradiso*, in CIC, II, cols 1198-99, especially col. 1199: 'Dicere autem, sicut aliqui asserere perhibentur, quod haereticum sit, tenere usum pauperem includi vel non includi sub voto evangelicae paupertatis, praesumptuosum et temerarium iudicamus.' See also Tabacco, 'Papato avignonese', p. 327.

⁵⁵ See Burr, *Spiritual Franciscans*, pp. 148-49.

⁵⁶ For brief discussions of the association between John XXII and Louis of Toulouse see Lambert, 'Franciscan Crisis', pp. 129-31, Kelly, 'Robert of Naples', pp. 49-50 and especially Oakley, 'Natural Right to Property', pp. 92-99.

established for the time between June 1297, when Jacques accompanied Louis on his trip to Catalonia together with Guillaume de Cornillon and the Franciscan friars Francis le Brun and Petrus Scarerii, and the death of the bishop of Toulouse in August of the same year.⁵⁷ Guillaume de Cornillon later became guardian of Arles in 1309 and was a representative in the Spiritual delegation summoned by Clement V in the same year, Francis le Brun died as bishop of Gaeta in 1320, and Petrus Scarerii became bishop of Rapolla and confessor of Robert of Naples.⁵⁸ As the companions of Louis on his last journey to Catalonia and at his deathbed, we can assume that Jacques Duèse must have known them quite well.⁵⁹ The witnesses called during the canonisation proceedings all agreed on the fact that Jacques stayed with the bishop during his time in Barcelona, and accompanied him on his journey to Rome which was cut short by the bishop's death at Brignoles on 19 August 1297.⁶⁰ The fact that Jacques accompanied Louis during this trip points to a degree of intimacy between the two men that might seem surprising, particularly when coupled with the fact that there does not seem to have been any connection between them before Louis's arrival in Toulouse in May 1297. Louis travelled with a small retinue and would not have taken Jacques with him had he not placed a high degree of trust in him. The same holds true for the fact that Jacques was one of the few people who stayed with the bishop through his final illness and was present at his deathbed.

During the canonisation proceedings, Jacques referred to himself as *officialis et familiaris et domesticus* of the bishop several times,⁶¹ confirming the view that there was a close personal relationship between the two men, particularly as none of the other witnesses either contradicted this picture that Jacques painted of himself or said anything else to suggest that this was fundamentally wrong. In the canonisation bull, John XXII additionally referred to

⁵⁷ See Toynbee, *St. Louis*, p. 125.

⁵⁸ See Toynbee, *St. Louis*, p. 174 and Lambert, 'Franciscan Crisis', p. 130.

⁵⁹ See Toynbee, *St. Louis*, pp. 125 and 130-32. For the presence of Jacques Duèse during Louis's final illness and death, see also his testimony in the canonisation proceedings: *Processus canonizationis* ad cap. xlix and liiij, pp. 76-77.

⁶⁰ *Processus canonizationis* ad cap. xl, xlj, xlix, l and liiij, pp. 76-77. See also Toynbee, *St. Louis*, pp. 126-32.

⁶¹ *Processus canonizationis* ad cap xxxiiij, p. 75: 'ille [=Jacques] qui erat officialis et familiaris et domesticus suus' and later on the same page 'sicut familiaris et domesticus suus frequentavit domum ipsius'; ad cap xxxvj, p. 75: 'ille familiaris'; ad cap xlix, p. 77: 'servivit sibi ipse qui loquitur multum assidue sicut familiaris suus'.

himself as Louis's secretary, but there is no other confirmation of this, and it is therefore hard to say whether this is just a later embellishment.⁶²

By the time of the canonisation process for Louis, the involvement of Jacques Duèse in the proceedings means that he must also have come into contact with two other principal witnesses to Louis's sanctity, Raymond Gaufredi and Guillaume de Saint-Marcel. Raymond Gaufredi was one of the most distinguished witnesses to the sanctity of Louis other than Jacques himself; he had been Franciscan minister general before being deposed by Boniface VIII in 1295, and he also had been one of the Spiritual delegates to the meeting with Clement V in 1309.⁶³ The Franciscan inquisitor Guillaume de Saint-Marcel was later involved in the trial of the Templars as well as becoming penitentiary of Clement V, chaplain of Robert of Naples and bishop of Nice.⁶⁴

These links between the future pope and a number of leading members of the Spiritual party are intriguing,⁶⁵ although not much can be said either about the relationship between them or the effect this might have had on John. The same is true for the relationship between Jacques and Louis himself; while it seems clear that Jacques was impressed and genuinely affected by Louis and his piety, it is not clear what influence, if any, this had on later policies.⁶⁶

It also seems a reasonable assumption that John came into contact with the Spiritual problem during his time as bishop of Fréjus and later Avignon (1300-12). Unfortunately, the documentary evidence left of his episcopate does not refer to any such encounters, and while there is at least some documentation on his activities as advisor to Charles II of Sicily, his time as bishop remains disappointingly elusive. It has been suggested by Ulrich Horst that the records of southern French inquisitorial processes were an important factor in drawing

⁶² See John's canonisation bull *Sol oriens mundo* of 7 April 1317, in *Processus canonizationis*, pp. 395-99 (p. 397).

⁶³ Toynbee, *St. Louis*, p. 178. On Gaufredi's career see also Burr, *Spiritual Franciscans*, pp. 67-69, 74-75 and 114-15.

⁶⁴ See Toynbee, *St. Louis*, p. 180.

⁶⁵ There is also an indirect connection between the later pope and Peter John Olivi who had been liked and admired not only by Louis of Toulouse, but also by his younger brother Robert of Naples. See Mercedes van Heuckelum, *Spiritualistische Strömungen an den Höfen von Aragon und Anjou während der Höhe des Armutstretes* (Berlin: Rothschild, 1912), pp. 31-32. For a very different assessment of the relationship between Olivi and the Angevin princes, however, see Kelly, 'Robert of Naples', pp. 47-49.

⁶⁶ Evidence for John's relationship with, and admiration for, Louis of Toulouse can be found mainly in his deposition during the canonisation proceedings (*Processus canonizationis*, pp. 75-77) as well as, to a lesser extent, in *Sol oriens mundo* (*Processus canonizationis*, pp. 395-99).

John's attention to the potentially subversive nature of the Franciscan poverty ideal, although we do not actually know when or if the pope came across these records or what he made of them.⁶⁷

However, there may be some circumstantial evidence for John's attitude towards the Spirituals in the records of his participation in the canonisation proceedings for Celestine V. These lasted from December 1312 to May 1313, and had been partly instituted under pressure from the French government as part of the attempt to discredit Celestine's successor Boniface VIII. Most of the pronouncements on the validity of Celestine's miracles were not very surprising: cardinals owing their position to Boniface tended to dismiss the miracles while cardinals appointed by Benedict XI or Clement V tended to accept them. There were two surprising exceptions, however. Cardinal-Bishop John of Porto, who had been appointed by Boniface VIII and therefore could have been expected to be hostile to the sanctity of Celestine V, recognised almost all of the miracles as genuine, leading Tilmann Schmidt to comment on the fact that John seemed to have lost his earlier hostility towards the Spirituals who had been favoured by Celestine.⁶⁸ On the other hand, Jacques Duèse, who was cardinal-priest of San Vitale at the time, and who had been appointed by Clement V, questioned the validity of more than half of the miracles attributed to Celestine.⁶⁹ Schmidt has

⁶⁷ Ulrich Horst, 'Die Armut Christi und der Apostel nach der *Summa de ecclesiastica potestate* des Augustinus von Ancona', in *Traditio Augustiniana: Studien über Augustinus und seine Rezeption. Festgabe für Willigis Eckermann OSA zum 60. Geburtstag*, ed. by Adolar Zumkeller and Achim Krümmel, Cassiciacum 46 (Würzburg: Augustinus-Verlag, 1994), pp. 471-94 (p. 489). Horst has quoted from the *Practica inquisitionis* of Bernard Gui and the statements made by Na Prous Boneta during her trial. But while Na Prous had already been questioned in 1315, her trial was not until 1325, and although the *Practica inquisitionis* was probably written in 1314/1316, there is no evidence that John read it. For Na Prous Boneta, see W. May, 'The Confession of Na Prous Boneta. Heretic and Heresiarch', in *Essays in Medieval Life and Thought: Presented in Honor of Austin Patterson*, ed. by John H. Mundy, Richard W. Emery and Benjamin N. Nelson (New York: Columbia University Press, 1955), pp. 3-30. For the date of Gui's *Practica inquisitionis*, see A. Vernet, 'Bernardus Guidonis', in *Lexikon des Mittelalters*, 9 vols (Munich: various publishers, 1980-98), I (Munich: Artemis & Winkler, 1980), cols 1976-78 (col. 1977).

⁶⁸ See Schmidt, *Bonifaz-Prozess*, pp. 433-34: 'seine frühere Spiritualenfeindlichkeit läßt er an dieser Stelle nicht mehr erkennen' (p. 434).

⁶⁹ See J. Celidonio, 'S. Pierre Célestin et ses premiers biographes', *Analecta Bollandiana*, 16 (1897), 365-487. The cardinals' verdicts are edited on pp. 475-87. Of the seven miracles attributed to Celestine before his election to the papacy, Jacques Duèse rejected one outright ('dixit non esse miraculum, nec esse probatum', p. 478) and did not accept five others as sufficiently proven. His verdict on the last one is not recorded. He did accept two miracles attributed to Celestine during his papacy and five from the time after his death, but doubted the validity of two miracles after Celestine's resignation and a further miracle after his death ('dixit quod dubitat de miraculo et probatione', p. 485).

not commented on any underlying reasons for the future pope's decision,⁷⁰ but it might possibly be an early indication of John XXII's sympathies in the Franciscan question.

Unfortunately, although Jacques Duèse participated in at least one of the committees preparing the Council of Vienne, where the fate of the Spirituals was to be decided, and despite the fact that he did attend the council as a delegate,⁷¹ there are no records which show him taking an active part in the deliberations. He certainly does not seem to have been involved in the debates about the Franciscan order. Even so, the proceedings of the Council will have brought John into contact with quite a wide spectrum of Franciscan ideas as well as with a number of people who were to play an important role later on. Other than Vital du Four whom he knew already,⁷² the most important of these were the Spiritual leader Ubertino da Casale as well as Bonagratia of Bergamo who attended the council as procurator of the Franciscan order, arguing on behalf of the Conventuals.⁷³

How much of an impression the discussion of Spiritual ideas at the Council made on Jacques is difficult to say; he did not record anything about them either at the time or in his later correspondence, so clues to this question can only be found in a study of his writings on poverty and through an examination as to whether they contain references to, or reflections of, Spiritual positions or the deliberations of Vienne in general. It is interesting to note, however, that John does seem to have used some of the Spiritual arguments against the Community when he turned on the Franciscan ideal itself – particularly Ubertino da Casale's

⁷⁰ He does speak of a 'Sonderrolle des Skeptikers Jacques Duèse', however: Schmidt, *Bonifaz-Prozess*, p. 433.

⁷¹ For his involvement in the committee dealing with the grievances of the French secular clergy and his participation in the council, see Müller, *Konzil*, especially pp. 118-19 and Boyle, 'Committee Stage', p. 25.

⁷² Both Jacques Duèse and Vital du Four were part of a commission charged to interview Italian witnesses for the trial of Boniface VIII (see Schmidt, *Bonifaz-Prozess*, pp. 227-30). Jacques did not in fact travel to Italy with the group, and in the end, he formed part of another commission charged with the investigation of witnesses in France. This second group also included Vital du Four, as well as Bertrand de Montauban and Castellanus of Treviso. See Schmidt, *Bonifaz-Prozess*, p. 228 and Lanhers and Fawtier, *Tables de registres*, no. 10472 (p. 78). It is not clear whether Jacques did go to France as part of the commission, but if he did, he must have been in extensive contact with Vital du Four thirteen years before the outbreak of the theoretical poverty conflict, and even if he did not, the two men must at least have known each other.

⁷³ See Müller, *Konzil*, p. 294.

diatribes against the use of procurators and his condemnation of the hypocrisy of his order.⁷⁴

Once he was elected pope, John XXII did act quickly and decisively on the Spiritual problem. There were two distinct groups with whom the pope was concerned: a group of Tuscan rebels sheltering in Sicily under the protection of King Frederick II (1272-1337) and the Spirituals of Provence, in particular the convents of Béziers and Narbonne. In spring 1317, the pope wrote to Frederick, ordering him to detain the first group, and he also summoned representatives of the convents of Béziers and Narbonne to appear in Avignon.⁷⁵ Sixty-four friars were detained in Avignon, while John prepared his first anti-Spiritual bull which was published on 7 October 1317.

Quorundam exigit settled the question of the *usus pauper* once and for all in favour of the Conventual Franciscans.⁷⁶ John argued that the ‘blind and uninformed scrupulosity’ of some friars had led some of them to disobey their superiors, under the pretext that they were following their conscience.⁷⁷ He therefore felt compelled to add yet another gloss to the Franciscan rule in the hope that the order would then be able to enjoy peace and unity again.⁷⁸

The pope explicitly refused to get drawn into the debate about the exact size, shape, material and price of the friars’ habits, arguing that out of misplaced

⁷⁴ See Davis, ‘Ubertino da Casale’, pp. 38-39. Franz Ehrle had also drawn attention to the fact that John XXII drew on Spiritual criticism of the Community when the pope turned his attention to the poverty ideal itself: see Ehrle, ‘Die Spiritualen, ihr Verhältnis zum Franciscanerorden und zu den Fraticellen (Schluss)’, p. 50. According to Davis, John’s use of Ubertino’s writings may reflect a slightly more ambivalent attitude towards the relative merits of the factions in the order than the one with which he is normally credited: see Charles T. Davis, ‘Le Pape Jean XXII et les spirituels, Ubertin de Casale’, in *Franciscains d’Oc: Les Spirituels ca. 1280-1324*, ed. by M.-H. Vicaire, Cahiers de Fanjeaux, 10 (Toulouse: Privat, 1975), pp. 263-83 (pp. 267-68). On John’s relationship with Ubertino, see also Burr, *Spiritual Franciscans*, pp. 260-61. One other connection might have been the pope’s rejection of the definition of poverty as non-ownership which mirrored a similar argument made by Ubertino da Casale (Davis, ‘Ubertino da Casale’, pp. 26 and 28). See Ubertino’s *Reducendo igitur ad brevitatem*: ‘Dicunt etiam predicti unum, quod michi videtur valde absurdum, scilicet quod Christus et apostoli perfectionem consilii de paupertate intellexerunt solum in non habendo dominium rerum.’ (Davis, ‘Ubertino da Casale’, p. 49). See also Miethke, *Sozialphilosophie*, p. 378.

⁷⁵ For a summary of the events of 1317-18, see especially Lambert, *Franciscan Poverty*, pp. 221-30 and Burr, *Spiritual Franciscans*, pp. 179-200.

⁷⁶ Edited in CIC, II, cols 120-24 and Tarrant, *Extravagantes*, pp. 163-181.

⁷⁷ *Quorundam exigit*, in Tarrant, *Extravagantes*, p. 163: ‘Quorundam exigit cece scrupulositas ambiguum ac ipsorum quodammodo indocta scientia (ne dixerimus quod irreligiosa horum sit uana uel in hoc superstitiosa religio) ut dum suis mauult temere sub conscientie uelamento conceptibus quam prelatorum ordinis sui cum obedientie merito prouide inherere sententiis [...]’.

⁷⁸ *Quorundam exigit*, in Tarrant, *Extravagantes*, pp. 164-65.

zeal the Spirituals had assumed ‘short, strict, unusual and squalid habits, full of novelty’ and that they had then compounded their error by refusing to change them when ordered to do so by their ministers.⁷⁹ While John acknowledged that the Franciscan rule called for *vilitas* in clothing, he argued that it was up to the order’s leadership to determine what constituted such ‘vileness’. The pope stressed three times in the bull that he (as well as Clement V) had burdened the leaders’ consciences with the responsibility of determining and enforcing *vilitas*.⁸⁰ John also pointed to the fact that even *Exiit* had left this question to the order’s leadership, and argued that it was not up to any individual friar to decide whether the superiors’ decisions about clothing conformed to the Franciscan poverty ideal.⁸¹ As long as they obeyed their leaders, their consciences and their souls were not in danger.

The bull also provided an indirect answer to the problem of having an indeterminate vow: rather than relying on the individual friar’s judgement and conscience, as Olivi had done, John minimised the spiritual and disciplinary problems this would have constituted for the order by making the determination of correct observance the responsibility of the order’s leadership, bringing the order more into line with Dominican practice if not theory. This was not the solution the Spirituals were looking for, however: although John did not explicitly reject the idea that the Franciscan vow involved some restrictions in the use of material goods, leaving the determination of proper use up to the order’s leadership amounted to practically the same thing in the eyes of the Spirituals who had become progressively disillusioned about the Community’s commitment to ‘true’ poverty.

The pope appears to have been particularly exasperated with what he chose to present as the pettiness of the objects involved in the debate: he

⁷⁹ *Quorundam exigit*, in Tarrant, *Extravagantes*, p. 169: ‘[...] fratribus aliqui habitus propterea curtos strictos inusitados et squalidos, novitate plenos ac dissidii non ignaros, cum a communitate ordinis discreparent, assumerent, nec eos ad ministrorum custodum gardianorum eorundem mandatum requisiti deponerent, nec alios, prout eiusdem ordinis communitas deferebat, habitus iuxta eorundem ministrorum custodum et gardianorum arbitrium ducerent resumendos, dicentes in hoc eorundem prelatorum suorum non parendum fore arbitrio [...]’.

⁸⁰ *Quorundam exigit*, in Tarrant, *Extravagantes*, pp. 168, 171 and 172. There is an interesting echo of *Exiit* in this, as Nicholas III’s bull had also discussed the problem of the consciences of the order and of its superiors: *Exiit*, in CIC, II, cols 1117-18. See also *Exivi de paradiso*, in CIC, II, cols 1195-96: ‘Huiusmodi enim vilitas iudicium ministris et custodibus seu gardianis duximus committendum, eorum super hoc conscientias onerantes, ita tamen, quod servent in vestibus vilitatem.’

⁸¹ *Quorundam exigit*, in Tarrant, *Extravagantes*, pp. 169-70. See also *Exiit*, in CIC, II, col. 1118.

complained repeatedly in the bull about having to deal with how long a Franciscan tunic ought to be,⁸² or the question of when, where and how often the friars were allowed to acquire, store and conserve grain, bread and wine for the necessities of daily life.⁸³ On the question of cellars and granaries John also pointed to the fact that Clement V had left this to the discretion of the order's leadership, and he told the rest of the order to accept this decision.⁸⁴ The pope then exhorted all those who had adopted short and strict tunics to return to the obedience of the order.⁸⁵

The Franciscan leadership took the next step in resolving the issue: Michael of Cesena asked all the friars detained in Avignon whether they accepted the ruling of *Quorundam exigit*, and if not, whether they believed that the pope had the authority to command what he had commanded in the bull. Twenty-five friars who refused to accept *Quorundam exigit* were then handed over to Michel le Moine, the Franciscan inquisitor for Provence and Forcalquier.⁸⁶ Michel had been one of the Franciscan leaders removed from office by Clement V for his persecution of the Spirituals, but there might have been more to his appointment than just his stridently anti-Spiritual reputation. The trial was held in Provence rather than the friars' native province, and the sentence was carried out under the secular authority of King Robert of Naples. Samantha Kelly has speculated that the appointment of Michel le Moine and the transfer of jurisdiction to Provence may have been linked to the fact that the pope could have been fairly sure of the cooperation of the secular authorities there.⁸⁷ Four friars remained adamant in

⁸² *Quorundam exigit*, in Tarrant, *Extravagantes*, pp. 173-74.

⁸³ *Quorundam exigit*, in Tarrant, *Extravagantes*, p. 176.

⁸⁴ *Quorundam exigit*, in Tarrant, *Extravagantes*, pp. 175-76. See *Exivi de paradiso* on granaries and cellars: 'Hoc autem ministrorum et custodum simul et separatim in suis administrationibus et custodiis, cum guardiani et duorum de conventu loci discretorum sacerdotum et antiquorum in ordine fratrum consilio et assensu, duximus iudicio relinquendum, eorum super hoc specialiter conscientias onerantes' (in CIC, II, col. 1198). John XXII did not comment on the way Clement V had hedged the establishment of granaries and cellars with conditions, and he did not add similar conditions of his own.

⁸⁵ *Quorundam exigit*, in Tarrant, *Extravagantes*, p. 178.

⁸⁶ Burr, *Spiritual Franciscans*, p. 197 and Lambert, *Franciscan Poverty*, pp. 227-28. For the text of John's letter authorising Michel to proceed against the recalcitrant friars see Baluze-Mansi, *Miscellanea*, II, pp. 247-48 and *Bullarium Franciscanum*, V, no. 293, pp. 132-33. On Michel le Moine, see also Jacques Paul, 'Les Spirituels, l'église et la papauté', in *Chi erano gli Spirituali? Atti del III Convegno Internazionale, Assisi, 16-18 ottobre 1975* (Assisi: Società Internazionale di Studi Francescani, 1976), pp. 221-62 (pp. 227-29).

⁸⁷ See Kelly, 'Robert of Naples', p. 52, and especially note 36. If she is right in her assessment, this would also support her overall argument that Robert of Naples' reputation as a supporter of the Spirituals is on much shakier grounds than is usually assumed.

their refusal to submit to *Quorundam exigit* and were burned at the stake in Marseilles on 7 May 1318.⁸⁸

Meanwhile, John had issued two more bulls dealing with the problem. *Sancta Romana* was published on 30 December 1317, and condemned all unauthorised religious groups.⁸⁹ John cited the Fourth Lateran Council's prohibition of new religious orders and condemned all those who had violated this canon by forming congregations and convents, particularly in Italy, Sicily and Provence, and all those who pretended that their religion had been approved by the Holy See.⁹⁰ He particularly condemned those who did this under the pretence of belonging to the Franciscan order, although they did not obey the order's leadership, and those who appealed to the approval of their groups by Celestine V even after all such privileges had been rescinded by Boniface VIII.⁹¹ The bull covered quite a number of different groups, and its main purpose seems to have been an attempt to neutralise those who attempted to 'bypass established organisations by appealing to special privileges or by claiming membership in some legitimate group without actually obeying its leaders'.⁹²

The third anti-Spiritual bull was published on 23 January 1318.⁹³ *Gloriosam ecclesiam* described the revolt of the Provençal and Tuscan Spirituals in some detail before going on to discuss the doctrinal errors found in their groups, singling out Henry of Ceva, the leader of the Spirituals in Sicily, for a large share of the blame. The pope discussed the factionalism of the Spirituals and their circumvention of proper ecclesiastical structures. He described how the dissident groups had elected their own superiors, received new members, appointed confessors and preachers, and built new convents.⁹⁴ His history of the Spiritual movement was selective, however: John mentioned Clement V's reprimand of the Spirituals for their disobedience, but not his predecessor's

⁸⁸ Lambert, *Franciscan Poverty*, p. 228.

⁸⁹ Edited in CIC, II, cols 1213-14 and Tarrant, *Extravagantes*, pp. 198-204.

⁹⁰ *Sancta Romana*, in Tarrant, *Extravagantes*, pp. 199-200.

⁹¹ *Sancta Romana*, in Tarrant, *Extravagantes*, pp. 200-201.

⁹² Burr, *Spiritual Franciscans*, pp. 198-99. Lambert on the other hand has argued for a more specific target for the bull (against the Celestinians): Lambert, *Franciscan Poverty*, p. 229.

⁹³ *Gloriosam ecclesiam*, in *Bullarium Franciscanum*, V, no. 302, pp. 137-42.

⁹⁴ *Gloriosam ecclesiam*, in *Bullarium Franciscanum*, V, pp. 137-39. See also Lambert, *Franciscan Poverty*, pp. 229-30 and Burr, *Spiritual Franciscans*, pp. 199-200.

disapproval of the slipping standards of the Community.⁹⁵ On the doctrinal side, the pope objected to the fact that not only did the Spirituals claim that there were two churches, a carnal and a spiritual one, but they also asserted that the priests and ministers of the carnal church could not administer the sacraments validly, that oaths were sinful, and that in themselves, the gospel had been fulfilled for the first time.⁹⁶ The pope also condemned all those who distinguished between pure and impure members of the church, and who attempted to pre-empt God's judgement on who was going to be saved.⁹⁷ He then prohibited anyone from giving aid to the rebels.

This was the last official pronouncement of John on the question of the Spirituals, but in addition to the bulls and the proceedings against the twenty-five friars who refused to accept *Quorundam exigit*, John also asked a small commission of thirteen scholars to discuss whether it was heretical to assert, as the twenty-five Spirituals had done, that the pope did not have the right to make the pronouncements he had made in *Quorundam exigit*, and he additionally set up a commission to investigate the writings of Olivi.⁹⁸ This apparently moved in tandem with a papal attempt to convince the order to change its teachings on apostolic and Franciscan poverty. After his break with the papacy in 1328, Michael of Cesena accused John of having attempted to pressure him into changing the order's doctrine, although neither of his two references to this attempt give a precise date for it. In the *Littera excusatoria*, Michael stated that John had now persecuted the order for nine years and that the pope had been trying to get him to change the order's teachings.⁹⁹ In the *Appellatio in forma maiori*, the former minister general elaborated slightly on this theme, claiming

⁹⁵ *Gloriosam ecclesiam*, in *Bullarium Franciscanum*, V, pp. 138-39: 'Clemens praedecessor [...] mandans, ut dicti fratres, qui contra praefatam communitatem ordinis huiusmodi quaestiones moverant et querelas, ad conventus, unde discesserant, reverterentur et suis superioribus obedirent humiliter et devote, harum quaestionum et querelarum praetextu ad Romanam curiam de cetero minime reversuri.'

⁹⁶ *Gloriosam ecclesiam*, in *Bullarium Franciscanum*, V, pp. 139-41.

⁹⁷ *Gloriosam ecclesiam*, in *Bullarium Franciscanum*, V, p. 140. See also Marco Bartoli, 'Jean XXII et les joachimites du Midi', in *La Papauté d'Avignon et le Languedoc (1316-1342)*, ed. by M.-H. Vicaire, Cahiers de Fanjeaux, 26 (Toulouse: Privat, 1991), pp. 237-56 (p. 250).

⁹⁸ On the commission of the thirteen, see Burr, *Spiritual Franciscans*, pp. 197-98. On the commission on Olivi, see especially Turley, 'John XXII and the Franciscans', pp. 80-86 and Burr, *Spiritual Franciscans*, pp. 207-12.

⁹⁹ *Littera excusatoria*, in *Chronica*, pp. 207-11: 'Siquidem a novem annis Ordinem nostrum et meam personam indesinenter et atrociter persecutus, multifarie nitebatur nos omnes inducere ad mutandum statum quem vovimus nobisque tradidit Christi almus confessor, Franciscus' (p. 210). See also Burr, *Spiritual Franciscans*, p. 267.

that John had argued that the rule of the Franciscan order was impossible to observe, and that the pope had hated the order for more than forty years.¹⁰⁰

If the Spiritual crisis had alerted John to the (potential) problem of the Franciscan ideal as a whole, it would seem plausible for him to have attempted to do something about it in 1317-18 when he was occupied with Franciscan concerns anyway, and when all the relevant people were in Avignon. Michael's letter to his order would place the attempt into the year 1319, the year in which the pope also received the report of eight curial masters on the errors of Olivi.¹⁰¹ Unfortunately, Michael of Cesena was not very specific as to what the pope had wanted him to change. John's accusation that the rule could not be observed did echo thirteenth-century criticisms of the friars, however; and these accusations tended to focus on the life of absolute poverty demanded of them. It is interesting to note that, if this story is true, it would show John XXII in an attempt to sort out the Franciscan problem without a major and public confrontation, an action quite in contrast to his usual reputation as an autocratic ruler.¹⁰²

John's three bulls on the Spirituals are all characterised by their focus on the importance of obedience to the order's superiors and the necessity of safeguarding established ecclesiastical hierarchies, while stressing the failure of the Spirituals to observe either. Partly because of this, the pope has been charged with a lack of interest in, and sympathy for, the Franciscan poverty ideal.¹⁰³ It is true that during the suppression of the Spirituals he appeared to be fairly indifferent to the question of how poor the Franciscan order ought to be and focused on matters of discipline and obedience instead.¹⁰⁴ This, however, had at least as much to do with the development of the debate within the Franciscan order and with the terms in which the problem was presented to the pope by both

¹⁰⁰ *Appellatio in forma maiori*, in *Chronica*, p. 308: 'Ipse vero dominus Ioannes [...] et me, praefatum fratrem Michaellem nisus est, quantum potuit, inducere ut consentirem mutationi regulae et status Ordini memorati, quem statum et regulam me praesente et pluribus aliis personis notabilibus fide dignis, dixit fore impossibile ad servandum, et quod a quadraginta annis et citra praedictum statum et modum vivendi habuerat exosum'.

¹⁰¹ On the commission of the eight masters and their findings see Turley, 'John XXII and the Franciscans', pp. 80-84 and Burr, *Spiritual Franciscans*, pp. 207-12.

¹⁰² For a discussion of Michael's accusations, see Turley, 'John XXII and the Franciscans', p. 86. Turley seems not to have noticed Michael of Cesena's statement about John's actions in the long appeal, however; he argues that the *Appellatio in forma maiori* begins with the year 1322 and does not mention Michael's reference to John's attempts to deal privately with the order first (see especially p. 86 note 41).

¹⁰³ See for instance Lambert, *Franciscan Poverty*, p. 238. For a discussion of John's views on the spiritual value of Franciscan poverty, see pp. 141-45 (section IV.1).

¹⁰⁴ Burr, *Spiritual Franciscans*, p. 201.

sides. By the time of the publication of *Exivi de paradiso* in 1312, the key issue of the Spiritual crisis had already become one of obedience and conformity rather than poverty.¹⁰⁵ The change of focus of the internal debate from theology to discipline was mirrored by a marked tendency in fourteenth-century Franciscan statutes and legislation to treat questions of use and consumption in terms of discipline and obedience. By 1316 uniformity had become the keyword for the majority of the order's official pronouncements, especially in the question of clothing,¹⁰⁶ and John XXII followed this trend in his discussion of, and decisions about, the Franciscan Spirituals.¹⁰⁷ It is also important to keep in mind that the issue of poverty had always been inextricably bound up with the question of obedience, and stressing obedience in this situation did not necessarily amount to a refusal to see any spiritual value in voluntary poverty on the part of the pope.

Obedience had always been an integral part of Franciscan self-understanding, something attested to by the fact that the Franciscan rule and St. Francis's writings devoted as much space to the problem of obedience as they did to poverty.¹⁰⁸ Poverty and obedience were linked by the concept of minority, and Michael Cusato has argued that part of the problem was that the Community was attempting to create a Franciscan self-image that concentrated on poverty to the exclusion of (social) minority.¹⁰⁹ This put the Spirituals into the paradoxical situation of having to fight for their own ideal of humility and minority through

¹⁰⁵ See Burr, *Spiritual Franciscans*, p. 201 and Cusato, 'Whence the Community?', p. 51.

¹⁰⁶ See especially the regulations of the general chapter at Assisi in 1316: Carlini, 'Constitutiones generales', pp. 278-79; see also a letter written by Vital du Four, Jacques de Via and Napoleone Orsini after the chapter meeting in Assisi in 1316 (see Pierre Péano, 'Les Ministres provinciaux de la primitive province de Provence (1217-1517)', *Archivum Franciscanum Historicum*, 79 (1986), 3-77 (p. 43) and Ferdinand M. Delorme, 'Constitutiones provinciae Provinciae (saec. XIII-XIV)', *Archivum Franciscanum Historicum*, 14 (1921), 415-34 (pp. 432-34)), and a similar letter written by Michael of Cesena in 1317 (Wadding, *Annales*, VI, p. 313). For some earlier examples of regulations about clothing, see Michael Bihl, 'Statuta generalia ordinis edita in capitulis generalibus celebratis Narbonae an. 1260, Assisii an. 1279 atque Parisiis an. 1292 (editio critica et synoptica)', *Archivum Franciscanum Historicum*, 34 (1941), 13-94 and 284-358. The regulations on clothing are on pp. 42-45.

¹⁰⁷ He therefore addressed the problem in the terms in which it had been presented to him, rather than turning the question from one of theology into one of discipline as Bartoli, 'Jean XXII', p. 249 has suggested. See also David Burr's discussion of how John's assessment of the situation followed in outline the terms in which the problem was presented to him, and his opinion that John's emphasis on the problem of obedience allowed him to avoid openly contradicting *Exiit*: Burr, *Spiritual Franciscans*, p. 201.

¹⁰⁸ See for instance Lambert, *Franciscan Poverty*, p. 28 on Francis's testament.

¹⁰⁹ Cusato, 'Whence the Community?', pp. 79-80, where he argues that one of the differences between the Spirituals and the Community was the fact that the Spirituals were attempting to maintain a social distance from power while for the Community, the concept of *minoritas* had become subsumed in the legal definition of Franciscan poverty.

open rebellion. The desperate attempts of the Community to enforce conformity, not only in dress, but more generally, were also linked to their attempts to avoid a split in the order, something that at least Ubertino da Casale and Angelo Clareno seem to have been contemplating and ready to accept.¹¹⁰

Even for John XXII, an emphasis on obedience was more than just the quickest way of bringing the Franciscan order back into line. John's statement that poverty was great, but that obedience was the greatest virtue of all, may have been a very convenient argument, but there is no reason to suppose that he was not being sincere when he wrote this praise of obedience.¹¹¹ In fact, most of *Quorundam exigit* is an extended plea for obedience,¹¹² and his discussion of the relative value of the instruments of perfection owed much to Aquinas who had also argued that of the three principal instruments of perfection, chastity, obedience and poverty, poverty was the least.¹¹³ John knew the *Summa Theologiae* and was almost certainly aware of Aquinas's opinion that poverty was only one among the instruments of perfection, and it therefore seems disingenuous to assume that his insistence on obedience is nothing more than a convenient tool to suppress the Spirituels.

Apart from the theological aspect of obedience, the problem also had a very important ecclesiological dimension. Malcolm Lambert has suggested that John's emphasis on obedience can at least partially be traced back to the fact that *Quorundam exigit* was the first bull which did not present itself as a simple explanation of the rule – the pope told the Franciscan order that it was not possible to observe the rule literally. Some form of dispensation was necessary, and the order was told that it had to face this reality. Obedience was crucial to the

¹¹⁰ Cusato, 'Whence the Community?', p. 62. On Ubertino's willingness to split the order see Burr, *Spiritual Franciscans*, pp. 136 and 308.

¹¹¹ *Quorundam exigit*, in Tarrant, *Extravagantes*, pp. 178-79: 'Magna quidem paupertas, sed maior integritas, horum est obedientia maximum, si custoditur illesa.' This is probably the most frequently quoted phrase of the bull in modern historiography. See for instance Lambert, *Franciscan Poverty*, pp. 226-28.

¹¹² See *Quorundam exigit*, in Tarrant, *Extravagantes*, especially pp. 176-78.

¹¹³ See for instance *Summa theologiae* 2.2.188.7 resp: '[...] ex illo verbo Domini non intelligitur quod ipsa paupertas sit perfectio, sed perfectionis instrumentum; et, sicut ostensum est [...] minimum est inter tria principalia instrumenta perfectionis' (in *Summa Theologica complectens Secundam Secundae*, p. 655); see also Kevin Madigan, 'Aquinas and Olivi on Evangelical Poverty', *The Thomist*, 61 (1997), 567-86 (p. 581). For a discussion of the instrumental nature of poverty, see pp. 147-53 (section IV.2).

vow; in the question of granaries and habits, it was also much more important than poverty.¹¹⁴

Additionally, the question of the Spirituals' rebellion had very direct implications for the hierarchical structure of the church. This can be seen in both the content and the wording of most of John's bulls dealing with the Spirituals. He made it very clear in *Quorundam exigit* that observance of the proper hierarchical structure of the church was a crucial part of obedience.¹¹⁵ *Sancta Romana* was very specifically directed against anyone who attempted to bypass proper structures of hierarchy and obedience, and *Gloriosam ecclesiam* also contained an extended condemnation of the Tuscan Spirituals who had built up an alternative leadership structure.¹¹⁶ The pope made even more explicit that this was one of his primary concerns when he employed a thirteen-man commission to investigate the question of whether it was heretical to assert both that Franciscans should not obey their superiors, and that the pope did not have the authority to issue *Quorundam exigit*. Maybe not surprisingly in the circumstances, the answer was a very decisive yes in all cases.¹¹⁷

It is here that the question of obedience became inextricably linked with the question of (the limitations of) papal power and authority. The question of whether John had the right to re-interpret or alter the Franciscan rule was not only asked by Michael of Cesena in 1317,¹¹⁸ it was a question that he had to answer for himself ten years later. Implicitly the question of what the pope could and could not do had always been a part of the controversy; the problem of the powers of the pope was a subtext that ran through both the Spiritual crisis and the theoretical poverty controversy. It was not a major issue during the Spiritual crisis, but it would become one of the crucial points of debate later on. At the time of the suppression of the Spirituals, Michael of Cesena still agreed that the pope had the

¹¹⁴ Lambert, 'Franciscan Crisis', p. 137.

¹¹⁵ One of the most important phrases of the bull is probably 'Religio namque perimitur si a meritoria subditi obedientia subtrahatur' (*Quorundam exigit*, in Tarrant, *Extrauagantes*, p. 178).

¹¹⁶ See Burr, *Spiritual Franciscans*, p. 198, and *Gloriosam ecclesiam*, in *Bullarium Franciscanum*, V, p. 139: 'Et ut tam foedo capiti membra caetera responderent, provinciales ministros, custodes praeterea et guardianos eligere se temeritate simili praesumpserunt, plurimos ad ipsorum sectam recipere, praedicatores et confessores assumere, eosdemque ad huiusmodi confessionis et praedicationis officium transmittere, loca etiam a locis fratrum ipsius ordinis remota ad habitandum de novo construere seu constructa recipere (contra Romanorum instituta pontificum, in animarum suarum periculum aliorumque perniciem) attentantes.'

¹¹⁷ Burr, *Spiritual Franciscans*, pp. 197-98.

¹¹⁸ See Burr, *Spiritual Franciscans*, p. 197 and Manselli, *Spirituali e beghini*, pp. 291-96.

power to interpret at least some aspects of the Franciscan rule, although it is unlikely that he would have ever gone as far as Michel le Moine who, in his condemnation of the four Spiritual Franciscans who refused to recant in 1318, had argued that no religious rule could ever be identified with the gospels, and that the pope could change or even abolish any existing religious order because all religious rules had ultimately received their validation from the papacy.¹¹⁹ During the theoretical poverty controversy, Michael of Cesena, along with the Franciscan order, was asked to acknowledge not only the power of John XXII over questions of clothing, storage and discipline within the order, they were asked to concede that the pope could radically alter the Franciscan constitution. Quite a number of prominent members of the Community were not prepared to do this.

II.3 The Reform of the Order of Grandmont

There is a tendency to look at John XXII's reform of the Franciscan order from an exclusively Franciscan perspective, and to treat the pope's involvement in the Spiritual crisis and the theoretical poverty controversy as if this had been the only instance of John XXII attempting to reorganise an order that did not see itself in need of papal intervention. However, the Franciscans were not the only ones identified by the pope as being in need of urgent constitutional reform. The pope's interventions in the order of Grandmont are an important foil to his relationship with the Franciscan order, and although the scale and causes of the problems in the two orders were very different, there are a number of similarities in John's approach to these problems, particularly in his emphasis on the importance of observing procedures and ecclesiastical hierarchies and on the role of the papacy in validating and legitimising the rule and status of any religious order.¹²⁰

¹¹⁹ See the inquisitorial sentence in Baluze-Mansi, *Miscellanea*, II, pp. 248-51, especially p. 249. See also Burr, *Spiritual Franciscans*, p. 205.

¹²⁰ The relationship between the order of Grandmont and John XXII as a whole has received almost no attention in modern scholarship, and most of the more recent studies of the order focus on the early history of the order and its poverty ideal. See Laura Palma, 'La povertà nell'"ordo" di Grandmont', *Aevum: Rassegna di scienze storiche, linguistiche, filologiche*, 48 (1974), 270-87; Christine Pellistrandi, 'La Pauvreté dans la règle du Grandmont', in *Etudes sur l'histoire de la pauvreté (Moyen Age-XVIIe siècle)*, ed. by Michel Mollat, 2 vols (Paris: Publications de la Sorbonne, 1974), I, pp. 229-45; Maire Wilkinson, 'Stephen of the Auvergne and the Foundation of the Congregation of Muret-Grandmont according to its Primitive Traditions', *Medieval History*,

A comparison of the reform of the order of Grandmont and of John's handling of the Spiritual crisis will not only shed light on the way the pope approached the constitutional problems of religious orders which he encountered during his pontificate, it will also make it possible to place the pope's resolution of the Spiritual crisis into the context of his attempts at religious and monastic reform.¹²¹ John's dealings with both orders show an interest in putting them (back) onto a proper procedural footing and in making sure that structural and administrative problems within the orders would not disrupt, or detract from, their primary purpose, an interest which may go back to his legal training and experience in ecclesiastical and secular administration. John seems to have identified the disturbances in the order of Grandmont as symptoms of a deeper structural crisis which he attempted to tackle through constitutional change; on an organisational level, his experience of the Spiritual crisis could also have alerted him to the underlying problem of the Franciscan poverty ideal, and again, his solution seems to have been to effect constitutional changes which would bring the order in line with the other mendicant orders. Both Grandmont and the Franciscans had rules and traditions that did not conform to what John may arguably have thought of as 'best monastic practice'.

The Spiritual crisis and John's dealings with the order of Grandmont also illustrate another important aspect of John's pontificate: the increasing tendency to investigate problems and controversial issues directly at the curia, and

2:2 (1992), 45-67; and Jean Becquet, 'Les Statuts de réforme de l'ordre de Grandmont au XIIIe siècle', *Revue Mabillon*, 59 (1977), 129-43. For a discussion of the relationship of the order with the papacy and early papal interventions, see especially Maire Wilkinson, 'The Vita Stephani Muretensis and the Papal Re-Constitution of the Order in 1186 and Thereafter', in *Monastic Studies II: The Continuity of Tradition*, ed. by Judith Loades (Bangor: Headstart History, 1991), pp. 133-55; George Conklin, 'Law, Reform and the Origins of Persecution: Stephen of Tournai and the Order of Grandmont', *Mediaeval Studies*, 61 (1999), 107-36; and Volkert Pfaff, 'Grave scandalum. Die Eremiten von Grandmont und das Papsttum am Ende des 12. Jahrhunderts', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Kanonistische Abteilung*, 106 (1989), 133-54. For a more general overview of the history of the order, see Carole Hutchison, *The Hermit Monks of Grandmont*, Cistercian Studies Series, 118 (Kalamazoo: Cistercian Publications, 1989) and Jean Fouquet and Frère Philippe-Etienne, *Histoire de l'ordre de Grandmont 1074-1772* (Chambéry: C.L.D., 1985) as well as Jean Becquet, 'L'Ordre de Grandmont à la fin du Moyen Age', in *Au cloître et dans le monde: femmes, hommes et sociétés (IXe-XVe siècle). Mélanges en l'honneur de Paulette L'Hermite-Leclercq*, ed. by Patrick Henriot and Anne-Marie Legras, *Cultures et Civilisations Médiévales*, 23 (Paris: Presses de l'Université de Paris-Sorbonne, 2000), pp. 151-55. A very brief discussion of John's reform of the order can also be found in Mollat, *Papes d'Avignon*, pp. 52-53.

¹²¹ For a more general discussion of the pope's interest in religious reform, see also Agnès Dubreil-Arcin, Fabrice Ryckebusch and Michelle Fournié, 'Jean XXII et le remodelage de la carte ecclésiastique', *Revue d'histoire ecclésiastique*, 98 (2003), 29-60.

his personal involvement in these investigations. In a very different context, Richard Southern has argued that John XXII concentrated the theological decision-making process at the curia, and that he acted (and maybe even saw himself) as the ‘master of a school whose *cathedra* was also that of St Peter’.¹²² Although the circumstances were very different, John’s personal involvement and his close reading of the available written evidence were all present in his dealings with Grandmont and in his relationship with the Franciscan order, and this tendency of the pope might help explain why he turned the appeals of Johannes de Belna and Berengar Talon into a large-scale theological investigation. His reform of Grandmont shows John XXII radically re-writing the rule of an order in a similar way to his reform of the Franciscans.

The order of Grandmont goes back to the establishment of a group of hermits at Muret by Stephen of Muret towards the end of the eleventh century. After Stephen’s death in 1124, the group decided to move to Grandmont, a few miles away, and there developed into a religious order of hermits which expanded rapidly, although it always remained centred on France and especially on the diocese of Limoges. An important step towards the institutionalisation of the order was the writing of its rule by the fourth prior, Stephen of Liciac, between 1139 and 1163. The Grandmontine life was officially confirmed by Hadrian IV in 1156 although there were several attempts to attribute both the first confirmation and the foundation of the order itself to Pope Gregory VII.¹²³

The order of Grandmont was characterised by a radical eremitical ideal of poverty and contempt for the world, based on Stephen of Muret’s reading of

¹²² Southern, ‘Rôle of Universities’, pp. 139-40 where he has also argued that this, despite the consultations and involvement of theologians in the decisions, represented a ‘take-over by the papal court of functions hitherto widely distributed among universities, diocesan and provincial councils and the general chapters of religious orders’ (p. 140). His examples are the investigation into the writings of Jean de Pouilly as well as the inquiries into the ideas of William of Ockham, Marsilius of Padua, Olivi, Durandus de Saint-Pourçain and Thomas Waleys.

¹²³ The rule has been edited in Jean Becquet, *Scriptores ordinis Grandimontensis*, Corpus Christianorum Continuatio Mediaevalis, 8 (Turnhout: Brepols, 1968), pp. 63-99. For the papal approbation of the order, see *Bullaire de l’ordre de Grandmont*, ed. by Jean Becquet (Ligugé: Abbaye Saint-Martin, 1956-63), nos 4 and 5 (p. 6). For the early history of the group and the order, see Hutchison, *Hermit Monks*, chapters 1 and 2 and Gert Melville, ‘*In solitudine ac paupertate*. Stephans von Muret Evangelium vor Franz von Assisi’, in *In proposito paupertatis. Studien zum Armutsverständnis bei den mittelalterlichen Bettelorden*, ed. by Gert Melville and Annette Kehnel, *Vita regularis: Ordnungen und Deutungen religiösen Lebens im Mittelalter*, 13 (Münster: LIT-Verlag, 2001), pp. 7-30 (p. 8). On the life of Stephen of Muret and his companion Hugh Lacerta, see also Wilkinson, ‘Stephen of the Auvergne’, pp. 45-67.

the gospel.¹²⁴ The order was to live the life of the gospel in imitation of Christ and the apostles, and the opening words of Stephen of Muret's *Liber de doctrina* began with the words: 'Non est alia regula nisi euangelium Christi.'¹²⁵ The poverty ideal of the order involved a complete dependence on divine providence, and Stephen of Muret had attempted to lead a life of contemplation that involved no contact whatsoever with the outside world. His closest companion Hugh Lacerta, a layman, was responsible for the administration and day-to-day running of the group of hermits, and from this arrangement derived the unique administrative structure of the later order. While Stephen of Muret consciously attempted to imitate the life of Mary, the order of Grandmont itself was characterised particularly by its attempt to replicate the lives of both Mary and Martha: the monks were to lead contemplative lives in imitation of Mary while the lay brothers imitated the active life of Martha.¹²⁶

The way in which this double imitation was implemented was one of the most unusual characteristics of the order, and the tension between these two aspects of Grandmontine life characterised its history in the twelfth century. The lay brothers, in fulfilling the role of Martha, were in charge of the order's temporal affairs and had exclusive authority over all administrative arrangements, work and dealings with outsiders. They also had complete financial control, and in contrast to orders like the Cistercians, the *conversi* participated in the internal government of the order as full members.¹²⁷

The Grandmontine rule also broke with monastic tradition in its prohibition of any form of land ownership and its complete renunciation of temporalities, including the owning of cattle, rights over parish churches and any involvement in lawsuits.¹²⁸ Stephen of Muret's emphasis on the evangelical nature

¹²⁴ Pellistrandi, 'Pauvreté', p. 232, Palma, 'Povertà', p. 272, Melville, 'In solitudine ac paupertate', pp. 24-25 and Wilkinson, 'Vita Stephani Muretensis', p. 133.

¹²⁵ See the *Liber de doctrina*, edited in Becquet, *Scriptores ordinis Grandimontensis*, pp. 1-62 (p. 5). See also Wilkinson, 'Vita Stephani Muretensis', p. 146.

¹²⁶ Conklin, 'Law', p. 110 and Hutchison, *Hermit Monks*, p. 72. See also *Liber de doctrina*, chapter 36 (pp. 23-24) and *Regula*, chapter 35 (p. 85) and chapter 54 (p. 92). See also Pellistrandi, 'Pauvreté', pp. 239-40.

¹²⁷ Hutchison, *Hermit Monks*, p. 71, Wilkinson, 'Vita Stephani Muretensis', p. 151 and Conklin, 'Law', p. 110.

¹²⁸ This also included a prohibition of any form of fixed income: see *Regula*, especially chapters 4-7 (in *Scriptores ordinis Grandimontensis*, pp. 71-74) and 23 (in *Scriptores ordinis Grandimontensis*, pp. 81-82), Pellistrandi, 'Pauvreté', pp. 232-38 and Melville's characterisation of the rule as 'Entzug aller Ressourcen und Verhinderung von Ressourcengewinn': Melville, 'In solitudine ac paupertate', p. 12.

of his poverty ideal, the use of the gospels as a rule for the order, and the prohibition of most forms of property have prompted comparisons of the Grandmontines to the Franciscans, although, even apart from other differences, the ideal of a complete withdrawal from the world in the Grandmontine order contrasted sharply with the apostolic life envisaged by the Franciscans.¹²⁹

Because of its unusual nature, the Grandmontine rule depended on papal confirmation and support,¹³⁰ and the papacy therefore played an important role in the development of the order throughout its history. Papal interventions in the internal affairs of the order were common, and became increasingly frequent after a rebellion of the *conversi* in 1185.¹³¹ Pope Urban III attempted to solve the crisis in 1186, and while he was not very successful, his intervention marked the beginning of several decades of papal involvement in the government and administration of the order. Disputes between the *clerici* and the *conversi* continued, and a number of popes tried to pacify the order by moving it closer to mainstream monastic practice and by decreasing the impact and role of the lay brothers in the government of the order.¹³² The statutes and amendments to the Grandmontine rule kept being revised by successive popes until Innocent III attempted to restructure the order along Cluniac lines by suppressing the last vestiges of lay rule, the prohibition of land ownership, cattle and lawsuits, thus settling the crisis firmly in favour of the clerics.¹³³ A final intervention by Honorius III in 1219 streamlined previous ecclesiastical legislation and put an end to the disputes for the time being.¹³⁴

This succession of papal interventions resulted in a clericalisation of the order and a considerable relaxation of the original rule.¹³⁵ The papacy had managed to resolve the controversies within the order through a restructuring of

¹²⁹ See especially the discussion of comparisons between the two orders in Melville, *In solitudine ac paupertate*, pp. 7-9.

¹³⁰ See Wilkinson, 'Vita Stephani Muretensis', pp. 141 and 151. On the question of the rule and the problem of papal exemption and support for the order, see also Pfaff, *Grave scandalum*.

¹³¹ See Conklin, 'Law', p. 110 and Palma, 'Povertà', p. 286.

¹³² See Palma, 'Povertà', p. 286, Becquet, 'Ordre de Grandmont', p. 151, Hutchison, *Hermit Monks*, pp. 74-76 and Conklin, 'Law', pp. 114 and 118.

¹³³ Palma, 'Povertà', p. 286, Hutchison, *Hermit Monks*, p. 85, Conklin, 'Law', p. 131 and Pfaff, *Grave scandalum*, p. 151. See also the emendations and changes to the rule by Innocent III in Becquet's edition of the rule: *Regula*, in *Scriptores ordinis Grandimontensis*, pp. 69-98.

¹³⁴ Becquet, 'Ordre de Grandmont', p. 151. On internal reforms, see also Becquet, 'Statuts', pp. 129-30.

¹³⁵ Palma, 'Povertà', p. 286.

the order's rule and statutes,¹³⁶ but this solution carried a price: once the papacy had become involved to such a degree, the curia had accepted responsibility for the affairs of the order, and it could not easily evade this responsibility for the internal affairs of the order later on.¹³⁷

By the time John XXII became pope, there was little left of the early structure of the order as it had been established in the course of the twelfth century. Instead, the order was facing two different (but partially related) problems: not only was there a contested election and a dispute over the leadership of the order,¹³⁸ but the order also faced considerable financial difficulties.¹³⁹

John XXII began tackling the constitutional crisis in the order very early on in his pontificate: the first letter dealing with the situation in the order dates from December 1316.¹⁴⁰ He identified two distinct problems, and he seems to have attempted to solve the struggle for leadership in the order through constitutional change and the debts through financial reorganisation. John first focused on the more immediate problem of the contested election, and in December 1316, he wrote a letter to the bishop of Limoges, informing him of the scandals, disorder and violence accompanying the eviction of Prior Jourdain de Rabastens by his rival Elie Adhémar, and asking him to bring the two rival priors, Elie's electors, the diffinitors of the order, the rule and all the statutes of Grandmont before the pope within the next forty days.¹⁴¹ In the letter, John complained particularly about the disruption to divine service caused by the disturbances, claiming that the conflict in the order had led to the incarceration, injury and mistreatment of Grandmontine monks, that it had caused some monks

¹³⁶ Conklin, 'Law', p. 132.

¹³⁷ See Pfaff, '*Grave scandalum*', pp. 149-50.

¹³⁸ Jourdain de Rabastens had become prior of the order in 1313 by direct papal mandate, but by 1315, he had become so unpopular within the order that a dissident faction of Grandmontines elected a rival prior in Elie Adhémar: see Hutchison, *Hermit Monks*, pp. 141-44.

¹³⁹ The order had already been in financial difficulties in the time of Clement V (see *Bullaire de Grandmont*, nos 143b and 143c, pp. 95-97), but the situation had deteriorated since then, partly due to the results of a long tradition of alienation of the order's property and the generous granting of annuities and pensions, and partly due the costs incurred through the disputes between the two rival factions in the order (see *Bullaire de Grandmont*, no. 149, pp. 118-21).

¹⁴⁰ *Bullaire de Grandmont*, no. 144, pp. 97-99.

¹⁴¹ See *Bullaire de Grandmont*, no. 144, pp. 98-99.

to discard their habits and flee, and that the monastery was now in the hands of infamous and undesirable people.¹⁴²

We do not have any extant information about any meetings between John and members of the order or the bishop of Limoges, but almost exactly a year later, the pope offered his solution to the crisis in the order: in the bull *Exigente debito* (17 November 1317), he introduced sweeping constitutional changes, rewriting and explicitly replacing the existing rule and statutes of the order.¹⁴³ The priory of Grandmont became an abbey with 60 monks while 39 priories were created from the existing cells, with 16-18 monks in each. The remaining cells were suppressed and attached to the monastery and some of the priories as dependencies. The pope also deposed the two rival priors and appointed the order's first abbot, Guillaume Péllicier, as well as the new priors in charge of the re-organised cells.

In a way, the bull was a continuation of previous papal policies towards the order which had always included fairly drastic interventions in the order's constitutional affairs. However, John XXII's reforms seem to have removed even the last traces of the highly individual approach to monastic life that had characterised the early history of the order.¹⁴⁴ The new formula for the profession of monks did not require the novice to swear obedience according to the rule of Stephen of Muret anymore (as had still been the case in the Institutions published by Prior Jourdain de Rabastens in 1314); instead, any mention of the order's founder was dropped, and the novice only promised obedience before God.¹⁴⁵ This development is mirrored in the *Liber de doctrina novitiorum* compiled by Abbot Guillaume de Péllicier in the 1320s; this text hardly mentioned Stephen of

¹⁴² John summed up his description of the dire state of the order with the words 'Dolemus, inquam, quod idem ordo qui solebat in spiritualibus et temporalibus refluere ac honoris et honestatis producere fructus uberes et salubres, subuertitur scandalis, scissuris diuiditur et dissensionibus deformatur.' (*Bullaire de Grandmont*, no. 144, p. 98).

¹⁴³ The bull has been edited in *Magnum Bullarium Romanum: bullarum, privilegiorum ac diplomatum Romanorum pontificum amplissima collectio*, 18 vols (Rome: various publishers, 1733-62; repr. Graz: Akad. Druck- und Verlagsanstalt, 1964-66), III: *Pars secunda*, ed. by Charles Cocquelines (Rome: Hieronymus Mainardi, 1741; repr. Graz, 1964), no. 12, pp. 155-60. The changes included new rules for the election of abbots and priors, for visitations, the deposition of an abbot or prior, the holding of a yearly general chapter and the levying of subsidies on daughter-houses. See Becquet, 'Ordre de Grandmont', p. 152 and Hutchison, *Hermit Monks*, p. 145.

¹⁴⁴ See Becquet, 'Ordre de Grandmont', p. 152.

¹⁴⁵ See Hutchison, *Hermit Monks*, p. 146 and Fouquet and Philippe-Etienne, *Histoire de l'ordre de Grandmont*, p. 64. *Exigente debito* also does not mention the name of the founder of the order.

Muret, either, and instead concentrated on the Bible, the Church Fathers and Bernard of Clairvaux.¹⁴⁶

No immediate reaction of the order to the papal rewriting of the rule has survived although there is some circumstantial evidence that not everyone in the order was happy with the reforms. After complaints from the priors, John reminded Guillaume Péllicier in February 1326 that he had to respect the measures introduced by the papacy in order to ensure peace and harmony in the order; the pope threatened Guillaume with deposition if he failed to comply.¹⁴⁷ Three years later, the priors sought the advice of two lawyers from Limoges on thirteen questions concerning the powers of the abbot over their houses.¹⁴⁸ This, however, may have had more to do with the personality of the abbot rather than a general unhappiness with the papal reforms – and in his previous letter, the pope had specifically charged Guillaume with his failure to comply with the (new) statutes of the order.¹⁴⁹ It is also clear, however, that there was some discontent specifically with John's reforms: twenty-five years after the publication of *Exigente debito*, Pope Clement VI ordered an investigation into the reforms after receiving a number of complaints from Grandmont that these measures had done the order more harm than good.¹⁵⁰ Unfortunately, neither the specific complaints nor the results of this inquiry are known. The inquiry shows, however, that there must have been some resentment about some aspects of the high-handed way with which John had reorganised the rule and practice of the order.

John XXII did not only rewrite the order's rule, however. Once he had solved the constitutional crisis in the order to his satisfaction, the pope turned his attention to

¹⁴⁶ Hutchison, *Hermit Monks*, p. 152. The text can be found as *Liber de doctrina novitiorum ordinis Grandimontensis*, in *Thesaurus Novus Anecdotorum*, ed. by Edmund Martene and Ursin Durand, 5 vols (Paris: Bibliopolarum Parisiensium, 1717), V: *Complectens ss. patrum, aliorumque auctorum ecclesiasticorum omnium fere saeculorum, a quarto ad decimum-quartum opuscula*, cols 1823-44. One of the few references to Stephen of Muret can be found in the section on obedience, col. 1842.

¹⁴⁷ *Bullaire de Grandmont*, no. 153i, pp. 142-43.

¹⁴⁸ See Becquet, 'Ordre de Grandmont', p. 153 and Hutchison, *Hermit Monks*, p. 150.

¹⁴⁹ *Bullaire de Grandmont*, no. 153i, p. 143.

¹⁵⁰ *Bullaire de Grandmont*, no. 157, pp. 162-164: 'Nuper siquidem fide digna relatio ad Apostolatus nostri produxit auditum quod ordinatio de prioribus conuentualibus et domibus ipsius ordinis unitis eisdem, dudum per felicis recordationis Iohannem XXII Papam predecessorem nostrum facta in ordine memorato ad informationem quarumdam singularium personarum que ad propria honores et commode intendebant, in communem damnum et dispendium dicti ordinis noscitur redundare, et alia loca predicta ipsorumque persone noscuntur reformatione multiplici indigere' (p. 163).

its financial situation. One of the more surprising aspects of the pope's dealings with Grandmont is his close and personal involvement in the financial affairs of the order. His main priorities seem to have been the recovery of alienated property, the revocation of annuities and pensions granted by various officials of the order and the management of the order's debts. As early as 22 November 1317 (five days after the publication of the new statutes of the order), John charged the abbots of the monasteries of St. Martin and St. Augustine in Limoges with revoking pensions granted by the ancient priors and correctors of Grandmont, and in 1318 he ordered the archdeacon of Montpezat to recover alienated properties.¹⁵¹

Additionally, the pope got involved in managing the debts of the order. He made very detailed arrangements for the repayment of the order's debts and for the financial consolidation of Grandmont. In June 1318, John wrote to the abbots of the monasteries of St. Martin and St. Augustine in Limoges as well as to the archdeacon of Lavour, detailing the extent of the debts of the abbot and monastery of Grandmont which were running to 12,000 florins, and arguing that they could only be paid off if they were divided among the abbot and priors of the order. The letter then proposed detailed arrangements for the distribution and settlement of the debts which were to be paid in three yearly instalments, with various fines, interest, legal costs and damage-payments to be cleared in the fourth and fifth years. The pope then added a list of all the priories with the amounts assigned to them for payment, based on the wealth and revenues of each priory.¹⁵² In April of the same year, the pope had already granted the abbot permission to borrow 2,000 florins in the name of the abbey and in order to clear

¹⁵¹ *Bullaire de Grandmont*, no. 146b (pp. 104-105) and no. 145 (pp. 102-103): 'Ad audientiam nostrum peruenit quod nonnulli dudum priorum monasterii Grandimontensis [...] nonnullas ecclesias, beneficia, castra, casalia, grangias, domos, terras, possessiones, decimas, fructus, redditus et prouentus, iura, iurisdictiones et bona ad monasterium et domos ipsas spectantia nonnullis clericis et laicis, quibusdam spontanea uoluntate, aliquibus deuicti precibus amicorum et aliis minis et comminationibus territi, concesserunt et alias sub diuersis conditionibus et pensionibus annuis in dictorum monasterii et domorum graue dispendium, forma canonica non seruata alienasse noscuntur' (p. 102). John also introduced other cost-cutting measures, including a privilege issued in 1318 which gave the abbots the right to be consecrated by a bishop of their choice rather than the pope – for reasons of economy: see *Bullaire de Grandmont*, no. 150, p. 121.

¹⁵² *Bullaire de Grandmont*, no. 149 (pp. 82-85). The sums assigned to the priories for payment add up to 18,250 florins and 295 pounds.

some of the Grandmontine debts; the letter containing this permission also included a set of detailed terms and conditions for the loan.¹⁵³

In 1324, the pope's involvement with the finances of the order became even more detailed: in another letter to the abbot of St. Martin in Limoges as well as to the deacon and official of Limoges, the pope informed them that the abbot and priors of Grandmont had paid some of their debts to the merchants Benzio Carroccio and Pilfort de Rabastens (as well as some others), but that they still owed 2,700 florins to Benzio, and 800 pounds to Pilfort de Rabastens and other merchants, in addition to a number of unpaid debts resulting from the disputed election in 1315 and royal fines, interest and damage-payments. Additionally, there had been disputes among the priors over the distribution of the debts and the repayments assigned to them. The pope therefore excommunicated the abbot of Grandmont and charged the recipients of the letter to investigate the finances of Grandmont, to redistribute the debts among the abbot and priors, and to investigate whether the fines imposed by the French king were justified. Only if the order complied with all of these measures would the interdict imposed on the monastery of Grandmont be lifted; if, however, the creditors did not receive the payments due to them at the stated times, the monastery would automatically be placed under an interdict again, and the abbot would be excommunicated.¹⁵⁴

Similar arrangements and re-arrangements of the financial details of the repayment schedule for the order's debts occurred at regular intervals until 1326, and the pope regularly threatened to place the order and monastery of Grandmont under an interdict, and to excommunicate members of the order who failed to pay on time.¹⁵⁵ In fact, one of the first actions of the pope after the publication of *Exigente debito* had been to write to twenty-five brothers who had been proposed to him as suitable candidates to become priors under the new rule, but who were all excommunicated, at least partly because of their non-payment of debts. John lifted these excommunications so that the persons concerned could take up office, but warned them that this did not absolve them from their duty to pay their

¹⁵³ *Bullaire de Grandmont*, no. 148 (pp. 113-15).

¹⁵⁴ *Bullaire de Grandmont*, no. 151b (pp. 86-89).

¹⁵⁵ See *Bullaire de Grandmont*, nos 148b, 151b, 152, 153, 153b and 153h (pp. 115-18, 122-25, 127-30 and 140-42). On the use of excommunication in canon law, see also R. H. Helmholz, 'Excommunication as a Legal Sanction: The Attitudes of the Medieval Canonists', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Kanonistische Abteilung*, 99 (1982), 202-18.

debts.¹⁵⁶ A large part of the pope's correspondence with the order and the clerics charged with overseeing the financial arrangements was concerned with the threat, imposition and lifting of excommunications. John seems to have used the threat, imposition and the targeted lifting of sentences of excommunication as a tool to enforce the settlement of the order's debts, and the letters dealing with the excommunication of monks or an interdict of the order show the same attention to detail as the pope's reorganisation of the order's finances.

II.4 Conclusion

John's quick, efficient and radical solution to the constitutional crisis in the order of Grandmont contrasts sharply with his slow and careful unravelling of the order's debts. His attention to detail is striking, particularly when it comes to the division of the debts among the priories, but it can also be seen in the various new settlements and adjustments to the repayment arrangements and in the terms and conditions drawn up by the pope for the loan-contract in 1318. The painstaking consolidation of the order's finances seems to be in contrast to John's handling of the Spiritual crisis, where he explicitly refused to be drawn into a discussion of 'petty' details, such as the length, price and materials of the friars' habits.

But although John XXII's involvement with the order of Grandmont was on a very different scale from his interventions in the affairs of the Franciscan order, there are some ways in which his actions in the Grandmontine crisis can shed light on the way he approached the problem posed by the Franciscan order.

While there are no records of a consultation of members of the curia in the case of Grandmont, other aspects of the pope's handling of the crisis do show similarities in his approach. The pope had the habit of examining the available

¹⁵⁶ *Bullaire de Grandmont*, no. 146c (pp. 105-106): 'Cum autem tu qui per plures ipsius ordinis fratres es de religionis zelo, uita laudabili et aliis probitatum meritis multipliciter commendatus, cuique propter huiusmodi tua laudabilia merita de aliquo prioratum ipsorum disponimus prouidere, sis dictis excommunicationum sententiis innodatus, nos nolentes propterea quod prouisio nostra huiusmodi posset quomodolibet impugnari, te ab omnibus excommunicationum sententiis in te propter eadem debita uel aliam quamcumque causam generaliter uel specialiter promulgatis per quoscumque iudices ordinarios uel delegatos aut auditores camere nostre, absoluimus, [...]. Mandamus tamen et uolumus quod infra predictas octabas illis quibus teneris et pro quibus excommunicatus haberis pro rata satisfacere non omittas, alioquin ex nunc prout ex tunc te uolumus eisdem sententiis subiacere.' (p. 106).

evidence for the issues he was dealing with carefully, and he seems to have at least intended to do the same thing in the case of Grandmont. It is an important point that John asked for a copy of the Grandmontine rule and statutes to be sent to him before he saw the rival priors and other representatives of the order.¹⁵⁷ We do not have any records of the arrival of the documents or any evidence of what John did with them, but his insistence on seeing the rule is paralleled by his examination of the Franciscan rule at the height of the Spiritual crisis. In the case of the Franciscan rule, the pope's copy and his marginalia have survived, and they show that his main interest when reading the documents lay in questions of evangelical counsels and precepts and the phrasing of exhortations and commands.¹⁵⁸

John's radical changes to the constitution of the order of Grandmont do recall to a degree his attempts at reforming the Franciscan order,¹⁵⁹ although in contrast to his later actions during the theoretical poverty controversy, the pope's new rule for Grandmont explicitly superseded all earlier papal legislation.¹⁶⁰ Rewriting the rule does not seem to have caused nearly as much antagonism in Grandmont as John's interventions in the Franciscan order did, although the fact that there are almost no records of resentment does not necessarily prove its absence. It is true, however, that the order of Grandmont was used to radical papal interventions, and that the Grandmontines had had their rules rewritten by a number of popes before. If there was a feeling among the order that they had a unique status within the church that was being undermined by the pope, it did not manifest itself in an attempt to put the rule outside papal control. There was therefore no Grandmontine discussion of the pope's authority (or lack thereof) over the rule which could have corresponded to the contemporary debate between the Spiritual Franciscans and Michel le Moine.

It has been suggested that the Spiritual controversy made John aware of the more general problems posed by the Franciscan poverty doctrine, and that he

¹⁵⁷ John ordered representatives of the order to appear before him, 'cum ipsorum privilegiis, si tute deferri poterunt, alioquin cum ipsorum transcriptis sub ea forma cui plena fides adhiberi ualeat ac etiam cum statutis eiusdem ordinis': see *Bullaire de Grandmont*, no. 144, pp. 97-99 (p. 98).

¹⁵⁸ See Maier, 'Annotazioni autografe', pp. 86-87.

¹⁵⁹ A similar approach seems to have been followed by John in his reform of the Hospitallers. This has never been investigated in any detail, however, although it also involved the deposition of the head of the order and some constitutional reform: see Mollat, *Papes d'Avignon*, pp. 51-52 and Helen Nicholson, *The Knights Hospitaller* (Woodbridge: Boydell Press, 2001), pp. 48-49.

¹⁶⁰ See *Exigente debito*, in *Magnum Bullarium Romanum*, III, p. 159.

might not otherwise have given the Franciscan order much attention.¹⁶¹ Even if the property arrangements of *Exiit* were not the main issue at first, the pope would have quickly realised that the Franciscan lifestyle (if not necessarily the ideal as a whole) depended on papal ownership of Franciscan goods, and might have decided to deal with this problem once the immediate crisis was past. Tackling the Franciscan problem from this angle would have enabled John to reform the order's teachings on poverty without doctrinally contradicting *Exiit*. It is, however, plausible to assume that even if John had at this stage thought that the property arrangements of *Exiit* were to blame for the Spiritual crisis, he might not necessarily have wanted to pursue this (almost certainly very contentious) line of argument, when he had quite a number of adequate and convincing arguments against the Spirituals that would not upset the Community. Neither the debates of the Spiritual crisis nor any of the attempts to solve it provided an adequate forum for the discussion of papal ownership over Franciscan goods or the question of whether Christ and the apostles had renounced all property rights and practised the *simplex usus facti*.

In this particular respect, however, the comparison between Grandmont and the Franciscans is not very helpful: even if the Spiritual crisis was the starting-point for John's pre-occupation with the status of the Franciscan order, in a similar way that the leadership dispute alerted the pope to the problem of the Grandmontines, his further dealings with the Franciscans went far beyond his involvement with the order of Grandmont, and his disagreement with the Franciscan poverty ideal went deeper than constitutional and administrative unease over the constitutional issues raised here even if they were brought into sharper relief by comparison with the order of Grandmont.

This is partly because in contrast to Grandmont, the Spiritual crisis could be seen as flagging up the (potential) implications of the Franciscan poverty ideal for the structure of the church. The problem of the Spirituals, and by extension the problem of the Franciscan order and its poverty ideal itself, was interpreted as threatening to the church by some (but by no means all) contemporaries, and John XXII has traditionally been assumed to have been one of them. The question is not so much whether the Franciscan ideal did in fact threaten the hierarchical

¹⁶¹ Burr, *Spiritual Franciscans*, pp. 264 and 266, and Turley, 'John XXII and the Franciscans', especially p. 80.

structure of the church, but rather whether John XXII himself thought that it did. The next chapter will therefore discuss the ecclesiological issues that came up during the theoretical poverty controversy: especially the implications of the Franciscan view of apostolic poverty for episcopal status, and the question of the authority of the pope which had already been brought into focus by the Spiritual crisis.

Chapter III

The Franciscan Threat to the Structure of the Church

From very early on in Franciscan history, there had been criticism of the order's poverty ideal because it was perceived by some commentators as a threat to the structure of the church. This criticism was, at first, not confined to the Franciscans; all of the new mendicant orders had to establish their place within the hierarchical structure of the church, and to justify their privileges, especially when it came to preaching.¹ By the time of the theoretical poverty controversy, however, the focus of concern had shifted to the question of whether the Franciscan ideal undermined the authority and status of the pope and bishops. The implications of the Franciscan ideal of the absolute poverty of Christ for the structure of the church have therefore been discussed extensively, both in contemporary treatises and in later studies of the poverty controversy. Modern scholarship has always been very interested in, and aware of, the ecclesiological problems posed by the Franciscan ideal, and a number of modern accounts of the poverty controversy rely heavily on an ecclesiological explanation for John's actions.² This is especially true when the (potential) implications of the Franciscan ideal for the authority of the pope are being considered, particularly in view of the significance of the poverty debate for later developments in the theory of the papal office and the question of papal infallibility. Although the poverty debate was crucial in helping to bring about some of these developments, the significance of the arguments used in the poverty controversy for later developments is not the concern of the present study. Rather, the focus will be on the pope's own statements about the ecclesiological implications of the Franciscan poverty ideal. John XXII had some very specific concerns in this respect although some of these objections have rarely been discussed in the historiography of John's pontificate.

¹ For a discussion of the ecclesiological implications of the mendicants' ideals, see especially Congar, 'Aspects ecclésiologiques', pp. 35-151.

² See particularly Horst, *Evangelische Armut und päpstliches Lehramt*, Tierney, 'From Thomas of York', especially p. 634, and Turley, '*Ab apostolorum temporibus*', p. 580, who has argued that the Franciscan order threatened the late medieval church's claim to apostolicity.

Given the degree of interest in the implications of the Franciscan ideal for the church and in the impact of the poverty controversy on later ecclesiological developments, it may be surprising that it has rarely been discussed in any detail to what extent John XXII's actions in the poverty controversy were influenced by his concern about the ecclesiological implications of the Franciscan ideal. It has never been clearly established to what extent John's attitude towards Franciscan poverty was shaped by such a concern, whether the pope thought that the Franciscan ideal was a threat to the church, and of what exactly he thought this threat consisted.

During the poverty controversy a number of ecclesiological issues played a prominent part in the debate, although these issues tended to be raised by participants other than the pope. The main problem discussed in this context was the link between poverty and perfection postulated by the Franciscan order which could be interpreted as undermining the status and apostolic succession of bishops. Additionally, the Franciscan claim to occupy a unique status within the church had implications for the authority and power of the pope. The question of what the pope could and could not do, which had already been a problem during the Spiritual crisis, resurfaced again during the theoretical controversy as well, especially after 1323. Both of these issues have their own historiography and are very important in both fourteenth-century and modern literature, but they seem to have been of less immediate concern to the pope than the one ecclesiological question John XXII explicitly raised himself: the impact Franciscan litigation had on the relations between the papacy and the secular clergy. This does not mean, however, that the pope had nothing to say on these other matters, but rather that the question of episcopal or papal authority was not crucial to John's decision-making in the question of the Franciscan poverty ideal.

III.1 The Question of Episcopal Status and Authority

The Franciscan poverty ideal could be interpreted as establishing a direct link between the degree of poverty and the degree of perfection of any given individual or community. While this did not necessarily reflect the order's official position, this opinion was voiced by some members and supporters of the order,

and there were some explicit claims of a direct correlation between poverty and perfection during the poverty conflict itself.³ This link between poverty and perfection could have potentially serious implications for the relative standing of religious orders and states within the church, and it therefore had an important ecclesiological dimension although a large part of the discussion of the state of perfection during the poverty controversy occurred in an exclusively theological form.⁴ The Franciscan claim to observe the highest, apostolic form of poverty could easily lead to claims that their order came closer to the ideal of apostolic perfection than anyone else. Because they embodied this apostolic perfection, it could therefore be claimed that the Franciscans occupied a unique position within the church, and that this unique status placed them in a position superior to that of other religious orders or the secular clergy. This could potentially be very damaging to the authority of the pope, and particularly the bishops, especially once the unique status of the order had been confirmed and strengthened by papal approbation, St. Francis's stigmata and his subsequent canonisation. There could be serious implications for the structure and hierarchy of the church if perfection, poverty and ecclesiastical status came to be linked.

That there was potential for trouble is amply illustrated by a treatise known as *De perfectione statuum*, which was written before 1322, possibly even before 1316, by a Franciscan who may have been (but probably was not) John Duns Scotus.⁵ It seems to have been directed mainly against the opinions expressed by Henry of Ghent, especially in his Quodlibet XI. Henry had argued that it was prelates who had brought Christian congregations into existence, while the mendicant orders preached to congregations that existed already, and that the friars therefore occupied a lesser position within the church.⁶ In response to this, *De perfectione statuum* argued that the friars were the successors to the apostles in

³ An early example for this is Thomas of York (see Horst, *Evangelische Armut und Kirche*, p. 56). During the poverty controversy, the most prominent case is Vital du Four's opinion in MS Vat. lat. 3740, fol. 18^{rb-va}: 'nihilominus paupertas evangelica seu renunciatio omnium tam in communi quam in speciali per se et essentialiter ad perfectionem vite humane pertinet non solum sicut instrumentum sed sicut pars essentialis' (quoted from Horst, *Evangelische Armut und päpstliches Lehramt*, p. 33 note 23).

⁴ For a discussion of the debate about the link between poverty, perfection and the state of perfection, see pp. 145-53 (section IV.2).

⁵ For an account of the treatise, its content, dating and possible authorship see Reinhold Seeberg, *Die Theologie des Johannes Duns Scotus. Eine dogmengeschichtliche Untersuchung*, Studien zur Geschichte der Theologie und Kirche, 5 (Leipzig: Dieterich, 1900), pp. 469-81, Tierney, *Infallibility*, pp. 165-70 and Horst, *Evangelische Armut und päpstliches Lehramt*, pp. 68-70.

their role as evangelical preachers, and that they were more necessary to the life of the church than anyone else, particularly prelates. The main reason given by the author for this inferior status of prelates turned Henry's argument upside down: it was the apostles in their role as preachers and the friars as their successors who had brought Christian congregations into being. The secular clergy, on the other hand, had the care of souls in congregations that already existed, administering to the needs of Christian communities and succeeding the apostles in their role as prelates of the church. The existence of the state of prelacy therefore presupposed another state whose followers brought about the congregations to whose needs the prelates ministered. While the religious engendered, the prelates only nourished. As the state of prelacy was therefore not as exalted as that of a friar, bishops and priests were not required to follow the example of the apostles over and above the general requirements for salvation. The cure of souls was not any more important than lay life, and in the last resort, the Franciscan state was more meritorious than that of the pope.⁷ The author of *De perfectione statuum* also argued that a pope could not refuse to administer material goods for the Franciscan order and still remain the true pope.⁸

The treatise has been interpreted as a direct attack on the state of episcopacy, and this has led some scholars to assume that John XXII attacked Franciscan poverty because he recognised the implicit criticism of existing ecclesiastical institutions contained in the order's ideal.⁹ However, *De perfectione statuum* does not seem to have had any impact on contemporary debate, either inside or outside the order; and none of the people involved in the theoretical poverty controversy referred either to the treatise as a whole or anything contained in it.¹⁰

On the other hand, the ecclesiological implications of Franciscan poverty did play an important role in the poverty debate, and a number of non-Franciscan contributions showed a great deal of interest in the problem of episcopal status.

⁶ See Tierney, *Infallibility*, p. 166.

⁷ For summaries of the main argument of *De perfectione statuum*, see Horst, *Evangelische Armut und päpstliches Lehramt*, pp. 70-72, Tierney, *Infallibility*, pp. 166-67, Tierney, 'From Thomas of York', pp. 629-31, Seeberg, *Duns Scotus*, pp. 470 and 476-79, and Congar, 'Aspects ecclésiologiques', pp. 87-88.

⁸ See Tierney, 'From Thomas of York', p. 635.

⁹ See for instance Tierney, 'From Thomas of York', pp. 631 and 634, and Horst, *Evangelische Armut und päpstliches Lehramt*, especially p. 155.

¹⁰ Horst, *Evangelische Armut und päpstliches Lehramt*, p. 76.

Guido Terreni, Augustinus of Ancona, Hervaeus Natalis and Durandus de Saint-Pourçain all discussed various implications of the Franciscan poverty ideal for the structure of the church. They attempted to answer the question of what would happen to the authority and status of the bishops (including the pope) if poverty was to be not just an important aspect but the defining criterion of apostolic succession.¹¹

The most detailed contribution to this aspect of the debate is that of the Dominican theologian and Bishop of Le Puy, Durandus de Saint-Pourçain. The problem of episcopal status forms an important part of his treatise *De paupertate Christi et apostolorum*, which he submitted to Pope John XXII as his contribution to the curial debate about Franciscan poverty.¹² The pope read Durandus's treatise with great interest and annotated this part of the manuscript extensively.

Durandus dealt with the question of poverty and perfection in the second part of his treatise; in the first part he had already proved to his satisfaction that Christ and the apostles had indeed owned material goods, and he was now left with the problem of a number of biblical passages which seemed to suggest that there was a link between poverty and Christian perfection.¹³

He therefore proposed to introduce a distinction between perfection and the state of perfection. Both religious and prelates were in a state of perfection, although Durandus added that this did not necessarily imply any personal perfection on their part. Personal perfection, according to Durandus, consisted in the habit and acts of virtue, particularly *in habitu et actu caritatis*.¹⁴ The state of perfection, on the other hand, was a *modus vivendi* characterised by a formal obligation to supererogatory works in order to attain personal perfection more easily or in order to pass perfection on to others. Members of religious orders vowed chastity and poverty in order to remove obstacles to attaining personal perfection, while bishops additionally obliged themselves to the administering of

¹¹ Horst, *Evangelische Armut und päpstliches Lehramt*, pp. 35 and 130. For Augustinus's treatise see also Horst, 'Augustinus von Ancona', p. 488. On Guido Terreni, see Turley, 'Ab apostolorum temporibus', pp. 572-73. On Durandus, see also the description of Durandus as 'unverkennbar an der Stellung der Bischöfe interessiert' in Miethke, 'Durandus', p. 161.

¹² Edited in Miethke, 'Durandus', pp. 169-94. See also Horst, *Evangelische Armut und päpstliches Lehramt*, pp. 130-31.

¹³ Most prominent among these was Jesus's advice to the rich young man in Mt 19:21.

¹⁴ Miethke, 'Durandus', p. 184: 'Nihilominus tamen perfectio Christiane vite in presenti consistit, ut dictum est, in habitibus virtutum et earum actibus, maxime tamen consistit in habitu et actu caritatis, que in via preeminet actus virtutibus.'

sacraments, cure of souls and, if necessary, death for their flocks. While religious were ordained to personal perfection, prelates were ordained to perfecting others.¹⁵

This still left the question as to which of these two states of perfection was more perfect than the other. And Durandus stated categorically that no religious, however poor, could ever be in a more perfect state than a prelate. He gave four reasons for the pre-eminence of prelacy: the more perfect state was the one that was ordained to a nobler end, and as prelates were ordained to disseminating perfection, their state was undoubtedly more perfect than that of the religious whose aim was to perfect themselves; the episcopal state also required more perfection than the state of the religious as could be seen from the fact that a religious only needed to be *sine crimine*, while a bishop additionally needed a higher degree of personal perfection as well as perfection in the knowledge of scripture. The third reason was the fact that bishops were called to the *opus summe perfectionis*, that is giving their lives for their flocks, which the religious were not held to do, and lastly, the state of a teacher and someone who passed perfection on to others was always more perfect than that of the pupil.¹⁶

Additionally, Durandus argued that the pope, as Vicar of Christ, had to be in the most perfect state possible for any human on this earth, and as the pope was first and foremost a bishop, the episcopal state had to be more perfect than that of any religious. Therefore, Durandus concluded, no degree of poverty could make a religious equal in perfection to a bishop.¹⁷

He then went on to compare degrees of poverty (and their link to perfection) within the religious state and within the state of prelacy, arguing that even there, greater poverty did not mean a higher degree of perfection. Poverty and riches could be instruments or obstacles to perfection, depending on the goal to which a religious order or state was ordained.¹⁸ The work of the state of prelacy at the time of the apostles had been conversion through preaching, and to that end, property such as land or houses would have been an obstacle. After a region or

¹⁵ Miethke, 'Durandus', p. 185: 'Et sic patet, quod status non dicitur perfectus, nisi quia ordinatur ad perfectionem acquirendam sibi et conservandam, ut est status religionis, vel diffundendam aliis, ut est status prelationis.'

¹⁶ Miethke, 'Durandus', pp. 186-87.

¹⁷ Miethke, 'Durandus', p. 187: 'Et sic patet quod nulla paupertas, in quocumque gradu sit, potest facere quod status religionis sit eque perfectus sicut status prelationis.'

¹⁸ Miethke, 'Durandus', p. 191.

city had been converted to Christianity, however, the institution of bishops became necessary to look after the newly-converted congregations and to spread the message even further. This could not be done without possessions, and these possessions did not detract from the perfection of the prelates.¹⁹ In short, corporate poverty could not be more perfect than communal property as bishops needed to own things in order to fulfil their function as prelates, and Durandus had already established that bishops were more perfect than any religious.²⁰

He also argued that if a vow of absolute poverty in the Franciscan interpretation were licit, no Franciscan should ever have become a bishop without a papal dispensation from his vow. Although bishops only administered and dispensed the goods of the church, ecclesiastical property was held communally, by and for the servants of the church, the foremost of whom were the bishops themselves. As a Franciscan could therefore not become a bishop without accepting communal property, he could not become a bishop without breaking his vow.²¹

Additionally, Durandus had already warned in the first section of his treatise that if Christ and the apostles really had lived, and by their example commanded, the Franciscan ideal of absolute corporate poverty, this would have bound not only the order itself, but also prelates, bishops and even the pope to the observation of a Franciscan lifestyle. And this would mean the condemnation of all the great bishops of antiquity who had not followed the Franciscan rule of evangelical poverty, such as St. Augustine or Gregory the Great.²² Durandus finished his treatise by pointing out the absurdity of the Franciscan position: if there really was a direct link between poverty and perfection, those people would be most perfect who renounced everything, including food, and starved themselves to death – an idea which echoed earlier criticisms of the Franciscan ideal during the secular-mendicant controversy.²³

¹⁹ Miethke, 'Durandus', p. 192.

²⁰ Miethke, 'Durandus', pp. 190-91 with reference to I Tim 1:3-7 and Io 21:15-17.

²¹ Miethke, 'Durandus', p. 189: 'Propter quod, si ex voto precedente obligatur, quod nihil possit habere in proprio vel communi, non licet ei ad episcopatum transire, in quo habet aliquid in communi, licet non sit eorum dominus sed dispensator quia caput, nisi cum eo specialiter dispensetur per eum, qui potest in talibus dispensere.'

²² Miethke, 'Durandus', p. 179.

²³ Miethke, 'Durandus', p. 194: 'Et sic maxime perfecti essent, qui pro paupertate non haberent omnino, quid comederent. Sed morerentur fame, quod est absurdum.' On a similar argument made by William of Saint-Amour, see Mäkinen, *Property Rights*, p. 40.

Similar arguments were used by other mendicant opponents of the Franciscan doctrine: Guido Terreni, the Carmelite Bishop of Majorca, argued in his *De perfectione evangelica* (14 December 1323) that the contemporary church was identical to that of the apostles, that Christ possessed goods in common with the apostles, and that bishops could have possessions without risking their perfection. He also pointed out that to claim a more perfect way of life than that of the contemporary church was to imply that the church of the apostles had not been perfect, and stressed that it was the prelates who practised the greatest perfection in the church.²⁴ The Augustinian Hermit Augustinus of Ancona (Augustinus Triumphus) stated that there were various types of perfection which were different for prelates and religious, and that the state of the bishops corresponded to that of Christ and the apostles. If poverty were to be the main criterion for perfection, prelates would appear to be in an inferior state of perfection compared to the religious, and a strict interpretation of poverty as a criterion for the apostolic succession would therefore endanger the church. Augustinus argued, however, that this aspect of the apostolic succession did not represent the *status Christi et apostolorum perfectorum*.²⁵

The Dominican minister general Hervaeus Natalis emphasised the willingness of prelates to give up everything if necessary, but he also argued that there were different types of perfection for religious and prelates, and he came to the conclusion that for the perfection of a prelate questions of ownership or non-ownership of goods were irrelevant.²⁶ It is also possible to detect some concern for safeguarding the continuity of the church with its apostolic beginnings in the work of Petrus de Palude on Franciscan poverty, but the Dominican theologian did not specifically discuss the problem of episcopal status or any Franciscan threat to the ecclesiastical hierarchy, although he did make it clear that there was no link between the abdication of property rights and perfection.²⁷

There were other contributions to the debate which discussed the question of episcopal status, such as that of the pope's nephew, Cardinal Gaucelme de Jean. He argued that the apostles must have had property as

²⁴ See Horst, *Evangelische Armut und päpstliches Lehramt*, p. 113, Tierney, *Infallibility*, p. 262 and Turley, 'Ab apostolorum temporibus', pp. 571-72.

²⁵ Horst, 'Augustinus von Ancona', pp. 488-90.

²⁶ Sikes, 'Hervaeus Natalis', pp. 275-77.

otherwise bishops would not be considered their successors although it was clear that prelates were in fact the successors to the apostles.²⁸ He went on to a detailed discussion of the property arrangements of contemporary bishops in canon law, arguing that they held ecclesiastical goods *quoad gubernationem* rather than as *dominium*.²⁹ Cardinal Pierre Tessier's argument followed along similar lines and displays the type of circular reasoning found in a number of contributions to the poverty debate: according to Pierre Tessier, it was clear that bishops were the successors to the apostles, and anything that was allowed or forbidden to the predecessors was automatically allowed or forbidden to the successors as well. Therefore, as the contemporary episcopate legitimately had communal property, the apostles must have had communal property as well.³⁰ Tessier seems to be arguing not so much that the Franciscan poverty ideal presented a threat to ecclesiastical hierarchy and the status and authority of the bishops, but to be using the fact that contemporary bishops had property as an argument for a propertied apostolate in an attempt to undermine the scriptural title of the Franciscan ideal.

All of the serious non-Franciscan discussions of episcopal status during the debate are heavily indebted to the arguments used by Thomas Aquinas in the secular-mendicant controversy, although very few of the participants in the debate referred to him directly.³¹ It had been one of Aquinas's aims to safeguard the position of bishops, and he had an enormous influence on the later debate with his explanation of why members of the episcopate ranked above everybody else in the church, although they did not observe a vow of poverty. This explanation consisted essentially of four points: the difference between perfection and the state of perfection, the instrumentality of poverty, the idea of the *praeparatio animi* (the willingness of bishops to give up everything for the well-being of their

²⁷ For Petrus de Palude's position, see Horst, *Evangelische Armut und päpstliches Lehramt*, p. 139 and especially Dunbabin, *Hound of God*, pp. 153-63.

²⁸ Tocco, *Quistione della povertà*, pp. 88-101, especially p. 90: '[...] ex consequentia concluditur quod apostoli habuerunt, alias enim vitam <episcopi> non sequerentur, et tamen textus dicit in capitulo *Illi*, superius allegato, quod sequebantur.'

²⁹ Tocco, *Quistione della povertà*, p. 91. Gaucelme's discussion of episcopal property and apostolic succession can be found on pp. 90-93.

³⁰ Tocco, *Quistione della povertà*, pp. 109-13, especially p. 112: 'Manifestum est quod episcopi sunt loco apostolorum et sunt successores eorum, 21 dist. c. *In novo*, et 12 qu. 1 *Videntes*. Quod licet enim praedecessori, licet etiam successori, et quod non licet, non noscitur interdictum: *De sepulturis*, c. *Parrochiano* (Decr. Greg. III. 28. 14); sed licet episcopis bona habere in communi ad conservandum et distribuendum possessiones, etiam castella, 23. qu. 8 § *Ecce*, ergo licuit apostolis habere bona in communi.'

flocks) and the notion of the bishop's role as a teacher and *perfector*.³² All four of these elements can be found to varying degrees in the non-Franciscan discussions of episcopal status as well as in the very few Franciscan attempts to counter their opponents' arguments.

The non-Franciscan opinions demonstrate that the ecclesiological implications of the Franciscan poverty ideal were a source of concern to at least some of the participants of the debate. It is important to note here, however, that of the seven non-Franciscan contributions discussed here, only four appeared in the manuscript compiled for, and annotated by, the pope in connection with the poverty debate. Augustinus of Ancona's treatise was probably written in 1320, but possibly not until 1326, while Guido Terreni's treatise was not finished until after the publication of *Cum inter nonnullos*, and Petrus de Palude's *De paupertate Christi et apostolorum contra Michelem de Cezena* was written in 1328 as a response to Michael of Cesena's short appeal from Pisa.³³ Only a very small number of the reports submitted to the pope mentioned the question of episcopal status in connection with the Franciscan poverty ideal. Although these included Durandus de Saint-Pourçain and Hervaeus Natalis, whose opinion was presumably more valued by the pope than that of some of the other participants to

³¹ One of the few exceptions was the contribution of Gaucelme de Jean: see Tocco, *Quistione della povertà*, p. 96.

³² John Jones, 'The Concept of Poverty in St. Thomas Aquinas's "Contra impugnantes Dei cultum et religionem"', *The Thomist*, 59 (1995), 409-39 (p. 427), Coleman, 'Two Jurisdictions', p. 97 and Horst, *Evangelische Armut und Kirche*, pp. 93-106. For Aquinas's view of poverty as an instrument of perfection, see Quodlibet I q. 7 a. 2 [14]: '[...] sicut praeambulum et praeparatorium ad perfectionem, ut paupertas, castitas, et huiusmodi, quibus homo retrahitur a curis secularium rerum, ut liberius uacet hiis que Dei sunt; unde huiusmodi magis sunt quedam perfectionis instrumenta', in *Sancti Thomae de Aquino Opera Omnia iussu edita Leonis XIII P.M.*, cura et studio Fratrum Praedicatorum, 50 vols (Rome: various publishers, 1882-), XXV: *Quaestiones de Quolibet* (Rome: Commissio Leonina, 1996), pp. 177-207 (p. 197). See also Jean-Pierre Torrell, *Saint Thomas Aquinas*, trans. by Robert Royal, 2 vols (Washington: Catholic University of America Press, 1996-2003), I: *The Person and His Work* (1996), p. 85. On the appropriateness of poverty to certain ends, see *Contra retrahentes*: 'Neque tamen eius sententia sic intelligenda est quasi possessiones communes habentes omnino monachorum perfectione deficiant, sed hoc dicebat propter periculum paupertatis amittendae, quod imminet plerisque monachorum communes possessiones habentium' (in *Sancti Thomae de Aquino Opera Omnia iussu edita Leonis XIII P.M.*, cura et studio Fratrum Praedicatorum, 50 vols (Rome: various publishers 1882-), XLI: *Contra impugnantes Dei cultum, De perfectione spiritualis vitae, Contra doctrinam retrahentium a religione*, ed. by H. F. Dondaine (Rome: Ad S. Sabinae, 1970), 41 C5-C85 (41 C72)). See also Horst, 'Mendikant und Theologe', p. 21. On the difference between perfection and the state of perfection, see for instance Quodlibet I q. 7 a. 2 [14]: '[...] quod perfectus dicitur aliquis dupliciter: uno modo quia habet perfectionem; alio modo quia habet statum perfectionis' (in *Quaestiones de Quolibet*, p. 196).

³³ For the dates of the treatises, see Horst, 'Augustinus von Ancona', p. 494, Horst, *Evangelische Armut und päpstliches Lehramt*, p. 109 and Dunbabin, *Hound of God*, p. 155.

the debate, the number of reports which expressed concern about the implications of the Franciscan ideal for the status of bishops remains very small.

Most of the Franciscan contributions to the poverty debate did not refer to the issue of episcopal status, including the longest and most detailed Franciscan treatise, Bonagratia of Bergamo's *Tractatus de paupertate Christi et apostolorum*.³⁴ One of the few discussions of the problem by a Franciscan is contained in the report submitted by the Cardinal Vital du Four, and even here the discussion of episcopal status is very short and surprisingly similar to the arguments of his opponents. Like Durandus, Vital argued that the states of religious and prelates were different and that therefore the type of perfection associated with each state must be different as well. He used the example of a bird to illustrate his point: any human being was more perfect than a bird, although it was part of the bird's nature to be able to fly which no human could do. By extension, anything that belonged to the perfection of one state within the church did not have any impact on what characterised the perfection of any other state.³⁵ Therefore, he implied, the Franciscan poverty ideal could not be a danger to episcopal status at all.

A similar opinion was given by Ubertino da Casale whose arguments, although he was no longer a member of the Franciscan order, still reflected some of the Franciscan terminology and concerns.³⁶ In his oral contribution at the consistory meeting in March 1322, Ubertino distinguished between the status of Christ and the apostles as exemplars of religious perfection where they had no civil dominion or right to legal action, and their status as prelates of the church which included the dispensation and administration of property, but he did not actually discuss episcopal status in any detail.³⁷ In his written report, Ubertino went on to argue that the apostles were unique in that they combined both states

³⁴ See Horst, *Evangelische Armut und päpstliches Lehramt*, p. 34.

³⁵ '[...] patet, quod dato quod paupertas sit essentialiter de statu religionis, non propter hoc sequitur, quod status religionis sit perfectior quam status prelationis, quia status distincti <sunt>, et non oportet, quod illud, quod est perfectionis in aliquo minus perfecto, sit perfectionis in alio magis perfecto. Constat enim, quod homo est perfectior ave simpliciter, et tamen de perfectione avis est, quod possit volare et tamen non de perfectione hominis.' Quoted from Horst, *Evangelische Armut und päpstliches Lehramt*, p. 33 note 27. See MS Vat. lat. 3740, fol. 32^{va}.

³⁶ See Davis, 'Ubertino da Casale', p. 11 and Horst, *Evangelische Armut und päpstliches Lehramt*, p. 36.

of perfection within themselves: the state of exercising perfection (in their function as prelates) and the state of acquiring perfection in which they were now emulated by all religious. Bishops were the successors of the apostles under the first aspect, and this did not include a vow of poverty; this was also the more perfect state as otherwise the Franciscan order would be more perfect than the pope.³⁸

The second Franciscan Cardinal Bertrand de la Tour also argued that there were two states of perfection within the church: the state of the religious or *status perfectionis acquirendae*, and the state of the prelates or *status perfectionis exercendae*. The state of the religious was characterised by poverty and the abdication of material goods, although Bertrand conceded that poverty was not perfection in itself but only a means of attaining it, for the simple reason that the state of the religious had not yet achieved perfection. Prelates on the other hand were to purify, illuminate and perfect others, but they were not held to observe absolute poverty.³⁹ He also returned to the topic of prelates briefly when discussing the fact that the power to administer and dispense goods for others did not imply *dominium* or property rights. Both prelates and the apostles had the right to dispense the goods of the church without owning any of them.⁴⁰ Here

³⁷ For an edition of Ubertino's oral report at the curia, see Zambrini, *Storia di fra Michele*, pp. 77-80. See also Davis, 'Ubertino da Casale', pp. 8-9.

³⁸ Davis, 'Ubertino da Casale', pp. 55-56: 'Si enim diceretur oppositum, scilicet quod status paupertatis et perfectionis acquirende sit perfectior statu perfectionis exercende, tunc sequeretur, quod abdicantes temporalia, maxime in proprio et in communi, essent in perfectiori statu simpliciter quam papa, qui ius et dominium rerum abdicatum per eos in se transfert, et sic ipse tale ius et dominium in se transferendo se faceret imperfectum, ac per hoc male et defective ageret tale ius et dominium in se transferendo vel recipiendo. Et ulterius sequeretur, quod papa non esset in statu perfectiori simpliciter quam alii quicumque, precipue non episcopi; quod est omnino absurdum dicere, cum ipse ex ipso statu papali ponitur dux, rector, gubernator, pastor, perfectior et perfectius omnium aliorum.' See also Horst, *Evangelische Armut und päpstliches Lehramt*, p. 35.

³⁹ Tocco, *Quistione della povertà*, pp. 64-74, especially p. 67: 'Secundum est quod in Ecclesia sunt duo status perfectionis, quorum neuter est de alterius ratione, scilicet status religionis, qui est de perfectionis acquirendae, de cuius intrinseca ratione est paupertas, seu abdicatio rerum non quidem essentialiter sed instrumentaliter, quia, ut dictum est, non est de ratione perfectionis sed de ratione status acquirendae perfectionis. Alius est perfectionis exercendae, ut status praelatorum, de cuius ratione non est paupertas vel rerum abdicatio in proprio vel in communi, quinimo sine detrimento perfectionis possunt praelati sic possidere propria sicut communia; sed de ratione huius status est purgare et illuminare et perficere secundum Dionisyum 4^o.' An expression of similar views can be found in Bertrand's *Dicta Domini Bertrandi Cardinalis de Turre*, edited in Nold, *John XXII and his Franciscan Cardinal*, pp. 178-94 (p. 183). For a discussion of Bertrand de la Tour's view on the connection between poverty and perfection and its implications for episcopal status, see also Nold, *John XXII and his Franciscan Cardinal*, pp. 48-50.

⁴⁰ Tocco, *Quistione della povertà*, pp. 64-74, especially p. 72: 'Praeterea nota secundo: quod potestas dispensandi nullam dat proprietatem vel dominium dispensanti. Unde et praelati secundum iura non habent proprietatem vel dominium in bonis ecclesiae, quae tamen habent dispensare. Et

Bertrand, in a similar way to Pierre Tessier, seems to have been concerned not so much with the effects of Franciscan poverty on the authority of the bishop's office; on the contrary, he used the contemporary theory and practice of the bishop's office to bolster his arguments about the status of the apostles.

The only Franciscan participant to the debate whose thoughts could be seen to endorse the view that the Franciscan poverty ideal was a potential threat to episcopal authority was the contribution of Arnaud Royard, the Archbishop of Salerno: his argument seems to imply a subtle difference between prelates and the perfect religious, based on the life of the apostles. When discussing money and property in the early church, he made the point that the prelates of the early church were not only prelates but also *perfecti religiosi* – possibly implying that contemporary prelates were not.⁴¹

Both Franciscan and non-Franciscan contributions drew on the idea that there was a difference between personal perfection and the state of perfection, and that there were different states or types of perfection appropriate to different states within the church. The Franciscan discussion of the various states of perfection within the church linked poverty, perfection and the apostolic succession. While not denying the apostolic succession of bishops, they did imply that in this one important aspect, the bishops were outside true discipleship.⁴² The Franciscans tended to distinguish between different ways of following in the footsteps of the apostles, but in contrast to their opponents, they made evangelical poverty the exclusive realm of their own order, insofar as poverty was associated with the apostolic function of preaching. This did not make the episcopate inferior to the order, but it did split the apostolic succession into several parts which could be pitted against each other. The explanation of their opponents left the link not only between the apostles and the bishops intact, but also that between apostolic poverty and the episcopate. In this, they followed Thomas Aquinas more closely, whose explanation of episcopal office had made the bishops the foremost heirs to the apostles in all their functions and attributes, including poverty.

ideo dispensare temporalia non repugnat statui, de cuius ratione est nichil habere in special vel in communi. Sic Christus et apostoli temporalia dispensabant.'

⁴¹ Tocco, *Quistione della povertà*, p. 87: 'Ad primum dico quod forma fuit ecclesiasticae pecuniae quoad habendum sed non quoad habendi modum, et quod praelati primi temporis non solum fuerant praelati sed etiam perfecti religiosi.'

⁴² Horst, *Evangelische Armut und päpstliches Lehramt*, p. 34 has referred to this as the 'Abkoppelung des Episkopats vom evangelischen Armutsideal'.

Between the time of Aquinas's writing and the outbreak of the poverty controversy, the question of episcopal status had acquired an added urgency in the conflict between Philip the Fair and Boniface VIII.⁴³ During this conflict, both of the opposing sides had placed an increasing emphasis on the apostolic succession of bishops.⁴⁴ It soon became a generally accepted idea that the relationship between Peter and the apostles was mirrored in that of the pope and the bishops,⁴⁵ although the conclusions drawn from this could be very different. This 'mirrored relationship' could be used to emphasise ecclesiastical over secular power,⁴⁶ but it could just as easily be used to bolster the authority of the bishops compared to that of the pope who was, in this interpretation, only one bishop among others.⁴⁷ In either case, the argument depended (implicitly or explicitly) on a direct link between the apostles and the bishops.

Mendicant insistence on poverty as the defining factor for apostolic succession could, on the other hand, be interpreted as a threat to episcopal claims to be the true successors to the apostles. The Franciscans in particular interpreted poverty as an integral and essential part of the apostolic succession in their claim to follow in the footsteps of the apostles. They did not deny the apostolic succession of the bishops, but Franciscan rhetoric could be interpreted as an attempt to elevate their order to the status of the only true successors to the apostles, leaving the bishops to follow the apostles in an inferior and less authentic way. The Franciscan claim to being the most perfect imitators of the apostles could therefore potentially undermine this link between the apostles and the bishops, and it may therefore not be surprising that this was a topic that was discussed particularly by those participants in the theoretical poverty controversy who also happened to be bishops or had been involved in the controversy between Boniface VIII and Philip the Fair.

⁴³ See for instance S. H. Hendrix, 'In Quest of the *vera ecclesia*: The Crises of Late Medieval Ecclesiology', *Viator*, 7 (1976), pp. 347-78 (p. 357).

⁴⁴ See Congar, 'Aspects ecclésiologiques', p. 148.

⁴⁵ Congar, 'Aspects ecclésiologiques', pp. 93 and 149.

⁴⁶ Michael Wilks, *The Problem of Sovereignty in the Later Middle Ages: The Papal Monarchy with Augustinus Triumphus and the Publicists* (Cambridge: Cambridge University Press, 1963), pp. 335 and 337.

⁴⁷ See Wilks, *Sovereignty*, p. 345 and Richard Scholz, *Die Publizistik zur Zeit Philipps des Schönen und Bonifaz' VIII. Ein Beitrag zur Geschichte der politischen Anschauungen des Mittelalters*, Kirchenrechtliche Abhandlungen 6/6 (Stuttgart: Enke, 1903; repr. Amsterdam: Schippers, 1962), especially p. 447. See also p. 149 where Scholz focuses on the arguments of James of Viterbo.

Starting with Bonaventura, the Franciscans themselves were always very careful to point out that not only did the apostles fulfil different functions (which were all equally important), but also that only one of these functions, that of evangelical preaching, required a renunciation of property rights.⁴⁸ Even so, in conjunction with the link between poverty and perfection, this meant that the bishops seemed to fall short of the true apostolic ideal, at least in this one important aspect. Despite their disclaimers, the Franciscan claim to apostolic poverty could therefore be seen as dangerous, not because it was a direct threat to the church, but because it could (potentially) weaken the link between the ecclesiastical hierarchy and apostolic tradition by denying to the bishops something that the Franciscans perceived to be a major element of the apostolic succession. It has to be noted here, however, that the Franciscan leadership would have been prevented from exploiting the order's (apparently) stronger link to the apostles by the fact that their ideal of absolute poverty was based and depended on papal ownership and therefore on a propertied episcopate.⁴⁹ The pope benefited from this when he renounced papal dominion over Franciscan goods and therefore made it impossible for the order to live up to their ideal, but the same relationship between Franciscan corporate poverty and the *dominium* of the pope would have also made it very hard for the order as a whole to mount a coherent attack on the status and authority of the episcopate on this basis.

The view that the Franciscan doctrine of the absolute poverty of Christ was a danger to the church because it threatened episcopal status was held and articulated by a small, but nevertheless prominent and influential number of mendicant participants in the controversy. People such as Durandus de Saint-Pourçain, Hervaeus Natalis, Augustinus of Ancona and Guido Terreni may have been alerted to this (perceived) danger by their involvement in the controversies between Boniface and Philip and/or their knowledge of the ecclesiology of Thomas Aquinas. This growing concern with the apostolicity of prelates can be seen even in otherwise minor contributions to the debate such as that of Pierre Tessier, and the problem of the place that the apostolic succession of bishops had

⁴⁸ See the discussion in Horst, *Evangelische Armut und Kirche*, p. 160, especially his emphasis on Bonaventura's distinction between general and specific succession to the apostles.

⁴⁹ See for instance Congar, 'Aspects ecclésiologiques', p. 107 and Leff, 'Bible and Rights', p. 229.

or could have within the Franciscan doctrine of the absolute poverty of Christ and the apostles seems to have been at the heart of this concern.

III.2 John XXII's Ecclesiological Concerns: Franciscan Litigation

When it comes to the pope's own ecclesiological concerns, things are far from clear, however. In none of his bulls did John XXII mention the problem of the Franciscans' place within the ecclesiastical hierarchy or any potential Franciscan threats to its structure. While some of the non-Franciscan contributors to the poverty debate seem to have taken it for granted that the Franciscan ideal was subversive, and that the Franciscan doctrine of absolute poverty lay at the heart of their threat to the church, the pope did not comment on the matter. The pope kept curiously quiet even in the consistory meetings which preceded the publication of his bulls and where several outbursts against the Franciscan order and its members were recorded. None of them touched on the problem of the ecclesiastical hierarchy, however. This may be partly due to the fact that none of the other speeches delivered in those meetings mentioned the question of episcopal status, either. But even in the most 'private' recordings we have of John's thoughts on Franciscan poverty, the marginalia in MS Vat. lat. 3740, the pope did not pay any particular attention to the question of the apostolic succession of prelates or to episcopal status. Although the contributions of Hervaeus Natalis and Durandus of Saint-Pourçain are the two most heavily annotated discussions of apostolic poverty in the manuscript, none of John's marginalia refer to their respective discussions of the Franciscan threat to episcopal authority or to the link between the episcopate and the apostles.⁵⁰

There is only one direct reference to the state of perfection in connection with bishops in any of John's bulls dealing with the Franciscan poverty ideal. In an argument about the apostles' right to litigate in *Quia vir reprobus*, he used the fact that contemporary bishops had the right to take legal action as corroborating evidence for the fact that the apostles must have had the same right. His argument

⁵⁰ In Durandus's contribution (fols 124^{ra}-136^{va}), there are 8 marginal comments, excluding repetitions of authorities quoted in the text, but including one on fol. 127^{rb} which was not edited by

is similar to those of Pierre Tessier and Bertrand de la Tour in that he was using contemporary practice to bolster his views on the status of the apostles. In an almost throw-away remark during this argument, the pope also pointed out that prelates were held to be more perfect than anyone else in the church, and that they were the successors to the apostles.⁵¹ He did not elaborate on this, but adopted the standard classification of the differing states of perfection of religious and prelates, taking for granted that there was no need for discussion in this area.

There has been a (largely implicit) assumption in modern scholarship that John's interest in the question of Franciscan poverty was largely motivated by ecclesiological and administrative concerns, although quite a number of his own comments suggest a much deeper interest in the spiritual aspects of the Franciscan ideal. If the subversive nature of Franciscan poverty, either in its crude form as an attack on ecclesiastical property or in a subtler undermining of the hierarchical structure of the church and the apostolic succession of bishops, was in the mind of the pope, he did not publicly voice any of his misgivings. There is not nearly enough evidence to state categorically that the Franciscan threat to papal and episcopal authority lay behind John's attack on the order. Most of John's marginalia show the pope's concern for the scriptural title of Franciscan poverty and the definition of Christian perfection rather than the question of the hierarchical structure of the church, and there is no obvious reason not to take his concerns about the spiritual content of the Franciscan ideal seriously.⁵²

Even if John XXII felt that the implications of the Franciscan poverty ideal for episcopal status were a serious threat to the church, he may not have wanted the debate to focus on the question of the hierarchical structure of the church and the bishops' and Franciscans' place within it. If nothing else, opening this new line of attack on the Franciscans would have made the entire debate at the curia much more unpredictable, controversial and potentially divisive. But although the pope never voiced any concerns about the implications of Franciscan poverty for the authority and status of bishops, he did have some very explicit ecclesiological misgivings about the Franciscan ideal. John did, in fact, argue that

Miethke, 'Durandus', and 16 substantial comments in Hervaeus Natalis's contribution (fols 168^{ra}-200^{vb}).

⁵¹ See *Quia vir reprobus*, in *Chronica*, p. 610: 'Item, quod praelatis quorum status reputatur perfectior aliis et qui locum tenent apostolorum, pro rebus suarum litigare liceat, patet.'

the Franciscans posed a threat to the stability of the church, although this threat had at its heart not the Franciscan ideal as such, but the property arrangements that made it possible for the order to live its ideal.

In both versions of his bull *Ad conditorem canonum*, John XXII claimed that the property arrangements of *Exiit* had been detrimental not only to the Franciscan order itself, but also to the church as a whole. Papal dominion over Franciscan goods detracted from the honour of the Roman church because it involved the church in constant litigation in both ecclesiastical and secular courts, and mostly over insignificant things.⁵³ He argued that this state of affairs had arisen because the property-arrangements of *Exiit* gave dominion over Franciscan goods to the papacy while reserving their use to the order. Any litigation involving the Franciscan order would therefore be carried out by procurators who had been appointed by the order, but acted in the name of the curia. The pope also added that the procurators had the reputation for unnecessarily disturbing the (legal) rights of others.⁵⁴ In the second version of the bull, John XXII was even more explicit about the fact that it was papal dominion over Franciscan goods that made this undesirable state of affairs possible. He claimed that the procurators had had a particularly negative effect on the church since the publication of Martin IV's bull *Exultantes in domino* (1283). The bull had proved to be injurious to the church as a whole and particularly burdensome to the secular clergy.⁵⁵ The pope also repeated his scathing comments about procurators from the previous version of the bull.⁵⁶

⁵² For a fuller discussion of John's views on the spiritual value of voluntary poverty, see pp. 141-45 (section IV.1).

⁵³ *Ad conditorem canonum* I, in *Chronica*, p. 86: 'Numquid non praefatae Ecclesiae derogatur honori si ipsam oporteat nunc in foro ecclesiastico nunc in saeculari, interdum quoque coram pedaneis iudicibus et plerumque pro rebus parvis et vilibus litigare?' This was repeated almost literally in the second version of the bull: see *Ad conditorem canonum*, in Tarrant, *Extravagantes*, pp. 247-48.

⁵⁴ *Ad conditorem canonum* I, in *Chronica*, p. 86: '[...] et quod gravius est censendum, procuratores praedicti multos vexare dicuntur indebite et in suis iuribus multipliciter perturbare.'

⁵⁵ *Ad conditorem canonum*, in Tarrant, *Extravagantes*, p. 248. See also the edition of *Exultantes in domino* in Konrad Eubel, *Bullarii Franciscani Epitome sive summa bullarum sive summa bullarum in eiusdem bullarii quattuor prioribus tomis relatarum* (Ad Claras Aquas: Collegium S. Bonaventurae, 1908), p. 301. On Martin IV's bull and its effect on the order, see also Lambert, *Franciscan Poverty*, p. 170.

⁵⁶ *Ad conditorem canonum*, in Tarrant, *Extravagantes*, p. 248: 'Hoc tamen notum est fieri, cum occasione retentionis dicti domini omnes cause occurrentes agendo uel defendendo pro bonis huiusmodi nomine Romane ecclesie uirtute cuiusdam priuilegii a felicis recordationis Martino papa iiii. predecessore nostro concessi super hoc agitentur, et (quod grauius est censendum) procuratores causarum huiusmodi multos uexare dicuntur indebite, licet potestas attributa

In this John XXII was actually echoing comments made by Ubertino da Casale at the Council of Vienne ten years earlier: Ubertino, then still a Franciscan, had complained that the procurators of the Franciscan order were much more active in litigation than those of religious orders with communal property, although the Franciscans claimed to be absolutely poor and to be unable to litigate.⁵⁷ Ubertino also referred to the system of procurators as the deadly poison of evangelical poverty.⁵⁸ And while he stopped short of actually saying so at this stage, Ubertino seems to have started to regard the renunciation of property rights (and the papal dominion over Franciscan goods on which that renunciation depended) as an obstacle to poor use and, ultimately, to evangelical poverty – one of the few points on which the former Franciscan and Pope John XXII came to agree.⁵⁹

The most damaging aspect of this constant litigation was something else, however: it was the fact that any secular cleric who found himself in a petty dispute with any member of the Franciscan order ended up in litigation with the Holy See – a situation which he had never wanted and usually could not afford. These clerics were then faced with the choice of opposing the Roman church or ceding their rights to the Franciscans, although, as the pope also pointed out, the Franciscans were not necessarily in the right about the disputed properties.⁶⁰ There is some circumstantial evidence that the order realised that Franciscan

procuratoribus talibus per priuilegium antedictum quo ad administracionem bonorum premissorum dudum seruata non fuerit nec seruetur, que omnia in notam et iniuriam sancte Romane ecclesie non est dubium redundare. Adhuc ordinacio antedicta ecclesiarum prelati et rectoribus grauis existere nimium et molesta monstratur.’ This is a very close paraphrase of the pope’s argument in the first version of the bull: see *Ad conditorem canonum* I, in *Chronica*, p. 86.

⁵⁷ See the edition of Ubertino’s *Rotulus* and the response of the Community in Franz Ehrle, ‘Zur Vorgeschichte des Concils von Vienne (Schluß)’, *Archiv für Litteratur- und Kirchengeschichte des Mittelalters*, 3 (1887), pp. 1-195. The *Rotulus* is edited on pp. 93-137. See especially p. 113: ‘sub isto inquam pretexto sic sunt plene curie tam seculares quam ecclesiastice nostris litigiis et causis, quod sub tali privilegio durius repetimus et defendimus omnia, que ad nos pertinere videntur, quasi quam multi religiosi, qui habent proprium in communi.’ See also Davis, ‘Ubertino da Casale’, pp. 32-33.

⁵⁸ See Ubertino’s treatise *Sanctitas vestra* in Ehrle, ‘Zur Vorgeschichte’, pp. 51-89, p. 66: ‘[...] tamen ista est enormis fallacia et venenum mortiferum paupertatis evangelice regule et manifesta transgressio.’ See also Davis, ‘Ubertino da Casale’, p. 32 and Leff, *Heresy in the Later Middle Ages*, p. 147.

⁵⁹ See Davis, ‘Ubertino da Casale’, pp. 33-34 and Burr, *Spiritual Franciscans*, p. 273.

⁶⁰ *Ad conditorem canonum*, in Tarrant, *Extrauagantes*, pp. 248-49: ‘Numquid non graue permissis potest existere, quod ipsos oporteat se opponere sancte Romane ecclesie, que ipsorum capud noscitur et magistra, ac cum ea agendo uel defendendo litigare assidue uel cedere iuri suo? Hoc tamen oportet illos facere, cum in multis dicti fratres predictis existere dicantur iniuriis, sicut multorum prelatorum et rectorum diuersarum prouinciarum adhuc in curia existencium habet

litigation might have been perceived as a problem at the time of the outbreak of the poverty controversy, and that the order's leadership was anxious to avoid giving the impression that the order was constantly involved in lawsuits: the statutes enacted by the Franciscan general chapter at Perugia in June 1322 included an exhortation to the order to avoid the curia and any form of litigation with secular clerics.⁶¹

Even before the pope began his discussion of the damaging effects of Franciscan litigation, he had alluded to the problems caused by this when he discussed the fact that experience had shown the Franciscans to be not less but more anxious about temporalities than other mendicants; earlier on in *Ad conditorem canonum*, he had already complained about the friars' anxiety in acquiring and retaining material goods, both in the law courts and outside.⁶²

What John objected to in this case was not the fact of litigation as such. In fact, he argued at great length in *Quia vir reprobus* that the apostles, disciples and all their followers did have the right to litigate about their possessions, and that it was perfectly acceptable for a community to defend what was rightfully theirs in common. The Franciscan order had always claimed that the apostles and those following in their footsteps were not allowed to litigate, but the pope objected that in this case practically all religious orders with communal property would be *in via damnationis* when defending the possessions of their community

insinuacio, qui quidem fratres facta sua per procuratores nituntur defendere antedictos.' See also *Ad conditorem canonum* I, in *Chronica*, p. 87.

⁶¹ Edited in Bihl, 'Formula et documenta', pp. 124-25. See p. 124: 'Item quod fratres non mittantur ad Romanam curiam, nisi pro notabili necessitate; nec assumant causas et litigia cum clericis, sed isto tempore transeant patienter.'

⁶² *Ad conditorem canonum* I, in *Chronica*, p. 85: 'Constat autem quod fratres Ordinis ante dicti post factam retentionem dicti domini non minus, sed satis amplius quam ante ipsam, in acquirendis bonis ipsis ac conservandis, tam in iudicio quam extra, fuerunt solliciti quam sint alii mendicantes circa illa solliciti, adserentes se habere aliqua in communi, prout haec nota magistra rerum, experientia, cunctis recte considerantibus evidentius manifestat.' See also *Ad conditorem canonum*, in Tarrant, *Extrauagantes*, p. 233: 'Constat autem quod post ordinacionem predictam non fuerunt in acquirendis ac conseruandis bonis predictis in iudicio et extra minus solliciti quam ante illam fuerant fratres ipsi quamque sint religiosi mendicantes alii habentes aliqua in communi.' The pope dropped the reference to courts in *Quia vir reprobus*, in *Chronica*, p. 568: 'Et hoc videmus ad sensum, quia ille ad quem rei utilitas pertinet sine dominio magis est circa rem illam sollicitus quam sit nudus dominus eius, ut ad sensum videri potest in Fratibus Minoribus, qui nudum usum facti se habere in talibus adserunt, qui circa illa magis sunt solliciti quam Romana ecclesia ad quam illarum rerum dominium adseruit pertinere.'

in a lawsuit although religious communities were also held to serve, protect and defend their property.⁶³

This debate about the Franciscans' right to litigate did, in an oblique way, raise the question of the apostolic succession of bishops after all because of the Franciscan claim that the order followed the apostolic example in renouncing the right to take legal action. John XXII never made the link between the two issues explicit, however, potentially because he found himself fairly isolated in his attribution of rights of litigation to the apostles. While many non-Franciscan contributors to the debate did attempt to demonstrate the continuity of the contemporary church and its practices with its apostolic roots by attributing contemporary rights and practices to the apostles, few were prepared to concede that the apostles had the right to instigate lawsuits. Generally speaking, most non-Franciscan participants were content to attribute civil property rights to the apostles without explicitly discussing litigation.

Cardinal Napoleone Orsini was one of the few people involved in the debate who explicitly discussed the topic, arguing that Christ and the apostles had property rights, but not the right to litigate.⁶⁴ Cardinal Peter Colonna also included a discussion of litigation in his contribution, but similarly he came to the conclusion that while Christ and the apostles did have property rights, they did not have the right to initiate lawsuits, citing the gospels of Matthew and Luke and the first letter to the Corinthians as proof.⁶⁵ He went on to argue that the gloss and other commentators distinguished between groups of people who could act licitly in a lawsuit, those who could, but should not (such as prelates), and those who were not allowed to litigate at all, such as the religious.⁶⁶ This was echoed in Petrus de Palude's treatise on poverty which explicitly discussed the question of

⁶³ See *Quia vir reprobus*, in *Chronica*, p. 609. For a full discussion of John's arguments on the right of the apostles to litigate, see pp. 178-81 (section IV.4).

⁶⁴ Tocco, *Quistione della povertà*, pp. 168-70, especially p. 170: 'Si vero accipiatur dominium et proprietates quantum ad defensionem illarum rerum, quibus utebantur, vel quantum ad repetitionem in iudicio, si quis eis auferet, sic quantum ad istam rationem habendi, verum est dicere ipsos non habuisse aliquid; [...]. In quibus patet quod Christus non removet a se et ab apostolis omnino dominii veritatem, sed defensionis resistenciam et litigii pravitatem, et etiam quanto ad hoc iudicam facultatem et potestatem.'

⁶⁵ The cardinal's contribution has been edited in Tocco, *Quistione della povertà*, pp. 158-68 and the discussion of apostolic property rights can be found on pp. 166-68. See especially pp. 166-67: 'Unum autem oportet nos diligenter attendere in omnibus supradictis, quod unum solum dominus Jesus Christus apostolis et viris apostolicis inhibuerit et interdixerit, prorsus videlicet omne genus litigandi et in iudicio contempnendi [*sic*; emended by Tocco to *contendendi*].' For the biblical passages, see Mt 5:40, Lc 6:29 and I Cor 6:6.

litigation and contended that while it was a good thing for a religious order to avoid litigation, there was no reason why the secular church should necessarily do so. Petrus quoted the example of Thomas Becket in particular who was held to be a saint precisely because he had defended the rights and property of the church.⁶⁷

Another discussion which deals more specifically with the question of the apostles' property rights is contained in the contribution traditionally ascribed to Berengar Frérol which has recently been re-attributed to the Franciscan Cardinal Bertrand de la Tour by Patrick Nold.⁶⁸ Bertrand de la Tour argued that the attribution of full property rights to the apostles seemed doubtful, partly because there was no record in the gospels of the apostles ever actually having used their right to sell property. There was, however, no doubt that the apostles did have things, and that they gave some of them away or used them to sustain their own life.⁶⁹ And it was also clear that they had the legal right to use these things, although the cardinal found it hard to reconcile this idea with his own earlier statement on apostolic and Franciscan poverty, and with *Exiit*.⁷⁰

The pope therefore found himself fairly isolated on the question of whether the apostles had the right to litigate, if not in his attribution of property rights to them. There is a curious dichotomy here, as the pope argued for the right of the church and of the apostles to litigate, while at the same time using the Franciscans' litigation as one of the arguments against the order's poverty ideal. On the other hand, the Franciscans found themselves in the situation of both having to defend their own litigation in the name of the Holy See while at the same time defending the order's doctrine that neither the apostles nor the order had the right to defend themselves in a court of law. The Franciscan discussion of the order's actual litigation focused on the fact that these lawsuits were not conducted by the order, but by and for the Roman church. Bonagratia's appeal against *Ad conditorem canonum* argued that the Franciscans, as dutiful sons of the church, defended the rights of their mother.⁷¹ And in his *Opus nonaginta dierum*,

⁶⁶ Tocco, *Quistione della povertà*, p. 167.

⁶⁷ Dunbabin, *Hound of God*, p. 158.

⁶⁸ For the reattribution, see p. 42 (section I.2).

⁶⁹ For an edition of the contribution of Bertrand de la Tour, see Tocco, *Quistione della povertà*, pp. 143-52. The discussion of the apostles' property rights can be found on pp. 149-52.

⁷⁰ Tocco, *Quistione della povertà*, p. 151.

⁷¹ *Appellatio Bonagratiae de Pergamo*, in *Chronica*, p. 114. See also Horst, *Evangelische Armut und päpstliches Lehramt*, p. 46.

William of Ockham argued (in a different context) that Nicholas III had expressly received all Franciscan goods into the *dominium* of the church, and had said that it was not beneath the dignity of the church to sue for even the vile and despicable goods used by the Franciscans.⁷² According to Ockham, the church took over the goods of the Franciscans in order to have the exclusive power to sue for them.⁷³

Ubertino again fell between these positions as he found himself in agreement with the pope when it came to the use of procurators, but on the side of his old order when it came to the question of the apostles' right to litigate. His argument was that the apostles were prohibited from litigating, and that this prohibition also extended to the act of litigation through others.⁷⁴ The use of procurators by the Franciscans, even if they were technically acting for the curia, was a breach of this prohibition and a breach of the vow to observe absolute poverty.

The question of the apostles' right to litigate was inextricably bound up with both the question of the renunciation of *dominium* by Christ and the apostles and the extent to which they had civil (property) rights. The answer to this question also had implications for the apostolic succession of bishops, although none of the participants in the debate make this link explicit. While John XXII's silence on this matter does not mean that he did not have any concerns about the question of episcopal status, it remains true that the only issue the pope did explicitly voice any concerns about in this context was the question of the Franciscan order's actual litigation, and this had a much more immediate ecclesiological impact. It is possible that the pope may have been alerted to the potential problem during his involvement with the ordering, summarising and classifying of the *gravamina* of the secular clergy during the preparations for the

⁷² See Christopher B. Gray, 'Ockham on Trusts', *Franciscan Studies*, 46 (1986), 141-59 (p. 154). See also Ockham's dismissal of John XXII's view that being involved in litigation for 'res pauperum parvas et viles' could ever detract from the honour of the Roman church in his *Tractatus contra Benedictum* (1338). See *Tractatus contra Benedictum*, in *Guillelmi de Ockham Opera Politica*, 3 vols (Manchester: Manchester University Press, 1940-1963), III, ed. by Hilary Seton Offler and R. F. Bennett (1956), pp. 157-322, chapter 5 (pp. 182-84).

⁷³ Gray, 'Ockham on Trusts', p. 155. See Ockham's *Opus nonaginta dierum*, in *Guillelmi de Ockham Opera Politica*, I, ed. by J. G. Sikes (1940), pp. 287-324 and II, ed. by R. F. Bennett, Hilary Seton Offler and J. G. Sikes (1963), especially chapter 77:343-47 (p. 632).

⁷⁴ Davis, 'Ubertino da Casale', p. 44: 'Unde apostoli et ipsorum perfecti discipuli nec sua auctoritate nec alia voluerunt pro rebus quibus utebantur per quoscunque submissos vel procuratos in iudicio litigare.'

Council of Vienne.⁷⁵ The fact that any lawsuit initiated by a Franciscan procurator would pit the papacy against individual clerics or parish churches could potentially endanger the stability of the church. Although the problem highlighted by the pope in *Ad conditorem canonum* was much more immediately damaging than the implicit threats to the ecclesiastical hierarchy presented by the Franciscan poverty ideal, there has been almost no discussion of this in modern scholarship.⁷⁶ Much more research needs to be done on the question of Franciscan litigation, particularly on the extent to which actual lawsuits brought by Franciscan friars caused the type of disruption John complained about, before any assessment of the seriousness of this threat can be made. But even without a clear sense of the extent of this problem, it seems reasonable to assume that when it came to the (potential) threats posed by the Franciscan order to the church, John XXII was more worried about rifts between the papacy and the secular clergy as a consequence of papal dominion over Franciscan goods than about the authority and status of the episcopate.

III.3 The Authority of the Pope

While the question of episcopal status was of immediate concern to a number of participants in the debate, the problem that concerned the pope most closely in connection with the Franciscan poverty ideal has often been assumed to be the implications of Franciscan poverty for his own authority. The poverty controversy played a crucial role in the development of theories of papal authority and power, and this aspect of the ecclesiology of the controversy has always attracted a great

⁷⁵ See John XXII's later assessment of his role in a letter to Edward II of England from December 1318/January 1319: '[...] quod dudum in concilio Viennensi dum universa gravamina in cunctis mundi regnis atque provinciis, christianitatis vocabulo insignitis, illata per dominos temporales ecclesiis, felicis recordationis Clementis pape V predecessori nostro oblata fuissent, et per eum nobis tunc in minori officio constitutis ad examinandum et ordinandum tradita [...]' (Coulon and Clémencet, *Lettres secrètes*, I (Fontemoing, 1899), no. 792, cols 691-94, especially col. 692) and another letter to the king of France: '[...] de huiusmodi reservationibus audivimus in Viennensi concilio graves ingeminari querelas' (Coulon and Clémencet, *Lettres secrètes*, I, no. 977, cols 844-45, col. 845). See also Boyle, 'Committee Stage', p. 25 and Müller, *Konzil*, pp. 118 and 630.

⁷⁶ Among the few exceptions is Patrick Nold who has briefly mentioned the issue in his summary of the argument of the first version of *Ad conditorem canonum* in *John XXII and his Franciscan Cardinal*, pp. 157-58, but without going into the question in any detail. The same is true for Jürgen Miethke, *Sozialphilosophie*, p. 378.

deal of attention in scholarship.⁷⁷ Although the discussion of the powers of the pope became a major part of the controversy later on, it was not at first the main issue. At its heart this aspect of the controversy was not at first about the general problem of the status of papal legislation, or the circumstances under which (at least some) papal decisions could or could not be changed by succeeding popes. Before the debate broadened out into a more general discussion of the extent and limits of papal power over previous papal legislation and articles of faith, it essentially hinged on the question of whether John XXII did have the right to act as he had done when he published *Ad conditorem canonum* and *Cum inter nonnullos*, recalling the discussion within the Franciscan order that followed John's publication of *Quorundam exigit* in 1317. James Heft has argued that the underlying question here was whether *Exiit* was revocable or not,⁷⁸ although it has to be kept in mind that John XXII himself always maintained that he had neither wanted to revoke or contradict *Exiit*, nor had he done so. At first, the debate was confined to the question of whether John had the right to abolish Nicholas III's property arrangements, and the discussion only became more general when the pope's right to publish *Cum inter nonnullos* was questioned more generally as well.

John XXII had been very explicit about how he saw his role as legislator for the church from the start of the controversy about Franciscan poverty. In *Quia nonnumquam*, as well as in both versions of *Ad conditorem canonum*, he argued that changes in legislation were unavoidable, as subsequent experience often proved laws to be less effective than planned even if they had been instituted with the best of intentions.⁷⁹ In *Ad conditorem canonum*, he stated that it was part of his role as legislator for the church not only to make new laws, but also to revise and change old ones once they proved to be useless or counterproductive.⁸⁰ John's

⁷⁷ See especially the works of Ulrich Horst, Brian Tierney and James Heft.

⁷⁸ Heft, 'John XXII and Papal Infallibility', p. 768.

⁷⁹ *Quia nonnumquam*, in Tarrant, *Extravagantes*, pp. 217-18: 'Quia nonnumquam quod coniectura profuturum credidit subsequens experientia nociuum ostendit, non debet reprehensibile iudicari, si canonum conditor canones a se uel suis predecessoribus editos uel aliqua in eisdem contenta canonibus reuocare modificare uel suspendere studeat, si ea obesse potius uiderit quam prodesse.'

⁸⁰ *Ad conditorem canonum* I, in *Chronica*, p. 83 and *Ad conditorem canonum*, in Tarrant, *Extravagantes*, pp. 228-29: 'Ad conditorem canonum non est dubium pertinere, cum statuta a se uel predecessoribus suis edita obesse percipit potius quam prodesse, ne ulterius obesse valeant, providere.'

insistence on re-evaluating legislation is a very important feature of this aspect of the debate.⁸¹ There has been an assumption in much modern scholarship that these bulls can be read as statements of John XXII's true opinion of his authority over previous papal legislation, and that they therefore provide valuable insights into the way John saw his own role as pope. But while the pope's view of papal authority undoubtedly influenced his decisions during the poverty controversy, it seems unlikely that he would have chosen the publication of *Quia nonnumquam* and *Ad conditorem canonum* as a forum in which to discuss his views.

It has been suggested that until the publication of *Ad conditorem canonum*, John XXII saw this aspect of the controversy in very simple terms, and that he interpreted any suggestion of papal decisions as irreformable as a threat to his sovereignty.⁸² At this stage, however, the debate was not (yet) about the question of papal sovereignty. Nevertheless, the Franciscan interpretation of *Exiit* constituted a curtailment of papal power, and John did not take kindly to being told what he could and could not do. In opening a general discussion of the question of Franciscan poverty, John had already abolished the penalty clauses of *Exiit*, and he had to defend himself against the charge of contravening the decisions of a previous pope.

John XXII's defence against the charge that he was undermining doctrines approved of by *Exiit* was twofold: he asserted on the one hand that he had not in fact changed any decree of his predecessors involving an article of faith, while on the other hand, he argued that he could have done so had he wanted to.

Most of the pope's discussion of his powers as pope and his relationship with earlier papal legislation can be found in *Quia quorundam mentes*. His ecclesiological arguments in the bull are a direct response to the challenge to his authority posed by the appeal of Sachsenhausen. In *Quia quorundam mentes*, John devoted a lot of effort to an attempt to prove that the simple use of fact could not be established for Christ and the apostles, and that it therefore had no basis in the Bible. The pope rejected the Franciscan claim that Christ and the apostles had practised the *simplex usus facti*, and that because of this apostolic practice, the

⁸¹ See Burr, *Spiritual Franciscans*, p. 275.

⁸² See Tierney, *Infallibility*, p. 179.

simple use pertained to the faith and customs of the church.⁸³ It was a purely administrative decision on his part to reject papal ownership over Franciscan goods, even if it meant rejecting the idea that Christ and the apostles had renounced communal as well as individual property. Just as importantly, the simple use of fact also had no basis in earlier ecclesiastical legislation: Nicholas III had never claimed that Christ and the apostles only had the *simplex usus facti*,⁸⁴ and although Innocent V had asserted this (as Peter of Tarentaise), he had been speaking as a private individual rather than making a binding statement.⁸⁵ The same was true for any claim that the Franciscan rule could be equated with the evangelical rule of Christ: John argued that this was not true, and that it had certainly not been approved of, much less confirmed by, the popes Honorius III, Gregory IX, Innocent IV, Alexander IV, or even Nicholas III.⁸⁶

This led John to state categorically that the Franciscans were wrong in claiming that his predecessors had defined evangelical poverty as consisting of a renunciation of civil property rights and the simple use of fact.⁸⁷ Most of the later part of this bull was devoted to the proof that John's definition of evangelical poverty did not contradict previous ecclesiastical definitions, and that he had not changed any significant part of his predecessors' legislation.⁸⁸ At this stage, John XXII's argument did not so much discuss whether he could change earlier papal legislation regarding the Franciscan order, but rather the pope asserted that the order misunderstood the nature and intention of Nicholas III's bull itself.

⁸³ *Quia quorundam mentes*, in Tarrant, *Extravagantes*, p. 284: 'Preterea dicant nobis assertores huiusmodi ubi legunt quod ad fidem uel mores pertineat Christum et apostolos non habuisse in his que habuerunt nisi simplicem usum facti. Profecto directe hoc ad fidem non pertinet.' He repeated the argument in *Quia vir reprobus*: see *Chronica*, p. 612.

⁸⁴ *Quia quorundam mentes*, in Tarrant, *Extravagantes*, pp. 268-69: '[...] ex uerbis tamen predictis nequaquam potest colligi quod prefati predecessoris nostri Nicolai intentio fuerit dicere quod dicta regula quo ad omnia que continentur in ea euangelico fundetur eloquio, ac uite Christi roboretur exemplo, nec quod apostolorum uita et actibus sit firmata.'

⁸⁵ *Quia quorundam mentes*, in Tarrant, *Extravagantes*, pp. 273-74: 'Nec obstat (quod dicunt) Innocentium (alias Celestinum) v. predecessorem nostrum dixisse alteram paupertatem esse habere pauca propria propter Deum; altiorem, que nulla habet propria tamen habet in communi; altissimam, que nichil habet in hoc mundo, nec in proprio nec in communi. Dicimus quidem quod hoc dixerit non ut papa, sed ut frater Petrus de Tarantasia in quadam postilla sua, quare dicta premissorum summorum pontificum sunt ei merito preferenda.'

⁸⁶ *Quia quorundam mentes*, in Tarrant, *Extravagantes*, p. 259.

⁸⁷ *Quia quorundam mentes*, in Tarrant, *Extravagantes*, p. 280: 'Ex premissis autem inferre nituntur, ut fertur, quod dictorum summorum pontificum diffinitio quam diffinierunt de paupertate Christi et apostolorum ac fratrum minorum predictorum regula, prout superius expresserunt, per nos non potuit mutari. Proculdubio falsa asserunt dicendo predecessores nostros diffinisse talia, ut superius est probatum.' See also Heft, *Papal Teaching Authority*, pp. 70-72.

⁸⁸ See Tierney, *Infallibility*, pp. 189-90.

The Franciscans claimed, according to the pope, that Nicholas III had condemned all those who denied the evangelical basis of Franciscan poverty and had prohibited all further discussion of the topic on pain of being branded a heretic. John XXII was quick to point out that what Nicholas III had actually said was that these people ought to be called rebels and contumacious rather than heretics.⁸⁹ Even more importantly, John insisted that the Franciscan argument really defeated itself: if Nicholas III had really meant what the order claimed he had meant, then Nicholas III himself would have been contradicting earlier legislation in the same way that John XXII had allegedly contradicted *Exiit*. If *Exiit* understood the simple use of fact to mean the complete renunciation of all communal property rights, then it expressly contradicted the declarations of Gregory IX, Innocent IV and Alexander IV, and if John XXII could not change the constitution of Nicholas III, then Nicholas III did not have the right to change those of Gregory, Innocent and Alexander, as the Franciscans acknowledged and even claimed he had done.⁹⁰ John's argument was complicated and to a degree obscured by the fact that it hinged on his claim that any licit use implied legal rights, but he made his main point quite clear: he had not changed any doctrinal definition about Franciscan poverty found in any of his predecessors' declarations, and even if he had done so, he was only going back to the original, 'true' definition that had been changed first by Nicholas III.

In *Quia vir reprobus*, John XXII returned to the question of the relationship between his own bulls and that of Nicholas III, although the pope did not answer Michael of Cesena's allegations and criticism of the ecclesiological discussion in *Quia quorundam mentes* in much detail.⁹¹ He pointed out that Michael of Cesena had misrepresented the intention of his earlier bulls; in contrast to what Michael argued, the pope had not actually claimed that he could revoke definitions of his predecessors in faith and morals. John contended that he had said no such thing, and that, on the contrary, he had expressly denied that the question of the absolute poverty of Christ and the apostles had anything to do with the faith and morals of the church.⁹²

⁸⁹ *Quia quorundam mentes*, in Tarrant, *Extrauagantes*, pp. 277-78.

⁹⁰ *Quia quorundam mentes*, in Tarrant, *Extrauagantes*, pp. 275 and 281.

⁹¹ See Horst, *Evangelische Armut und päpstliches Lehramt*, p. 93.

This led to John's second line of argument: although he had not actually changed a doctrinal definition of a previous pope, this did not necessarily mean that he did not have the power to do so. He illustrated this with a brief discussion of the prohibition of new orders by the Fourth Lateran Council in 1215, the fact that new orders had later been approved of by Innocent III's successors, and the fact that some of these new orders had then been dissolved again by the Second Council of Lyon in 1274. From this he argued that if a pope could confirm new orders despite the prohibition of a general council, and if it was then possible to dissolve some of these same orders again, then the pope could certainly change some things about the rules of existing religious orders.⁹³ Or in short, it was false to conclude that a pope could not change his predecessors' declarations, especially not in the case of Franciscan poverty, since Nicholas III had expressly stated that future problems with the doctrine of poverty ought to be brought before the Holy See.⁹⁴ Earlier on in the bull, John had already asserted the same thing: it was not possible to infer from anything he had said so far that he did not have the authority to change decisions of his predecessors.⁹⁵ This, however, was asserted right in the middle of a chain of argument attempting to prove that John had in fact not changed anything substantially anyway. Even so, it seems clear that John was quite certain that he had the authority to contradict certain teachings of the church if he wanted to,⁹⁶ although he does not seem to have been prepared to discuss the mechanics of this in any detail.

There was not much doubt in anyone's mind that in purely disciplinary matters, papal legislation could be revised, changed or even abolished. There was also no doubt that certain basic truths of the Christian faith were outside papal jurisdiction altogether. This left a large area of ecclesiastical legislation, however, which included definitions of theological truth and therefore was not purely disciplinary or administrative, but which also did not pertain directly to an article

⁹² See *Quia vir reprobus*, in *Chronica*, p. 612.

⁹³ *Quia quorundam mentes*, in Tarrant, *Extravagantes*, pp. 282-83.

⁹⁴ See John's exasperated reference to the fact that Nicholas III himself had declared that any further problems with the Franciscan rule and ideal of poverty should be brought before the Holy See: *Quia quorundam mentes*, in Tarrant, *Extravagantes*, p. 285: 'Vnde non possunt ex predictis concludere, nisi falso, quin contra ordinata per summos pontifices circa talia liceat successoribus aliud ordinare, quod Nicolaus iii. prefatus expresse in sua declaratione inseruit, ut superius plenius continetur.' He had already quoted Nicholas III's words to that effect earlier on in his bull: *Quia quorundam mentes*, in Tarrant, *Extravagantes*, p. 282.

⁹⁵ *Quia quorundam mentes*, in Tarrant, *Extravagantes*, p. 280.

of faith, and where the extent and limits of the authority of succeeding popes were far from clear.⁹⁷

The problem of papal authority over ecclesiastical legislation had already been discussed extensively by canon lawyers in the context of the question of whether the pope could dispense from apostolic laws, particularly from apostolic impediments to the priesthood.⁹⁸ Canonists in general tended to have a developmental view of the early church, and seem to have regarded the institutions of the apostles as part of positive rather than divine law.⁹⁹ They regarded institutions of the apostles as not binding in the same sense that the gospels were binding, and a consensus (if not a unanimous one) developed that the pope could dispense from apostolic institutions which were not part of the substance of the faith.¹⁰⁰ Conversely, anything pertaining directly to the substance of the faith and the revealed truths of the Bible was outside papal control.¹⁰¹ The question was therefore, at least to a degree, whether Franciscan poverty was part of the substance of the faith, and, according to the order's interpretation, it was part of the substance of the faith because Franciscan poverty derived from the property arrangements of the apostles.¹⁰²

In this view, John XXII did not have the authority to change the property arrangements of *Exiit*, although by no means all Franciscans agreed. It is necessary to keep the opinion of Michel le Moine in mind who had argued that, as all religious orders received their confirmation from the papacy, the pope had of course the right to change or even abolish all religious rules. Some of the

⁹⁶ See Tierney, *Infallibility*, p. 190.

⁹⁷ For a discussion of the terminology, definition and distinctions between the concepts of doctrine, dogma and article of faith, as well as the notions of sovereignty and infallibility, see the debate between James Heft and Brian Tierney in the *Journal of Ecumenical Studies*: Heft, 'John XXII and Papal Infallibility', Tierney, 'Sovereignty and Infallibility', and Heft, 'Rejoinder'.

⁹⁸ See Stephan Kuttner, 'Pope Lucius III and the Bigamous Archbishop of Palermo', in *Medieval Studies Presented to Aubrey Gwynn, S.J.*, ed. by J. A. Watt, J. B. Morrall and F. X. Martin (Dublin: Colm o Lochlainn, 1961), pp. 409-53 (p. 409), and Tierney, *Infallibility*, pp. 28-29.

⁹⁹ Turley, '*Ab apostolorum temporibus*', p. 563 and James Doyne Dawson, 'William of Saint-Amour and the Apostolic Tradition', *Mediaeval Studies*, 40 (1978), 223-38 (p. 232).

¹⁰⁰ Dawson, 'William of Saint-Amour', p. 232, especially note 17, and Kuttner, 'Bigamous Archbishop', pp. 424-27, drawing particularly on the opinions of Huguccio, Hostiensis and Johannes de Retesella.

¹⁰¹ See Tierney, *Infallibility*, p. 29.

¹⁰² James Heft, 'Nicholas III (1277-1280) and John XXII (1316-1334): Popes in Contradiction? A Reexamination of Texts and Contexts', *Archivum Historiae Pontificiae*, 21 (1983), 245-57 (p. 249). For an example of the Franciscan view, see the *Declaratio magistrorum*, in *Chronica*, pp. 75-76, as well as the Franciscan excursus in the appeal of Sachsenhausen (*Appellatio Ludovici de Sachsenhausen*, in *Chronica*, pp. 143-55 and especially pp. 144-45).

statements of the pope discussed so far make it seem likely that the pope agreed with this sentiment. From a more radical Franciscan point of view, however, the pope had betrayed Christ in his decision, and this sense of betrayal was later developed into a full-blown attack on the papacy by William of Ockham who accused the pope of betraying Christ's law in his assertion of coercive power, dominion and temporal authority.¹⁰³ Marsilius of Padua also claimed that loyalty to Christ required the renunciation of all property and rights of litigation, and called for a return of the church to its primitive apostolic ideal.¹⁰⁴

While Pope John XXII vigorously defended both his decision in the question of the poverty of Christ and the fact that he had made the decision in the first place, he was very careful about the claims he actually made in his bulls about the exact nature and extent of papal power. Whenever he came close to stating anything like Michel le Moine's opinion, the pope retracted to his second line of argument, asserting that he had not actually made any substantial changes to his predecessor's bull anyway. His main argument to back up and support his changes to *Exiit* discussed the powers of the pope only to a degree: he asserted that the Franciscan poverty ideal had not ever been approved of by the whole church. John used the argument both in *Quia quorundam mentes* and *Quia vir reprobus*, pointing out that no general council had approved of the Franciscan interpretation of evangelical poverty (not even the Council of Vienne), and equally that it had never been approved of by the whole church.¹⁰⁵

John's most open condemnation of the lack of official recognition for the Franciscan ideal derives from an 'unofficial' source, however: in the account of the consistory meeting of 6 March 1322 which is contained in the Italian translation of the chronicle of Nicolaus Minorita, the pope is quoted as saying that Nicholas III wrote *Exiit* in his room without consulting the cardinals.¹⁰⁶ John's practice, both in the poverty controversy and elsewhere, supports the view that he

¹⁰³ Gordon Leff, 'The Apostolic Ideal in Later Medieval Ecclesiology', *Journal of Theological Studies*, n.s. 18 (1967), 58-82 (p. 81).

¹⁰⁴ See Leff, 'Apostolic Ideal', pp. 69-71.

¹⁰⁵ *Quia quorundam mentes*, in Tarrant, *Extravagantes*, p. 283 and *Quia vir reprobus*, in *Chronica*, p. 573.

¹⁰⁶ Zambrini, *Storia di fra Michele*, p. 75: '[...] e che papa Nicolaio terzo fecie quella directale, *Exijt*, nella camera sua, sanza il consiglio de' cardinali.' The charge that Nicholas III's bull had been a personal rather than an official decision, and that it had not been discussed with the cardinals or in a general council, was later repeated by Petrus de Palude in his *Tractatus de paupertate*: see Horst, *Evangelische Armut und päpstliches Lehramt*, p. 148.

saw consultation with the cardinals as an indispensable part of papal decision-making. He was careful to note the fact that all of his bulls had been drawn up with the help of the cardinals which can be seen not only from the use of standard phrases such as *de fratrum nostrorum consilio*, but also from the extensive consultation process that preceded the publication of many of his major bulls.¹⁰⁷

The problem lies therefore less with John's practice than with John's theory; his arguments have been called 'imprecise' by Brian Tierney because they moved from a discussion of the question of whether, when and how doctrinal definitions could be revoked by a succeeding pope to the assertion that the pope could revoke administrative measures of his predecessors. Brian Tierney has argued that this may have been due to the failure of John to come to terms with the ecclesiology that lay behind the Franciscan arguments.¹⁰⁸ While John stressed the importance of consultation with the cardinals and the approval of the whole church, he did not discuss in any detail how this approval would have to be voiced or implemented for him to accept it as such, reinforcing the impression that the ecclesiological implications of his arguments were (at this stage at least) of secondary importance to the pope, and that he did not really want to get involved in a general debate about papal authority and its limits. It is therefore important to note that the pope's apparent failure to engage in an ecclesiological debate may mostly be due to the fact that his primary concern was to establish that he did have the right and authority to act as he had when he published the bulls *Ad conditorem canonum* and *Cum inter nonnullos*. Coming to terms with the implications of Franciscan ecclesiology was probably not John's main concern, especially since it was possible for him to defend his actions and his right to these actions without getting involved in a very complex debate about the true nature of papal authority.

¹⁰⁷ See for instance *Cum inter nonnullos*, in Tarrant, *Extravagantes*, pp. 256-57, *Ad conditorem canonum*, in Tarrant, *Extravagantes*, p. 249 and *Quia nonnumquam*, in Tarrant, *Extravagantes*, p. 220: '[...] in fratrum nostrorum ac multorum archiepiscoporum episcoporum et aliorum prelatorum necnon multorum professorum utriusque iuris et multorum sacrae theologiae magistrorum presentia, dum consistorium teneremus, auctoritate apostolica [...]' See also the discussion of the papal process of consultation and decision-making in the poverty-controversy in sections I.1 and I.2 (pp. 20-33 and 41-42).

¹⁰⁸ Tierney, *Infallibility*, p. 193. See also Heft's criticism of Tierney's discussion in 'John XXII and Papal Infallibility', pp. 774-75.

If no coherent picture of John's views of the extent and limitations of the powers of the pope emerges from these bulls, the issue was made even more complicated by John's discussion of the keys of knowledge and power in *Quia quorundam mentes*. It is fairly certain that this was not an issue the pope would have chosen to discuss in this context, but after the publication of the appeal of Sachsenhausen and its discussion of papal power, John XXII evidently felt that he had to comment on it as well. The Franciscan excursus in the appeal of Sachsenhausen had argued that any papal definition in faith and morals which had been made with the key of knowledge could not be revoked by a succeeding pope, while definitions made with the key of power were not subject to such a restriction.¹⁰⁹ This was not a common interpretation of the type of authority invested in the sacerdotal power of the keys; this power had traditionally been defined as juridical authority and the sacramental power to remit sins,¹¹⁰ and Bonaventura, for instance, had defined the key of knowledge in this traditional way as conferring a form of judicial authority.¹¹¹

John XXII was almost certainly aware of the fact that the idea of an unerring key of knowledge was a novelty, and he strongly objected to it and to the attempt to apply it to *Exiit* in order to remove Nicholas III's bull from his jurisdiction.¹¹² He made it very clear in *Quia quorundam mentes* that the spiritual key was not the key of knowledge, but the power of binding and loosing, and he quoted the opinion and definition of the masters of theology to support his definition.¹¹³ Brian Tierney has argued that this probably reflected the personal opinion of the pope, as well as being a useful argument against the Franciscan position.¹¹⁴ John XXII also claimed that, since the keys were conferred in

¹⁰⁹ For the discussion of the key of knowledge in the Franciscan excursus in the appeal of Sachsenhausen, see the *Appellatio Ludovici de Sachsenhausen*, in *Chronica*, pp. 149-50. John's summary of the basic Franciscan argument can be found in *Quia quorundam mentes*, in Tarrant, *Extravagantes*, pp. 260-61.

¹¹⁰ See Tierney, *Conciliar Theory*, pp. 32-33, and Heft, *Papal Teaching Authority*, pp. 49-50, especially note 19.

¹¹¹ See Tierney, *Infallibility*, p. 184 and Heft, 'John XXII and Papal Infallibility', pp. 765-66.

¹¹² Tierney, *Infallibility*, pp. 185-86.

¹¹³ *Quia quorundam mentes*, in Tarrant, *Extravagantes*, p. 261: 'Primo quidem secundum illos qui tenent clauem spiritualem nequaquam esse scientiam sed ligandi atque soluendi potestatem patet assertores predictos ponendo clauem esse scientiam errauisse. Pro quibus facit clauis diffinitio que a doctoribus datur, 'Clauis est spiritualis potestas ligandi atque soluendi, qua iudex ecclesiasticus dignos recipere et indignos excludere debet a regno'. The masters referred to by him were Peter Lombard and Raymond of Peñafort: see Tarrant, *Extravagantes*, p. 261.

¹¹⁴ Tierney, *Infallibility*, p. 186.

ordination, and since it was clear that knowledge was not conferred in ordination, the spiritual key could not be one of knowledge.¹¹⁵

Those who argued that there was one key pertaining to the faith and another to make constitutions were also wrong; this theory would mean that all simple priests had the power to define articles of faith by a constitution which was patently absurd.¹¹⁶ If, alternatively, the proponents of this theory took it to mean that the keys referred specifically to the powers of the pope, they would also argue that everything defined by the key of knowledge had a different effect from those things defined by the key of power. This was obviously wrong as the key of knowledge only conferred the *auctoritas discernendi seu cognoscendi* rather than the authority to make a decision. The pope argued that either both keys were needed for a decision on an article of faith, or, if only one of them was necessary, it would be the key of power rather than that of knowledge.¹¹⁷

In *Quia vir reprobus*, John XXII very briefly resumed his discussion of the keys of the church. The pope did not add much to his earlier comments, and Ulrich Horst has speculated that the general lack of ecclesiological material in *Quia vir reprobus* may indicate that John saw the real issue with, and solution to, the problem of Franciscan poverty elsewhere.¹¹⁸ In the bull, the pope argued that the keys to the kingdom of heaven which were conferred on Peter did not include the key of knowledge mentioned in the gospel of Luke (Lc 11:52). The key of knowledge, according to the pope, was the humility needed to understand Scripture fully. This key could also be interpreted as faith in Christ, and it was this

¹¹⁵ *Quia quorundam mentes*, in Tarrant, *Extravagantes*, pp. 261-62: 'Item, quia claves de quibus agimus in collatione sacerdotalis ordinis conferuntur, constat autem quod ordinato in sacerdotem scientia communiter non confertur, quare secundum illos uidetur quod scientia clavis non est, sed potentia tantum ligandi atque soluendi debeat dici clavis.' Jesselinus's gloss on *nequaquam esse scientia* in the passage immediately preceding this one, added the comment that, while the spiritual key was conferred by priestly ordination, *scientia* (or the key of knowledge) had to be acquired with diligence and hard work: 'Clavis enim talis spiritualis suscipitur per susceptionem ordinis sacerdotalis: vt infra sequitur absque alia angustia seu labore. Scientia autem cum a natura non infit ab euentu est: et cum diligentia acquiritur.' (fol. 55^{ra}). See also Heft, *Papal Teaching Authority*, p. 50 note 20.

¹¹⁶ *Quia quorundam mentes*, in Tarrant, *Extravagantes*, p. 262: 'Claves autem que in sacerdotali conferuntur ordine ad talia minime se extendunt, alias sequeretur quod circa premissa possent constitutiones sacerdotes simplices facere, quod falsum est evidenter.' See also Tierney, *Infallibility*, p. 186.

¹¹⁷ *Quia quorundam mentes*, in Tarrant, *Extravagantes*, pp. 263-64: 'Quare restat quod ad conuenienter statuendum seu aliquid diffiniendum utraque clavis, scilicet cognoscendi et diffiniendi, necessario requiratur, uel quod soli clavi potentie statuere competat et etiam diffinire.' See also Heft, *Papal Teaching Authority*, p. 51.

¹¹⁸ Horst, *Evangelische Armut und päpstliches Lehramt*, p. 93.

faith in Christ that had been rejected by the Pharisees, and that was now being rejected by Michael of Cesena.¹¹⁹ It could not be the same as the key to the kingdom of heaven, however, because Peter had this key (that is, faith and humility) even before he was promised the key to the kingdom of heaven; otherwise he would not have been able to recognise Jesus as the son of God.¹²⁰ And even apart from that, the key of knowledge had nothing to do with the ability or authority to define doctrine. John XXII had already argued in *Quia quorundam mentes* that knowledge was needed to guide the proper use of the key of power, in the same way as light was needed to direct the use of a material key. And the pope claimed that this was what Christ had had in mind when, immediately after promising to St. Peter the keys to the kingdom of heaven, he told him that whatever he would bind or loose on earth would also be bound or loosed in heaven.¹²¹

To a degree, the discussion of the power of the keys obscures the main issue; John XXII was not primarily concerned with establishing a coherent ecclesiological system, but with defending his right to act as he had done during the theoretical poverty controversy.¹²² He tried to do this by proving that he had not in fact made any ecclesiologically significant decisions during the poverty controversy; as long as John XXII could restrict the discussion to an administrative and legal level, he could not be accused of overturning the dogmatic decisions of a previous pope. If the pope could manage to steer the debate away from the question of papal power, the ecclesiological arguments of his Franciscan opponents would become redundant. Ulrich Horst has also speculated that the curia may not have thought that the issue of papal authority was ripe for an authoritative papal decision just yet, arguing that the question of papal infallibility had never been meant to be an issue during the poverty

¹¹⁹ *Quia vir reprobus*, in *Chronica*, pp. 611-12.

¹²⁰ *Quia vir reprobus*, in *Chronica*, p. 612. See also Tierney, *Infallibility*, p. 211.

¹²¹ *Quia quorundam mentes*, in Tarrant, *Extrauagantes*, p. 264: 'Sed sicut lumen materiale clauigerum in usu clauis materialis dirigit, sic et scientia clauigerum spiritualis clauis potentie in eius usu dirigit, et quasi quantum ad hoc obtineat scientia uicem lucis. Et hoc Saluator noster in promissione clauium facta beato Petro sensisse uidetur expresse, cum post illam immediate subiunxerit, 'Et quodcunque ligaueris super terram, erit ligatum et in celis, et quodcunque solueris super terra merit solutum et in celis', nulla de scientia habita mentione.'

¹²² See also Heft's argument that the main reason the pope began to discuss whether he had changed previous legislation pertaining to an article of faith in 1324 was because it was only then that he was accused of having done so: Heft, 'John XXII and Papal Infallibility', p. 776.

controversy.¹²³ The real issue for the pope was not the question of the extent and limits of papal power, but much more immediately the definition of Franciscan poverty itself.

III.4 Conclusion

Most of John XXII's discussion of the ecclesiological implications of the Franciscan poverty ideal was a reaction to accusations made by his opponents. This is especially true for the question of papal power and authority, but even when it comes to the implications of the Franciscan ideal for the status and authority of bishops, the pope does not seem to have been prepared to discuss the issue unless he had to. The fact that John XXII did not discuss the question of papal authority until he felt he had to react to Franciscan challenges does not mean, however, that he was not aware of the potential problems of the Franciscan ideal for episcopal and papal office. It is quite possible that he deliberately chose not to get involved in a debate about the ecclesiological implications for the authority of the papacy because such a debate would have meant that he had to set out his alternative view of what the pope could and could not do. In this case, it would have been much harder to maintain an anti-Franciscan consensus among John's supporters in the question of Franciscan poverty.¹²⁴ To a degree, there was no necessity for him to use all (possible) arguments available when at least some of them might let the debate in general spiral out of control completely.

The only direct ecclesiological threat coming from the Franciscan order that the pope discussed in any amount of detail in his bulls about Franciscan poverty was the question of Franciscan litigation. This was a topic introduced into the debate by the pope, but not really taken up by anyone else, either at the time of the controversy or later. While it is not clear how much of a threat this was at the time of John XXII's pontificate, it is clear that the pope was concerned about the rifts that could potentially be created between the papacy and the secular clergy as

¹²³ Horst, *Evangelische Armut und päpstliches Lehramt*, pp. 93-94.

¹²⁴ See Horst, *Evangelische Armut und päpstliches Lehramt*, p. 149 who has argued that the question of papal teaching authority was not discussed in any detail by John XXII in *Quia quorundam mentes* because it would have been answered in very different ways even by his supporters.

a result of papal dominion of Franciscan goods, and that he viewed the Franciscan practice of litigating in the name of the curia as a serious problem for the church.

In the early stages of the controversy, John XXII did not explicitly discuss any ecclesiological issues linked to the Franciscan poverty ideal, other than stating the need for a re-evaluation of ecclesiastical legislation in order to assess whether it had achieved its aim. He only began discussing the question of his own authority over previous papal legislation once the appeal of Sachsenhausen had accused him of revoking a doctrinally binding bull of a previous pope. Even then his argument seems to be fairly defensive, focusing on the fact that he did have the right to revoke some previous legislation, and asserting that in his decisions about Franciscan poverty, he had not actually abolished any decision in faith and morals. The pope seems to have tried not to get entangled in a debate about how exactly a binding papal decision in faith and morals could be enacted, recognised and (at least potentially) revoked, although the arguments he did use to defend the decisions that he had made in the poverty controversy were later used in order to establish such criteria.

This does not detract from the significance of the poverty controversy for later developments in ecclesiology, but it does mean that other factors are needed to explain John XXII's attack on the Franciscan poverty ideal and the order's doctrine of the absolute poverty of Christ and the apostles. The fact that John XXII did not discuss the problem in any detail does not mean that he was not aware of the problem or did not see this as a potential danger; it is, however, important to take into account the issues raised by the pope explicitly in the debate, in addition to the attempt to reconstruct the pope's ecclesiology from his bulls on Franciscan poverty. John XXII's unease about the Franciscan ideal went deeper than just administrative dissatisfaction, and it went beyond the ecclesiological issues posed by the Franciscan order; when the pope's own discussion of Franciscan poverty is read carefully, the main focus of his attack on the ideal of the absolute poverty of Christ is theological and legal.

Chapter IV

John XXII's Theological Response to the Franciscan Ideal of Absolute Poverty

In the consistory meeting on 6 March 1322, John XXII had asked whether it was heretical to maintain that Christ and the apostles had had no private or communal property. Taken at face value, this could be interpreted as a fairly straightforward enquiry into the scriptural title of Christ's poverty. And in fact, some of the respondents to the pope's question perceived it as such and focused on this aspect in their answers.¹ This was not how the most prominent participants in the debate treated the problem, however. The responses by the Franciscans, as well as by people such as Durandus de Saint-Pourçain or Hervaeus Natalis, tended to emphasise the ecclesiological and theological ramifications of the Franciscan poverty ideal: most of their discussion centred not on the scriptural title of Christ's poverty or its exact nature, but on related questions of the relationship between poverty, perfection and the state of perfection, the difference between counsels and precepts and the implications of these concepts for the structure of the church.²

Some of these problems also surfaced in John XXII's own contributions to the debate, although there is little overt theological material in most of his bulls.³ All of his bulls are based on a number of assumptions about the nature of the poverty of Christ and the spiritual value of voluntary poverty. These were not

¹ See for instance the contribution of Cardinal Peter Colonna who mainly concentrated on Scripture (Tocco, *Quistione della povertà*, pp. 158-68), but also that of Cardinal Raimond de Roux who also included a large amount of scriptural discussion (Tocco, *Quistione della povertà*, pp. 128-43), the very brief opinion of Armand de Vernovo, Bishop of Digne, who only discussed the *loculi* (Duval-Arnould, 'Conseils', pp. 169-70) and the equally brief report of the Franciscan Archbishop of Benevento, Monaldo Monaldeschi, who focused on the advice to the rich young man in Mt 19:21, although he attributed it to chapter 18 in the gospel of Matthew (Duval-Arnould, 'Conseils', p. 138).

² See Horst, *Evangelische Armut und Kirche*, pp. 207-21 on Durandus de Saint-Pourçain and pp. 201-206 on Hervaeus Natalis. Durandus's discussion of poverty, perfection and the state of perfection can be found in Miethke, 'Durandus', pp. 183-94; that of Hervaeus Natalis in Sikes, 'Hervaeus Natalis', pp. 223-297. Hervaeus argued that the pope's question could only be answered once the question of the relationship between poverty and perfection had been established (p. 223). On the ecclesiological implications of the relationship between poverty and perfection, see also pp. 102-16 (section III.1).

necessarily spelled out in any detail by the pope, and especially in the early phase of the controversy, the pope discussed the nature of the poverty of Christ only in very general terms. This approach changed radically in his last bull, however; in *Quia vir reprobus*, the pope devoted a considerable amount of space to the question of the scriptural title of Christ's poverty.

John XXII's interest in the poverty of Christ as it was described in the gospels may be linked to a more general revival of biblical studies and an emphasis on the literal sense of Scripture which coincided with John's pontificate and which was supported by the pope.⁴ John XXII seems to have had an interest in scriptural studies which can be seen not only from the fact that several works of biblical commentary were dedicated to him,⁵ but also from his fondness for long lists of biblical quotations.⁶ John's own use of the Bible in the controversy was restricted to a discussion of its literal meaning, and this may reflect a more general rejection of the use of any interpretation of the Bible beyond the literal sense for argument rather than edification.⁷

To a degree, John's theological response to the Franciscan ideal was very reactive. His theological arguments were generally answers to Franciscan attacks – he refuted some of the arguments of the *Declaratio magistrorum* of Perugia in *Ad conditorem canonum*, the imperial appeal of Sachsenhausen in *Quia quorundam mentes*, and the allegations of Michael of Cesena's *Appellatio in forma minori* in *Quia vir reprobus*. There is therefore little evidence for John's theological opinion in a non-controversial environment, and his discussion usually began with a refutation of the immediate claims of his opponents.⁸ His arguments did go beyond a simple rebuttal of his opponents' attacks, however, and they

³ See for instance Ulrich Horst's comment on the lack of theological argument in *Ad conditorem canonum*: Horst, *Evangelische Armut und päpstliches Lehramt*, p. 43.

⁴ See for instance Beryl Smalley, 'John Baconthorpe's Postill on Matthew', *Mediaeval and Renaissance Studies*, 4 (1958), 91-145 (p. 91) and Heft, *Papal Teaching Authority*, pp. 56 and 66.

⁵ See Smalley, 'John Baconthorpe', p. 91, discussing works by Dominic Grima, Guido Terreni and Enrico del Carreto.

⁶ Heft, *Papal Teaching Authority*, p. 56 has drawn attention to this; it should be noted, however, that these long lists of biblical quotations only seem to appear in the later stages of John's pontificate: Heft has used the pope's writings in the controversy over the Beatific Vision as an example, but the only bull to exhibit this characteristic in the poverty controversy was *Quia vir reprobus* (1329).

⁷ See Heft, *Papal Teaching Authority*, p. 56, especially note 32, and Smalley, 'Baconthorpe', pp. 142-43, especially p. 143 note 1 on the difference between John XXII and Boniface VIII in this respect.

⁸ See also Lambert, *Franciscan Poverty*, p. 244 who argues that the bulls can only be understood in light of John's opponents' attacks.

deserve to be taken more seriously than is usually the case.⁹ Although they did not necessarily contribute much original theological thought, this does not mean that they should therefore be disregarded completely, and they do provide a very important insight into John's own views on the value of voluntary poverty and the problems he associated with the Franciscan poverty ideal.

Another problem is the extent of John's theological knowledge. John's lack of a theological degree does not necessarily mean that the pope was ignorant of theology or unable to understand and appreciate the theological position of the Franciscans.¹⁰ It is clear that John knew a lot about the thought of Thomas Aquinas: he read the *Summa Theologiae* as well as quite a number of other works, in particular the commentary on the Sentences, during the canonisation proceedings for Aquinas in 1318-23. Marginal annotations in the works of Aquinas owned and used by the pope also show that he read them carefully, and with an interest that went beyond what was necessary for the canonisation process itself.¹¹ During the poverty controversy, the pope took a lot of the arguments for granted which had been used by Thomas Aquinas in the thirteenth century, and which had become a commonplace of anti-Franciscan writing by the 1320s; although John XXII did not discuss these concepts in any detail, they formed a background to his arguments and to the controversy as a whole. The extent to which John was influenced by his reading of Aquinas has never been established satisfactorily,¹² particularly as some of Aquinas's theories had by then been accepted by most of the Dominican order as well as by some Franciscans, and even those of John's views which resembled concepts of Aquinas therefore did not necessarily have to derive directly from the Dominican's work.

Another area largely neglected by scholarship is the problem of John's view of the spiritual value of voluntary poverty and the question of how much understanding he had of the Franciscan ideal outside purely legal and ecclesiological considerations. This is partly due to the fact that the traditional

⁹ For the significance of theology in the controversy, see for instance Schlageter, 'Armutsauffassung', p. 99: 'die theologische Kernfrage zeigt sich dort, wo der Dissens über Eigentum (und Herrschaft) in eine christologische Auseinandersetzung übergeht.'

¹⁰ On the pope's theological knowledge (or lack thereof) and interests, see for instance Lambert, 'Franciscan Crisis', pp. 126-27, Lambert, *Franciscan Poverty*, pp. 241-42 and Nold, *John XXII and his Franciscan Cardinal*, p. 142.

¹¹ See Maier, 'Annotazioni autografe', pp. 322-36 and Lambert, *Franciscan Poverty*, p. 241.

¹² Lambert, 'Franciscan Crisis', p. 127 and Oakley, 'Franciscan Innocence', p. 219.

view of John as a lawyer and administrator seemed to preclude any empathy on his part for what the Franciscan order was trying to achieve.¹³ To a degree, a similar case has been made for the incompleteness of his theological training and his resulting (apparent) inability really to understand the issues involved.¹⁴ For any assessment of the pope's view of Franciscan poverty, it is therefore necessary to address the question of the spiritual value attached to the concept of voluntary poverty by John XXII and his discussion of the theological implications and ramifications as well as of the scriptural title of the Franciscan ideal of absolute corporate poverty.

IV.1 The Spiritual Value of Poverty

It is a general assumption in much of Franciscan historiography that John XXII did not have much sympathy for, or understanding of, the spiritual aspects of the Franciscan poverty ideal.¹⁵ This is an easy assumption to make, particularly as there are very few statements by the pope that even mention any spiritual value attached to poverty, especially not once the controversy had started in earnest. Some hints can be gathered, however, from a number of scattered documents such as the canonisation proceedings for Louis of Toulouse and Thomas Aquinas, as well as some of John's sermons and his later bulls dealing with the Franciscan order.

The canonisation of Louis of Toulouse is particularly interesting and suggestive, especially as a large part of the canonisation proceedings dates from the time before John's election to the papacy. The portrayal of the association between Jacques Duèse and the Franciscan bishop of Toulouse by the future pope can provide us with some information about the later pope's view of the nature and value of Franciscan poverty. Jacques Duèse's witness statement during the

¹³ See the summary in Oakley, 'Natural Right to Property', pp. 19-20.

¹⁴ For examples of this view, see Lambert, *Franciscan Poverty*, 241 and Tierney, *Infallibility*, p. 190.

¹⁵ See Oakley, 'Natural Right to Property', p. 20 and his discussion of the prevailing view that John was 'temperamentally incapable of understanding Franciscan spirituality'. See also Lambert, *Franciscan Poverty*, p. 238 and Manselli, 'Un papa', pp. 452-53.

canonisation proceedings focused on Louis's piety, charity and humility,¹⁶ but one of the *capitula* of the proceedings allows us a more specific glimpse of the future pope's views on the poverty of Louis of Toulouse. *Capitulum* 36 discussed Louis's humility and the fact that he did not avail himself of a special papal privilege which granted him the right to adopt a lifestyle befitting a royal prince rather than a bishop, and that he even asked one of his advisors to calculate all the revenues of his diocese so that he would know how much he could spend on alms.¹⁷

When Jacques Duèse was asked about the truth of this story, he answered that it was true, because he himself had been the familiar asked to do the calculations. He even enlarged on the original story and said that Louis had not only asked him to calculate all the revenues, but also all unavoidable expenses, making sure that large sums would remain available for alms.¹⁸ Not only does this show Jacques in his later familiar role as an administrator, but the story might also have implications for his attitude towards the Franciscans. It seems likely that the future pope approved of the bishop's actions not only because of their generosity but also because of their careful planning. How much of this planning was due to Jacques's influence in the first place is difficult to say; that it did occur seems to be clear from the statements of other witnesses.¹⁹

¹⁶ This has been used as evidence for the pope's lack of sympathy for the Franciscan ideal (see Lambert, *Franciscan Poverty*, p. 238). For a similar interpretation of Jacques's witness statement, see also Jacques Paul, 'Saint Louis d'Anjou, franciscain et évêque de Toulouse (1274-1297)', in *Les Évêques, les clercs et le roi (1250-1300)*, ed. by M.-H. Vicaire, Cahiers de Fanjeaux, 7 (Toulouse: Privat, 1972), pp. 59-80 (p. 81). It has to be said, however, that the future pope was not alone in this, and that even witnesses with Spiritual sympathies focused on Louis's charity and piety rather than poverty: see for instance the witness statement of Guillaume de Cornillon, *Processus canonizationis*, pp. 21-32.

¹⁷ *Processus canonizationis*, ad cap xxxvj: 'Ex tunc fuit sibi pauperum cura maior, sic equidem ut, quamvis Papa dixisset eidem quod non ut episcopus set ut regis natus expenderet, ipse tamen egere sibi cupiens ut aliis abundaret, iniunxit semel cuidam ex familiaribus quod summam redditum episcopatus exquireret, ad illum videlicet finem ut sciret quam largas facere elemosinas inde posset' (p. 16).

¹⁸ *Processus canonizationis*, ad cap xxxvj: 'ipse qui loquitur fuit ille familiaris cui dominus Ludovicus verba illa dixit. Quaedam enim die eo ad partem vocato, dixit eidem testi qui loquitur dictus dominus Ludovicus quod provideret quod summam sui episcopatus exquireret et eciam expensarum, et taliter ordinaretur hospicium suum et temperantur expense quod superesset satis ad largas helemosinas faciendam' (p. 75).

¹⁹ See for example the depositions of Elzean de Alamannone (p. 48), Brother Fortis (p. 62), Raymond Gaufredi (p. 69) and that of Magister Durantus Curaterii who, although not present at the conversation, 'dixit tamen quod ipse frequenter erat cum camerariis qui fuerunt de domini Ludovici, et ibi habebatur ratio expensarum; et inveniebant quod quandoque una die expendebant decem libras, quandoque xx^{ti}, quandoque xxx^{ta} parisienses in victualibus et necessariis domus; et tantum quantum ascendebant familie et domus expense, tantum in elemosinis et pauperibus expendebat, ut dixit' (*Processus canonizationis*, ad cap. xxxvj, p. 90).

This sort of sustainable generosity, achieved at a cost to the giver, but not denuding him or his diocese of funds completely, would almost certainly appeal to the future pope more than a radical renunciation of property. This idea gets some backing from the wording of the canonisation bull which placed even more emphasis on planning and calculation: John XXII said in the bull that Louis wanted the revenues calculated and ‘moderate and rational’ expenses deducted.²⁰ This would seem to point to a view of voluntary poverty as a very laudable and spiritually valuable thing, but also to a view which was based on a very different conception of religious poverty and its spiritual value from that of the Franciscans. It is particularly interesting that the renunciation of Louis was not given more prominence, that it was discussed under the heading of humility rather than poverty, and that the poverty experienced by Louis was described in terms of deprivation of use rather than renunciation of *dominium*.

In the canonisation bull, the pope extolled Louis’s renunciation of his position as heir to the Sicilian throne, his humility and charity.²¹ Poverty was part of this, and John XXII praised the fact that Louis wore only a rough shirt with a rope as belt (preferring the Franciscan habit over episcopal vestments), as well as the fact that he would only allow brown furnishings in the episcopal palace.²² Poverty was only one of the elements of Louis’s sanctity, however, rather than its defining characteristic, and the focus of the bull was definitely much less on Louis’s love of poverty than on his love of the poor – as the example of Louis’s calculation of revenues shows, even episodes in the life of Louis that would seem particularly suited to a discussion of poverty tended to be presented in terms of his charity and compassion. The picture that emerges from an investigation into John’s description of Louis’s sanctity is therefore one that seems far removed from the contemporary Franciscan discourse. John XXII did not, however, try to set up Louis of Anjou as an alternative model of mendicant (or Franciscan)

²⁰ *Sol oriens mundo*, in *Processus canonizationis*, p. 397: ‘Unde factus iam episcopus Tolosanus per unum suum familiarem secretarium mandavit inquiri de suorum quantitate redditum, quantumque sibi sufficeret, pro moderatis expensis et rationabilibus faciendis, volens quod totum residuum in sustentandis pauperibus poneretur, quamquam praelatus tam magnus esset ac filius tanti Regis.’

²¹ *Sol oriens mundo*, in *Processus canonizationis*, pp. 395-99.

²² *Sol oriens mundo*, in *Processus canonizationis*: ‘[...] vestiendo pro camisia rudem stamineam, deferendo ad nudam carnem pro cingulo chordam grossam [...]’ (p. 396) and ‘Post ingressum vero dicti ordinis vili habitu ac bruno colore in tapetiis et cortinis ac lecti coopertorio utebantur’ (p. 397).

poverty in the subsequent debate with the order, and he did not refer to Louis again in the context of the poverty controversy.²³

Another indication of the pope's sympathies and view of mendicant poverty dates from the time of the poverty controversy itself: the canonisation of Thomas Aquinas. This canonisation has often been seen as part of the pope's anti-Franciscan campaign, although this view was not necessarily shared by all contemporary observers. It is suggestive, however, that John XXII did not actually refer to poverty anywhere in the canonisation bull of Aquinas, although it is unclear whether he did not want the canonisation to be dragged into the current debate or whether he did not consider poverty an important enough issue in the life of the saint.²⁴ The only indication of how the pope thought Aquinas fitted into the current debate derives from his sermon on the eve of the canonisation. This praised Aquinas's and the Dominican ideal of poverty, specifically referring to the fact that the Dominicans renounced private but not common property, and it called Aquinas's and the Dominican life truly apostolic.²⁵

Another source of information on John's views on voluntary poverty can be found in his sermons. In his unpublished doctoral dissertation, John Oakley has shown that these were filled with references to the poverty of the Holy Family, and especially the poverty of Mary.²⁶ But while John XXII did place a high value

²³ The only further references to Louis made by the pope are John's announcement of the canonisation to a number of Louis's relatives (*Bullarium Franciscanum*, V, nos 259-61, pp. 115-116), and a number of indulgences for those visiting chapels dedicated to Louis, a permission to build a chapel in his honour and an indulgence for the feast of his translation (see *Bullarium Franciscanum*, V, no. 387, p. 180; no. 394, p. 182; no. 504, pp. 251-52; no. 517, pp. 255-56; no. 523, p. 260; no. 613, p. 302; no. 672, p. 328; and no. 688, p. 334).

²⁴ See the edition in M.-H. Laurent, 'Bulle de canonisation de Saint Thomas d'Aquin', in *Fontes Vitae S. Thomae Aquinatis notis historicis et criticis illustrati*, ed. by D. Prümmer and M.-H. Laurent (Toulouse: [no publ.], [1911-37]), 519-30.

²⁵ There are two Dominican accounts of the pope's sermon cited in Laurent, 'Processus canonizationis S. Thomae', pp. 511-18: 'Inter cetera, dixit quod iste sanctus in ordine sancto Predicatorum gessit vitam apostolicam, quum ordo nihil habet in proprio [et] in speciali, licet habeat in communi, addens: "Et hanc vitam apostolicam reputamus"' and 'dicens eum in sancto ordine Predicatorum apostolicam vitam duxisse; qui ordo, sive fratres, nihil habens proprium, licet aliquid in communi sicut apostolici habuerunt, et apostolicam vitam ducunt' (pp. 513-14). As these are the only records of the pope's words, the apostolic nature of Dominican poverty may therefore have been emphasised more by the Dominican chroniclers than by the pope.

²⁶ He discusses sermons from MS Paris, Bibliothèque nationale, lat. 3290: Oakley, 'Natural Right to Property', pp. 171-72. On the prominence of references to the poverty of Christ and the apostles in John's sermons in this manuscript, see also Edith Pásztor, 'Le polemiche sulla "Lectura super Apocalipsim" di Pietro di Giovanni Olivi fino alla sua condanna', *Bullettino dell'Istituto Storico Italiano per il Medio Evo e Archivio Muratoriano*, 70 (1958), 365-424 (pp 415-16 and especially note 4). Oakley has additionally drawn attention to the fact that John's descriptions of the Holy Family were very similar to those given by Ubertino da Casale at the Council of Vienne: Oakley, 'Natural Right to Property', p. 172.

on voluntary poverty in these sermons, the poverty he extolled was a life of manual labour rather than mendicancy. The pope juxtaposed poverty and cupidity in a very traditional way, arguing that the virtue and practice of poverty extinguished the vice of cupidity and avarice, although he did not discuss poverty and charity in terms of their opposition to cupidity in his writings on the Franciscan poverty ideal.

What is important in this context is the fact that both of the canonisation proceedings and the pope's sermons show a high regard for voluntary poverty, but also that John's view of the form and appearance of both apostolic and truly praiseworthy contemporary poverty was radically different from that offered by the Franciscans. John XXII did not see any spiritual value in complete renunciation and focused on the importance of manual labour and restrictions in use rather than lack of property.

IV.2 Poverty and Perfection

The relationship between poverty, perfection and the state of perfection was one of the crucial problems of the theological debate. There was a (largely implicit) link between the degree of poverty and the degree of perfection in Franciscan thought, and this had been the source of anti-Franciscan criticism very early on.²⁷

The nature of Christian perfection from a specifically mendicant perspective had already been discussed in great detail during the secular-mendicant controversy in the thirteenth century.²⁸ During the controversy, the mendicant orders had found themselves under attack from the secular masters, especially at the university of Paris. The orders had united in their defence of the mendicant ideal of absolute poverty, but this defence had also shown up some crucial differences in interpretation between the Franciscans and Dominicans. The Dominican position was shaped by Thomas Aquinas who had a very decisive influence on the later poverty debate as well, although he was not often quoted

²⁷ For the ecclesiological implications of the link between poverty, perfection and the state of perfection, see pp. 102-16 (section III.1).

²⁸ See Sophronius Clasen, *Der hl. Bonaventura und das Mendikantentum: ein Beitrag zur Ideengeschichte des Pariser Mendikantenstreits (1252-1272)* (Werl: Franziskus-Druckerei, 1940),

directly in the fourteenth-century conflict.²⁹ His arguments proved very influential in shaping the general (non-Franciscan) view of the nature of evangelical poverty, however, and most of his arguments were at least implicitly present in the later debate.

There was a general mendicant consensus that voluntary poverty meant not possessing anything, and Aquinas did not depart from this. He thought of poverty in terms of non-ownership of goods.³⁰ Although he explicitly excludes theology from his discussion, John Jones has given a stimulating account of the conceptual aspects of Aquinas's notion of poverty.³¹ His account is also useful as a frame of reference for John XXII's discussion of the nature of apostolic poverty and its relation to Christian perfection.

Jones's starting-point is the observation that in defining poverty, it is too easy to assume that someone is poor just because they do not personally own goods,³² a claim which echoes that of John XXII in the 1320s. He also stresses that Aquinas's emphasis on ownership and dominion shows that his conception of poverty was connected more with economic dependency and vulnerability than with a low standard of living.³³ This was true for all mendicant orders, and while a concern with low standards of living (conceptualised in terms of the use and consumption of material goods) can be seen in the *usus pauper*-controversy and the Spiritual crisis, this never became part of the official definition of the nature of poverty for any of the mendicant orders.

The preoccupation with ownership and possession in some ways encouraged the adoption of the relational or non-subsistence approach to poverty adopted in the *Summa Theologiae*; in contrast to Aquinas's earlier polemical treatise *Contra impugnantes*, poverty in the *Summa Theologiae* was not defined in

p. 1, Congar, 'Aspects ecclésiologiques', p. 86 and Horst, *Evangelische Armut und Kirche*, pp. 55-92.

²⁹ One of the exceptions is the opinion of Gaucelme de Jean: see Tocco, *Quistione della povertà*, pp. 88-101.

³⁰ See for instance his argument in *Contra retrahentes*: 'Numquam autem Dominus legitur possessiones habuisse; non igitur beatitudinis detrimentum habet paupertas eorum qui possessionibus carere volunt propter Christum, sed magis beatitudinis augmentum' (in *Contra impugnantes Dei cultum, De perfectione spiritualis vitae, Contra doctrinam retrahentium a religione*, 41 C69). See also Horst, 'Mendikant und Theologe', p. 16, Jones, 'Concept of Poverty', p. 418 and John D. Jones, 'Poverty and Subsistence: St. Thomas and the Definition of Poverty', *Gregorianum*, 75 (1994), 135-49 (p. 139).

³¹ Jones, 'Concept of Poverty', pp. 409-39 and Jones, 'Poverty and Subsistence', pp. 135-49.

³² Jones, 'Poverty and Subsistence', p. 144.

³³ Jones, 'Concept of Poverty', p. 418.

terms of physical subsistence criteria (the things necessary for the survival of the body) but rather in terms of the (in-)ability to achieve certain goals. In fact, poverty could not easily have been based on subsistence criteria for the Dominicans, as books were a necessity for the achievement of the order's main aim, although they were not absolutely necessary for physical survival. While this adoption of a non-subsistence approach to poverty was in some ways predetermined by the structure of the Dominicans, it also meant that it was harder for them to use degrees of poverty as a means to rank religious perfection because there could be no direct link between the degree of poverty and perfection while there was no definitive and concrete definition of what constituted 'greater poverty'.³⁴

The Franciscans, on the other hand, had always (implicitly) used a subsistence approach to poverty which led to its own problems of definition: what exactly was needed for physical survival and what constituted excessive use of material goods? The *usus pauper*-controversy can be interpreted as arising partly out of the practical problems of a subsistence approach coupled with an exclusive emphasis on the renunciation of property rights as the basis for the order's definition of poverty.

The mendicants' main concern, however, was not the theoretical categorisation of poverty (nor even necessarily its practical consequences for the day-to-day life of their orders), but its theological significance, its nature and place within the framework of Christian perfection. Aquinas's most important contribution to the later poverty debate consisted in his theory of the instrumental nature of poverty. In contrast to the Franciscans, he saw poverty essentially as a means to an end. The idea of poverty as an instrument of perfection was one of the key notions in Aquinas's theology, and it was present in his writings from the very beginning, although the term *instrumentum perfectionis* was used for the first time only in the Easter Quodlibet of 1269.³⁵ As M.-D. Chenu has pointed out, *instrumentum* was an important term in the work of Aquinas even apart from the

³⁴ Jones, 'Poverty and Subsistence', p. 148.

³⁵ Quodlibet I q. 7 a. 2 [14]: '[...] sicut praeambulum et praeparatorium ad perfectionem, ut paupertas, castitas, et huiusmodi, quibus homo retrahitur a curis secularium rerum, ut liberius uacet hiis que Dei sunt; unde huiusmodi magis sunt quedam perfectionis instrumenta' (in *Quaestiones de Quolibet*, p. 197); see also Torrell, *Saint Thomas*, p. 85 and Horst, *Evangelische Armut und Kirche*, p. 62.

poverty question and was used as a ‘framework for analysis throughout the whole Christian economy of salvation’.³⁶

Aquinas insisted on the absolute primacy of charity as the true test of Christian perfection which was the love of, and union with, God.³⁷ If poverty was just a means to achieve a higher aim, the only way it could be judged was on its appropriateness toward achieving this goal. An active order whose aim it was to maintain hospices or to ransom prisoners needed ample possessions, but it was not necessarily any less perfect because of that. There was a gradation of poverty in the *Summa Theologiae*, ranking religious orders in terms of possession/ownership of goods, but the ranking was linked to the respective order’s aims and the appropriateness of the poverty adopted by the order to achieving those aims.³⁸ Aquinas did maintain that mendicancy was more conducive to perfection than having possessions, however, because property in most cases involved a certain amount of care about worldly things.³⁹ Nevertheless, there was no simple and direct correlation between poverty and perfection: poverty was a variable which had to conform to an order’s goals and was defined by those same goals.⁴⁰ Aquinas even went so far as to say that of the three principal instruments of perfection, chastity, obedience and poverty, poverty was the least.⁴¹

The different view of the Franciscan order can be seen in comparing Aquinas to Bonaventura whose main exposition of his order’s ideal can be found in his *Apologia pauperum* (1269) which became the standard account of Franciscan poverty. Bonaventura also maintained that Christian perfection

³⁶ M.-D. Chenu, *Toward Understanding Saint Thomas*, trans. by A.-M. Landry and D. Hughes, The Library of Living Catholic Thought (Chicago: Henry Regnery Company, 1964), p. 121.

³⁷ See for example Quodlibet I q. 7 a. 2 [14]: ‘perfectio autem hominis in caritate consistit que hominem Deo conjungit’ (in *Quaestiones de Quolibet*, p. 196). See also Torrell, *Saint Thomas*, p. 87 and Horst, *Evangelische Armut und Kirche*, p. 217.

³⁸ *Summa Theologiae*, 2.2.188.7 resp: ‘Si autem consideretur per comparisonem ad speciales fines religionum, sic, praesupposito tali fine, paupertas maior vel minor est religioni accommodata: et tanto erit unaquaque religio secundum paupertatem perfectior, quanto habet paupertatem magis proportionatam suo fini.’ (in *Summa Theologica complectens Secundam Secundae*, p. 655). See also Jones, ‘Poverty and Subsistence’, p. 142 and Madigan, ‘Aquinas and Olivi’, p. 580.

³⁹ See *Contra retrahentes*: ‘Neque tamen eius sententia sic intelligenda est quasi possessiones communes habentes omnino monachorum perfectione deficiant, sed hoc dicebat propter periculum paupertatis amittendae, quod imminet plerisque monachorum communes possessiones habentium’ (in *Contra impugnantes Dei cultum, De perfectione spiritualis vitae, Contra doctrinam retrahentium a religione*, 41 C72). See also Horst, ‘Mendikant und Theologe’, p. 21.

⁴⁰ Horst, *Evangelische Armut und Kirche*, p. 217.

⁴¹ *Summa Theologiae*, 2.2.188.7 resp: ‘[...] ex illo verbo Domini non intelligitur quod ipsa paupertas sit perfectio, sed perfectionis instrumentum; et, sicut ostensum est [...] minimum est

consisted in *caritas*.⁴² Charity and poverty alike were rooted in opposition to the sin of cupidity.⁴³ While imperfect itself, poverty was made perfect as an expression of Christ's charity, and Bonaventura described poverty as an act that was not only sufficient unto the law but a supererogatory work of Christian perfection.⁴⁴ This type of poverty involved the renunciation of dominion and property rights, and it was the chief means of achieving perfection.⁴⁵ Perfection was based on poverty of the spirit and the three spiritual counsels (obedience, chastity and poverty) formed the first part of evangelical perfection.⁴⁶ But in contrast to Aquinas, Bonaventura stipulated a much more direct link between poverty and perfection.⁴⁷ The relationship between poverty and perfection depended on careful distinctions,⁴⁸ but it was potentially much more dangerous than Aquinas's flat denial of any such direct link.

Bonaventura's *Apologia pauperum* became a standard reference point for the Franciscan order from then on, especially since it was used extensively by Nicholas III for his bull *Exiit qui seminat*,⁴⁹ and there was a general feeling in the order that their life of mendicant poverty was more conducive to Christian perfection than any other lifestyle, that the Franciscan form of absolute poverty

inter tria principalia instrumenta perfectionis' (in *Summa Theologica complectens Secundam Secundae*, p. 655); see also Madigan, 'Aquinas and Olivi', p. 581.

⁴² On *caritas* as the root of Christian perfection, see the *Apologia pauperum*, in *Opuscula varia ad theologiam mysticam*, p. 272. See also Horst, *Evangelische Armut und Kirche*, pp. 145 and 157.

⁴³ See the *Quaestiones disputatae*: 'Si igitur fundamentum perfectionis civitatis Dei principaliter consistit in caritate; et illa potissime est perfecta, quando omnis excluditur cupiditas, quia venenum; hanc autem cupiditatem omnino foras mittit qui omnino omnia relinquit re et voluntate.' (in *Doctoris seraphici S. Bonaventurae S.R.E. Episcopi Cardinalis Opera Omnia*, ed. by Aloysius Lauer, 8 vols (Quaracchi: Collegium S. Bonaventurae, 1882-1902), V: *Opera varia theologica* (1891), pp. 117-98, p. 129). See also Condren, 'Rhetoric, Historiography and Political Theory', p. 18.

⁴⁴ Kinsella, 'Poverty of Christ', p. 487 and Jacques Guy Bougerol, *Introduction to the Works of Bonaventure*, trans. by José de Vinck (Paterson, NJ: St. Anthony Guild Press, 1964), pp. 118-19.

⁴⁵ *Apologia pauperum*, in *Opuscula varia ad theologiam mysticam*, p. 273: 'evangelicae paupertatis est, possessiones terrenas quantum ad dominium et proprietatem relinquere, usum vero non omnino reiicere, sed arctare [...].' Similar views are expressed in the *Quaestiones disputatae* (p. 129). See also Decima L. Douie, 'St. Bonaventure's Part in the Conflict between Seculars and Mendicants in Paris', in *S. Bonaventura 1274-1974*, 5 vols (Grottaferata: Collegio S. Bonaventura, 1973-74), II, ed. by J. Guy Bougerol (1974), pp. 585-612 (p. 593) and Condren, 'Rhetoric, Historiography and Political Theory', p. 18.

⁴⁶ See Horst, *Evangelische Armut und Kirche*, pp. 156 and 158.

⁴⁷ *Apologia pauperum*, in *Opuscula varia ad theologiam mysticam*, p. 272: 'certa potest ratione concludi, quod perfectionis evangelicae, per quam Christo configuramur et complantamur et habitaculum eius efficimur, ipsa paupertas spiritus, secundum quandam analogiam et cohaerentiam ad praedicta, radix est et fundamentum.' See also Leff, *Heresy in the Later Middle Ages*, p. 95.

⁴⁸ See Condren, 'Rhetoric, Historiography and Political Theory', p. 18.

⁴⁹ Horst, *Evangelische Armut und Kirche*, p. 146.

had been taught by Christ in the gospels, and that it corresponded to the life practised by Christ and the apostles.⁵⁰ The order also agreed on the view that this life of apostolic poverty had been lost to the church until its divinely ordained revival in the thirteenth century.⁵¹

While John XXII did not specifically discuss the question of the relationship between poverty and perfection in any of his published bulls or writings, it can be shown that he was interested in the question even if he did not bring it up during the debate. In the margins of the contribution of Hervaeus Natalis in MS Vat. lat. 3740, the pope's annotations focused particularly on the sections discussing the relationship between poverty and perfection.⁵² Hervaeus's contribution was one of the longest in the papal manuscript, and the one with the most detailed discussion of the question of poverty and Christian perfection, and it was annotated more heavily by the pope than any other opinion in the manuscript. John's annotations to this section did not go beyond repeating the terms used in Hervaeus's text and therefore did not provide anything more than a table of contents, but the sheer number of them when compared to other contributions to the debate shows the depth of the pope's interest.

John seems to have considered it self-evident that perfection consisted in charity, and he also took the instrumental nature of poverty for granted. Even before the outbreak of the controversy, John had stressed the primacy of charity over poverty in his testimony and canonisation bull for Louis of Anjou.⁵³ In *Ad conditorem canonum*, the pope argued that the property arrangements made by

⁵⁰ See Turley, 'Ab apostolorum temporibus', pp. 565-66 and Lambert, *Franciscan Poverty*, pp. 236 and 238 (on Bonaventura). One Franciscan who did follow Aquinas's theory of the instrumentality of poverty and state of perfection as applied to both religious and prelates was Bertrand de la Tour in his *Compendiosa resumptio: Tocco, Quistione della povertà*, pp. 64-67 (p. 67). On Bertrand de la Tour's position on this, see also Nold, *John XXII and his Franciscan Cardinal*, pp. 48-50.

⁵¹ Turley, 'Ab apostolorum temporibus', pp. 566 and 569.

⁵² See for instance the pope's annotations on fol. 168^{rb} of MS Vat. lat. 3740: 'Quod paupertas pertinet ad perfectionem vitae essentialiter generaliter' (next to Hervaeus's 'Ad primum sic proceditur et arguitur: quia paupertas pertineat ad perfectionem vitae humanae essentialiter') and 'Illud ex quo integratur status perfectionis pertinet ad perfectionem essentialiter' (next to 'primo sic: quia illud ex quo integratur status perfectionis pertinet ad perfectionem essentialiter, sed paupertas est huiusmodi') and on fol. 168^{va}: 'quod illud quod est formaliter privatio non est essentialiter perfectio nec perfectionis' (next to 'In contrarium arguitur sic: quia illud quod est privatio formaliter non est essentialiter perfectio nec pars perfectionis, sed paupertas est huiusmodi') and 'quod perfectio non potest esse sine eo quod est de essentia perfectionis' (next to 'Secundo sic: quia perfectio non potest esse sine eo quod est de essentia perfectionis'). See also Nold's comment that 'a majority of annotations in the manuscript concern religious perfection': Nold, *John XXII and his Franciscan Cardinal*, p. 153.

Nicholas III for the Franciscan order in *Exiit* had not contributed to the Franciscans' state of perfection: perfection consisted in charity which had been called the *vinculum perfectionis* by Paul in his letter to the Colossians.⁵⁴ The way to perfection was paved with contempt for worldly goods. Poverty or renunciation of worldly goods was useful because it could remove the heart's anxiety about temporalities which was the main stumbling-block on the way to perfect charity. This led to one of John's main arguments in *Ad conditorem canonum*, that experience had shown that the Franciscan renunciation of communal property had not actually achieved this end: the order was not any less anxious about temporal goods than they had been before the publication of *Exiit* or even in comparison to other mendicant orders with communal property. In the first version of the bull, the pope also added that this had led to idle and unjustified boasting on the part of the Franciscans, while in the second version he changed this to the comment that the property arrangements in *Exiit* had made the Franciscan order think they were poorer now than they would have been if they had not renounced dominion.⁵⁵

John XXII never specifically discussed the relationship between poverty and perfection; rather, he concentrated on the instrumental nature of poverty in removing anxiety from the soul, and the question of anxiety (*sollicitudo*) was at the forefront of his discussion. He expanded on it during a discussion of the gospel of Luke and the parable of the talents in *Quia vir reprobus*. This proved, according to the pope, that there was not necessarily any correlation between *dominium* and *sollicitudo*. The servants who had been entrusted with money by their master felt anxious about the money although it did not belong to them. If this had not been the case, then the master in the parable would have rebuked the negligent servant unjustly for not taking his money to the bank. The pope then made a similar case for the Franciscans, arguing that they were much more

⁵³ On the canonisation bull, see p. 143 above.

⁵⁴ *Ad conditorem canonum* I, in *Chronica*, p. 84 and *Ad conditorem canonum*, in Tarrant, *Extrauagantes*, pp. 232-33 with reference to Col 3:14. See also *Quia vir reprobus*, in *Chronica*, p. 586 where John defended his reasoning in *Ad conditorem canonum*.

⁵⁵ *Ad conditorem canonum* I, in *Chronica*, p. 85 and *Ad conditorem canonum*, in Tarrant, *Extrauagantes*, pp. 233-34. The comment from the second version of *Ad conditorem canonum* is later quoted in *Quia vir reprobus*, in *Chronica*, p. 586. See also Schlageter, 'Armutsauffassung', p. 111 and Miethke, *Sozialphilosophie*, p. 378.

anxious about the things they did not own than the church was about its *dominium* on behalf of the order.⁵⁶

Michael of Cesena, in his *Appellatio in forma minori*, had argued that the perfection of poverty in Christ excluded the anxiety that accompanied property, that Christ therefore could not have had any personal property rights, even over consumables, and that this proved the possibility of separating *dominium* and use.⁵⁷ In *Quia vir reprobus*, John argued against this that although the poverty of Christ was of course perfect, what this really referred to was the state of his soul and the fact that he was not attached to worldly goods in any way. Contempt for worldly things rather than non-ownership was the sign of perfect poverty. This was the poverty practised by Christ and the apostles, and this was why it was called evangelical poverty. Therefore it was obvious to the pope that evangelical poverty did not necessarily exclude dominion over consumables.⁵⁸

The emphasis placed by the pope on the question of *sollicitudo* can also be seen in his discussion of the gospel of Matthew (Mt 19:27) where he argued that when Peter referred to having left everything behind, this meant that he had stopped worrying about, and caring for, material goods rather than that he had renounced dominion.⁵⁹ In contrast to the Franciscan order, John did not interpret an attitude that accepted property relationships as the main problem, but the anxiety about temporal things which could become an obstacle to perfect *caritas*.⁶⁰ This anxiety was linked to the acquisition and defence of property, but it

⁵⁶ *Quia vir reprobus*, in *Chronica*, p. 568: ‘Constat enim quod si dominus servo concedat peculium, quamquam proprietates seu dominium peculii in servum non cadat, non propterea servus a sollicitudine est immunis; alias iniuste reprehendisset dominus servum negligentem, de quo agitur Lucae 19, 23 c., quia pecuniam a domino sibi creditam non tradiderat ad usuras. Et hoc videmus ad sensum, quia ille ad quem utilitas pertinet sine dominio magis est circa rem illam sollicitus quam sit nudus dominus eius, ut ad sensum videri potest in Fratibus Minoribus, qui nudum usum facti se habere in talibus adserunt, qui circa illa magis sunt solliciti quam Romana Ecclesia ad quam illarum rerum dominium adserunt pertinere.’ For the parable, see Lc 19:12-27. A slightly different view of this can be found in the contribution of Cardinal Peter Colonna who argued that someone who knows that he will have food and clothing for the next day will generally be less anxious about worldly goods than someone without any form of property: Tocco, *Quistione della povertà*, pp. 158-68 (p. 163).

⁵⁷ *Appellatio in forma minori*, in *Chronica*, p. 432: ‘Ergo reliquerant omnia, tam usu consumptibilia quam non consumptibilia usu, quantum ad dominium et proprietatem, ut probatur 12 q.1 [c.2] *Dilectissimis*, quia dicit “omnia”, nihil excipit. [...] Ergo dicere quod usus rerum usu consumptibilium non potest separari a proprietate et dominio, Scripturae sacrae repugnat.’

⁵⁸ *Quia vir reprobus*, in *Chronica*, p. 568.

⁵⁹ *Quia vir reprobus*, in *Chronica*, p. 563: ‘Possint enim res temporales relinquere quoad curam et affectionem illarum sine domini abdicacione.’

⁶⁰ See Schlageter, ‘Armutsauffassung’, p. 112 who has referred to this acceptance as ‘Haltung der Besitzergreifung’.

was possible to remove it by renouncing private property and/or fostering contempt for material goods in general; it was not possible, on the other hand, to renounce communal dominion. The Christian perfection of charity could be attained through poverty, but poverty was only one means of doing so, and it could not become an end in itself without defeating its purpose.⁶¹ There might also be a more practical reason for the pope's focus on the question of *sollicitudo*: one of the main ways in which the order's care for worldly goods manifested itself was in Franciscan litigation which involved the papacy very directly.⁶²

In *Ad conditorem canonum* and *Quia vir reprobus*, John XXII referred to two key concepts ultimately derived from Aquinas's discussion of the relationship between poverty and perfection: the primacy of charity and the instrumentality of poverty. The pope equated Christian perfection with charity, and he accepted the instrumental nature of poverty, but he did not enter into any detailed discussion of these concepts, and he did not develop the notion of the state of perfection at all. He seems to have placed most of his emphasis on the nature of the link between property ownership and anxiety about worldly goods.

IV.3 Counsels and Precepts

One of the most important problems in the interpretation of the Franciscan rule, vow and poverty ideal in general was the question of the relationship between counsels and precepts, both in the Franciscan rule and in the gospels. The question of which parts of the gospels were evangelical counsels, and which were precepts and therefore binding on all believers had no easy answer, and there was a similar problem with the terminology of the Franciscan rule. This was particularly important because of the Franciscan tradition of a literal observation of biblical precepts and the view that the Franciscan rule recreated the apostolic life of the Bible.

The gospels had provided the main inspiration for St. Francis who had wanted to follow Christ rather than the apostles, and who had also wanted to

⁶¹ Schlageter, 'Armutsauffassung', p. 112 where he has also suggested that John was trying to realign the Franciscan order with traditional monastic practice.

⁶² See especially pp. 118-20 (section III.2).

imitate the apostles of the gospels rather than of Acts, and to live the entire gospel, not just excerpts.⁶³ Even with Francis's emphasis on the life of Christ rather than the apostles, however, his aim was to observe the entire gospel, while later Franciscan tradition tended to concentrate on selected parts of Scripture and particularly on the passages in the gospels of Matthew (Mt 10:9-10) and Luke (Lc 10:4) which gave instructions to the apostles for their preaching missions, and on which the mendicant orders' claim to apostolicity came to be based.⁶⁴ This attempt to recreate the gospels as accurately as possible can also be seen in Bonaventura's treatment of the 'Franciscan' passages of the Bible as if they were a monastic rule.⁶⁵

John XXII seems to have been very doubtful as to whether this approach to biblical texts was either possible or desirable: an intriguing glimpse of John's thoughts on the literal observance of the gospels in general can be found in MS. Borghese 280, a *summarius* of Gratian's *Decretum* which was heavily annotated by the pope. The last pages of the manuscript contain five problems discussed and answered by John, including the question 'Utrum sit alicui concedendus ordo, qui regulam, per quam astringitur Domini nostri Ihesu Christi sanctam evangelium observare vivendo in obedientia, paupertate et continentia, ad litteram debeat observare'.⁶⁶ In his answer, John referred to both Aristotle and Augustine on signs and meanings in arguing that as the Bible was obscure and open to different interpretations, it seemed unlikely that any literal observance was possible. He concluded that this was due to divine providence as Augustine had said that the obscurity of Scripture was provided to tame *superbia* and to recall the intellect from boredom.⁶⁷ The arguments used in this very brief discussion are very different from anything written by the pope specifically for the poverty

⁶³ Duane V. Lapsanski, *Perfectio evangelica. Eine begriffsgeschichtliche Untersuchung im frühfranziskanischen Schrifttum*, Münchener Universitäts-Schriften: Katholisch-Theologische Fakultät, NF 22 (Munich: Schöningh, 1974), pp. 241 and 243, and Dawson, 'William of Saint-Amour', p. 231.

⁶⁴ Lapsanski, *Perfectio evangelica*, pp. 261 and 264.

⁶⁵ See Lambert, *Franciscan Poverty*, pp. 136-37.

⁶⁶ For a description of the manuscript and an edition of this question and John's answer, see Maier, 'Annotazioni autografe', pp. 327-32.

⁶⁷ Maier, 'Annotazioni autografe', p. 332: 'Constat autem. quod scriptura sacra in plerisque locis dubia est et obscura et potest diversa [emended by Maier from *diversimode*] significare. [...] unde in talibus non videtur possibile quod possit ad litteram servari. hoc autem sine dei providentia non est factum unde beatus Augustinus ibidem dicit quod scriptura sacra. in locis aliquibus sit obscura divinitus est provisum ad edomandam labore superbiam et intellectum a fastidio revocandum cui facile investigata plerumque vilescunt.'

controversy, but they do demonstrate a general unease about any attempt to observe the gospels literally.

The discussion in the 1320s centred not so much on the literal observance of the gospels, as on how to establish which parts of the Bible were binding. Again, the thought of Aquinas formed the backdrop to the debate, especially his discussion of whether the *nova lex* instituted by Christ taught precisely how to act.⁶⁸ Aquinas had contended that the point of this New Law was not to institute a fixed set of rules and laws that governed every aspect of life, but to lead mankind toward perfection and salvation in perfect freedom. Therefore there was only a small number of direct commands (precepts) in the New Law, and those were concerned with what pertained directly to salvation. This also answered the question of how to distinguish precepts from counsels in the New Testament. Aquinas maintained that poverty was not essential to perfection and to the essence of salvation, and that therefore all the words of Jesus concerning poverty were counsels rather than precepts.⁶⁹ This did not invalidate the significance of poverty as an instrument of perfection, however: absolute mendicant poverty meant greater freedom in the pursuit of Christian perfection – while the economic basis of traditional monastic orders was perfectly legitimate, it always involved a certain amount of *sollicitudo*.

Related to this idea of the New Law as a law of freedom that would lead mankind to a more perfect life was the interpretation of another passage in the gospel of Matthew. Jesus had given the rich young man the advice to go and sell everything, to give the proceeds to the poor and to follow Christ (Mt 19:21), and Aquinas here introduced another key notion into his work that had been present in the Dominican order from the very beginning – the *sequela Christi*. Essential in this context was not the selling but the following. To follow Christ and the apostles, the material conditions of life were not as important as doing what they

⁶⁸ In the *Prima Secundae: Summa Theologiae*, 1.2.108.1 and 2 (*Sancti Thomae Aquinatis Doctoris angelici ordinis praedicatorum Opera omnia ad fidem optimarum editionum accurate recognita*, ed. by Vernon J. Bourke, 25 vols (Parma: Fiacadori, 1852-73; repr. New York: Musurgia, 1948-50), II: *Summa Theologica complectens Primam Secundae* (1853; repr. 1948), pp. 423-28) with particular reference to Mt 10:9, one of the traditional ‘pro-Franciscan’ text in the gospels.

⁶⁹ The point was also taken up in *Quodlibet* IV q. 12 a. 2 [24] which examined the relation between precepts and counsels: ‘Secundo queritur utrum consilia ordinentur ad praecepta’, in *Quaestiones de Quodlibet*, pp. 317-61 (pp. 355-61). See also Torrell, *Saint Thomas*, p. 87.

did: teaching and preaching.⁷⁰ This is also the reason why, according to Aquinas, this passage did not refer to bishops and prelates; the phrase was ‘if thou wilt be perfect’, and the bishops were already in a state of perfection. Therefore, prelates of the church were not directly confronted with the demands of this particular passage, just as (by implication) the apostles were not confronted by it.⁷¹

John XXII’s own discussion of the same passage placed much more emphasis on the difference in the wording of the advice to the rich young man and of the apostles’ references to their renunciation, arguing that the advice to the rich young man had been to go and sell everything which implied a renunciation of property rights, while the apostles, in leaving everything behind, had not actually renounced *dominium*.⁷² Additionally, he pointed out that some of the passages used by the Franciscans to justify their idea of an apostolic renunciation of civil property rights could not have been meant as a precept for the apostles as they were injunctions given by Jesus before there was any formal apostolate.⁷³ It is interesting, however, that the implicit conclusion drawn from this was the same as that of Aquinas: the apostles were not actually confronted by any demand to renounce property rights.

But while the problem of counsels and precepts was discussed in a number of Dominican responses to the poverty conflict,⁷⁴ there is surprisingly little echo of it in any of the papal statements about Franciscan poverty. John’s most explicit statement of interest in the topic can be found in the marginal

⁷⁰ See Mt 19:21: ‘Ait illi Iesus si vis perfectus esse vade vende quae habes et da pauperibus et habebis thesaurum in caelo et veni sequere me.’ For Aquinas’s interpretation, see the *Summa Theologiae*, 2.2.188.7 resp: ‘[...] perfectio non consistit essentialiter in paupertate, sed in sequela Christi’ (in *Summa Theologica complectens Secundam Secundae*, p. 654) and *Lectura super Matthaeum*: ‘[...] relinquere omnia non facit perfectionem sed relinquere omnia et sequi Christum’, in *Sancti Thomae Aquinatis Doctoris Angelici Ordinis Praedicatorum Opera Omnia*, ed. by Vernon J. Bourke (Parma: Fiacadori, 1852-73; repr. New York: Musurgia, 1948-50), X: *Commentum in Matthaeum et Johannem Evangelistas* (1860; repr. 1949), pp. 1-278 (p. 179).

⁷¹ See the *Lectura super Matthaeum*: ‘[...] ideo non oportet quod vendat ea quae habet [perfectionem]’ (in *Commentum in Matthaeum et Johannem Evangelistas*, p. 179); see also Horst, *Evangelische Armut und Kirche*, p. 79.

⁷² *Quia vir reprobus*, in *Chronica*, p. 563.

⁷³ *Quia vir reprobus*, in *Chronica*, p. 606.

⁷⁴ Especially in the contribution of Durandus de Saint-Pourçain (see Miethke, ‘Durandus’, pp. 178-79) and Hervaeus Natalis (see Sikes, ‘Hervaeus Natalis’, pp. 284-87). One Franciscan contributor who discussed this was Arnaud Royard: Tocco, *Quistione della povertà*, pp. 74-77 (p. 75).

annotations of the pope's copy of the Franciscan rule where he was predominantly concerned with phrases that imposed some form of obedience on the order.⁷⁵

In the context of the poverty controversy, John XXII referred to the problem of precepts in *Quia quorundam mentes* and *Quia vir reprobus* when he discussed Christ's prohibition against carrying money and personal possessions. In *Quia quorundam mentes*, he briefly referred to Augustine's opinion that this did not constitute a precept but a *potestas* to receive the necessities of life from the people the apostles preached to, and that this was a *potestas* the apostles could accept or not, as they chose.⁷⁶ The pope's discussion of the same problem in *Quia vir reprobus* is more extensive and involves more explicit references to Augustine and the Bible. John explicitly referred to Augustine's concordance of the gospels in supporting his view that the prohibition against carrying money and personal possessions contained in the 'pro-Franciscan' passages in the gospels of Matthew, Mark and Luke was not a precept (Mt 10:9-10, Mc 6:7-9 and Lc 9:2-3).⁷⁷ If the apostles had not had the right to choose whether or not to accept the necessities of life from their audience, then Paul would have transgressed against this precept because on various occasions he did not receive the necessities of life from the people he was preaching to, but from others or even sustained his life with what he had acquired with his own hands.⁷⁸ John also argued that the precept (if that is what it was) would have obviously been limited rather than permanent.⁷⁹ The pope briefly referred to the question again when he argued that there was no evidence that Christ had ever counselled the apostles or disciples to renounce communal property.⁸⁰

⁷⁵ Such as 'monet et hortatur' or 'dicit non debere'. See Lambert, *Franciscan Poverty*, p. 261 and Maier, 'Annotazioni autografe', p. 322.

⁷⁶ *Quia quorundam mentes*, in Tarrant, *Extrauagantes*, p. 269: 'Preterea Augustinus dicit expresse quod illud non fuit preceptum, sed potestas recipiendi necessaria ab hiis quibus predicabant euangelium quam seruare apostolis licuit uel etiam non seruare.'

⁷⁷ *Quia vir reprobus*, in *Chronica*, p. 601: 'Augustinus tamen dicit expresse in *Concordia evangelistarum*, quod illud non fuit praeceptum, sed potestas data recipiendi necessaria ab his quibus euangelium praedicabant, quam servare apostolis licuit vel etiam non servare.' See also *Sancti Aureli Augustini De consensu evangelistarum libri quattuor*, ed. by Franz Weihrich, Corpus Christianorum Series Latina, 34 (Vienna: Tempsky, 1904), pp. 177-79, especially p. 178.

⁷⁸ *Quia vir reprobus*, in *Chronica*, p. 601: 'alias apostolus Paulus transgressor praecepti huiusmodi exstitisset, quia plerumque ab illis quibus praedicabat non recipiebat necessaria, sed illa vel recipiebat ab aliis vel ea suis manibus adquirebat, sicut patet I Ad Corinthios 9, 15, Ad Philippenses 4, 14, II Ad Thessalonicenses, 3, 8-9, et Actuum 10, 33-34.'

⁷⁹ *Quia vir reprobus*, in *Chronica*, p. 601: 'Praeterea, quod illud praeceptum fuerit temporale, satis innuitur Lucae 22, 35, ubi Dominus apostolis dixit: *Quando misi vos sine pera et sacco numquid aliquid defuit vobis?*'

⁸⁰ *Quia vir reprobus*, in *Chronica*, p. 587.

Although the problem of distinguishing between counsels and precepts had preoccupied both the Franciscans and the Dominicans during the secular-mendicant controversy, the issue was not discussed in any detail by John XXII. He arrived at a similar conclusion to that of Aquinas when discussing whether the apostles were confronted by a direct demand for renunciation, but for different reasons: John wanted to prove that there was no scriptural title to an explicit renunciation of property rights; he was not trying to find a way of exempting bishops and prelates from such a demand. This lack of any explicit discussion of episcopal status and authority meant that the pope only rarely mentioned the concept of the *praeparatio animi* or the state of perfection which were central to Aquinas's defence of the bishops' status, and that these references tended to deal with the relationship between anxiety and the state of perfection (in *Ad conditorem canonum*) and with the question of the apostles' right to litigate (in *Quia vir reprobus*).⁸¹ But his focus in all of these cases was not on ecclesiological implications but on the scriptural title of absolute poverty.

IV.4 The Scriptural Title of Franciscan Poverty

Two different problems were bound up with the scriptural title of poverty: on the one hand, there was the question of the exact nature of the property relationships of Christ and the apostles as well as of the early Christian communities. The Franciscan claim that the order mirrored the property arrangements of the gospels made an interpretation of these arrangements crucial. If Christ and the apostles could be proved to have renounced all civil property rights, it would be hard for the pope to justify prohibiting the Franciscans from imitating them. There was, unfortunately, no explicit discussion of this in the New Testament, but there were plenty of passages that could be invoked by both sides to strengthen their arguments or at least to cast doubts on the argumentation of their opponents. The interpretation of these passages was one of the crucial elements in establishing the validity of the Franciscan poverty ideal.

⁸¹ See *Ad conditorem canonum*, in Tarrant, *Extrauagantes*, pp. 232-33 and *Quia vir reprobus*, in *Chronica*, pp. 607 and 610.

The other problem was the question of the relationship between the Franciscan rule and the gospels. The tradition of a literal observance of the Bible had led to a high degree of identification of the rule with the gospels. Nicholas III's bull *Exiit qui seminat* had seemed to accept this fundamental identity in the sense that the bull equated the Franciscan way of life with that of Christ and the apostles, and that it also extended the Franciscan ideal of absolute poverty as a life without property rights to Christ and the apostles. Although the extent of Nicholas III's approval could be exaggerated, *Exiit* confirmed the evangelical basis of Franciscan life and argued that absolute poverty was not only in accordance with the teaching and example of Christ, but also that there was a correspondence between the Franciscan life and that of Christ and the apostles.⁸² According to this interpretation, evangelical poverty as practised by Christ and the apostles consisted of the renunciation of property as it was practised by the contemporary Franciscan order.

This acceptance of an identity of the Franciscan rule with the gospels could go much further, however; Olivi had seen the rule as a reenactment of the life of Christ, and this was one of the statements discussed by the commission set up to investigate his writings in 1319. The commission had come to the conclusion that, taken in the spirit of *Exiit*, this view of the Franciscan rule as evangelical was correct, but not if Olivi had understood this to mean that the rule of St. Francis was identical to the gospel, that it had the same status, and that Christ had followed everything that was contained in the Franciscan rule.⁸³ The ambivalent verdict of the commission on this (and some other points) has been cited as one of the reasons that may have inspired John XXII to focus his attention on what appeared to be the root of the problem: *Exiit* and the ideal of poverty it endorsed.⁸⁴

During their interrogation in 1317, some of the Spirituals also argued that the pope had no authority to either dispense from an evangelical vow or to alter the Franciscan rule because it corresponded to the gospel and teachings of

⁸² *Exiit*, in CIC, II, col. 1110. See also Lambert, *Franciscan Poverty*, p. 151, Feld, *Franziskus*, pp. 459-60, Kinsella, 'Poverty of Christ', p. 492, Schlageter, 'Armutsauffassung', p. 97 and Heft, *Papal Teaching Authority*, pp. 79-81.

⁸³ Lambert, *Franciscan Poverty*, pp. 235-36, Heft, *Papal Teaching Authority*, p. 83 and Turley, 'John XXII and the Franciscans', p. 79.

⁸⁴ See the discussion of the various explanations of John's motivation in Turley, 'John XXII and the Franciscans', especially pp. 77-80.

Christ,⁸⁵ and the contribution of Frederick of Pernstein, the Franciscan Bishop of Riga, similarly maintained the evangelical status of the rule during the debate about the poverty of Christ.⁸⁶ Evidence of this kind needs to be balanced by very different Franciscan opinions, however, as can be seen from the Franciscan inquisitor's condemnation of the four Spiritual Franciscans who refused to recant. Michel le Moine argued that no religious rule could ever be identified with the gospels, and that the pope could change or even abolish any existing religious order because all rules had received their validation from the papacy.⁸⁷ Bonagratia of Bergamo, however, had argued in his *Tractatus* that the Franciscans vowed to live a life which was identical to that of Christ and the apostles, adding that this had been confirmed by Christ himself when he conferred the stigmata on St. Francis.⁸⁸ The Franciscan excursus in the appeal of Sachsenhausen also quoted *Exiit* to the effect that the Franciscan rule originated from the Father, had been passed on to the apostles by Christ, and then given to St. Francis by the Holy Spirit.⁸⁹ On the other hand, Bonagratia was very careful not to equate the rule with the gospel, and he made it quite clear that he considered the identification of the rule with the gospels to be a Spiritual problem when he attempted to have Ubertino da Casale charged with heresy in 1319, arguing that both Olivi and Ubertino had maintained that the Franciscan rule was identical to the gospel, and that to vow the rule was to vow the gospels as well.⁹⁰

⁸⁵ For an edition of the interrogation of the Spirituals by Michael of Cesena and their answers, see Manselli, *Spirituali e beghini*, pp. 291-96.

⁸⁶ Tocco, *Quistione della povertà*, pp. 60-61: 'et regulam ejus [=St Francis] totam esse evangelicam determinaverunt sancti predecessores vestri [=John XXII].'

⁸⁷ In the inquisitorial sentence condemning the four recalcitrant friars in 1318: see Baluze-Mansi, *Miscellanea*, II, p. 249: 'quod nulla regula religiosorum aequanda est evangelio, cum evangelium Christi sancta universalis atque Romana Ecclesia propter eminentissimam ejus auctoritatem nec mutet nec corrigat nec confirmet, sed veneranter suscipiat, & suavissimo illius jugo promptae obedientiae colla submittat, regulae vero praedictae & quorumcumque religiosorum omnis tenor & vigor sic a Romanae sedis potestate manat ut nulla sit ejus auctoritas quae ab indulgentia seu confirmatione sedis apostolicae non decurrat. Non faceret igitur Romanus Pontifex contra evangelium & fidem Christi, etiamsi statueret contra, mutaret, vel tolleret ipsam regulam; nec est ipsa regula idem quod evangelium sed est quaedam vitae laudabilis forma a Romanis Pontificibus approbata & confirmata, ipsorum declarationi, mutationi, & omnimodae dispositioni simpliciter et absolute subjecta.' See also p. 87 (section II.2 above).

⁸⁸ Oliger, 'Tractatus', p. 329. See also Horst, *Evangelische Armut und päpstliches Lehramt*, p. 39.

⁸⁹ *Appellatio Ludovici de Sachsenhausen*, in *Chronica*, pp. 146-47, quoting from *Exiit*, in CIC, II, col. 1110. See also Heft, *Papal Teaching Authority*, p. 81.

⁹⁰ Bonagratia argued that one of Ubertino's errors was the assertion 'quod regula fratrum Minorum est vere & proprie idem quod evangelium, & quod idem est evangelium & dictam regulam promittere, & quod pro eodem est votum & observantia evangelii & regulae praedictae' (see the *Articuli probationum contra fratrem Ubertinum de Casali inductarum a fratre Bonagratia in*

In *Quia quorundam mentes* John XXII briefly discussed the Franciscan claim that their rule was identical to the evangelical rule of Christ who had nothing but the simple use of fact. He argued that this was obviously wrong. When Honorius had (allegedly) equated the Franciscan rule with the gospel, what he had really said was that it was the rule of the Franciscan order to observe the gospels in obedience, without property and in chastity, and the same was true for all other confirmations and papal declarations on the rule of St. Francis.⁹¹ Moreover, the Franciscan rule contained quite a number of things that had never been taught by Christ, either by word or by example. The pope used the prohibition to touch money as an example for something that could be found in the Franciscan rule without any precedent in the gospels.⁹² In a similar vein, he argued that the Franciscan claim that the simple use of fact of Christ and the apostles belonged to the faith and customs of the church was wrong and could not be proved from the Bible.⁹³ But in general, John XXII did not discuss the issue of the equation of the rule and gospel in any detail during the controversy, partly because it would have been enough for his purposes to disprove any deliberate and explicit renunciation of property rights on the part of the apostles. The issue of the equation of the Franciscan rule and the gospel would then have taken care of itself.

The most important question in this context was therefore whether it could be established from the New Testament that Christ had renounced both individual and communal property, and what exactly the apostles' relationship with material goods was. The problem was partly one of terminology. The question of the definition of evangelical and apostolic poverty, and whether there was a difference between the two, was very rarely articulated during the poverty controversy although assumptions about what exactly constituted apostolicity formed an important part of the debate. While the term 'evangelical' tended to

Baluze-Mansi, *Miscellanea*, II, pp. 276-79, p. 277). See also Davis, 'Ubertino da Casale', p. 5 and Burr, *Spiritual Franciscans*, p. 268.

⁹¹ *Quia quorundam mentes*, in Tarrant, *Extravagantes*, pp. 264-66.

⁹² *Quia quorundam mentes*, in Tarrant, *Extravagantes*, p. 269.

⁹³ *Quia quorundam mentes*, in Tarrant, *Extravagantes*, p. 284.

refer to the gospels and ‘apostolic’ to the apostolic church described in Acts,⁹⁴ there was also a tendency to conflate the two terms and to emphasise the ideal qualities of early Christianity in general. The early mendicant orders, especially the Franciscans, had attempted to imitate the life of Christ and the apostles in the gospels rather than that of the apostolic church of Acts, and James Dawson has argued that for a while both Dominicans and Franciscans avoided the term *vita apostolica* because of its association with traditional monasticism.⁹⁵ There was a general consensus among the Franciscans that their order imitated the life of the apostles although there was also quite often a certain vagueness about what exactly constituted apostolicity. Ubertino da Casale had stressed in his *Arbor Vitae* (1305) that the Franciscan rule was both evangelical (because it had been established by Christ) and apostolic (because it was instituted by the apostles who followed it until their deaths).⁹⁶ During the property debate in the 1320s, Cardinal Pierre Tessier was one of the few participants to distinguish between the *lex evangelica* and the *lex apostolica*.⁹⁷

In his own contribution to the debate, John maintained that it could not have been Nicholas III’s intention to argue that everything contained in the Franciscan rule was founded on evangelical teachings, strengthened by the example of the life of Christ, or confirmed by the life and acts of the apostles.⁹⁸ The pope was less interested in a distinction between evangelical and apostolic, but rather tried to establish the exact point in time when an express apostolate was instituted, and while he only ever referred to Christ’s twelve closest disciples as apostles, he also argued that anything said to them before their vocation could not be used in an argument about evangelical or apostolic poverty. According to the pope, chapter 10 of the gospel of Matthew marked the beginning of their vocation and of an explicit apostolate which meant that all the preceding chapters of the

⁹⁴ Canonists tended to be fairly specific in their use of the two terms and seem to have regarded as apostolic institutions only those that had been specifically established by the apostles: see Dawson, ‘William of Saint-Amour’, p. 232, especially note 17.

⁹⁵ Dawson, ‘William of Saint-Amour’, p. 231.

⁹⁶ See ‘The Tree of the Crucified Life of Jesus. Book Five (Excerpts). By Ubertino of Casale’, in *Francis of Assisi: Early Documents*, ed. by Regis J. Armstrong, J. A. Wayne Hellmann and William J. Short, 3 vols (New York: New City Press, 1999-2001), III: *The Prophet* (1999), pp. 139-203 (p. 195).

⁹⁷ Tocco, *Quistione della povertà*, pp. 109-13 (p. 109).

⁹⁸ *Quia quorundam mentes*, in Tarrant, *Extrauagantes*, pp. 268-69.

gospel of Matthew applied to all believers equally.⁹⁹ John always distinguished this group from the disciples, a term he used to refer to quite a number of different groups of people, such as 70 disciples sent out by Christ (Lc 10:4), Tabitha (Dorcas) from Acts (Act 9:36-39), Mary Magdalene, or Martha of Bethany, without differentiating between these groups and individuals.¹⁰⁰

The question remained, however, whether there was any scriptural basis to the absolute poverty of Christ as it was postulated by the Franciscan order. The problem for the Franciscan participants in the debate was that passages dealing with the apostles' relationship with material goods quite often seemed to favour their opponents. They did make heavy use of the pro-Franciscan texts of the gospels, particularly the passages that inspired St. Francis (such as Mt 10:9-10, Mt 19:27, Lc 5:36, Mc 6:7-9 and Lc 9:2-3) which could be treated as scriptural evidence for, and confirmation of, an explicit renunciation of property rights by the apostles.¹⁰¹

Opponents of the Franciscan ideal had it slightly easier, as it was easier to cast doubt on an explicit apostolic renunciation of civil property rights than to prove that this had occurred. John XXII did not refer to, or quote from, specific scriptural passages in the early bulls dealing with the poverty controversy (that is, *Quia nonnumquam*, the two versions of *Ad conditorem canonum* and *Cum inter nonnullos*), and there are only two direct references to Scripture in *Quia quorundam mentes*, one of which dealt with the question of the powers of the keys held by the pope.¹⁰² *Cum inter nonnullos* had argued that it contradicted Scripture to claim that Christ and the apostles had had no communal property, and that Scripture did testify to the fact that the apostles had material goods and the right to use them. This assertion was then used by the pope to argue that any attempt to attribute absolute poverty in the Franciscan sense to Christ and the apostles would also attribute unjust deeds to them and therefore undermine the foundations of

⁹⁹ *Quia vir reprobus*, in *Chronica*, p. 606 with reference to Mt 10:1-4.

¹⁰⁰ *Quia vir reprobus*, in *Chronica*, p. 600.

¹⁰¹ See for instance the *Declaratio magistrorum*, in *Chronica*, p. 80 on Mt 10:9 and Michael of Cesena's *Appellatio in forma minori*, in *Chronica*, p. 432 on Mt 19:27.

¹⁰² *Quia quorundam mentes*, in Tarrant, *Extravagantes*, p. 264. The other quotation in the bull is taken from II Cor 8:2, arguing that the highest poverty referred to in the passage concerned the community at Corinth which had both communal and private property (*Quia quorundam mentes*, in Tarrant, *Extravagantes*, p. 274).

faith.¹⁰³ He also argued in *Quia quorundam mentes* that there was no abdication of property rights observed by Christ or imposed on the apostles as the Franciscans claimed.¹⁰⁴ In all of the early bulls, John asserted that the Franciscan case for an explicit renunciation by Christ and the apostles was wrong because Scripture showed them using material goods, but the pope did not quote from, or even refer to, any specific biblical passages.

His approach to the question of the biblical title of Franciscan poverty changed completely in *Quia vir reprobus*, however. Here, the pope quoted a great number of scriptural reasons for doubting the Franciscan notion of a renunciation of civil property rights by Christ and the apostles. The bull contains a great number of biblical references and extended quotations backing up John's theological, legal and ecclesiological arguments. This is partly because a large part of *Quia vir reprobus* was a point-by-point-refutation of Michael of Cesena's *Appellatio in forma minori*, and the counter-arguments mirrored the argumentation of the deposed Franciscan minister-general.¹⁰⁵ In answering Michael, John XXII quoted the passages used by the Franciscan and refuted them through alternative exegetical interpretations and the citation of other passages that supported his own views of the property relationships of Christ, the apostles and the early Christian church. In the second part of the bull, the pope then proposed to investigate the problem at the heart of the dispute: what the Bible actually said about the relationship of Christ and the apostles to material goods.¹⁰⁶ He divided this problem into three questions: did Christ have *dominium* over temporal things, or did he explicitly renounce *regnum* and *dominium*? Did the apostles have *dominium*, either individually or in common? And finally, did the apostles have the right of litigation?

¹⁰³ *Cum inter nonnullos*, in Tarrant, *Extravagantes*, pp. 255-56.

¹⁰⁴ *Quia quorundam mentes*, in Tarrant, *Extravagantes*, pp. 278-79. For an example of the Franciscan claim, see *Appellatio Ludovici de Sachsenhausen*, in *Chronica*, p. 150: 'abdicatio omnis iuris in cuiuscumque rei proprietate vel in usu eius, est sancta et meritoria propter Deum, et a Christo in se ipso servata et apostolis imposita et ab ipsis sub voto assumpta.'

¹⁰⁵ This is particularly true for the first section of the bull (*Quia vir reprobus*, in *Chronica*, pp. 554-88).

¹⁰⁶ *Quia vir reprobus*, in *Chronica*, p. 590: 'Sed quia iste haereticus pertinaciter adserit Christum et apostolos nullius rei temporalis proprietatem seu dominium in communi vel proprio habuisse, videndum est utrum eius adsertio possit stare.'

Fairly early on in the bull, when defending *Ad conditorem canonum* against Michael's criticisms, John responded to the Franciscan claim that the apostles in the early Christian community at Jerusalem observed communal poverty despite the fact that in Acts, the early believers were said to have had everything in common.¹⁰⁷ The pope therefore tried to define the relationship of the *credentes* in Acts (Act 4:32) to material goods, coming to the conclusion that they did not have individual *dominium*, but that the individual property they had had before their conversion had been converted into communal property held by all of them.¹⁰⁸ He also argued that the apostles in Judea had the right to retain property, and that there was no vow that compelled them to renounce *dominium*.¹⁰⁹

John XXII then tried to establish that Christ and the apostles had property rights by drawing attention to various passages in the New Testament which showed their relationship with material goods. He started by arguing that passages such as that in Acts in which the angel told Peter to put on his sandals (Act 12:8) presupposed that Peter had clothing *quoad dominium*, and as clothing was one of the classic examples of a consumable item, other consumables such as money, bread and wine would have had the same status for Peter (and, by implication, the other apostles).¹¹⁰ This type of argument was repeated by John throughout the bull which contains many repetitive lists of clothing and food used by Christ and the apostles. In a similar way (if a lot more briefly), Cardinal Napoleone Orsini argued in his contribution to the debate that Christ and the apostles owned the consumables they used, as the clothing of Christ, Peter and Paul did not have any owner other than Christ and his apostles.¹¹¹

¹⁰⁷ *Appellatio in forma minori*, in *Chronica*, pp. 431-32 and 445-46. See also the *Declaratio magistrorum*, in *Chronica*, p. 77.

¹⁰⁸ *Quia vir reprobus*, in *Chronica*, p. 557. John did come back to the interpretation of this passage in the second part of the bull: see *Quia vir reprobus*, in *Chronica*, p. 603.

¹⁰⁹ *Quia vir reprobus*, in *Chronica*, p. 558.

¹¹⁰ *Quia vir reprobus*, in *Chronica*, p. 561: '[...] in Actibus legitur quod Angelus Petro dixit *praecinge et calcea te caligas tuas*. Item, dixit ei *circumda tibi vestimentum tuum* etc., ubi clare supponit angelus quod caligae et vestimenta assignata Petro proprie quoad dominium erant Petri. Quare videtur quod pecunia, panis, vinum et vestimentum et res aliae consumptibiles sibi divisim pro vitae sustentatione assignatae similiter eius essent.'

¹¹¹ For an edition of the cardinal's *consilium*, see Tocco, *Quistione della povertà*, pp. 168-170, especially pp. 169-70: 'Nam si accipiatur dominium quantum ad hoc quod res, quibus utebantur, erant vere suae, idest non usurpatae, nec ab alio furtim vel violentia raptae, sic adhuc est verum quod habuerunt, quod vestimenta apostolorum Petri et Pauli, et valor laboris Pauli, et vestimenta Domini nostri Jesu Christi, quae diviserunt sibi crucifixores, non habuerunt hominem alium dominum nisi Christum et apostolos.'

The pope also addressed some of the traditional pro-Franciscan passages (particularly Mt 19:27, Lc 5:36 and Mt 4:18-20¹¹²), arguing that their emphasis on leaving everything behind did not necessarily mean the renunciation of dominion. John first referred to the authority of Augustine and asserted that chronologically the passage in Luke preceded the one in Matthew 4, which meant that some of the apostles had nets even after they had supposedly left everything behind.¹¹³ Additionally, there were later references to property held by the apostles, such as the houses of Peter and Matthew, the swords being used at the time of Jesus's arrest, references to moneybags and the angel telling Peter to put on his clothes.¹¹⁴

It seemed therefore obvious to John that leaving everything behind was not the same as giving up dominion or ownership, and he also argued from the parable of the rich young man that an explicit renunciation of *dominium* could not have been meant in these passages. Jesus had told the rich young man to go and sell everything and give the proceeds to the poor, and John XXII argued that it was reasonable to assume that Christ meant a complete renunciation in his case. Peter, on the other hand, had only spoken of leaving things behind. If there had been an explicit renunciation on the part of the apostles, the term used by Peter would have been 'selling' rather than 'leaving', and the implication was,

¹¹² See *Quia vir reprobus*, in *Chronica*, p. 562. For the texts, see Mt 19:27: 'tunc respondens Petrus dixit ei ecce nos reliquimus omnia et secuti sumus te quid ergo erit nobis', Lc 5:11 (attributed by the pope to Lc 5:36): 'et subductis ad terram navibus relictis omnibus secuti sunt illum', and Mt 4:18-20: 'ambulans autem juxta mare Galilaeae vidit duos fratres Simonem qui vocatur Petrus et Andream fratrem ejus mittentes rete in mare erant enim piscatores Et ait illis venite post me et faciam vos fieri piscatores hominum at illi continuo relictis retibus secuti sunt eum.'

¹¹³ *Quia vir reprobus*, in *Chronica*, p. 562: 'Ad hoc dicendum quod per verba [Mt. 19, 27] *Ecce nos reliquimus omnia* etc. non potest concludi quod quoad dominium seu proprietatem reliquerint ea. Reperimus enim hoc dictum de Petro, Iacobo et Ioanne Lucae 5, 36 ubi dicitur quod *subductis ad terram navibus, relictis omnibus secuti sunt eum*, et tamen post illa verba legitur Matthaei 4, 18-20 quod Iesus, ambulans iuxta mare Galilaeae, vidit Petrum et Andream mittentes retia in mare, quibus ait: *Venite post me et faciam vos piscatores hominum. Qui continuo, relictis retibus, secuti sunt eum*. Et quod dictum Lucae 5 praecesserit illud quod dictum est Matthaei 4, dicit Augustinus in libro *De concordia evangelistarum* expresse.' See also *De consensu evangelistarum*, pp. 139-40. It should be noted, however, that Augustine's text was not nearly as unequivocal about the sequence of events as John XXII, partly because Augustine's passage primarily focused on the gospels of John and Matthew rather than Matthew and Luke.

¹¹⁴ *Quia vir reprobus*, in *Chronica*, pp. 561-562 with reference to Mt 8:14; Mt 26:51-52; Io 18:10; Lc 22:36; Lc 5:27-29; and Act 12:8. One Franciscan answer to the question of Peter's house had already been provided in 1322 in the opinion of Arnaud Royard, the Franciscan Archbishop of Salerno, who argued that the house had, in fact, belonged to Peter's wife (Tocco, *Quistione della povertà*, p. 76).

according to the pope, that the apostles did not actually give up dominion over the things they left.¹¹⁵

Apart from the argument that it was quite possible to leave material goods without renouncing dominion over them, the pope also stated that some forms of property relationship could not be renounced at all, as they were necessary for survival,¹¹⁶ and he added that one of the things left behind by the apostles James and John was their father Zebedee, although they had obviously not renounced their relationship with him.¹¹⁷

He then went on to discuss the question of the apostles' vow, arguing that Michael of Cesena had wrongly interpreted Augustine in this question. Contrary to Franciscan opinion, the apostles had not vowed to abdicate property rights but to follow the lord (partly because, according to the pope, this made much more sense grammatically).¹¹⁸ And since Augustine's rule called for common property, he would not have claimed that the apostles had no common *dominium*, even apart from the fact that C. 16 q. 1 c. 24 *Ex auctoritate* made it clear that monks *figuram tenent* of the apostles which meant that the apostles had or could have had things in common even if they did not, in fact, retain any property in Judea.¹¹⁹ This echoed the Dominican position that the *sequela Christi*

¹¹⁵ *Quia vir reprobus*, in *Chronica*, p. 563: 'Et propter hoc Petrus, Matthaei 19, 21 cum Dominus dixit uni qui non erat de discipulis: *Si vis perfectus esse, vende omnia quae habes et da pauperibus, et habebis thesaurum in caelo, et veni et sequere me*, Petrus dixit: *Ecce, nos reliquimus omnia* etc., non dixit "nos vendidimus omnia et dedimus pauperibus", sed dixit "nos reliquimus omnia". Possint enim res temporales relinquere quoad curam et affectionem illarum sine dominii abdicatione.'

¹¹⁶ *Quia vir reprobus*, in *Chronica*, p. 563: 'Vel "reliquimus omnia", scilicet praeter illa sine quibus non potest haec vita transiri, sicut sunt alimenta vel pro alimenta necessaria, quibus non est verisimile quod ipsis renuntiaverint, ut probant Scripturae praedictae et aliae multae de quibus dicetur latius infra.'

¹¹⁷ *Quia vir reprobus*, in *Chronica*, p. 563: 'De Iacobo autem et Ioanne dicitur Marci 1, 20 quod *relicto patre suo, Zebedeo, in navi cum mercenariis, secuti sunt eum*. Certe, patrem non reliquerunt ut ei renuntiaverint et pro patre postea non habuerint eum, immo eius filii remanserunt.'

¹¹⁸ *Quia vir reprobus*, in *Chronica*, pp. 565-66: 'Quod est ergo illud votum? Certe, videtur quod voverant se Dominum secuturos, de quo immediate mentio erat ibi: *secuti sumus te*. Et si dicatur quod immo, voverunt se relicturos omnia et Dominum secuturos, quia ista verba praecesserant illa cum dixisset "*ecce, reliquimus omnia*" etc., dicimus quod non est verisimile quod beatus Augustinus intellexerit quod in voto huiusmodi, scilicet quod "*reliquimus omnia*" intelligantur illa comprehensa quae Scriptura sacra eos postea adserit habuisse, sicut sunt quae ipsos habuisse est probatum.'

¹¹⁹ *Quia vir reprobus*, in *Chronica*, p. 566. See C. 16 q. 1 c. 24 in CIC, I, col. 767 and the *Regula ad servos Dei*, in *Sancti Aurelii Augustini Hipponensis episcopi Opera omnia*, ed. by J.-P. Migne, Patrologia Latina, 32 (Paris: Garnier, 1877), cols 1377-84. See especially cols 1378-79: 'Et non dicatis aliquid proprium, sed sint vobis omnia communia [...] Sic enim legis in Actibus Apostolorum *Quia erant illis omnia communia, et distribuebatur unicuique sicut cuique opus erat* (Act. IV, 32, 35).'

was the key factor in the apostolic life, and that following Christ did not involve the renunciation of property. Later on the pope returned to the question and made it very clear that in his opinion nothing in the Bible warranted the theory that Christ had counseled the apostles to give up communal property.¹²⁰

It was only at a later stage in the bull that John returned to the scriptural arguments for and against the absolute poverty of Christ and the apostles, but when he did so, he did discuss the question in great detail. The middle section of the bull, John's answer to Michael of Cesena's criticism of *Cum inter nonnullos*, consists of an almost completely self-contained treatise on the role of *dominium* in Scripture. After summarising Michael's criticism of the bull and dismissing it as unfounded,¹²¹ the pope proposed to discuss the question under four headings, dealing with the origin and nature of *dominium*,¹²² the *dominium* of Christ and his (alleged) renunciation, the property relationships of the apostles, and the question of whether the apostles had the right to litigate.

John argued that it could be seen in a great number of passages both in the Old and New Testament that Christ did indeed have *dominium* over temporal things. While this had been one of the central ideas behind the reasoning of *Cum inter nonnullos*, it was only here that the pope tried to prove his point with reference to specific biblical passages, and his extensive use of messianic passages from the Old Testament was new to the debate. Moreover, the passages used by John show a deliberate conflation of *dominium* in the sense of lordship and authority with the more technically legal sense of *dominium* as property. This conflation allowed him to use all passages that spoke of Christ as *dominus* or assigned to him the *regni dominium* as evidence for his view, and to argue that Christ was consistently portrayed as *dominus* and *rex* throughout Scripture. He had already supported this equation of *dominium* in the sense of property with any other word from the same root earlier in the bull by reference to Pseudo-

¹²⁰ *Quia vir reprobus*, in *Chronica*, p. 587.

¹²¹ The pope charged Michael of Cesena with quoting *Cum inter nonnullos* only selectively, therefore distorting the bull's true meaning: *Quia vir reprobus*, in *Chronica*, pp. 588-90.

¹²² For a discussion of the origin of *dominium*, see section V.4, especially pp. 219-23.

Dionysius's *De divinis nominibus*, which argued that the words *dominus*, *dominans* and *dominator* derived from *dominium*.¹²³

The pope concentrated on highlighting biblical texts that stressed the authority of Christ as lord, arguing that the prophets of the Old Testament had announced the coming of the Messiah as the future king.¹²⁴ He also used similar announcements of the Messiah as king from the New Testament: the words of the Archangel Gabriel at the Annunciation, the angel's words to the shepherds at the Nativity and similar instances.¹²⁵ Another example he used to illustrate this point was Pilate's conversation with Jesus about the nature of his kingdom in the gospel of John (Io 18:36-37), and Jesus's statement that his kingdom was not of this world. John XXII argued that Jesus's use of *hinc* rather than *hic* showed that he did have *dominium* in this world, but that he had received this *dominium* from outside this world. If Christ had wanted to say that he did not have any dominion in this world, his answer would have been *My kingdom is not here*, rather than *My kingdom is not from here*.¹²⁶

Additionally, the pope argued that Peter's words in Acts (Act 2:36), to the effect that God had made Jesus both lord and Christ, meant that, as a human being, Jesus was both *dominus et rex*, and as Jesus was crucified as a man rather

¹²³ This was in the context of his discussion of the origin of *dominium* and his claim that before the creation of Eve, Adam had individual *dominium* even in Paradise (*Quia vir reprobus*, in *Chronica*, p. 570). The pope here referred to Eriugena's translation of the *De divinis nominibus*: see *Sancti Dionysii Areopagitae liber tertius. De divinis nominibus*, in *Joannis Scoti Opera quae supersunt omnia ad fidem Italicorum, Germanicorum, Belgicorum, Gallicorum, Britannicorum codicum*, ed. by Heinrich Joseph Floss, *Patrologia Latina*, 122 (Petit-Montrouge: Migne, 1865), cols 1111-72. Rather than from *dominium*, as in the papal bull, the terms *dominatus*, *dominabile* and *dominari* are derived from *dominus* in this translation: 'propter quod et dominatus a Domino, et dominabile, et dominari' (col. 1168).

¹²⁴ *Quia vir reprobus*, in *Chronica*, p. 594: 'Multi quidem prophetae eum regem futurum populi Israelitici, et per consequens habere regni dominium, prophetarunt' with explicit references to Is 33:22; Ier 23:5-6; Dn 2:44-45; Za 9:9; Ps 2:6 (from the Gallican Psalter); Ps 44; and Ct 3:11. See also Schlageter, 'Armutsauffassung', p. 114.

¹²⁵ *Quia vir reprobus*, in *Chronica*, p. 594 with reference to Lc 1:32; Lc 2:11; Mt 2:2; Io 1:47-49; Io 19:19-22 and Io 18:36-37.

¹²⁶ *Quia vir reprobus*, in *Chronica*, pp. 594-95: 'Hoc etiam Salvator noster confessus fuit Ioannis 18, 36-37. Cum enim Pilatus interrogaret eum utrum esset rex Iudaeorum, respondit ei: *Regnum meum non est de hoc mundo*. Ex quo Pilatus concludens dixit: *Ergo rex es tu? Iesus respondit: Regnum meum non est hinc*. Non dixit "non est hic", sed dixit "non est hinc", quasi diceret: Regnum meum a mundo non habeo, sicut nec habebat; immo, a Deo <habebat>, sicut angelus eius genitrici praedixerat, dicens Lucae 1, 32: *Dabit ei Dominus sedem David* etc.' See also the slightly different wording of the passage in Io 18:36-37: 'respondit Iesus regnum meum non est de mundo hoc si ex hoc mundo esset regnum meum ministri mei decertarent ut non traderer Iudaeis nunc autem meum regnum non est hinc. Dixit itaque ei Pilatus ergo rex es tu respondit Iesus tu dicis quia rex sum ego. Ego in hoc natus sum et ad hoc veni in mundum ut testimonium perhibeam veritati omnis qui est ex veritate audit meam vocem.'

than as God, he also had this rule and dominion as man rather than God.¹²⁷ As man, Christ had had this dominion from the moment of his conception, but as God, he had had it since the beginning of time.¹²⁸ While John had up to this point discussed the *dominium* of Christ in the sense of lordship (although without really defining what this meant), he now moved on to more tangible forms of dominion. Without signalling the shift in the meaning of the term, he argued that Christ's *dominium* was quickly supplemented by a much more concrete type of lordship in the form of material goods which Christ acquired on earth, either through gifts or purchases.¹²⁹

John claimed that the apostles and disciples, being the best witnesses for the life of Christ, confirmed his assertions that Christ had clothes,¹³⁰ shoes,¹³¹ food and wine¹³² as well as the *loculi*.¹³³ The *loculi*, the bags that Judas carried in the gospel of John (Io 12:6 and Io 13:29), had always been a major problem for the mendicant orders, especially the Franciscans, because they presented the most obvious challenge to the view that Christ and the apostles had been absolutely poor. Both the *Declaratio magistrorum* and Bonagratia's *Tractatus* had addressed the issue at length, downplaying the old argument (deriving from Bonaventura) that the *loculi* were carried out of condescension for the imperfect, and focusing

¹²⁷ *Quia vir reprobus*, in *Chronica*, p. 595: 'Item, concludit Petrus ex verbis praedictis quod Christus in quantum homo, subsistens in divino supposito, fuerit dominus et rex factus. Constat enim quod in quantum erat Deus, crucifixus non fuerit, sed in quantum homo, sequitur quod et regnum et dominium tamquam homini Deus sibi concessit.'

¹²⁸ *Quia vir reprobus*, in *Chronica*, p. 596: 'Praemissa autem, scilicet regnum et universale dominium habuit Iesus in quantum Deus ab aeterno, eo ipso quod Deus genuit eum, et in quantum homo ex tempore, scilicet ab instanti conceptionis suae, ex Dei datatione, ut patet ex praedictis.'

¹²⁹ *Quia vir reprobus*, in *Chronica*, p. 596: 'Et nihilominus habuit dominium rerum aliquarum temporalium non ab instanti suae conceptionis sed postea successive modis aliis, utpote ex collatione fidelium vel emptione adquisitas.' The argument that Christ had temporal *dominium* from the moment of his conception, and that he acquired more things later on, had already been made in the contribution by Cardinal Simon d'Archiac: see Kerry E. Spiers, 'Pope John XXII and Marsilius of Padua on the Universal Dominion of Christ: A Possible Common Source', *Medioevo: Rivista di storia della filosofia medioevale*, 5-6 (1980), 471-78 (pp. 473-74).

¹³⁰ Mt 17:2; Io 13:4; Io 19:24; and Mt 27:35.

¹³¹ Mt 3:11; Mc 1:7; and Io 1:27.

¹³² See Io 13:27; Io 13:18; Mt 26:27; Mc 14:23-24; and Lc 22:17.

¹³³ *Quia vir reprobus*, in *Chronica*, p. 597: Item, Ioannes supponit ipsum loculos habuisse, in quibus Iudas quae mittebantur portabat. Unde Ioannes 13, 27, cum dixisset Iudae Iesus *quod facis fac citius*. [Io. 13, 29] *Quod putaverunt, quia loculos habebat Iudas, quod dixisset ei Iesus: eme ea quae sunt opus nobis ad diem festum aut ut egenis aliquid daret*. Et quod loculi esset Iesu, patet per Augustinum dicentem: "Habebat Dominus loculos a fidelibus oblate conservans et suorum necessitatibus aliisque indigentibus tribuebat." See also *Sancti Aurelii Augustini In Iohannis evangelium tractatus CXXIV*, ed. by Radbod Willems, Corpus Christianorum Series Latina, 36 (Turnhout: Brepols, 1954), p. 485.

on their role as a model for the administration of ecclesiastical property.¹³⁴ The passage had always posed less of a problem to the Dominican self-image than to that of the Franciscans, and they had generally accepted the interpretation that the purse held alms given to the apostles for divine services and the help for the poor.¹³⁵

John XXII had already argued in *Quia quorundam mentes* that the *loculi* were only really a problem if Christ and the apostles were said to have had some form of *dominium* over them. He considered Nicholas III's arguments about the *loculi* and dismissed his claims that they were carried out of condescension for the imperfect by pointing to the fact that there was no need for this theory if Christ and the apostles had only had the simple use of fact. According to the pope, the argument from condescension only made sense if it was presupposed that Christ and the apostles had some form of property right over the *loculi*.¹³⁶ In the same passage he also referred to Augustine's interpretation that the *loculi* were mostly meant for the provision of the apostles themselves.¹³⁷ Considering the importance of the *loculi* in all earlier debates about mendicant and specifically Franciscan poverty since the 1250s, they received surprisingly little attention from John, who only referred to them in his list as one of the items among the many things used by Christ.

Having established to his satisfaction that Christ did indeed have *dominium*, both in the sense of lordship and of owning property, John XXII then turned his attention to the question of the renunciation of Christ. He wanted to know whether Christ had expressly renounced *regnum* and *dominium* during his

¹³⁴ For a discussion of the use of the *dispensatio*-argument in the controversy, see also pp. 34-35 (section I.1 above).

¹³⁵ See for instance Aquinas's *Lectura super Johannem*: 'In quo etiam instruimur, quod ecclesiastica pecunia sit expendenda solum in duobus. Primo quidem in his quae pertinent ad cultum divinum [...] Deinde vero in his quae pertinent ad pauperum sustentationem' (in *Sancti Thomae Aquinatis Doctoris Angelici Ordinis Praedicatorum Opera Omnia*, ed. by Vernon J. Bourke (Parma: Fiacadori, 1852-73; repr. New York: Musurgia, 1948-50), X: *Commentum in Matthaeum et Johannem Evangelistas* (1860; repr. 1949), pp. 279-645 (p. 537)). For an extended discussion of the problem of the *loculi* from a non-Franciscan and primarily legal perspective, see the contribution of Raimond de Roux: Tocco, *Quistione della povertà*, pp. 128-43 (especially pp. 128-37).

¹³⁶ *Quia quorundam mentes*, in Tarrant, *Extravagantes*, pp. 270-71.

¹³⁷ *Quia quorundam mentes*, in Tarrant, *Extravagantes*, pp. 271-72. This was also the generally accepted Dominican view: see the *Summa Theologiae*: 2.2.188.7 resp: '[...] quia inter illos pauperes praecipue erunt ejus discipuli' (in *Summa Theologica complectens Secundam Secundae*, p. 655). See also Horst, *Evangelische Armut und Kirche*, p. 81 and Horst, 'Mendikant und Theologe', p. 28.

time on earth. John argued first of all that an explicit renunciation could not be shown conclusively from the Bible, as Christ referred to himself as *dominus* on a number of occasions. Again, the pope conflated the two senses of *dominium*, referring both to the gospel of John and the Psalter, and arguing that the phrase ‘diviserunt vestimenta mea sibi’ (Ps 21:19) and Jesus’s words ‘Vos vocatis me magister et Domine et bene dicitis sum etenim’ (Io 13:13) both showed that Jesus had not renounced dominion.¹³⁸ The pope added that if Christ had actually committed an express act of renunciation, he would have done so against the will of God, referring in particular to passages in the book of Daniel, which described the position and power of the Messiah.¹³⁹

The last part of the pope’s discussion of the dominion of Christ dealt with Michael of Cesena’s objection that the main point about scriptural descriptions of Christ was their emphasis on his poverty. While the question of the poverty of Christ (as opposed to his dominion) takes up only a very small part of the bull, John XXII was nevertheless careful to stress that he was not denying the fact that Christ was poor. He made it quite clear, however, that it was not a lack of dominion that made Christ and the apostles poor, but a lack of attachment to worldly goods, and the fact that they did not use the property rights they had. The pope tried to establish that there was no automatic link between poverty and lack of property. John compared Christ to the (hypothetical) example of a king of France who returned from abroad without being recognised, and who was allowed to live in his own palace out of charity – he would still be the king of France, living on his property, but he would also be held to be genuinely poor because he did not actually use any of the things he rightfully owned.¹⁴⁰

It was the fact that Christ had dominion and chose not to use it that made him poor; he was poor not because he did not have anything but because he refrained from enjoying the fruits of his dominion. The pope dismissed Michael’s argument that the Bible showed Christ in the Franciscan form of absolute poverty,

¹³⁸ *Quia vir reprobus*, in *Chronica*, p. 597 with additional reference to Mt 21:2-3 and Mt 27:35. See also the full text of Ps 21:19: ‘diviserunt vestimenta mea sibi et super vestem meam miserunt sortem’.

¹³⁹ *Quia vir reprobus*, in *Chronica*, pp. 598-99, referring to Dn 2:44 and Dn 7:14.

¹⁴⁰ *Quia vir reprobus*, in *Chronica*, p. 598: ‘Si enim rex Franciae, non renuntiando regno, se absentaret a regno et post lapsum alicuius temporis incognitus rediret ad illud, si se pro rege non gereret nec aliqua emolumenta perciperet dicti regni, sed in domo regia reciperetur, ut unus alius, ex gratia necessaria vitae suae, talis utique, licet rex esset et dominus, posset mendicus et pauper merito reputari.’

arguing that poverty did not necessarily imply a renunciation of property rights, and that the Bible obviously contradicted the idea that Christ did not have anything at all. He also used this opportunity to reiterate one of his standard arguments against the Franciscans, that *dominium* alone and separated from use did not make anyone rich, because it was not the lack of *dominium* that counted but the *carentia perceptionis fructi*. People who had *dominium* could be poor at the same time.¹⁴¹

From this discussion of the *dominium* of Christ, John turned to the question of the property relationships of the apostles, and more specifically to the question of whether they had any *dominium*, either individually or in common. Here, the pope used *dominium* much more straightforwardly in the sense of property or ownership. The pope started his argument by drawing several distinctions. One had to differentiate between the status of the apostles while Christ was still alive and their status after his death; during Christ's lifetime, one further needed to distinguish between the time before the apostles were sent out to preach, the time they spent preaching and the time after their return to Christ.¹⁴² In fact, John's careful distinction and discussion of the status of the apostles at the various times of their ministry made no difference to the outcome of his investigation: he came to the conclusion that at no point could they be shown to have given up communal property.

Before the apostles were sent out to preach, John argued that it had not been forbidden to them to have things, especially those things necessary for the sustenance of life. This could be seen, according to the pope, from their vocation: Peter and Andrew left their nets behind to follow Christ, while James and John left their nets and their father. They obviously had dominion at this stage, and John XXII went on to repeat his argument that the fact that the apostles left things behind did not imply a renunciation of all temporal things, as there was no evidence that Peter and Andrew left anything but their nets behind, and furthermore, Peter still had a house after joining Jesus, while Philip, according to

¹⁴¹ *Quia vir reprobus*, in *Chronica*, p. 598: 'Sic Christus, [I Tim. 6, 15] *rex regum et dominus dominantium*, quoad perceptionem fructuum regni et rerum temporalium, nisi in valde paucis, pro rege vel domino se non gessit, propter quod merito pauper dici potuit voluntarius et egenus, non propter dominii carentiam sive regni, sed propterea quia se eorum fructibus et proventibus non iuvabat.' See also Schlageter, 'Armutsauffassung', p. 115.

John, did not leave anything at all. And James and John had obviously not renounced their father by following Christ.¹⁴³

When Jesus sent the apostles out to preach, he expressly told them not to take money or belongings with them (Mt 10:9, Mc 6:8 and Lc 9:3); according to the pope, the implication was that this had not been forbidden to them before. If the apostles had already renounced all temporal possessions, there would have been no need to command them to leave their belongings behind.¹⁴⁴

This applied even more to the wider circle of disciples: John cited the cases of Joseph of Arimathia, Simon the Leper, Mary Magdalene and Martha of Bethany who all owned various types of property.¹⁴⁵ The pope also drew on the *Decretum* to make the point that there was no difference between the lives of the apostles and that of the disciples, and that while the apostles had more extensive powers than the disciples, they did not have to follow a set of more elaborate or complex rules.¹⁴⁶

The status of the apostles changed while they were on their preaching tours, and this was when the 'Franciscan' passages of the Bible came into their own. While they were out preaching, the apostles were forbidden to own money or to carry personal property with them. These passages formed the basis for the Franciscan claim that Christ and the apostles had been absolutely poor, that this poverty involved a renunciation of *dominium* and that the Franciscan order observed a truly apostolic form of poverty. However, John XXII immediately claimed that this was not a precept, but a *potestas* and that even if it had been a precept, it could only have been a temporary injunction. Additionally, not only the apostles but also the seventy disciples were told not to carry possessions with

¹⁴² *Quia vir reprobus*, in *Chronica*, p. 599.

¹⁴³ *Quia vir reprobus*, in *Chronica*, p. 599 with reference to Mt 4:19-20; Mt 4:22; Io 1:43; Mc 1:29-30; Mt 8:14; and Lc 5:28-29.

¹⁴⁴ The same line of thought had already been used by the pope in *Quia quorundam mentes* (without any reference to specific biblical passages): *Quia quorundam mentes*, in Tarrant, *Extrauagantes*, p. 296.

¹⁴⁵ See Io 19:38; Mt 27:57; Mt 26:6; Io 12:2-3; and Act 9:36-38.

¹⁴⁶ *Quia vir reprobus*, in *Chronica*, p. 600: 'Nec reperimus quod Iesus, Dominus noster, aliam legem vivendi discipulis dederit et aliam apostolis suis. Immo beatus Clemens in quadam epistola sua, cuius pars recitatur 12 q.1 c. [2] *Dilectissimis*, expresse supponit quod eadem erat vita apostolorum et discipulorum vita, dicens "communis vita omnibus est necessaria et maxime his qui vitam apostolorum eorumque discipulorum imitari volunt." Item, nec cum ipsos apostolos ex discipulis fecit, videtur eis interdixisse aliam vitam quam prius habuerant, sed potestatem eis aliqua tribuisse.'

them (Mt 10:9), and as John had already pointed out earlier, they certainly did own property.¹⁴⁷

The next change in the status of the apostles before the death of Christ was after they had returned from preaching: at this point they definitely had temporal things. The pope used the miracle of the bread and fish as one of the examples, arguing that the original loaves and fish belonged to the apostles.¹⁴⁸ He also quoted the fact that the apostles must have had money when they were sent by Jesus to buy food,¹⁴⁹ and that there was at least one sword among them at the time of Jesus's arrest.¹⁵⁰ Additionally he argued that Scripture assumed that the apostles had *sacculos* for money, and that they had several tunics each.¹⁵¹

Things changed again after the death of Christ. Again there were two different time periods to consider: before and after Pentecost. In fact, John only discussed one period in any detail as in his opinion nothing changed as far as the property relationships of the apostles were concerned between the death of Christ and the coming of the Holy Spirit.

After Pentecost, the property relationships did change, although, again, distinctions were needed: there was a difference between the community in Jerusalem and other, particularly non-Jewish, converts. The community in Jerusalem had all things in common – and this community did include the apostles. He argued that the passages about the early Christian community in Jerusalem (Act 2:44 and Act 4:32-35) could not be used to prove that the apostles did not have common property in the way this had been attempted by the Franciscans.¹⁵² In chapter 4 of the Acts of the Apostles, the early Christians were said to have had all things in common while the apostles bore witness to Christ and his resurrection.¹⁵³ While this seemed to prove that the apostles were part of

¹⁴⁷ *Quia vir reprobus*, in *Chronica*, p. 601.

¹⁴⁸ *Quia vir reprobus*, in *Chronica*, p. 602 with reference to Lc 9:13.

¹⁴⁹ Mc 6:37 and Io 4:6-8.

¹⁵⁰ Lc 22:36-38 and Io 18:10-11.

¹⁵¹ *Quia vir reprobus*, in *Chronica*, p. 602: 'Supponit quoque evidenter Scriptura evangelica ipsos post reversionem praedictam sacculos, in quibus portatur pecunia, et plures tunicas habuisse. Legitur enim Lucae 22, 36-38 Dominum nostrum Iesum Christum apostolis dixisse: *Qui habet sacculum tollat similiter et peram, et qui non habet gladium, vendat tunicam suam et emat gladium.*'

¹⁵² *Quia vir reprobus*, in *Chronica*, p. 603.

¹⁵³ See Act 4:32-35: 'multitudinis autem credentium erat cor et anima una nec quisquam eorum quæ possidebant aliquid suum esse dicebat sed erant illis omnia communia et virtute magna reddebant apostoli testimonium resurrectionis Iesu Christi Domini et gratia magna erat in omnibus illis neque enim quisquam egens erat inter illos quotquot enim possessores agrorum aut domorum

the community of the early Christians who had everything in common, the *Declaratio magistrorum* had argued that the biblical text actually made a distinction between the apostles and the rest of the community, and had quoted from the *Glossa ordinaria* to back this argument up: the *Glossa* distinguished between the learned ones and the listeners as the multitude was bound together in love after they had renounced their private property while the apostles explained the mysteries of Christ. The conclusion drawn by the chapter of Perugia and later by Michael of Cesena from this passage in the *Glossa* was that the apostles, not being part of this group of believers, also were apart from them when it came to shared dominion.¹⁵⁴

John on the other hand turned this particular argument upside down, claiming that if the apostles had been separate from this group, they would by definition not have been believers.¹⁵⁵ This was obviously wrong, as the apostles were, by contrast, the principal believers, and it followed from this, according to John, that the communal property was principally for their benefit as well. In fact, he attempted to prove this by referring to the fact that the money from the sale of houses and fields was laid at the feet of the apostles and to the interpretation given

erant vendentes adferebant pretia eorum quae vendebant et ponebant ante pedes apostolorum dividebantur autem singulis prout cuique opus erat.’

¹⁵⁴ *Declaratio magistrorum*, in *Chronica*, p. 77: ‘Ad illud de Actibus dicimus quod Apostoli non includuntur in illa multitudine, sicut patet per textum ibi, 4 c., 32-33, quia discretio ponitur inter illos de multitudine credentium et inter apostolos qui docebant et faciebant miracula. Unde scribitur immediate: *Et virtute magna reddebant apostoli* etc. Et ideo signanter dicit *Glossa*: “Discernit, inquit, inter ordinem doctorum et auditorum, nam multitudo credentium, rebus propriis spretis, copula caritatis invicem iungebantur, apostoli vero virtute fulgentes mysteria Christi pandebant.” Et ex hoc patet manifeste quod sic dicendo non habuerunt apostoli aliquod dominium ibi, quia non computabantur inter illos de quibus arguitur. Et dato quod includerentur, non tamen oporteret dici quod apostoli habuerint aliquid ultra simplicem facti usum.’ See also the *Appellatio in forma minori*, in *Chronica*, pp. 431-32: ‘Et per Augustinum circa principium regulae suae, et *Glossa ordinaria* super verbo “habebant omnia communia” dicit “Indicium fraterni amoris est omnia possidere et nihil proprium habere”. Ex quibus verbis insinuat aperte quod nullius rei temporalis, nec usus consumptibilis nec rei non consumptibilis usu, proprietatem habebant, quia res non consumptibiles usu, scilicet possessiones, agros, domos et substantias (*Glossa*: id est pecora) vendebant et ipsas nec in speciali nec in eorum communitate retinebant.’ Michael of Cesena went back to the same argument later on in the appeal as well: ‘nec his obviare dignoscitur in Actibus Apostolorum [4, 32] dicitur, quod erant illis omnia communia, quia sicut ibidem patet, loquitur de communitate generali et universale credentium et non de speciali communitate sive collegio apostolorum’ (*Appellatio in forma minori*, in *Chronica*, pp. 445-46).

¹⁵⁵ *Quia vir reprobus*, in *Chronica*, p. 603: ‘Si ergo omnibus credentibus erant omnia communia, sequitur quod si apostolis non erant omnia communia quod credentes non erant. Quod est falsum.’ The pope had already used a similar argument when commenting on the *consilium* of Durandus de Saint-Pourçain on fol. 127^{ra} of MS Vat. lat. 3740: ‘Item act(uum) 2. dicitur quod omnes qui credebant erant pariter et habebant omnia in communi. Constat autem apostolos fuisse de numero credentium et per consequens de numero habentium in communi’ (see Maier, ‘Annotazioni autografe’, p. 322).

to this passage in C. 12 q. 1 c. 2 *Dilectissimis*, one of the most important passages dealing with the problem of communal property and use in the *Decretum*.¹⁵⁶ The apostles were part of the community of early believers in Jerusalem who had all things in common, and before this community was founded, both apostles and disciples could and did have individual as well as communal property.¹⁵⁷

The case of non-Jewish converts to Christianity was dealt with even more easily: they could and did keep their individual property as could be seen from the testimony of Paul's letters to the Corinthians and Philippians (I Cor 16:1-2 and Phil 4:15-18) as well as the Acts of the Apostles (Act 11:28-30) and Augustine's *De doctrina christiana*.¹⁵⁸ John had already referred to the early Christian communities outside Jerusalem in *Quia quorundam mentes* when he dismissed the Franciscan claim that the highest poverty had to be equated with a renunciation of all property rights by referring to Paul's second letter to the Corinthians (II Cor 8:2). In this passage, Paul had praised the *altissima paupertas* of the community of Corinth, but as the pope pointed out, members of this community had both communal and individual property.¹⁵⁹ John had already argued in *Quia quorundam mentes* that communal property did not detract from the highest poverty according to Gregory IX and Alexander IV who had said that the Franciscans and Dominicans observed the highest poverty, although the Dominicans had communal property.¹⁶⁰

¹⁵⁶ *Quia vir reprobus*, in *Chronica*, p. 603: 'Et hoc expresse probatur per epistolam Clementis, recitatum pro parte 12 q. 1 c. [2] *Dilectissimis*, in qua beatus Clemens, scribens condiscipulis suis, Ierosolymis habitantibus cum beato Iacobo, episcopo Ierosolymitano, sic dicit: "Apostoli eorumque discipuli una nobiscum et vobiscum communem vitam duxerunt. Ut enim bene nostis, erat multitudinis cor eorum unum et anima una, nec quisquam eorum quae possidebat aliquid suum esse dicebat, sed omnia nobis erant communia.'" See also C. 12 q. 1 c. 2, in CIC, I, cols 676-77.

¹⁵⁷ *Quia vir reprobus*, in *Chronica*, p. 604. John had already discussed the interpretation of chapter 4 of the Acts of the Apostles earlier on in the bull, coming to the same conclusion: see *Quia vir reprobus*, in *Chronica*, pp. 557 and 564-65.

¹⁵⁸ *Quia vir reprobus*, in *Chronica*, pp. 604-605. See also *Sancti Aurelii Augustini De doctrina christiana, De vera religione*, ed. by Joseph Martin, Corpus Christianorum Series Latina, 32 (Turnhout: Brepols, 1962), III, cap. 6, no. 10 (pp. 83-84). John XXII included a quote from *De doctrina christiana* in his text which paraphrased the passage on pp. 83-83.

¹⁵⁹ *Quia quorundam mentes*, in Tarrant, *Extrauagantes*, p. 274: 'Dicunt etiam quod Apostolus de tali altissima loquitur paupertate, dicens: "Et altissima paupertas eorum abundavit in diuitias simplicitatis eorum.'" Quod euidenter est falsum, quia ibi loquitur de paupertate Macedonum qui etiam in speciali bona temporalia obtinebant, de quibus Apostolus asserit quod supra uires suas miserant helemosinas sanctis.' On John's exegesis of the passage in Paul's letter (II Cor 8:1-14), see also Heft, *Papal Teaching Authority*, p. 90.

¹⁶⁰ *Quia quorundam mentes*, in Tarrant, *Extrauagantes*, pp. 272-74. He added that Innocent V's comments which could be taken to mean the contrary had been made as a private person and not as pope, and therefore did not have the same force.

The last big question dealt with by John XXII in this second part of *Quia vir reprobus* was whether the apostles had the right to litigate. Could they use legal action to defend the things they had? I have already discussed the answers of a number of non-Franciscan contributions to this question,¹⁶¹ but the pope's own arguments deserve a fuller examination in the context of his view of *dominium* in the Bible. According to John, it was a fact that the apostles did not go to court in defence of their temporal goods, but he questioned Michael of Cesena's assertion that they did not have the right to do so. The Franciscan's argument was that when the apostles left everything behind, this included the right to take legal action, particularly as perfection was not compatible with litigation, and Jesus had told the perfect not to get involved in lawsuits.¹⁶²

John's interest in this context at first seems not to have been the question of litigation itself but the admissibility of Michael's arguments. He claimed that for Michael perfection was indistinguishable from the simple use of fact, and therefore the argument was not applicable at all. The passages used by Michael in the gospels of Matthew and Luke (Mt 5:40 and Lc 6:29) both referred to instances where people clearly possessed the things they were not to instigate legal proceedings for; and anyway, the pope went on, this passage was followed immediately by one stating that everyone should give up their possessions to anyone who asked.¹⁶³ This clearly presupposed that the audience had something to give. According to the pope, giving was not possible if it was not the giver's to give, and the same was true for borrowing. Without going into any legal detail, John here used terminology which would have conjured up to anyone with legal knowledge the rules surrounding a *mutuum*-loan for consumption in Roman civil

¹⁶¹ See pp. 121-22 (section III.2 above).

¹⁶² *Appellatio in forma minori*, in *Chronica*, p. 437: 'Sed hoc obviat Scripturae sacrae, Matthaei 19, 27 quae loquens de apostolis et de eorum perfectione, dicit: *Ecce, nos reliquimus omnia*. Ex qua secundum doctores catholicos patet quod reliquerunt ius agendi in iudicio, quod non stat cum tali perfectione supererogationis, quia implicat ad peccatum, sicut probat Apostolus I Cor. 6, 7, dicens: *Iam quidem omnino delictum est in vobis, quia iudicia habetis inter vos*. Et ideo Christus iniungit perfectis quod non litigent nec contendat in iudicio, Matthaei 5, 25 et Lucae 6, 29.'

¹⁶³ See *Quia vir reprobus*, in *Chronica*, p. 605: 'Illos enim solos perfectos adserit qui a se temporalium omnium proprietatem abdicarunt et dominium, sibi dumtaxat retento simplici usu facti. Constat autem quod illa verba: *Si quis vult tecum in iudicio contendere et tunicam tuam tollere, dimitte ei et pallium*, posita Matthaei 5, 40 et Lucae 6, 29 intelligitur de his qui in proprio temporalia obtinebant. Loquitur enim Dominus illi qui tunicam habebat et pallium. Sic dicit ei: *qui voluerit tunicam tuam tollere, dimitte ei et pallium*. Sicque patet quod tunicam habebat et pallium is cui loquebatur.'

law.¹⁶⁴ Additionally, John also argued that at the time of this discussion, there were no apostles yet (it preceded Jesus's call to the disciples), and that therefore none of this could have been intended as a precept for apostolic life.¹⁶⁵

The pope referred to several other passages in the gospel of Matthew to make clear his view that there was very rarely any distinction made between the apostles and other disciples/believers, that quite a number of the passages which the Franciscans took to be precepts for an apostolic life were actually nothing of the sort purely because they predated the existence of an expressly apostolic status of Jesus's followers, and that most of the passages used by the Franciscans were not applicable in a Franciscan sense because they referred to people who had not given up all their possessions and did not observe the simple use of fact.¹⁶⁶

Only then did John XXII turn to the problem of the apostles' right to litigation and the question of whether Christians could litigate without sin. He quoted the gospel of Matthew (Mt 5:39-41), arguing, with reference to Augustine's *De sermone Domini in monte* and C. 23 q. 1 c. 2 *Paratus* (which discussed the question of whether war could ever be justified), that the injunction to turn the other cheek and to give a cloak to someone suing for a tunic was not something that had to be observed in practice at all times, as the emphasis was on the *praeparatio animi*. It was only necessary to be prepared to suffer injuries when charity required this.¹⁶⁷ This was the only reference to the concept of the *praeparatio animi* made by the pope; the prominence of this idea in anti-

¹⁶⁴ *Quia vir reprobus*, in *Chronica*, p. 605: 'Ex quibus etiam patet quod habentibus temporalia hactenus est locutus, cum dixerit quod det ei qui a se petit. Quod non posset facere, cum dare sit accipientis facere, nisi dominium etiam quoad temporalia obtineret, nec mutuare posset nisi eius quod mutuaret esset dominus, cum in mutuo a mutuante in eum qui mutuum recepit rei mutuatae sit dominium transferendum.' On the role of *mutuum*-loans in the arguments about Franciscan poverty, see p. 201 (section V.1).

¹⁶⁵ *Quia vir reprobus*, in *Chronica*, p. 606: 'Item ipse intelligit apostolis datum praedictum fuisse mandatum, quod est falsum. Tempore enim illius sermonis, in monte facti, in quo iniuncta fuerunt praedicta, nullus adhuc erat apostolus, ut patet, quia sermo ille recitatur Matthaei 5, 1-16, et apostoli fuerunt facti post, ut patet Matthaei 10, 1-4. Unde dici non potest, nisi mendaciter, quod illa praecepta contento sermone praedicato in monte, solis apostolis facta fuerunt, cum nondum essent apostoli.'

¹⁶⁶ *Quia vir reprobus*, in *Chronica*, pp. 606-607 with reference to Mt 18:15-21; Mt 7:24-26; Mt 28:19; I Cor 6:7-8; I Cor 16:1-2; and Augustine's reference to the fact that churches other than that of Jerusalem did not lay their possessions at the feet of the apostles: see *De doctrina christiana*, III, cap. 6, no. 11 (p. 84).

¹⁶⁷ *Quia vir reprobus*, in *Chronica*, p. 607: 'Et ideo dicendum quod praecepta illa [...] non sunt semper servanda in executione operis, sed semper in praeparatione animi sunt habenda, scilicet ut simus parati hoc facere et sustinere quando caritas hoc requiret.' See C. 23 q. 1 c. 2 in CIC, I, cols 891-92 and *Sancti Aurelii Augustini De sermone Domini in monte libri duos*, ed. by Almut Mutzenbecher, Corpus Christianorum Series Latina, 35 (Turnhout: Brepols, 1967), p. 69.

Franciscan defences of episcopal authority was not reflected in the writings of the pope on the question of Franciscan poverty.

There was no wholesale prohibition of lawsuits in the New Testament, as could be seen from Paul's first letter to the Corinthians where the apostle repeatedly referred to judgements made by the community and the fact that those judgements were much more desirable than those made by unbelievers.¹⁶⁸ When the apostle had said that judgements of things pertaining to this world should be left to those who were most despised in the church, John XXII argued that he could not have meant this seriously.¹⁶⁹ The community of believers in Corinth did have the right to litigate.

The pope also argued that the Bible did not show *secundum intellectum historicum* that Christ and the apostles had always followed these precepts. When Christ was beaten during his arrest, he did not offer the other cheek, while Paul complained about being beaten unlawfully when he was arrested, and he attempted to evade an assassination attempt by the Jews as well. He also appealed to the emperor in Rome.¹⁷⁰ It was therefore clear, according to the pope, that Christ never intended to forbid the faithful to defend themselves and their goods in the courts.¹⁷¹

In general, John XXII came to the conclusion that the apostles, disciples and all their followers did have the right to litigate about their possessions, the only proviso being that those without personal property could not start legal proceedings about personal property, although it was perfectly acceptable for a community to defend what was rightfully theirs in common. Michael's and the Franciscans' objection that perfect men were not allowed to litigate would mean that practically all religious orders with communal property were *in via damnationis* when defending the possessions of their community in a lawsuit although religious communities were held to serve, protect and defend their

¹⁶⁸ *Quia vir reprobus*, in *Chronica*, pp. 607-608 with reference to I Cor 5:12 and I Cor 6:1-12.

¹⁶⁹ *Quia vir reprobus*, in *Chronica*, p. 608, with reference to I Cor 6:4: 'Et sequitur: *Saecularia igitur iudicia si habueritis contemptibiles qui sunt in ecclesia illos constituite ad iudicium. Hoc autem dicebat sibi ironice.*'

¹⁷⁰ *Quia vir reprobus*, in *Chronica*, pp. 608-09 with reference to Io 18:22-23; Act 22:24-29; Act 23:3; and Act 28:19. The assassination attempt was only referred to by John through a reference to C. 23 q. 3 c. 2 (see CIC, I, cols 896-97)

¹⁷¹ *Quia vir reprobus*, in *Chronica*, p. 609: 'Ex quibus satis liquet quod non fuit intentio Salvatoris nostri prohibere fideles se defendere in iudicio et res suas nisi quando hoc caritas suaderet.'

property.¹⁷² According to the pope it was also clear that prelates who were the successors to the apostles and whose state was more perfect than that of anyone else in the church had the right to litigate about the property of their churches.¹⁷³

While John XXII did not give much detailed attention to the scriptural title of apostolic and Franciscan poverty in any of his early bulls, he devoted a lot of time and effort to discussing this in *Quia vir reprobus*. The pope referred frequently to Augustine and the *Decretum*, but his main focus was on scriptural arguments which he supported with extensive quotations and long lists of biblical passages. Apart from refuting Michael's scriptural arguments, John devoted the middle section of *Quia vir reprobus* to an attempt to establish the temporal dominion of Christ and the apostles. His exegesis of biblical passages dealing with the apostles' property relationships focused on their use of consumable goods and the fact that they could not be shown to have renounced all property rights or legal standing. According to the pope, the Franciscan view that Christ and the apostles had been absolutely poor could not be proved from the Bible, and therefore could not be used as a justification for the Franciscan poverty ideal.

IV.5 Conclusion

What has emerged from this investigation into the theological and spiritual aspects of John XXII's discussion of Franciscan poverty is not so much John's lack of sympathy for voluntary poverty, but rather his sympathy for a concept of poverty that was very different from that of the Franciscans (and other mendicant orders) in that it was not based on the renunciation of property as the main criterion. The spiritual value of poverty manifested itself in the absence of anxiety about worldly goods, and the sign of perfect poverty was contempt for temporal things rather than non-ownership of material goods. This is one important aspect in which John's approach to evangelical and apostolic poverty diverged sharply from any of the mendicant positions: he rejected the idea that religious poverty

¹⁷² *Quia vir reprobus*, in *Chronica*, p. 609.

could be defined by non-ownership. Especially in *Quia vir reprobus*, he advanced a forceful claim that the lack of *dominium* did not mean poverty, and that it was quite possible to be poor and have *dominium* at the same time.¹⁷⁴ It is possible that his rejection of a concept of poverty based exclusively on non-ownership reflected some of the Spiritual criticisms of the Conventual Franciscans, but in the pope's conception of poverty as restraint in the use of material goods rather than non-ownership, he distanced himself from both the Franciscan and Dominican traditions of defining mendicant poverty.¹⁷⁵

The idea that John's concern was much more specifically religious and theological rather than administrative and ecclesiological is also supported by the pope's marginalia. In the contribution of Durandus de Saint-Pourçain, the pope's comments show a particular interest in the state of innocence and original justice as well as in the scriptural title of Franciscan renunciation and the property relationships of the apostles.¹⁷⁶ Durandus's discussion of the state of prelacy, however, did not receive any marginal comment, not even the repetition of an authority cited or referred to. In the case of Hervaeus Natalis's contribution, the marginal notes are much more numerous, and John's primary concern seems to have been the definition and spiritual value of poverty and the question of evangelical perfection. But again, he did not mark any of those folios in Hervaeus's treatise which dealt explicitly with the questions of the ecclesiastical hierarchy and episcopal status.¹⁷⁷ It is nevertheless hard to shake off the impression that John XXII was much more interested in the *dominium* of Christ and the apostles than in their poverty, despite his admiration for the poverty of the

¹⁷³ *Quia vir reprobus*, in *Chronica*, p. 610. This is the only reference to the status of prelates in John's bull; for a discussion of the implications of the Franciscan ideal for the authority of bishops and prelates, see pp. 102-16 (section III.1 above).

¹⁷⁴ *Quia vir reprobus*, in *Chronica*, p. 598: 'est dicendum quod non carentia domini fecit eum [=Christ] pauperem et egenum, sed potius carentia perceptionis fructus et obventionis rerum quarum dominus erat. Nudum enim dominium, separatum in perpetuum ab omni perceptionis commodi rei, habentem non facit divitem, cum sit inutile reputandum. Unde habens tale dominium potest egenus et pauper merito reputari.'

¹⁷⁵ For other Spiritual arguments used by the pope, see John's discussion of the order's hypocrisy and unjustified boasting (*Ad conditorem canonum* I, in *Chronica*, p. 85), litigation and the use of procurators (*Ad conditorem canonum*, in Tarrant, *Extravagantes*, pp. 247-49). On John's use of Spiritual criticism, see also Davis, 'Jean XXII et les spirituels', p. 267, Miethke, *Sozialphilosophie*, p. 378 and Ehrle, 'Die Spiritualen, ihr Verhältnis zum Franciscanerorden und zu den Fraticellen (Schluss)', p. 50. See also pp. 77-78 (section II.2 above).

¹⁷⁶ Miethke, 'Durandus', pp. 172-73 and 176-78, and MS Vat. lat. 3740, fols 124^{ra}, 125^{va-vb}, 127^{ra-rb} and 128^{rb}.

¹⁷⁷ Marginal comments other than the listing of authorities are on MS Vat. lat. 3740, fols 168^{ra}, 168^{va-vb}, 169^{rb-vb}, 171^{rb}, 173^{vb}, 174^{ra}, 175^{va}, 192^{va} and 194^{va}.

Holy Family and devotion to Louis of Toulouse. It has to be kept in mind, however, that John XXII's Franciscan bulls, and the controversial context in which they were published, were hardly an appropriate forum for a meditation on the nature of the poverty of Christ, no matter what the pope's true feelings on the matter were.

The theological background is important to the debate, but the theology behind the pope's reasoning remained mostly unspoken: all of his bulls assumed the acceptance of certain theological concepts, but he usually did not make them explicit. And the pope did show the impact of his early training by deriving quite a number of his references to Augustine and other theologians from canonical sources, especially the *Decretum*.¹⁷⁸ There is not much overtly theological material in any of John XXII's Franciscan bulls, but the pope did refer to some of the major theological concepts and ideas that had been part of the debate about evangelical poverty since the 1250s, such as the relationship between poverty and perfection, the instrumental nature of poverty (including the question of *sollicitudo*) and the problem of counsels and precepts.

From a theological point of view, John's main emphasis seems to have been on the question of *sollicitudo*; behind his insistence on the significance of this lay his acceptance of the instrumentality of poverty. If poverty was an instrument of perfection, then it could be judged by whether or not it succeeded in bringing an order or individual closer to the state of perfection. Anxiety about temporal goods was an impediment to perfect charity and Christian perfection, and it is one of the main theological arguments used by the pope against the Franciscan order. It was not only the fact that experience had shown that the Franciscans were not any less anxious about property after their renunciation that lay behind the pope's unease about the Franciscan position, but also his reading of biblical passages such as the parable of the talents and his legal background that seem to have led him to his view that renunciation of property did not necessarily lead to the contempt for worldly goods that was the true sign of perfect Christian poverty.

¹⁷⁸ For the quotation of authorities from the *Decretum* and other canonical collections, see for instance Blake Beattie, 'Lawyers, Law and Sanctity in Sermons from Papal Avignon', in *Models of Holiness in Medieval Sermons: Proceedings of the International Symposium (Kalamazoo, 4-7 May 1995)*, ed. by Beverly Maine Kienzle and others (Louvain-la-Neuve: Fédération Internationale des Instituts d'Études Médiévales, 1996), pp. 259-82 (p. 266).

In a similar way, his discussion of the scriptural title of evangelical and apostolic poverty is characterised by the attempt to establish temporal dominion for Christ and the apostles. The question of why the pope insisted on earthly dominion for Christ when he conceded that Christ had not actually used it has been raised by Johannes Schlageter.¹⁷⁹ In *Quia vir reprobus*, John used the term *dominium* in its fullest sense, and his conflation of the two senses of lordship and property is significant: the pope was perfectly capable of using the term in a very precise technical sense when discussing civil law, and his broad use of *dominium* in *Quia vir reprobus* was more than just a rhetorical ploy to allow him to use Old Testament passages against the Franciscans. For the pope, dominion was much more than private property, and a discussion of John XXII's legal objections to the Franciscan case will show the integral part his understanding and definition of *dominium* played in his rejection of the Franciscan ideal.

¹⁷⁹ Schlageter, 'Armutsauffassung', p. 115. He does not provide an answer to this question, however.

Chapter V

John XXII's Legal Response to the Franciscan Ideal of Absolute Poverty

One of the most striking features of John XXII's theological discussion of the Franciscan poverty ideal was his insistence on the temporal dominion of Christ. While the pope did not make it very explicit in his discussion of the property relationships of Christ and the apostles, this presupposed a very different view from that of the Franciscans of the nature and role of *dominium* itself. This crucial difference in the view of *dominium* becomes much clearer when John's more specifically legal arguments against Franciscan poverty are taken into account. The theoretical poverty controversy was in many ways a legal debate, partly because the Franciscan poverty ideal in the form of the simple use of fact had been expressed in predominantly legal terms since the publication of *Exiit*, and partly because the order's simple use had always posed a legal problem. Both John XXII and Bonagratia of Bergamo were lawyers, and their reasoning and arguments were shaped by their legal training and informed by an established tradition of discussing the Franciscan ideal in legal terms. Although this legal nature of the poverty debate is acknowledged in most studies dealing with the controversy, the legal arguments of John XXII have rarely been discussed in any detail or put into their legal context.¹

The legal arguments found in John XXII's bulls have to be seen in the context of both contemporary legal theories of property and the Franciscan discourse on *dominium*, use and consumption. These were two different debates which occasionally overlapped, but essentially existed side by side until the 1320s. Within legal circles there had been discussions of various aspects of *dominium*, *ius* and human property relationships. On the other hand, there was the Franciscan tradition of discussing their ideal in legal terms, both in the internal

¹ Among the discussions of John's legal arguments are the studies of Mäkinen, *Property Rights*, especially pp. 162-73 and Kriechbaum, *Actio, ius und dominium*, as well as Miethke, *Sozialphilosophie*, pp. 365-414; Brett, *Liberty, Right and Nature*, especially pp. 50-68; Tarello, 'Profili giuridichi', pp. 411-22; and Tabarroni, *Paupertas Christi*, pp. 73-112. Studies devoted specifically to the poverty controversy itself have tended not to discuss the legal aspects of the

debates about use and consumption, and in the defence of the order against outside critics. These critics, such as Gerard of Abbeville or Godfrey of Fontaines, likewise discussed Franciscan poverty in the legal terms of *dominium* and *usus*. The Franciscan debate is additionally characterised by the fact that despite its intensely legal terminology and (in some cases) argumentation, there were very few lawyers involved in it before John XXII and Bonagratia of Bergamo.²

Both strands of the discussion profoundly influenced the tone and the arguments of the debate in the 1320s. Their arguments were linked, and the language and terminology were similar if not identical, but the meanings assigned to technical terms such as *dominium* and *usus* by people debating Franciscan poverty from the 1250s onwards could be very different from their meaning and function in the purely legal treatises of both canonists and jurists. In the 1320s, this difference can still be seen reflected in many of the Franciscan writings although the argumentation of Bonagratia of Bergamo used both traditions with apparent ease. John XXII, on the other hand, discussed the problem of dominion and use almost exclusively in the terms of Roman property law. The legal arguments of the poverty controversy were mainly exchanged between Bonagratia of Bergamo and John XXII although other participants of the debate referred to, and quoted from, legal texts as well, and although legal assumptions underpinned most of the contributions.

The specifically legal debate about Franciscan poverty between John and Bonagratia revolved around three main points: first, there was the question of the legal status of *usus*, particularly the problem of separating ownership and use in the case of consumable items, and the question of how the act of using could be defined in law. The other two legal issues of the debate were the relationship between *ius* and *iustum* and the question of the origin and function of *dominium*.

debate in too much detail (for that approach, see for instance the summary of John's legal case in Lambert, *Franciscan Poverty*, pp. 249-53).

² Apart from Innocent IV who instituted the separation of *dominium* and *usus* for the Franciscan order, the only person with formal legal training who discussed the Franciscan ideal in any detail before the 1320s was Gerard of Abbeville.

V.1 The Question of *usus* in Law

The problem of how to define and separate ownership and use in law had always been a difficult question for the Franciscans. Critics as early as Gerard of Abbeville had questioned whether it was possible to separate *dominium* and *usus* permanently and under all circumstances as the Franciscan way of life seemed to demand.³ The negative answer provided by Gerard became one of the standard anti-Franciscan arguments and was used by most critics of the order up to and including Pope John XXII.⁴ There were several different issues involved here: How were *usus* and the act of using to be defined in legal terms? Could ownership and use be separated in perpetuity? And could *dominium* and use be separated in the case of items that were consumed by use?

The terminology employed during the controversy was predominantly that of Roman property law, especially in the writings of Bonagratia of Bergamo and John XXII himself, although there were differences in the way technical legal terms were used and defined by the various participants in the debate. The two crucial terms in this respect were *usus* and *dominium*; both of them had a highly technical meaning in Roman law, but were often used in a much more general sense by canonists and theologians. In Roman law terms, *usus* as a legal category could refer to one of the three elements comprising ownership (which consisted of *usus*, *fructus* and *abusus*: the right to use, the right to fruits and the right of disposal), as well as more specifically to the legal right to use something without having access to its fruit, a lesser form of right than that of usufruct.⁵ This very technical meaning of the term *usus* was not used very much during the poverty controversy, which tended to treat *usus* either as any form of the use of material goods or as one of the elements of ownership. The ambiguity of the term can

³ The edition of Gerard's *Contra adversarium* can be found in Sophronius Clasen, 'Tractatus Gerardi de Abbatisvilla "Contra Adversarium perfectionis christianae"', *Archivum Franciscanum Historicum*, 31 (1938), 276-329 and 32 (1939), 89-200. See especially pp. 133-35 on the question of separating dominion and use. See also Mäkinen, *Property Rights*, pp. 47-48.

⁴ See for instance Mäkinen, *Property Rights*, pp. 134-35 on Godfrey of Fontaines. During the poverty controversy, the argument was also used by Cardinals Simon d'Archiac (Tocco, *Quistione della povertà*, pp. 114-16, pp. 115-16), Bertrand de Montfavez (Tocco, *Quistione della povertà*, pp. 117-28, p. 122) and Napoleone Orsini (Tocco, *Quistione della povertà*, pp. 168-70, pp. 169-70).

⁵ Inst. 2.5 pr. and Inst. 2.5.1 (in CICiv, I, p. 14) and D. L. Carey Miller, 'Property', in *A Companion to Justinian's Institutes*, ed. by Ernest Metzger (Ithaca: Cornell University Press, 1998), pp. 42-79 (pp. 63 and 67).

easily be seen from the way the question of consumable items was discussed in the 1320s: in the term *res usu consumptibiles*, the word *usus* could only refer to factual use, to the actual act of using something, but when speaking about the separation of *usus* and *dominium*, the participants of the debate necessarily referred to *usus* in the sense of the permission to use, *usus* as a legal category, or the *ius utendi*.⁶ The variety of contexts and definitions of the term meant that its exact legal status remained ambiguous during the debate.

In canon law, things were complicated even further, and the essential confusion went back to Gratian. In one of the central passages dealing with the problem of communal property, the *Decretum* quoted a letter attributed to St. Clement which stated that everything should be *communis enim usus omnium*, using the examples of the shared ownership of the primitive church as well as of the free use of air and water.⁷ The differences in the meaning of the term ‘common use’, which here referred both to the absence of ownership (in the case of air) and to shared ownership (in the case of monastic property), were already obscured in this letter which used the examples interchangeably.⁸ This use of the term to refer to both concepts continued, but in Franciscan texts the focus tended to be on the absence of ownership, while John XXII’s usage of the term emphasised shared ownership and the more technical, legal meaning of *usus* in civil law.

The definition of the term *dominium* was even more complex. The basic meaning of the term was ‘lordship’, and that included a sense of mastery over material goods. While Gratian used the terms *dominium* and *possessio* to refer to different forms of property relationships in the *Decretum*,⁹ the more general sense of power or lordship could still be found in his use of *dominium* as well, as in the passages dealing with marriage law.¹⁰ Additionally, *dominium* was not the only

⁶ See Kriechbaum, *Actio, ius und dominium*, p. 34.

⁷ See C. 12 q. 1 c. 2 (in CIC, I, col. 676).

⁸ See Dawson, ‘Richard FitzRalph’, pp. 319 and 326.

⁹ See Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979), p. 18 and Brian Tierney, ‘Tuck on Rights: Some Medieval Problems’, *History of Political Thought*, 4 (1983), 429-44 (p. 436).

¹⁰ See for instance C. 33 q. 4 c. 17 (in CIC, I, col. 1255): ‘Nulla est mulieris potestas, sed in omnibus uiri dominio subsit’, and similar instances.

term used in the *Decretum* for ownership of material goods in a sense that implied more than simple possession: *proprietas* can be found just as often.¹¹

The terminology remained fluid even in a specifically legal environment. Roman civil law had used *dominium* as the standard term for ownership, and it recognised *dominium* as an ‘ultimate form of ownership superior to all other possible rights in a given thing’, characterised by the rights of *usus*, *fructus* and *abusus*.¹² Even in civil law, however, the term could also refer to lordship in a more general sense, but the difference between *dominium* as ownership and other, more relative forms of relationships with material goods was set out very clearly, particularly in the *Institutes*.¹³ Because of this, the meaning of *dominium* in civil law was narrowed down until it stopped referring to concrete acts of lordship and became restricted to the ownership of material goods.

The sense of ‘mastery’ as well as property was still strong in later writings, however, both in legal and non-legal texts. The Franciscan theologian Alexander of Hales argued for instance that there were two types of *dominium*: before the fall, there had been *dominium* as a form of precedence or pre-eminence based on age, virtue and understanding, while since the fall, *dominium* implied a *potestas praesidendi* or *possidendi* linked to *servitudo*.¹⁴ And both Innocent IV and Giles of Rome referred to *dominium* as government or the power to rule.¹⁵ Giles of Rome in particular discussed all forms of authority, including property relationships, as part of lordship.¹⁶

¹¹ For statistical information of the use of *dominium*, *proprietas*, *possessio* etc. see *Wortkonkordanz zum Decretum Gratiani*, ed. by Timothy Reuter and Gabriel Silagi, *Monumenta Germaniae Historica*, 10, 1-5 (Munich: Monumenta Germaniae Historica, 1990). The terms were not synonyms, however, and their relationship to each other as well as to other forms of relationships with material goods fluctuated: see Dietmar Willoweit, ‘*Dominium* und *proprietas*. Zur Entwicklung des Eigentumsbegriffs in der mittelalterlichen und neuzeitlichen Rechtswissenschaft’, *Historisches Jahrbuch*, 94 (1974), 131-56 (p. 139).

¹² Miller, ‘Property’, p. 43 and pp. 45-46.

¹³ Inst. 2.1-6 (in *CICiv*, I, pp. 10-15). See also the survey of Roman property law in Miller, ‘Property’, especially pp. 45-46, as well as Dawson, ‘Richard FitzRalph’, p. 321 and note 12.

¹⁴ See Bernhard Töpfer, ‘*Status innocentiae* und Staatsentstehung bei Thomas von Aquino und William von Ockham’, *Mittellateinisches Jahrbuch*, 36 (2001), 113-29 (p. 116) who also refers to a similar discussion in Bonaventura.

¹⁵ See Tierney, ‘Tuck on Rights’, p. 439 for Giles of Rome and John F. McGovern, ‘Private Property and Individual Rights in the Commentaries of the Jurists, A.D. 1200-1550’, in *In Iure Veritas: Studies in Memory of Schafer Williams*, ed. by Steven B. Bowman and Blanche E. Cody ([Cincinnati]: University of Cincinnati College of Law, 1991), pp. 131-58 (p. 140) for Innocent IV.

¹⁶ Dawson, ‘Richard FitzRalph’, p. 323.

Even so, there was a noticeable shift in the meaning of *dominium* from general lordship to ownership of material goods in the thirteenth century.¹⁷ In this sense of ownership, *dominium* implied a higher amount of control over the goods in question than other terms for property and possession, something Richard Tuck has called ‘true property.’¹⁸ This does not mean that there was a single definition of *dominium* as ownership of material goods, however. Even in the later fourteenth century, the jurist Bartolus (ca. 1313-57) could still offer two different definitions of the term. According to him, *dominium* could mean either any right over corporal or incorporeal things, or, as a sort of sub-category of this definition, it could refer to the ownership of material goods only.¹⁹ In the more restricted sense of ownership rather than lordship, the right of disposal was an essential component of *dominium*, and it was the right of disposal as well as the possibility of taking legal action which lay at the heart of the definition of *dominium* in the sense of ownership rather than the rights of use or possession.²⁰

This emphasis on the right of disposal and legal action can be seen in the development of the concept of *usufructus*. In Roman law, usufruct was classed as a personal servitude. Servitudes were lesser rights than the right of *dominium* in the sense that their scope was less than that of full ownership, and in that they placed a ‘limitation upon the right of ownership from which they were abstracted’.²¹ A personal servitude in the form of a usufruct gave a person the right to use and the right to fruits of a property, while the right of disposal remained with the owner. Personal servitudes such as usufructuary rights were vested in the person of the holder of the usufruct and therefore (at least in theory)

¹⁷ Coleman, ‘Poverty, Property and Political Thought’, pp. 845-46.

¹⁸ Tuck, *Natural Rights Theories*, p. 15. It is unlikely, however, that this meant a claim to ‘total control against all the world’ in the way it has been presented by Tuck: while Roman law recognised *dominium* as the ‘greatest possible accumulation of rights’, *dominium* consisted of a number of constituent rights which the owner could part with. As long as the owner retained the right of disposal, *dominium* remained with him as well although his control over the property had been limited. See Miller, ‘Property’, p. 45.

¹⁹ ‘[...] omnis enim qui habet aliquod ius in re potest recte dicere: ego habeo dominium illius iuris’, as well as ‘Et potest appellari largissime pro omni iure incorporali: ut habeo dominium obligationis ut puta usus fructus.’ And for the more narrow definition: ‘prout dominium cadit in rebus corporalibus.’ Quoted from Helmut Coing, ‘Zur Eigentumslehre des Bartolus’, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung*, 70 (1953), 348-71 (p. 349).

²⁰ Willoweit, ‘*Dominium und proprietas*’, p. 146, Coing, ‘Bartolus’, p. 353, Kriechbaum, *Actio, ius und dominium*, p. 26. See also Miller, ‘Property’, p. 45.

²¹ Miller, ‘Property’, p. 65. For the definition of usufruct in Roman law, see Inst. 2.4 (in CICiv, I, p. 13: ‘Usus fructus est ius alienis rebus utendi fruendi salva rerum substantia. est enim ius in corpore quo sublato et ipsum tolli necesse est.’)

inalienable.²² Once usufruct had come to be described as *dominium utile* by Accursius (ca. 1185-1263), however, its possessor was thought to have the right to alienate or sell it.²³

Dominium was expressly defined as the right of disposal by Bartolus in his commentary on Dig. 41.2.17: ‘est ius de re corporali perfecte disponendi nisi lege prohibeatur’.²⁴ William of Ockham’s definition, on the other hand, concentrated on the possibility of legal action: ‘dominium est potestas rei vendicandi’.²⁵ It was generally characteristic of Franciscan definitions of *dominium* that they emphasised the fact that the *dominus* could defend his property in a court of law.²⁶ The Franciscan renunciation of *dominium* had always included not just an absence of wealth and property but an absence of legal standing,²⁷ and the emphasis on the link between dominion and the law courts is made more prominent in the context of the Franciscan tradition of renouncing all civil property rights.

One additional problem in discussing property was the question of the relationship between *dominium* and other forms of ownership and possession, or to be more precise, the relationship between full ownership (whichever term was used to describe this state) and other legal relationships with material goods. Innocent IV had argued that *dominium*, *possessio* and *jurisdictio* all expressed distinct legal relationships with material goods,²⁸ while Nicholas III, on the other hand, had characterised *proprietas*, *possessio*, *usufructus* and *ius utendi* as types of *dominium*, while at the same time claiming that the Franciscan concept of the

²² For a general discussion of lesser real rights such as servitudes, and especially the right of usufruct, see Miller, ‘Property’, pp. 66-67.

²³ See Coleman, ‘Property and Poverty’, p. 614. For the *dominium utile*, see also pp. 198-99 below.

²⁴ The article in the *Digest* is part of a longer discussion of the difference between *dominium* and *possessio* (see Dig. 41.2.17 in CICiv, I, pp. 653-54). Bartolus’s discussion of his own definition of *dominium* distinguished between the ‘Sacheigentum’ and a wider definition of dominion which included incorporeal rights such as usufruct: see Coing, ‘Bartolus’, pp. 352-53.

²⁵ See Kriechbaum, *Actio, ius und dominium*, pp. 25 and 375.

²⁶ For a discussion of the Franciscan emphasis on the possibility of taking legal action, see Kriechbaum, *Actio, ius und dominium*, pp. 26-27. An example of this is the discussion in Bonagratia’s *Tractatus*: ‘Sic et cui non competit actio nec exceptio pro repetenda vel defendenda, non dicitur proprie et perfecte secundum iura civilia rem habere.’ (Oliger, ‘Tractatus’, p. 326). See also the discussion of the apostles’ right to litigate on pp. 178-81 (section IV.4).

²⁷ Brett, *Liberty, Right and Nature*, p. 12. For the Franciscan concept of *minoritas*, see also Cusato, ‘Whence the Community?’, pp. 79-80.

²⁸ See Coleman, ‘Two Jurisdictions’, p. 77.

simplex usus facti constituted no such thing.²⁹ *Proprietas* here assumed the meaning of full ownership, while *usufructus* and *usus* referred to different types of partial rights to use property belonging to somebody else, and *possessio* indicated actual possession of a thing regardless of legal status.³⁰ Only the *simplex usus facti* did not involve any legal rights, and its acceptance as a legal category derived from Nicholas III's acceptance of the evangelical basis of Franciscan poverty.³¹

The discussion of the legal problems of the Franciscan poverty ideal came into focus in the question of the legal status of usufructuary rights. Roman law tradition had always held that a usufruct could not be constituted by consumables, and that use and ownership could not be separated in perpetuity, as otherwise the property would bring no temporal benefit to the owner.³² This tradition had already been used against the Franciscan order in 1269 by Gerard of Abbeville, who had argued that the papacy could not be considered the true owner of Franciscan goods because it did not gain any temporal benefits from its *dominium*.³³ The Franciscan order had to be considered the real owner because, despite all claims to the contrary, it was the order which derived temporal benefits from the goods nominally owned by the papacy. In the *Apologia pauperum*, Bonaventura had attempted to refute the argument by drawing attention to the spiritual benefits that accrued to the papacy for assuming responsibility for the Franciscan goods,³⁴ but this was not an argument John XXII was prepared to accept.

According to Roman law, it was also impossible to establish usufructuary rights over consumable items because a consumable item could not be used

²⁹ See *Exiit*, in CIC, II, especially col. 1113 for a discussion of types of ownership and possession: 'Nam quum in rebus temporalibus sit considerare praecipuum proprietatem, possessionem, usumfructum, ius utendi, et simplicem facti usum [...] Nec per hoc, quod proprietatem usus et rei cuiusque dominium a se abdicasse videtur, simplici usui omnis rei renunciasset convincitur, qui, inquam, usus non iuris, sed facti tantummodo nomen habens [...]' See also Tuck, *Natural Rights Theories*, p. 20.

³⁰ Dawson, 'FitzRalph', p. 321.

³¹ Horst, *Evangelische Armut und Kirche*, p. 191, Feld, *Franziskus*, p. 460, Schlageter, 'Armutsauffassung', p. 97 and Moorman, *History of the Franciscan Order*, p. 180.

³² Inst. 2.4 (in CICiv, I, pp. 13-14). See Miller, 'Property', p. 66 and Kriechbaum, *Actio, ius und dominium*, pp. 34 and 43. See also Dawson, 'FitzRalph', p. 324 note 20.

³³ Clasen, 'Tractatus Gerardi de Abbatisvilla', p. 135. On Gerard of Abbeville and his discussion of *usus* and *dominium*, see also Lambert, *Franciscan Poverty*, pp. 141-42 and Mäkinen, *Property Rights*, pp. 47-53.

³⁴ See *Apologia pauperum*, in *Opuscula varia ad theologiam mysticam*, p. 312. See also Mäkinen, *Property Rights*, p. 65.

without destroying its substance.³⁵ Classic examples for consumable items were clothing and food, and Justinian expressly excluded wine, oil and grain from constituting a usufruct.³⁶ Despite this consensus, John XXII still felt the need to assert quite forcefully that clothing was indeed a consumable in *Quia vir reprobus*, after Michael of Cesena had argued that as consumables were not necessarily consumed *in primo actu utendi*, it was perfectly possible to assume that a master had dominion over the clothes worn by a servant or even over the food in a servant's mouth.³⁷ John replied that Michael of Cesena had misunderstood the terms involved: items consumable by use were not necessarily consumed immediately but only by the *actus perfectus*. Any use of consumable items entailed the consumption of the substance, and without consumption, the item had not been used properly.³⁸ This was why clothing was counted as a consumable item in law: once clothing had been used perfectly, there was no clothing left, and thus it had been consumed by use.³⁹

The issue was further complicated by the ambivalent status of money. Money was generally held to be a consumable in civil law although it was sometimes treated as an immovable in the English tradition.⁴⁰ It became possible in time to allow usufructuary arrangements in the case of consumables, provided security was put up for the restoration of the amount concerned, although Justinian refused to call such arrangements a usufruct.⁴¹

Following on from the Roman law tradition, the legal consensus had always been that there was no *usus* possible in the case of consumable items because any form of use not tied to ownership had to maintain the substance of the thing used; the question of use in general had been discussed in legal circles, but it had not attracted a great deal of attention because it had not been

³⁵ Inst. 2.4 pr. (in CICiv, I, p. 13).

³⁶ Inst. 2.4.2 (in CICiv, I, pp. 13-14).

³⁷ *Appellatio in forma minori*, in *Chronica*, p. 440.

³⁸ *Quia vir reprobus*, in *Chronica*, pp. 584-85.

³⁹ *Quia vir reprobus*, in *Chronica*, pp. 584-85. The pope had already argued that clothing was a necessity for the sustenance of life and therefore in a similar category as the consumables bread and wine: *Quia vir reprobus*, in *Chronica*, p. 561.

⁴⁰ Gray, 'Ockham on Trusts', p. 144 who has tried to establish the extent of the influence of the English legal tradition on Ockham's view of *dominium*. Malcolm Lambert has argued that the legal debate would have been less one-sided if the participants of the debate had known about this English tradition: Lambert, *Franciscan Poverty*, p. 253.

⁴¹ He did allow their existence, however: see Inst. 2.4 (in CICiv, I, pp. 13-14): 'ergo senatus non fecit quidem earum rerum usum fructum (nec enim poterat), sed per cautionem quasi usum fructum constituit' (p. 14). See also Miller, 'Property', p. 66.

particularly controversial.⁴² The Franciscan concept of the *simplex usus facti*, the use of material goods without dominion even in the case of consumables, ran counter to this legal tradition. Neither the term nor the concept had been current in legal circles before the publication of *Exiit*, and it did not attract a great deal of legal attention before the 1320s, partly because it remained largely confined to the discourse about poverty within the Franciscan order.⁴³ The Franciscan problem with regard to *usus* was whether their theory of the simple use of fact could be reconciled with the legal tradition, and the question of where, in the spectrum of relationships with material goods, the *simplex usus facti* could fit in. Was it possible to have an extra-legal permission to use material goods without having a legally enforceable right to do so?

The legal consensus seemed to imply that this was not the case, and this is how the legal tradition was used by John XXII. It did not help the Franciscan case that Nicholas III's bull had not dealt with the legal implications of the acceptance of simple use at all, apart from the fairly general statement that the *simplex usus facti* was licit because it brought spiritual benefits to the owner.⁴⁴ Malcolm Lambert has suggested that Nicholas III's omission of a discussion of consumables in this context might have been due to the fact that he saw the argument from consumables as essentially unanswerable from a legal perspective.⁴⁵ This seeming omission can be explained differently, however. Maximiliane Kriechbaum has argued that the legal arguments of the opponents of the Franciscan order were directed against the assignation of the *ius utendi* over consumables to a person who was not the owner. By endorsing the *simplex usus facti*, which was expressly defined as not being a *ius utendi*, the discussion of consumables became redundant.⁴⁶ The acknowledgement that a simple use devoid of legal rights existed meant that the civil law objection to consumables could be ignored because it was not relevant, especially because in practice, dominion and

⁴² Kriechbaum, *Actio, ius und dominium*, p. 43. This does not mean, however, that there was no legal discussion of the *res usu consumptibiles* at all, as Miethke, *Sozialphilosophie*, p. 381 has maintained.

⁴³ See Kriechbaum, *Actio, ius und dominium*, pp. 41-42, Leff, 'Bible and Rights', pp. 229-30, Mäkinen, *Property Rights*, pp. 59-60 and Tarello, 'Profili giuridichi', pp. 396-97.

⁴⁴ *Exiit*, in CIC, II, col. 1113.

⁴⁵ Lambert, *Franciscan Poverty*, p. 153.

⁴⁶ Kriechbaum, *Actio, ius und dominium*, pp. 43-44. See also Tarello, 'Profili giuridichi', p. 397.

use had already been separated in perpetuity for the Franciscan order by Innocent IV, a pope who was also a canon lawyer.⁴⁷

The Franciscan legal defence in the 1320s could use this to their advantage: although the fact that usufructuary rights could not be established for consumable items seemed to preclude the existence of the simple use of fact, the order could argue that because the Franciscan simple use was not part of Roman civil law, it did not have to conform to Justinian's legislation. In his appeal against *Ad conditorem canonum*, Bonagratia claimed that it was the distinguishing characteristic of the Franciscan simple use that it was outside civil property rights, and that therefore arguments based on civil law were not applicable.⁴⁸ Again, this echoed the Franciscan renunciation not only of property, but also of legal standing and 'normal' legal relationships.

During the theoretical poverty controversy, John XXII questioned whether any form of extra-legal permission to use material goods without having legal property rights over them was possible, especially in the case of consumable items.⁴⁹ The pope addressed the problem of both *dominium* and *usus* for the first time in *Ad conditorem canonum*. For the first time in the conflict, John XXII gave a detailed account of what he thought was wrong with the Franciscan concept of absolute corporate poverty, although his discussion of these problems is complicated by the existence of the revised version of the bull.

In the first version of the bull, John argued that it was not the Franciscans' use that was naked and simple but the *dominium* of the papacy. The Franciscan order could freely exchange, sell and give away the goods that technically belonged to the Roman church, and they could therefore not be regarded as simple usufructuaries.⁵⁰ Additionally, the pope claimed that use of fact and use of right could not be separated from *dominium* in the case of consumable items. It was not possible to use a consumable item legitimately without having

⁴⁷ In the bull *Ordinem vestrum* (1245). The bull is edited in *Bullarium Franciscanum*, I, no. 114, pp. 400-402. See also Lambert, *Franciscan Poverty*, p. 141.

⁴⁸ *Appellatio Bonagratiae de Pergamo*, in *Chronica*, pp. 106-107. See also Miethke, *Sozialphilosophie*, pp. 381-82.

⁴⁹ In a second step, he also questioned whether, if such a use could be shown to exist, it could be just: see the discussion of the connection between *ius* and *iustum* on pp. 208-13 below.

⁵⁰ *Ad conditorem canonum* I, in *Chronica*, p. 85: 'videlicet quod non relictum eis usum, sed retentum Ecclesiae Romanae dominium esse nudum. Quis enim nudum usuarium poterit dicere cui rem usariam licet permutare, vendere ac donare?'

the legal right to do so, and legal use of a consumable item entailed some form of property right. There was no practical difference between simple use and full ownership in the case of consumables.⁵¹ He also argued that the church did not have true ownership over Franciscan goods because it did not have any temporal gains from the arrangement and did not expect any.⁵² The pope then refused to accept into the *dominium* of the church any Franciscan goods unless similar goods were owned by the Holy See on behalf of other mendicant orders.

In the question of the true dominion over Franciscan goods, and in his more general discussion of the separability of *dominium* and use, the pope referred obliquely to the laws of usufruct, the problem of use and of different legal rights of use in Roman civil law, although at this stage in the controversy, he did not explicitly refer to, or quote from, any legal sources. But although the pope did not mention the passages on usufruct in the *Corpus Iuris Civilis* in the first version of *Ad conditorem canonum*, the Roman law view that ownership and use could not be separated in perpetuity was clearly behind John's claim that the dominion of the church over Franciscan goods existed in name only. Likewise, his insistence that the Franciscan simple use of fact could not be established over consumables reflected the law that limited the establishment of usufructuary rights to items whose substance was not consumed by use.

In the second version of *Ad conditorem canonum*, John XXII included a greatly expanded legal section which was in the main a long discussion of the simple use of fact and the relationship between *dominium* and *usus* against a background of references to Roman civil law. He discussed in detail the laws of usufruct as well as the legal definitions of usufruct, *ius utendi* and *simplex usus facti*. At the end of the second version of *Ad conditorem canonum*, John XXII then slightly modified the new property arrangements for the Franciscans by accepting *dominium* over buildings, books and liturgical equipment on behalf of the Franciscans which meant that the order did retain some of their special status as the Dominicans, for

⁵¹ *Ad conditorem canonum* I, in *Chronica*, pp. 85-86: 'Quod autem non sint nudi usuarii in rebus quae usu consumuntur, evidentius declaratur, in quibus dicere quod usus iuris vel facti a dominio separatus possit constitui iuri repugnat et etiam obviat rationi. [...] Adhuc, esto quod usu in talibus rebus possit constitui, nudus tamen nullatenus posset dici, cum usus rei consumptibilis usuarii non differat ab usu plenum dominium obtinentis.'

⁵² *Ad conditorem canonum* I, in *Chronica*, p. 86.

instance, owned their books and convents.⁵³ The legitimate use of anything that destroyed the substance of the thing used automatically implied *dominium*, and therefore consumables remained in the dominion of the order, which meant that the Franciscans lost their claim to practising absolute poverty in their own definition. While they still had a special position within the church, they had lost the justification for this status as far as their self-image was concerned.

John provided definitions of the terms *usufructus* and *ius utendi*, explaining that usufruct referred to the right to use another's property preserving the substance of the thing used. The pope defined usufruct explicitly as a *ius in re* and *servitus personalis*.⁵⁴ In the earliest legal commentary on the bull, the canonist Jesselinus de Cassagnes explained the use of the term *personalis*, arguing that a usufruct constituted a personal right although it did not involve any praedial rights (that is, any legal relationships between separate parcels of land).⁵⁵ A *ius in re*, on the other hand, specified a legal relationship between a person and a thing, characterised by the possibility of real actions (claims against another for redress based on the existence of a specific legal relationship between a person and a thing).⁵⁶ According to the pope, there would be no point in establishing

⁵³ See William A. Hinnebusch, *The History of the Dominican Order*, 2 vols (Staten Island: Alba House, 1965-71), I: *Origins and Growth to 1500* (1965), pp. 148 and 158-60.

⁵⁴ *Ad conditorem canonum*, in Tarrant, *Extrauagantes*, pp. 237-38: 'Cum enim usufructus prout est ius in re constitutus, qui seruitus dicitur personalis et pro quo reales competunt acciones, nichil sit aliud quam ius utendi fruendi.' See also Miller, 'Property', pp. 42-43 and 65-66.

⁵⁵ Praedial servitudes regulated the relationship between separate immoveable properties, placing limitations on some aspect of a landowner's right; these servitudes involved relationships between properties rather than individuals and were therefore independent of changes of ownership. See Miller, 'Property', pp. 67-70. Jesselinus also commented specifically on the term *personalis* (fol. 46^{rb}): 'que persone constituitur etiam praedium non habenti: quod non est in seruitutibus realibus et praedialibus. ff. de. serui. l. j. communia praedio. l. j. et cum persona finitur ff. quibus mo. vsufruc. amit. l. sicut. §. morte. nec a persona abdicatur immo si in alium per commercium transferatur statim rei domino applicatur. ff. de iure do. l. si vsufructus. et d. §. finitur. licet commoditas fructuum percipiendorum per commercium in alium transferri possit: et ita intelligitur lex que alias contradiceret. ff. de vsufru. l. arboribus. §. vsufructuarius. de peri et commo. rei vendi. l. necessario. §. vl. alias est sub l. quod si pendente. et de nouatio. l. iij. ar. etiam ad hoc extra de loca c. vestra.'

⁵⁶ See Miller, 'Property', pp. 42-43. Jesselinus also added a lengthy commentary on the term *reales competent acciones*, fol. 46^{rb-va}, especially fol. 46^{va}: 'Si queras que sit ratio quare realis actio possidenti et detinenti non detur pro re corporali: sed pro re incorporali. Respondeo: rei vindicatio non datur ad alium effectum nisi quod possessio corporalis penes conuentum existens in actorem transferatur. ff. de rei vindicatio. l. qui restituere. C. de aliena. iudi. l. j. cum igitur actor illam quam petit penes se habet seipsum excludit: qui quod petit in ius habet. sufficit enim sibi quod effectualiter possideat dicto. §. interdictum. Sed realis actio pro incorporalibus competens non datur ad illum effectum tantum sed vt ille qui debet seruitutem nichil faciat: nullumquam impedimentum prestat: sed patiatu illu cui debetur pacifice illa vti. ff. de vsufruc. l. iij. §. de seruitu. l. quotiens de seruitu. rustico. praedio. l. j. in fine: cum similibus. expedit igitur quod ipsi possidenti detur actio vt submotionem impedimenti aduersarij: et eius patientiam consequatur: cum aliter iure etiam suo vti libere et plene non posset.'

usufructuary rights over things where the only use that could be gained from them would result in the consumption and therefore destruction of the substance.⁵⁷

The *ius utendi*, on the other hand, was not a *ius in re* or personal servitude, but only a personal right for which there was no possibility of taking real actions as a form of legal redress. In his commentary on the bull, Jesselinus gave an explanation of why the *ius utendi* was not a personal servitude: the *ius utendi* was a lesser form of right than that of a servitude or *ius in re*, comparable to those rights pertaining to an *emphyteuta* (tax farmer) in Roman law.⁵⁸ Lesser rights, such as *emphyteusis*, also placed a limitation on the right of ownership, but in contrast to rights such as a usufruct, the core elements of *dominium* (*usus*, *fructus* and *abusus*) all remained with the owner, although some other aspects of the owner's rights were curtailed.⁵⁹ While this was in a sense alien to Roman property law, the idea of these lesser rights proved to be important in the development of canonical property theory which needed to try and accommodate feudal relationships within the Roman laws of property. The term *dominium utile* was increasingly applied to the rights of feudal vassals over property they held in fief.⁶⁰ Usufructuary rights came to be included under this term as well, once they were seen as alienable by the holder of the usufruct and therefore as a sub-

⁵⁷ *Ad conditorem canonum*, in Tarrant, *Extravagantes*, p. 237: 'Que quidem lex de rebus illis intelligitur quarum penes unum usus rei et penes alium dominium possit licet inutile remanere, quod nequaquam in rebus usu consumptibilibus potest esse, cum in illis per usum uel abusum usuarii substantia talis rei esse desinat et per consequens proprietates etiam inutilis non subsistat.'

⁵⁸ *Ad conditorem canonum*, in Tarrant, *Extravagantes*, p. 239: 'Adhuc nec ius utendi, quod nec est ius in re, nec seruitus personalis, sed mere ius personale, pro quo reales acciones non competunt.' Jesselinus added another comment on *nec seruitus personalis* (fol. 46^{vb}): 'que est triplex. s. vsufructus. vsus. et habitatio. alie dicuntur reales seu prediales. ff. de serui. l. j. de vsufruc. l. qui binas. et ibi nota. ratione seruitutis personalis dicitur quis in re ius habere: cum contra quemlibet rei possessorem peti possit. ff. s. vsufruc. pe. l. vti frui. §. vtitur. Ius autem vtendi iure seu seruitute potest dici illud quod superficiario in re superficialia competit: vel emphyteote vel feudatario. ff. si ager vectigalis. l. j. et ij. de superficie l. j. §. vlti', with reference to Inst. 2.4, Inst. 2.5 (in CICiv, I, pp. 13-14), Inst. 3.24.3 (in CICiv, I, p. 40) and Dig. 43.18.1 (in CICiv, I, p. 692) on *ususfructus*, *usus*, *habitatio*, *emphyteusis* and *superficies*. On the rights of *emphyteusis* and *superficies*, see also Miller, 'Property', pp. 74-75.

⁵⁹ See Miller, 'Property', p. 65.

⁶⁰ The term *dominium directum*, on the other hand, referred in this context to the type of rights a feudal lord would have over his property. This included the power to dispose of the property but not necessarily the power to use it. See Stein, *Roman Law*, p. 62, Coing, 'Bartolus', p. 361 and Tabarroni, *Paupertas Christi*, pp. 79-80, especially note 12. The question of the nature of the relationship between *dominium directum* and *dominium utile* is a complex problem, not least because the term 'divided dominion' is commonly used in modern scholarship to describe this relationship although it does not actually appear in any contemporary sources. For a general discussion of notions of 'geteiltes Eigentum' or 'domaine divisé', see Kriechbaum, *Actio, ius und dominium*, pp. 335-39.

category of *dominium*.⁶¹ Despite its status as a lesser right than that of usufruct, however, even a *ius utendi* implied preserving the substance of the thing used, and it could therefore not apply to consumable items.

The *simplex usus facti*, in the definition of John XXII, did not even have the status of a personal right, but even here the actual use was characterised by the fact that the substance would have to remain undamaged.⁶² John defined any form of legal use as the right to use somebody else's property while maintaining the substance of the thing.⁶³ The pope did not at this stage explicitly address the Franciscan view that the simple use of fact was outside the legal rules governing the relationship between dominion and *usus* of material goods; his rejection of this view was, however, implicit in his refusal to consider the possibility of a legitimate use without dominion which destroyed the substance.

The pope went on to argue that there was no way in which legal use could be established over a consumable item as the very idea of it contradicted both law and reason.⁶⁴ Legitimate use of consumables was only possible if the user had a right to *abusus*, the right of disposal which was one of the three essential elements that made up *dominium* in the civil law tradition. In the case of consumable items, there could be no difference between the right of disposal (*abusus*) and the right to use (*usus*): they amounted to the same thing in practice,

⁶¹ On the development of the concept of the *dominium utile*, see Tuck, *Natural Rights Theories*, pp. 15-17 and on the relationship between *dominium utile* and usufructuary rights, see also Coleman, 'Property and Poverty', p. 614.

⁶² *Ad conditorem canonum*, in Tarrant, *Extrauagantes*, p. 239: 'Rursus nec simplex usus facti qui nec est seruitus nec pro illo competit ius utendi in talibus rebus potest constitui uel haberi.' On the term *nec est seruitus*, Jesselinus added the comment 'et sic per consequens ius in re non imponens' (fol. 47^{ra}).

⁶³ *Ad conditorem canonum*, in Tarrant, *Extrauagantes*, p. 238: 'nec usus, [...] sit aliud quam ius tantum utendi rebus alienis substantia salua rei, id est, ius percipiendi fructus et utilitatem aliam in totum uel pro parte suo nomine qui possunt ex re in qua usufructus seu usus constituitur provenire.' He repeated this in very similar terms in *Quia vir reprobus*, in *Chronica*, pp. 555-56: 'Usus est ius utendi rebus alienis, salva rerum substantia, id est ius percipiendi fructus seu utilitatem aliam, in totum vel pro parte, suo nomine, qui possunt ex re, in qua usus constituitur, provenire.'

⁶⁴ *Ad conditorem canonum*, in Tarrant, *Extrauagantes*, p. 236: 'Quod autem non sint nudi usuarii in rebus quae usu consumuntur, evidentius declaratur, in quibus dicere quod usus iuris vel facti a dominio separatus possit constitui iuri repugnat et obuiat rationi [...].' The commentary by Jesselinus de Cassagnes added an explanation to *repugnat iuri* (fols 45^{vb} and 46^{ra}): 'Cum habens in talibus vsum earum dominium censeatur habere. ff. de vsufruc. earum rerum que vsu consumuntur. l. cum pecunia. et l. si tibi. insti. de vsufruc. §. constituitur. et se. et in talibus rebus habere vsum tantum est sicut habere vsumfructum. vt. de tit. l. hoc senatus. §. vlt. et l. quam. §. j. In alijs autem rebus non est ita: quia in illis plus est in vsufructu quam in vsu. ff. de vsu et ha. l. si habitatio. §. si vsus. et l. plenum. insti. de vsu et habi. §. minus. cum similibus.'

as using a consumable item disposed of it.⁶⁵ While it was entirely possible to have the right to use an immoveable property without owning it, it was not possible to have the right to use a consumable item without ownership. The right to consume implied *dominium*; at least by implication, the pope argued here that any form of legitimate use of a consumable item entailed legally enforceable property rights. In his commentary on this part of *Ad conditorem canonum*, Jesselinus made it clear that *usus* and *abusus* were identical in the case of consumable items, and he added that this type of use was called *abusus* because by being used these things were reduced from being to non-being.⁶⁶

John provided a detailed discussion of the meaning of the term *abusus* in *Quia vir reprobus* which was triggered by Michael of Cesena's assertion that Augustine had defined *abusus* as an illicit use, and that the Bible only ever used the term in a negative sense.⁶⁷ The pope devoted a considerable amount of space to the demonstration that Michael had misinterpreted Augustine, and that the Bible's use of the term was not exclusively negative.⁶⁸ According to the pope, *abusus* meant to use something by consuming it – the only possible use of a consumable item was *abusus*. This did not mean that the term necessarily described an illicit act, and the primary meaning of *abusus* both in law and in Scripture was consumption. According to the pope, this also made much more sense grammatically: the preposition *ab* made the original meaning of *usus* stronger, and changed the meaning of the term from 'use' to 'consumption'.⁶⁹

⁶⁵ The notion that in the case of consumables, *usus* was indistinguishable from *abusus* was first expressed in Dig. 7.5.5.1 (in CICiv, I, p. 107). See *Ad conditorem canonum*, in Tarrant, *Extravagantes*, p. 237 and the repetition of the idea in *Quia vir reprobus*, in *Chronica*, p. 556. See also Miller, 'Property', pp. 65-66.

⁶⁶ See Jesselinus's commentary on *vel abusum* (fol. 46^{rb}): 'Licet alias abusus in mala parte sumi persueuerit: vt dixi in decre. cum inter nonnullos: hoc tamen in bona sumitur: quia in talibus rebus vsus et abusus idem sunt. ff. de vsufu. ca. rerum que vsu consumuntur. l. hoc senatus. §. j et vl. cum similibus. Licet ideo appellatur abusus quia per vsum in talibus rebus res ipse ad totalem exinanitionem deducuntur: et de esse ad non esse reducuntur: vt hic.'

⁶⁷ *Appellatio in forma minori*, in *Chronica*, pp. 435-36 with reference to Gn 34:31, Est 16:2, I Cor 9:18 and Augustine's *De doctrina Christiana*, p. 8: 'Nam usus inlicitus abusus potius uel abusio nominanda est.'

⁶⁸ *Quia vir reprobus*, in *Chronica*, p. 578 with reference to Ier 18:23.

⁶⁹ *Quia vir reprobus*, in *Chronica*, pp. 577-78. See especially p. 578: 'Ex quibus patet quod legislatores loquentes proprie de rebus quae usu consumuntur, negant usum in illis locum habere, et abusum locum habere concedunt. Quod quidem abusus, id est rei consumptio, si fiat ab eo cui ius abutendi, id est consumendi competit, erit licitus; si vero ab eo cui ius non competit, illicitus est censendus.

Item, quod abusus pro consumptione ponatur, congruit rationi. Praepositio enim sensum dictioni cui per compositionem apponitur augere vel diminuere consuevit. Unde patet quod rationi congruit

The pope's position on the inseparability of use and dominion in the case of consumables was strengthened by other passages in the *Institutes* which dealt with the two types of loans recognised by Roman law. A *commodatum*-loan was a loan of non-perishables, where the borrower had to return the borrowed item in exactly the same state in which it had been received. A *mutuum*-loan, on the other hand, was a loan for consumption; the borrower had to return the exact value in money or in kind after an agreed period of time rather than the actual item that had been borrowed. The normal object of such a *mutuum*-loan was money, and the loan was automatically assumed to involve a transfer of ownership.⁷⁰ The example of the loans had already been used by Gerard of Abbeville in order to prove that the Franciscan property arrangements were legally invalid.⁷¹ John did not explicitly refer to these concepts until the publication of *Quia vir reprobus* when he argued that a *mutuum*-loan of money involved a transfer of ownership as money could not be used while its substance was being maintained. Therefore a lender could not licitly ask for anything more than the value of the original loan.⁷² If a *commodatum*-loan was not possible in the case of money and consumables precisely because it did not involve a transfer of ownership, then the simple use of fact could not be established for consumables either: as their only use was through consumption, it was impossible to separate their use from ownership.

The counter-argument used in Franciscan apologetic writings also derived from civil law, and more specifically the *Digest*, which stated that a son under parental control had the use of his *peculium* (personal funds), but no *dominium*, and that this use without ownership included consumable items.⁷³

quod per illam praepositionem [sic] "ab" sensus dictionis "usus" cui per compositionem apponitur, augeatur.'

⁷⁰ See Inst. 3.14 (in CICiv, I, pp. 35-36). For *mutuum*- and *commodatum*-loans, see J. A. C. Thomas, *Textbook of Roman Law* (Amsterdam: North-Holland, 1976), pp. 271-74 and Robin Evans-Jones and Geoffrey MacCormack, 'Obligations', in *A Companion to Justinian's Institutes*, ed. by Ernest Metzger (Ithaca: Cornell University Press, 1998), pp. 127-207 (pp. 129-31). See also Mäkinen, *Property Rights*, p. 48.

⁷¹ See Clasen, 'Tractatus Gerardi de Abbatisvilla', p. 172.

⁷² *Quia vir reprobus*, in *Chronica*, p. 556: 'Mutuans autem pecuniam in eum cui mutuavit pecuniae transfert dominium, non fructum aliquem nec utilitatem aliam quae ex ea salva rei substantia valeat providere, et tantundem ab eo cui mutuavit postea recipit. Quare ultra illud quod mutuavit a recipiente mutuum licite recipere nequeat, ut legitur 88 D. c. [11] *Eiciens*.' John's starting-point for this discussion was the condemnation of usury by John Chrysostom in D. 88 c. 11 (in CIC, I, cols 308-309). On the connection between the traditional argument against usury and the use of the consumptibility argument during the theoretical poverty controversy, see also Roberto Lambertini, 'Usus and usura: Poverty and Usury in the Franciscans' Responses to John XXII's *Quia vir reprobus*', *Franciscan Studies*, 54 (1994-1997), 185-210 (especially pp. 188-93).

⁷³ Dig. 50.17.93 (in CICiv, I, p. 870).

Other exceptions were slaves and, in later ecclesiastical legislation, monks, and the Franciscan order saw themselves as being in the legal position of an unemancipated son or a slave, characterised by the same lack of legal standing and control. Roman law stated that dominion over the *peculium* of an unemancipated son, or the material goods used by a slave, remained with the father or owner, and that both the son and the slave only had the use of the goods (including consumables). These examples, as well as that of the legal position of a monk, had already been used by Bonaventura in the *Apologia pauperum*, and they were used again in Bonagratia's *Tractatus* and appeal.⁷⁴

John XXII did not really discuss this particular question and did not provide a counter-argument to these exceptions to the general rule. His discussion of this question was characterised by an emphasis on general legal principles, without going into any details. The pope did admit in *Quia vir reprobus* that the act of using food and drink did not make monks into *propriarii* because they did not consume food as their own but communally, and because the act of consuming these things was not separated from communal ownership.⁷⁵ This seems to concede, at least partially, that use and dominion of consumables could be separated in certain cases, but the pope never elaborated on this issue anywhere else.

John did briefly mention another point which came close to admitting that *dominium* and use could be separated even in the case of consumables. In his discussion of the parable of the talents in *Quia vir reprobus*, he argued that the parable showed that the abdication of property rights did not necessarily remove anxiety: although the servant was only granted the *peculium* rather than dominion by the *dominus*, and although he only had the *usus*, he was still anxious about the money (Lc 19:23).⁷⁶ This would seem to presuppose that in the case of money, dominion and use could be separated, despite the fact that money was normally classed as a consumable item, and this is how the passage had been interpreted by

⁷⁴ Bonaventura, *Apologia pauperum*, in *Opuscula varia ad theologiam mysticam*, p. 312, Oligier, 'Tractatus', p. 502 and *Appellatio Bonagratiae de Pergamo*, in *Chronica*, p. 105. See also Coleman, 'Two Jurisdictions', p. 84, Mäkinen, *Property Rights*, pp. 66-67 and Miethke, *Sozialphilosophie*, p. 381.

⁷⁵ *Quia vir reprobus*, in *Chronica*, p. 560: '[...] sed per actum consumendi talia non sunt censendi propriarii, cum ipsa non ut propria consumere sed ut communia sunt dicendi actusque consumendi res huiusmodi nequaquam a communi dominio separantur [...].'

⁷⁶ *Quia vir reprobus*, in *Chronica*, p. 568.

Michael of Cesena.⁷⁷ John himself, however, went on to argue that this was not the case: the use of money (in the sense of the consumption of money) always involved a transfer of ownership although this did not mean that money could not be used on behalf of somebody else. In the case of the parable, the servant did not consume the money for himself. The money and the proceeds from the money did not actually belong to the servant, and all transactions were done in the name of the owner of the property. The master remained the true owner and user throughout, and there had been no real separation of dominion and use at any point.⁷⁸

Michael of Cesena also tried to bolster the Franciscan case by referring to Old Testament history in the *Appellatio in forma minori*. He argued that the book of Leviticus (Lv 27:30) provided another example of the separation of *dominium* and use: the tithes meant for the use of the Levites were said to belong to God. This proved that it was possible to have the use of consumables without any dominion.⁷⁹ John XXII provided a lengthy answer to this in *Quia vir reprobus*. He argued that God had actually given the tenth to the Levites *in possessionem* which meant that they had not only the use but also dominion.⁸⁰ The crucial point about this was, according to the pope, that there was a difference between giving something for the use of somebody and giving the use of something. When the use of any usable thing was conceded to someone, the use rather than *dominium* was given, but if anything was given *in usum*, both use and

⁷⁷ *Appellatio in forma minori*, in *Chronica*, p. 433: 'Item, Lucae 19, 23 dicitur de domino qui dedit servis suis pecuniam numeratam, quod dixit servo nequam: *Quare quod dedisti pecuniam meam ad mensam, et ego veniens cum usuris exegissem illam?* Ex qua auctoritate patet quod in pecunia data servus usum actualiter habebat et habere poterat, et dominus proprietatem eiusdem.'

⁷⁸ *Quia vir reprobus*, in *Chronica*, p. 571: 'Usus enim pecuniae, immo potius abusus, non est ipsam simpliciter alicui tradere, sed taliter tradere quod consumpta quoad dominium censeatur. Unde licet servus actualiter pecuniam mutuanti traderet, per traditionem solam, sine traditione domini, nequaquam usum sed abusum potius fuisse pecunia potest dici. Sed per translationem domini habetur pro consumpta pecunia; quam quidem translationem non servus sed dominus, cuius nomine fiebat mutuum, facit. Unde cum servus nomine domini mutuasset, ipse dominus videtur usus, immo potius abusus, fuisse pecunia et non servus. Praeterea, servus qui iussu domini pecuniam mutat, non debet dici habere usum seu abusum simplicem facti, cum ius habuerit per concessionem huiusmodi mutuandi.'

⁷⁹ *Appellatio in forma minori*, in *Chronica*, p. 435 with reference to Lv 27:30 and Nm 18:24.

⁸⁰ *Quia vir reprobus*, in *Chronica*, p. 567: 'Quod enim dicit levitas habuisse usum tantum decimarum, falsum dicit, ut probatur Numerorum 18, 21 per eum in contrarium allegato, ubi Dominus sic dicit filiis Levi: *Dedi omnes decimas Israel in possessionem pro ministerio quo serviunt mihi in tabernaculo foederis*. Ex quibus patet quod levitae non tantum usum in decimis, sed et dominium habuerunt.'

dominium were given.⁸¹ The primary use of consumable items was consumption, but sometimes abundance in some consumables meant a deficiency in others, and God wanted the Levites to have the right to exchange and sell goods in order to provide for the necessities of life. This is why God gave them the tenth *in usus et necessaria*.⁸²

The major part of John's legal argument focused on the question of consumable items. Their legal status came up again and again in both versions of *Ad conditorem canonum*, in *Quia quorundam mentes* and in *Quia vir reprobus*. This was not so much because the question of consumable items was the most important legal objection John had against the Franciscan poverty ideal, but because it provided the pope with the most obvious and uncontroversial argument against it. The pope's disagreement with the order went deeper than that, even on the relatively superficial level of the question of *usus* in law.

V.2 The Act of Using

There had been no detailed previous discussion of the simple use of fact from a legal perspective, and the question of what exactly constituted a use of fact was still open when the Franciscan poverty controversy broke out. While the simple use of fact had not been a term or concept current in legal circles, the difference between factual use (the act of actually using something) and the right to do so had first been discussed by the jurist Azo (d. 1220) who had distinguished between the *ius utendi* and the *usus qui est facti*.⁸³ Azo had made this distinction during his discussion of *usus*, arguing that a *ius utendi* was impossible in the case of consumable items. Despite this, the distinction between the (theoretical) right

⁸¹ *Quia vir reprobus*, in *Chronica*, p. 567: 'Aliud est enim alicui in usum rem aliquam dare et aliud dare alicuius rei usum. Ubi enim usus alicuius rei usibilis conceditur alicui, usus tantum rei non dominium sibi intelligitur esse datum, sed ubi alicui res datur in usum nedum usus rei sed et dominium intelligitur esse datum.'

⁸² *Quia vir reprobus*, in *Chronica*, p. 567: 'Quia enim de frugibus et fructibus dupliciter nos vivamus: uno modo comedendo, ad quod primo et principaliter sunt concessi, iuxta illud Genesis 1, 29: *Ecce, dedi vobis omnem herbam et universa ligna quae habent in semetipsis sementem generis sui, ut sint vobis in escam*; verum, quia nonnumquam qui abundat in talibus deficit in aliis necessariis ad vitam humanam, voluit Dominus quod levitae possent non solum de frugibus illis comedere, sed etiam de illis quoad alia vitae necessaria vendendo vel permutando sibi providere, et ideo dixit "in usus et necessaria".' He additionally supported this (abbreviated) quote by reference to Nm 18:9, Nm 18:11 and Nm 18:13.

to use and the act of doing so proved to be a useful tool for the Franciscans who could claim that this confirmed their theory of the simple use of fact. The Franciscan property arrangement depended on a distinction between the *ius utendi*, which implied legal rights (including usufructuary rights) and therefore excluded consumables, and the *simplex usus facti*, which did not.⁸⁴

John XXII, on the other hand, argued in *Ad conditorem canonum* that the act of using belonged to the user in so far as a user could be described as the *dominus* of his own actions.⁸⁵ In *Quia quorundam mentes*, John returned briefly to the act of using, but only to point out that the *simplex usus facti* in the Franciscan definition was impossible in the case of consumable items, as no one other than oneself could be said to use a thing as one's own. According to the pope, this had been proved both by *Ad conditorem canonum* and by St Augustine.⁸⁶ As nobody could concede something that was not his, it was also impossible to concede the act of using something. The *actus utendi* of the person actually performing the act was not the same as the *actus utendi* of the person conceding the right to act, even if that person had performed the act himself.⁸⁷ The basis for the pope's argument was the difference between the act of using (which in the person of the *concedens* was different from the person of the *utens*) and the possibility of performing such an act.⁸⁸ The commentary of Jesselinus de Cassagnes on *Cum inter nonnullos* also explained that it was expressly opposed to the law, and to what was right, to use

⁸³ Kriechbaum, *Actio, ius und dominium*, p. 33.

⁸⁴ See for instance the *Appellatio Bonagratiae de Pergamo*, in *Chronica*, pp. 106-107. See also Miethke, *Sozialphilosophie*, pp. 381-82.

⁸⁵ *Ad conditorem canonum*, in Tarrant, *Extravagantes*, pp. 241-42. This echoed the idea that the primary dominion of humans was over their own wills: see Brett, *Liberty, Right and Nature*, p. 13. Jesselinus added a gloss on John's use of the term *dominus dicitur* in *Ad conditorem canonum* (fol. 47^{va}): 'Unde legitur quod libertas est naturalis facultas eius quod cuiquam facere libet nisi quod vi aut iure prohibetur. ff. de sta. homi. l. libertas. et ideo scribitur quod vis animo non infertur. xxij. q. v. §. j. Licet autem quis suorum actuum dicatur dominus per naturalem libertatem arbitrij: non autem membrorum suorum dominus dicitur vt illorum estimationem facere possit. ff. ad l. aquil. l. liber homo. cum illa estimationem non recipiant. ff. si quadru. paupe. fecis. l. ex hoc. de his qui deiece. vel effu. l. vlti.'

⁸⁶ *Quia quorundam mentes*, in Tarrant, *Extravagantes*, p. 275: 'Adhuc dicimus quod est hoc impossibile, scilicet, usum facti simplicem absque iure aliquo (quod nichil aliud quam ipsum ut proprie est dici) posse in re aliqua etiam usu non consumptibili ab aliquo obtineri, prout in decretali "Ad conditorem canonum" est probatum et Augustinus in libro confessionum libro xi. de actu tenet expresse.' See *Sancti Augustini Confessionum libri XIII*, ed. by Lucas Verheijen, Corpus Christianorum Series Latina, 27 (Turnhout: Brepols, 1981), pp. 194-216. The passage referred to by John XXII has been identified by Tarrant, *Extravagantes*, p. 275 as *Sancti Augustini Confessionum libri XIII*, XI.30 (p. 215) although chapter XI in the *Confessiones* only has a fairly tenuous link to John's argument in this passage.

⁸⁷ *Ad conditorem canonum*, in Tarrant, *Extravagantes*, pp. 241-42.

⁸⁸ See Kriechbaum, *Actio, ius und dominium*, pp. 54-55.

anything without the right to do so because this would not be a use of the user's own.⁸⁹

The act of using could not be performed by the person who granted the right to use; it could only be performed by the user. The act itself could not be granted to anyone because it did not have an existence of its own. The only thing that could be granted to someone else was the right to exercise an act of using, such as granting somebody the use of a horse as a *commodatum*-loan. This meant granting the right to ride the horse rather than granting the act of riding.⁹⁰ What was granted was a specific right over the horse, not the act of using it, and again, this implied a legally recognised right which was exactly what the Franciscans denied having.

Additionally, the pope argued that an act itself did not and could not exist before it had been actualised. Before and after being carried out it existed only in the mind of the user, and while actually being performed, it was instantaneous and could be perceived more by the intellect than by the senses; therefore it could not really be said to have been had.⁹¹

John XXII addressed the problem again in *Quia vir reprobus* in a bit more detail. Michael of Cesena had argued in his short appeal that John's definition of the act of using as something that had no existence in nature contradicted Scripture because this would deny that any of the acts performed by Christ and the apostles had actually happened.⁹² John replied that this was wrong,

⁸⁹ See Jesselinus's discussion of the word *non iusta* in *Cum inter nonnullos* (fol. 53^{va}): 'A lege autem et sic a iure expresse discrepat usum in aliqua re habere sine aliquo iure cum sine iure usus non ipsius utentis sed alienus censeatur xiiij. q. iij. c. quid dicam. 14.' See also Brian Tierney, '*Ius dictum est a iure possidendo*: Law and Rights in *Decretales*, 5.40.12', in *The Church and Sovereignty, c. 590-1918: Essays in Honour of Michael Wilks*, ed. by Diana Wood, *Studies in Church History: Subsidia*, 9 (Cambridge: Blackwell, 1991), pp. 457-66 (p. 462).

⁹⁰ *Ad conditorem canonum*, in Tarrant, *Extrauagantes*, p. 242: 'Non autem actus ipse utendi ad eum pertinet qui concedit alii quod in re sua actum illum ualeat exercere, quod utique nichil est aliud quam quod actum suum ad rem concedentis ad actum suum utens ualeat applicare, sicut qui equum suum alicui comodat non actum equitandi concedit comoditario, sed quod actum illum in equo suo ualeat exercere [...].' See also Mäkinen, *Property Rights*, pp. 170-71.

⁹¹ *Ad conditorem canonum*, in Tarrant, *Extrauagantes*, p. 244: 'Quod enim de actu, qui est in fieri, preteriit uel futurum est iam non est in rerum natura, sed in memoria uel apprehensione tantum est; quare nisi prout in memoria uel apprehensione est haberi nequaquam potest. Quod autem in presenti fit momentaneum seu instantaneum est, quod utique magis intellectu quam sensu percipi potest, unde nec est haberi pro tunc nisi pro momento illo seu instanti in quo sic potest dici actum.' See also Mäkinen, *Property Rights*, p. 171. In his first reference to the act of using in *Quia vir reprobus*, the pope paraphrased this as well, and then referred the reader to his fuller discussion in *Ad conditorem canonum: Quia vir reprobus*, in *Chronica*, p. 556.

⁹² *Appellatio in forma minori*, in *Chronica*, p. 439: 'Ratio autem dicti destruit gesta Christi et apostolorum, quae Scriptura sacra eos fecisse testatur, ac etiam gesta fidelium, quia si ista ratio

and that the opposite conclusion was to be drawn from his arguments: if the act of using, which did not exist in nature, could not be had, it followed that, because a fact was not in the nature of things, it could not be performed. For just as what did not exist could not be had, so what was a fact could not be performed. Therefore if the act of using could not be had because it was not in the nature of things, it followed from this that a fact, which was not in the nature of things, could not be performed.⁹³ The crucial thing in John's argument here (as it had been in *Ad conditorem canonum*) was not so much the contention that there was no *actus* in the nature of things, but rather his emphasis on the fact that this *actus* could not be had.⁹⁴ The question was not so much whether the act of using existed in nature or not, but whether something that was *instantaneum* or *momentaneum* could be had in any meaningful sense, and John came to the conclusion that it could only be had in a very limited sense. The pope interpreted the *actus utendi* as one of the defining characteristics of the simple use of fact, but on the basis of such an *actus* the terms *concedere* and *habere* were not particularly meaningful. There was not much point in speaking of conceding or having the act of using; what could be had or conceded was the *potestas utendi* or the right to use, but not the act of doing so.⁹⁵

John's discussion of the *actus utendi* was very closely linked to his contention that the simple use of fact in the Franciscan definition did not have an existence in law. It was not possible to establish legal rights over consumables, and it was not possible to have a simple act of using. The simple use of fact could not exist in any meaningful sense. But the pope's argumentation went beyond the technicalities of where the Franciscan idea of the simple use would fit in with the

concluderet, sequeretur quod Christus nec comedit, nec bibit, nec praedicavit, nec pedes discipulorum lavit, quia per tandem rationem dicitur: si aliquod istorum fecit, aut ante actum, aut post actum, aut in ipso actu, secundum dictam divisionem.' Michael had also argued that if the act of using could not be had in the form of a simple use of fact, it could also not be had in any other form of use involving property rights or even in the use of items that were not consumed by use.

⁹³ *Quia vir reprobus*, in *Chronica*, pp. 583-84: 'Procul dubio ista consequentia est falsa, et est potius totum contrarium concedendum, videlicet quod si actus utendi, quia in rerum natura non est, haberi non potest, concludi debeat quod quia factum in rerum natura non est, fieri non possit. Sicut enim quod non est, haberi non potest, sic quod est factum fieri nequit. Unde si actus utendi haberi non possit quia in rerum natura non est, sequitur quod factum, quia in rerum natura non est, fieri possit.' See also Mäkinen, *Property Rights*, pp. 171-73.

⁹⁴ See Kriechbaum, *Actio, ius und dominium*, p. 56. Critics such as Michael of Cesena and William of Ockham tended to focus on the first part of the statement, however: see Kriechbaum, *Actio, ius und dominium*, p. 57.

⁹⁵ See Kriechbaum, *Actio, ius und dominium*, pp. 57-58.

legal definition of *usus*, if at all. In a next step, the pope also questioned whether the simple use of fact, even if it could be proved to exist, could ever be legitimate.

V.3 The Relationship between *ius* and *iustum*

When John XXII published *Cum inter nonnullos*, he condemned the Franciscan ideal of absolute poverty by making it heretical to claim that Christ and the apostles had renounced both individual and common possessions. While the bull was very short and did not, in fact, contain much legal material, it rested on a very important legal assumption that underlay much of John's unease about the Franciscan ideal in general: the idea that nothing outside the law could be legitimate.

The pope argued that as Christ and the apostles could be shown to have used material goods, they must have had the *ius utendi* over these goods, including the right to sell these goods or to give them away. To claim that Christ and the apostles had renounced all property rights would be to claim that they had not actually had the right to use material goods in the way they could be shown to have used them in the Bible; this would ascribe to Christ and the apostles 'usum et gesta [...] non iusta', which was plainly wrong and heretical.⁹⁶

What underlay this argument was the definition of (legal) right as something which was morally right or just – an association between *ius* and *iustum* which could be found in much of thirteenth- and fourteenth-century thought. For most medieval writers the term *ius* had always implied the idea of something that was right.⁹⁷ This was not confined to legal discourse as both Henry of Ghent and Thomas Aquinas, for instance, interpreted the concept of right as

⁹⁶ *Cum inter nonnullos*, in Tarrant, *Extrauagantes*, pp. 256-57: 'Rursusque imposterum pertinaciter affirmare quod Redemptori nostro predicto eiusque apostolis hiis, que ipsos habuisse scriptura sacra testatur, nequaquam ius ipsis utendi competierit, nec illa uendendi seu donandi ius habuerint aut ex ipsis alia acquirendi, que tamen ipsos de premissis fecisse scriptura sacra testatur, seu ipsos potuisse facere supponit expresse, cum talis assertio ipsorum usum et gesta euidenter includat in premissis non iusta, quod utique de usu gestis seu factis Redemptoris nostri in dei filii sentire nefas est sacre scripture contrarium et doctrine catholice inimicum, assertionem ipsam pertinacem de fratrum nostrorum consilio deinceps erroneam fore censendam merito ac hereticam declaramus.'

⁹⁷ See Tierney, '*Ius dictum*', p. 458 as well as Tierney, 'Tuck on Rights', p. 437 note 24.

what was just.⁹⁸ Brian Tierney has argued, however, that to most early commentators on the *Decretum*, *ius* meant law, and more specifically civil law.⁹⁹

There were several instances in the *Decretum* where the connection between *ius* and *iustum* was made, but the most important one for the later debate can be found in the *Liber extra* (1234) where there was a definition of *ius* as something possessed by law and, following on from that, the equation of what was possessed by law with what was possessed justly (X 5.40.12).¹⁰⁰ Canon lawyers in general had a tendency to discuss not the equivalence of *ius* and *iustum* so much as the difference between the two concepts, while the correspondence between the terms was emphasised particularly in civil law.¹⁰¹ Examples for the different treatment in canon and civil law are provided by a definition of Azo which claimed that all *iura* were flowing from justice for the civil law tradition, while both the *Glossa ordinaria* and Hostiensis (ca. 1200-71) used the passage in the *Liber extra* to point out that although what was possessed justly was automatically possessed legally, the reverse was not necessarily the case.¹⁰² Even so, there was a tradition which supported John's idea that there was a connection between *ius* and *iustum*. Although he did not refer to it explicitly, in *Cum inter nonnullos*, John seems to have been relying on the definition of *ius* found in X 5.40.12.¹⁰³

In his discussion of the relationship between *ius* and *iustum*, John XXII seems also to have drawn particularly on the report submitted by the Dominican Master General Hervaeus Natalis in the summer of 1322.¹⁰⁴ Hervaeus had argued that the act of using could not be separated from the right to use, as there were only two types of *usus*: the *usus illicitus* which was a use without the *potestas licite utendi*, and the *usus licitus* which was essentially a synonym for the right to

⁹⁸ See Mäkinen, *Property Rights*, pp. 138 and 173.

⁹⁹ See Tierney, '*Ius dictum*', p. 460.

¹⁰⁰ See CIC, I, col. 915: '*ius dictum est a iure possidendo. Hoc enim iure possidetur quod iuste.*' Other references to the same concept can be found in D. 1 c. 1 (in CIC, I, col. 1): '*Ius autem est dictum quia iustum est*' and C. 14 q. 4 c. 11 (in CIC, I, col. 738): '*Hoc enim certe non alienum est quod iure possidetur, hoc autem iure, quod iuste, et hoc iuste, quod bene.*' Ultimately, the definition had its roots in the *Digest*, however: see Dig. 1.1.11 (in CICiv, I, p. 1).

¹⁰¹ Kriechbaum, *Actio, ius und dominium*, p. 60.

¹⁰² See Kriechbaum, *Actio, ius und dominium*, p. 61 and Tierney, '*Ius dictum*', pp. 460-61.

¹⁰³ Tierney, '*Ius dictum*', p. 462.

¹⁰⁴ Kriechbaum, *Actio, ius und dominium*, pp. 64-65. On Hervaeus's influence, see also Miethke, *Sozialphilosophie*, p. 385.

use or *ius utendi*. According to Hervaeus, the Franciscans could therefore only claim their simple use as an illicit use of material goods.¹⁰⁵

The same idea had already formed part of the argument of the second version of *Ad conditorem canonum* where John XXII had briefly discussed his view that even if the simple use of fact did exist, it would be unjust.¹⁰⁶ He argued that any use without the *ius utendi* was illicit and therefore could not contribute to the state of perfection of the Franciscan order. As any use had to be either permitted or prohibited, a permitted use was automatically an *usus iustus* and therefore equivalent to the *usus iuris* – which in John’s definition could not be reconciled with a complete renunciation of property rights.¹⁰⁷ The pope also pointed out that *Exiit qui seminat* had expressly mentioned the licit use of material goods conceded to the friars, which according to John proved that Nicholas III could not have had a complete renunciation in mind when he endorsed the Franciscan ideal.¹⁰⁸ The Franciscan use had to be a just use, as any use of fact had to be either an *usus permissus* or an *usus prohibitus*; as the Franciscan use was permitted, it was necessarily a just use which also implied that the order had the right to use.¹⁰⁹ Here, the pope (again implicitly) referred to a connection between *ius* and *licitum/permissum* made in a number of commentaries on the *Decretum* by lawyers such as Paucapalea (fl. 1148), Rufinus (d. ca. 1192) or Huguccio (d. 1210) who used a definition of *ius* as something that was permitted.¹¹⁰

¹⁰⁵ Sikes, ‘Hervaeus Natalis’, p. 240: ‘Si loquamur de uso illicito, accipiendo licitum secundum rationem iusti et iniusti, sic in omni tali usu separatur usus a iure in ipso casu, quia ex hoc dicitur usus illicitus, quia utens non habet potestatem licite utendi; sed potestas licite utendi idem est quod ipsum ius vel potestas iuris, ergo in omni usu illicito est usus sine iure et per consequens separatur usus a iure, sicut est usus latronis vel raptoris, et in omni usu quo utitur aliquis invito domino qui est dominus rei et sui usus.’ See also Kriechbaum, *Actio, ius und dominium*, p. 65.

¹⁰⁶ *Ad conditorem canonum*, in Tarrant, *Extravagantes*, p. 245: ‘Praeterea si simplex usus absque iure utendi haberi possit ab aliquo: constat, quod non iustus esset actus utendi huiusmodi reputandus, cum ille usus fuerit, cui non competeat utendi. Talis autem usus non iustus ad perfectionis statum nequaquam pertinet, nec perfectioni aliquid adicit, sed sibi repugnare potius ac detrudere noscitur manifeste.’ He repeated the argument in *Quia quorundam mentes*, where he added the observation that Nicholas III would not have reserved an unjust use for the order when he accepted *dominium* over their goods: see *Quia quorundam mentes*, in Tarrant, *Extravagantes*, pp. 275-76.

¹⁰⁷ *Ad conditorem canonum*, in Tarrant, *Extravagantes*, pp. 245-46. See also Kriechbaum, *Actio, ius und dominium*, p. 59.

¹⁰⁸ *Ad conditorem canonum*, in Tarrant, *Extravagantes*, pp. 245-46; see also *Exiit*, in CIC, II, col. 1113.

¹⁰⁹ *Ad conditorem canonum*, in Tarrant, *Extravagantes*, p. 246. See also Kriechbaum, *Actio, ius und dominium*, p. 60.

¹¹⁰ See Kriechbaum, *Actio, ius und dominium*, pp. 60-61.

John picked up the argument again in the bulls *Quia quorundam mentes* and *Quia vir reprobus*. In *Quia quorundam mentes*, John argued that an extrinsic human act could not be just unless it was performed by somebody who had the right to perform it, and that such an act was not only not just, but necessarily unjust. He went on to argue that an act performed without the right to do so could not be more acceptable to God than an act performed with the right to do so.¹¹¹ He quoted Gregory IX's confirmation of the Franciscan rule and referred to the explanations by Innocent IV and Alexander IV, all of whom claimed that the Franciscans had the use of those things which it was permitted for them to have. According to John XXII, this permitted use was necessarily the same thing as the *usus iuris*.¹¹² In *Quia vir reprobus*, John XXII finally drew the text of the *Liber extra* into the discussion when he argued, again, that the right of using and the use of something with the permission of the rightful owner were the same thing. He argued that the licence or permission to use (which Michael of Cesena had claimed for the Franciscan order) had to be the same as the legal right to use.¹¹³ The Franciscan concept of the *simplex usus facti* as the legitimate use of something without any legal right to do so was condemned by the pope as impossible: any such use would be unjust.

According to the pope, Michael of Cesena could not avoid the decision whether a permitted use was just or unjust: if Michael accepted such a use as unjust, then he was in agreement with *Ad conditorem canonum*; if he maintained that this use was just, then he had to accept that it was legally enforceable as well. Here the pope explicitly referred to X 5.40.12, arguing that *ius* and *iustum* were

¹¹¹ *Quia quorundam mentes*, in Tarrant, *Extravagantes*, pp. 279-80: 'Impossibile enim est actus humanum extrinsecum esse iustum, si exercens actum ipsum nullum ius habeat illud exercendi, immo non iustus seu iniustus necessario conuincitur tali usus. Item, est absurdum et erroneum quod actus alicuius non habentis ius actum huiusmodi faciendi sit iustior et Deo acceptior quam habentis, cum concludat actum iniustum iustioem et Deo acceptioem existere quam sit iustus.' See also Mäkinen, *Property Rights*, p. 173.

¹¹² *Quia quorundam mentes*, in Tarrant, *Extravagantes*, p. 267: 'Cum enim dicatur in declarationibus supradictis quod ordo usum rerum habeat permissarum, ad usum iuris necesse est hoc referri.' The pope was here referring to the bulls *Quo elongati* (1230), *Ordinem vestrum* (1245) and the second edition of *Ordinem vestrum* by Alexander III (1257). See *Chronica*, p. 162 notes 145-46.

¹¹³ *Quia vir reprobus*, in *Chronica*, p. 582: 'Si enim aliquis licentiam concedat alicui utendi re sua usibili, ita quod licentia teneat, constat quod iste habet ius utendi re illa cui licentia est concessa.' The pope also referred to X 1.6.6 (in CIC, I, col. 51) and X 1.6.27 (in CIC, I, col. 71) as corroborating evidence for this. See also Tierney, '*Ius dictum*', pp. 462-63.

linked, and that just use implied legal use.¹¹⁴ If Michael claimed that the use was neither just nor unjust, he was wrong: no human act could be morally indifferent, but had to be judged according to its aims. John also tried to establish that this was not contradicted by the *Decretum* in D. 1 c. 1 which quoted Isidore of Seville's comment that crossing someone else's field was *fas* although it was forbidden by human law. The point of Isidore's text, according to John, was not to introduce some morally neutral middle ground, but to show that some things were allowed by divine law although they were legitimately prohibited by human law.¹¹⁵

In his argument, John conflated the term *ius* in the sense of law (and civil law in particular) with *ius* in the sense of moral or natural law. This was in keeping with at least some of the legal tradition, but there were some problems with his condemnation of the Franciscan way of life as both immoral and unjust. The identification of *ius* and *iustum* was not the only tradition that could be justified by recourse to the *Decretum* and canon and civil law traditions. While often assuming an underlying link between *ius* and justice, legal commentators in the thirteenth century also identified *ius* with positive rather than natural law; the definition of the term had always been ambiguous, and the significance of the term in legal texts often remained unclear.¹¹⁶ Particularly the Franciscan participants in the debate had an interest in distinguishing between natural and positive law, and Bonagratia of Bergamo was quick to point out that while the pope's remarks concerning the legitimacy of use and ownership might be true for the rules set up by Roman law (although even in this case, there were precedents which supported the Franciscan way of life), the Franciscan simple use of fact belonged to natural or divine law to which the laws of Justinian did not necessarily apply.¹¹⁷ Bonagratia used the term *ius naturale* to refer to the law instilled by nature in all creatures (derived from Dig. 1.1.1.3),¹¹⁸ while John

¹¹⁴ *Quia vir reprobus*, in *Chronica*, p. 582: 'Si dicat quod iniuste, concordat utique cum constitutione praedicta quae vult quod qui sine iure utitur, utatur iniuste. Si dicat quod iuste utitur, sequitur per consequens quod et iure, quia quod iuste fit et fit iure, X. [5.40] *De verborum significatione*, c. [12] *Ius dictum*, et 14 q. 4 c. [11] *Quid dicam*.' See also X 5.40.12 (in CIC, I, col. 915) and C. 14 q. 4 c. 11 (in CIC, I, col. 738).

¹¹⁵ *Quia vir reprobus*, in *Chronica*, pp. 582-83, with reference to D. 1 c. 1 (in CIC, I, col. 1)

¹¹⁶ See Tierney, '*Ius dictum*', p. 460.

¹¹⁷ Oliger, '*Tractatus*', p. 503. See also Miethke, *Sozialphilosophie*, p. 374.

¹¹⁸ Oliger, '*Tractatus*', p. 503: 'est de iure naturali, eo quod ab exordio rationalis creature inceptit v. dist. in principio, et xxxv dist., c. sexta die, et eo quod ubique et apud omnes instinctu nature, non ex constitutione aliqua habetur, ut in Decreto, dist. 1, c. ius naturale, et eo quod natura hunc usum

XXII's preferred definition seems to have derived from Dig. 1.1.11: the equation of law with what was good and just.¹¹⁹

The equation of *ius* and *iustum* was particularly strong in *Cum inter nonnullos*, despite (or because of) the fact that the main argument was not made explicit: for John XXII, the idea of a legitimate use of material goods without the legal right to do so was an impossibility – there could be no extra-legal permission to use something, although this was the assumption on which the Franciscan ideal of the simple use of fact depended.

V.4 The Origin and Function of *dominium*

While the question of the existence and legitimacy of the simple use of fact occupied a central role in John's argument, his unease about Franciscan poverty also seems to have been founded on a very fundamental disagreement about the role and function of *dominium* in human society and the history of salvation. This is where the emphasis of the pope's argument shifted from Roman civil law to canon law.

John XXII discussed his own view of the origin and function of property in detail for the first time in the middle section of *Quia vir reprobus* as part of his more general discussion of the role and function of *dominium* in Scripture and the history of salvation. Again, this was not a completely new topic of discussion, either in legal theory or in the Franciscan debates about poverty and property, but, as in the case of consumable items, it had been brought up by only a few of the participants in the theoretical poverty controversy before, and it received a new emphasis in the treatment of John XXII. It was important because of the Franciscan claim that by renouncing civil property relationships, the order could recreate not only the community of the apostles with Christ, but also humanity's state of innocence before the fall.

The general consensus for much of the Middle Ages had followed Augustine in defining private property as a direct consequence of the fall; there

omnia animalia docuit, Instit. de iure naturali et gentium et civili, in principio, et ff. de iustitia et iure, l. 1, § ius naturale.' The text of Dig. 1.1.1.3 can be found in CICiv, I, p. 1. See also Mäkinen, *Property Rights*, p. 185.

had been no private property in the Garden of Eden.¹²⁰ The general connotations of *dominium* were therefore fairly negative, although this slowly changed from the twelfth century onwards, a process in which Thomas Aquinas played an important role. The church eventually recognised private property as legitimate within the context of the fallen state of humanity.¹²¹

Gratian's *Decretum* had stated that under natural law all things had been common to all people, and that the division of this communal use into private property relationships had been instituted by human law.¹²² This was analogous to the Roman law view which held that private property was part of the *ius gentium* rather than of natural law.¹²³ While the exact relationship between private and common use remained ambiguous in the *Decretum*,¹²⁴ Gratian's statements about property did suggest that he considered private property a less desirable state for mankind than common ownership. The problem with this was that Gratian also affirmed that natural law took precedence over positive laws and that positive laws not in accord with natural law were invalid. While he never spelled out the consequences, his statements could be taken to mean that all positive laws dealing with property, as well as the institution of private property itself, were contrary to natural law and therefore invalid. On the other hand, he gave no indication otherwise that he disapproved of contemporary property relationships. He never attempted to resolve this discrepancy, but later commentaries had to address the problem. Canonists were faced with the task of framing an acceptable theory of property that was nevertheless consistent with early church legislation as it was

¹¹⁹ The text of Dig. 1.1.11 is in CICiv, I, p. 1. See also Mäkinen, *Property Rights*, p. 173.

¹²⁰ See Coleman, 'Property and Poverty', p. 614, Töpfer, '*Status innocentiae*', p. 114 and Töpfer, '*Anschauungen*', pp. 297-98.

¹²¹ Flasch, *Einführung in die Philosophie*, pp. 119-20. See also Töpfer, '*Status innocentiae*', p. 120 on a similar development in the discussion of the origins of the state, and especially his emphasis on the significance of the term *dominium* in connection with the state of innocence.

¹²² D. 8 pr. (in CIC, I, col. 12): 'Nam iure naturae sunt omnia communia omnibus, quod non solum inter eos seruatim creditur, de quibus legitur: "Multitudinis autem credentium erat cor unum et anima una etc.", uerum etiam ex precedenti tempore a philosophis traditum inuenitur [...]' and D. 8 c. 1 (in CIC, I, col. 12): 'Iure diuino omnia sunt communia omnibus; iure uero constitutionis hoc meum, illud alterius est.' See also C. 12 q. 1 c. 2 (in CIC, I, col. 676): 'Communis enim usus omnium que sunt in hoc mundo omnibus esse hominibus debuit. Sed per iniquitatem alius hoc dixit esse suum, et alius istud, et sic inter mortales facta est diuisio.' See also Weigand, *Naturrechtslehre*, pp. 311-12.

¹²³ See McGovern, 'Private Property', p. 135.

¹²⁴ Weigand, *Naturrechtslehre*, pp. 312-13.

presented in the *Decretum*, especially because they generally accepted the prevailing property relationships as both necessary and just.¹²⁵

This problem could be addressed through an analysis of the term *ius naturale*. Gratian used the term natural law without distinguishing between its meaning of a former state of society and that of the conditions natural to all men, independent of their situation, and the meaning of the term continued to cover both concepts.¹²⁶ For the canonists, the problem was not so much historical precedent (that is, contemporary practice clashing with the precedent set by the apostles or the early church) but the implication that private property was contrary to the moral law instituted by God.¹²⁷ Both canonists and civilians tried to reconcile the *Decretum*'s insistence on the naturalness of common use with existing property relationships, and they did this by linking natural law to the ideal state of common use in the age of innocence before the fall.

The sharp difference between the praise of common use and contemporary practice was tied to a major break in the history of salvation, and there was a tendency in twelfth- and thirteenth-century legal thought to assume that private property was an immediate result of sin or a direct consequence of the fall.¹²⁸ Common use of material goods could therefore be interpreted as the 'natural', innocent state of mankind before the fall. Once this innocence had been lost, natural use was no longer feasible, and the division of property reflected the fallen state of humanity. To a certain extent, Gratian could be seen to corroborate this view, as he had argued that *per iniquitatem* people could now refer to property as theirs.¹²⁹

The idea that private property and sin were linked was a common assumption among canonists for a long time. That divine law had established a community of use was also the prevailing view of the theologians, who argued that human law added private ownership as a corrective to man's neglect of this

¹²⁵ See Brian Tierney, *Medieval Poor Law: A Sketch of Canonical Theory and its Application in England* (Berkeley: University of California Press, 1959), p. 26 and Coleman, 'Property and Poverty', p. 617.

¹²⁶ Tierney, *Poor Law*, p. 30 and Coleman, 'Property and Poverty', p. 618.

¹²⁷ Tierney, *Poor Law*, p. 28.

¹²⁸ As can be seen in the writings of Huguccio, among others: see Weigand, *Naturrechtslehre*, p. 360.

¹²⁹ See C. 12 q. 1 c. 2 (in CIC, I, col. 676).

ideal situation.¹³⁰ This view was particularly appealing to Franciscan theologians and to the Franciscan view of property which tended to assume a very pessimistic direct link between property and sin. Alexander of Hales had argued, for instance, that in the state of innocence, natural law required that all things were held in common, while after the fall it required the institution of private property.¹³¹ Another example of this can be seen in the writings of John Duns Scotus who claimed that natural law ruled out *dominium* (which was essential to private property), but that common use as practised by the Franciscans did not involve *dominium* and was therefore compatible with natural law.¹³² This did not change, either during the poverty conflict or afterwards. William of Ockham still maintained that liberty and property were natural God-given rights of humans in a post-lapsarian society,¹³³ and that *dominium* had to be human because it was logically tied to human institutions, while natural man before the fall only had the *ius utendi* which did not imply any legal form of property relationship.¹³⁴

On the other hand, Thomas Aquinas had already formulated a much more positive view of property. While he had not challenged the view that in an ideal world there would be no need or justification for a division of property, he did acknowledge that in this world private property was a necessary instrument of a good life and an orderly society. A moderate amount of possessions was both natural and just. This did not mean that private property was introduced by natural law, however, merely that it was the best organisation possible in a fallen world.¹³⁵

¹³⁰ Aquinas and Bonaventura also assumed that everything was held in common during the state of innocence before the fall: see Virpi Mäkinen, 'The Rights of the Poor: An Argument against Franciscans', in *Nordic Perspectives on Canon Law*, ed. by Mia Korpiola, Publications of the Calonius Society, 2 (Saarijärvi: Gummerus Kirjapaino Oy, 1999), pp. 41-49 (p. 44). A similar thought can be found in, for instance, Innocent IV's writings although he attributed the actual institution of property to reason, arguing that property and government were simultaneous artefacts of society. See McGovern, 'Private Property', p. 140 and John T. Gilchrist, *The Church and Economic Activity in the Middle Ages* (London: Macmillan, 1969), p. 77.

¹³¹ Tierney, 'Tuck on Rights', p. 437.

¹³² Tuck, *Natural Rights Theories*, p. 21.

¹³³ Anthony Black, *Political Thought in Europe 1250-1450* (Cambridge: Cambridge University Press, 1992), p. 31.

¹³⁴ Tuck, *Natural Rights Theories*, p. 23.

¹³⁵ See the *Summa Theologiae*, 2.2.66.1 and 2 (in *Summa Theologica complectens Secundam Secundae*, pp. 247-48). See also Coleman, 'Two Jurisdictions', p. 94, Lester K. Little, *Religious Poverty and the Profit Economy in Medieval Europe* (London: Elek, 1978), p. 176 and Johannes Hallebeek, *Quia natura nichil privatum: Aspecten van de eigendomsvraag in het werk van Thomas van Aquin (1225-1274)* (Nijmegen: Gerard Noodt Instituut, 1986), pp. A41-42.

Aquinas was not the only one with a more positive view of private property; especially within canon law, there was a tendency to view the institution of private property as much more than just a necessary evil. French glosses in particular argued that sin was not the cause of private property but only its prerequisite, and in some cases claimed that private property was established after the fall while expressly denying a causal relationship.¹³⁶ Again, this presumed that in an ideal state of society, there would be no need for a division of property, but far from associating private property simply and directly with sin, they maintained that the fall changed the way human society was organised, and that a corollary of this reorganisation was the institution of private property. Natural law in both senses was seen to apply only to the innocent, perfect state of mankind before the fall. In the world after the fall private property was inevitable, and natural law did therefore not invalidate positive laws of property. Both Azo and Accursius had argued that dominion had not been introduced by the *ius gentium*, but had derived from divine law. Both of them also used the Ten Commandments (especially the prohibition of theft) as supporting evidence that divine law did not frown upon the division of property.¹³⁷ Godfrey of Fontaines went so far as to assert that natural law was in accord with civil and canon law in accepting that all were free to alienate or sell what was their own,¹³⁸ and Giles of Rome even implied that legal property was part of the state of nature and had existed since creation.¹³⁹

In his gloss on *Cum inter nonnullos*, Jesselinus de Cassagnes followed this French line of argument when he attacked the idea that there were three ways of having: he argued that having something *quantum ad simplicem facti usum* was a novelty and absurd, that there was no foundation for claiming that Christ and the apostles only had possessions *quoad dispensationem*, and that it was definitely wrong to say that they had no dominion according to human law.¹⁴⁰ But most

¹³⁶ Weigand, *Naturrechtslehre*, p. 345 who has quoted the gloss 'Ecce vicit leo' commenting on the term *per iniquitatem* in C. 12 q. 1 c. 2: 'id est per peccatum primi hominis, id est post peccatum, et non notat istud "per" causam, immo consecutivum est, quia ius gentium tantum fuit causa appropriandi ut supra d. viii Quo iure.'

¹³⁷ Töpfer, 'Anschauungen', p. 305. See also Weigand, *Naturrechtslehre*, pp. 358-59 on a similar argument used by the *Summa Reginensis*.

¹³⁸ Joel Kaye, *Economy and Nature in the Fourteenth Century: Money, Market Exchange and the Emergence of Scientific Thought*, Cambridge Studies in Medieval Life and Thought: Fourth Series, 35 (Cambridge: Cambridge University Press, 2000), p. 113.

¹³⁹ Dawson, 'FitzRalph', p. 324.

¹⁴⁰ See his discussion of the term *declaramus* in *Cum inter nonnullos*, fols 52^{vb}-53^{vb}. See also Tabarroni, *Paupertas Christi*, pp. 105-106.

interestingly, he argued that *dominium* was not introduced because of human iniquity as the author of the *Responsiones ad oppositiones* had claimed. Jesselinus contended that in fact *dominium* conformed to divine law and had nothing to do with iniquity.¹⁴¹

A different way of addressing the contradictory tone of the *Decretum* was to concentrate on an analysis of the meaning of the term *communis*, and Johannes Teutonicus (d. 1245) argued that common use in this context really meant that all things had to be shared in times of necessity,¹⁴² an argument that was later also echoed by Godfrey of Fontaines.¹⁴³ From the 1180s onward, it became increasingly common to assume that ‘communal use’ did not refer to a permanent community of property and was taken to refer only to the responsibility of all people with possessions to help anyone in need. This was also mentioned by Huguccio and the French schools,¹⁴⁴ although Johannes Teutonicus was the first canonist to make an explicit attempt to elucidate the meaning of the term *communis* and to take this as the basis for his interpretation. The later decretists still spoke of *iniquitas* in connection with private property, but mainly in the sense that the institution of unequal property relationships was contrary to natural equity.¹⁴⁵ They did not necessarily imply a direct connection between property and sin anymore. It was only the Franciscan order who argued that the common use postulated in the *Decretum* for the state of innocence was characterised not only by the absence of private property, but also by that of common *dominium*.¹⁴⁶

¹⁴¹ Tabarroni, *Paupertas Christi*, p. 106. See Jesselinus’s discussion of *declaramus* (fol. 53^{va}): ‘Non videntur etiam recte sapere in hoc quod dicunt iura imperatorum quibus dicitur aliquid proprium fore per iniquitatem introducta adherentes cortici litterae dicti capituli dilectissimis non sensum non mentem non virtutem eius amplectentes: contra iura expresse contrarium statuentia’, and further on in the same article: ‘Non obstat dictum c. dilectissimis innuens prima facie quod per iniquitatem aliquis dicit hoc meum alius hoc suum: quia exponitur et exponi debet per iniquitatem. i. propterea quia fuit iniquitas. i. peccatum lex induxit hoc meum esse hoc alterius: non quod ipsa lex fuerit de se iniqua hoc adinueniens causa rationabili: vt quisque suo contentus non inuaderet alienum. xcij. dist. diaconi. C. de suffra. l. j. vnde vi. l. cum querebatur.’ (fol. 53^{va-b}).

¹⁴² Tierney, *Poor Law*, p. 32.

¹⁴³ See especially Quodlibet 13, question 5 (p. 223): ‘Cum ergo bona exteriora omnibus sint communia quantum ad ius utendi illis libere tempore necessitatis.’ Tellingly, he then went on to say: ‘sed extra casum necessitatis non est ita.’ The Quodlibet has been edited in J. Hoffmans, *Les Quodlibets onze-quatorze de Godefroid de Fontaines (texte inédit)*, Les Philosophes Belges: Textes et Études, 4 (Louvain: Institut Supérieur du Philosophie, 1924), pp. 222-30.

¹⁴⁴ See Weigand, *Naturrechtslehre*, p. 336.

¹⁴⁵ Weigand, *Naturrechtslehre*, p. 360.

¹⁴⁶ See Töpfer, ‘Anschauungen’, p. 298.

There were big differences in the various explanations of the origin of private property, but most of them depended on the assumption that private property would not exist in an ideal society, however necessary, appropriate and just it was in this fallen world, and however the actual property arrangements had been worked out in reality. In the course of the poverty controversy, John XXII also discussed the question of the origin of *dominium* and private property. He only turned to this problem in *Quia vir reprobus*, but in this bull, he did discuss the question of the origin and function of *dominium* in a great deal of detail.

Bonagratia had explicitly claimed in his *Tractatus* that the state of innocence precluded any possessions, and had identified this state with that of the apostles and, by implication, with that of the Franciscan order.¹⁴⁷ This argument was repeated by Michael of Cesena in much more detail in the *Appellatio in forma maiori*,¹⁴⁸ as well as more briefly in the shorter appeal where he argued that without the fall, there would have been use without any dominion for all of mankind, even in the case of consumables.¹⁴⁹ John discussed the question of the origin of dominion in several places in *Quia vir reprobus*. While some references were embedded in arguments about other things, John discussed the problem specifically and in some detail in his defence of *Ad conditorem canonum* against Michael of Cesena's criticisms.¹⁵⁰ He returned to the problem at a later stage in the bull when he specifically discussed the question of whether *dominium* was of divine or human origin, during his treatise on the role of *dominium* in the Bible.¹⁵¹

In *Quia vir reprobus*'s defence of *Ad conditorem canonum*, John XXII argued that a human origin of dominion was expressly contradicted by Scripture because God had told the first parents to govern the earth in the book of Genesis.¹⁵² This proved, according to the pope, that Adam and Eve had dominion over the earth even in the state of innocence; dominion predated the fall, and

¹⁴⁷ Oliger, 'Tractatus', pp. 506-507. See also Guy Geltner, 'Eden Regained: William of Ockham and the Franciscan Return to Paradise', *Franciscan Studies*, 59 (2001), 63-89 (p. 74).

¹⁴⁸ *Appellatio in forma maiori*, in *Chronica*, pp. 238-42.

¹⁴⁹ *Appellatio in forma minori*, in *Chronica*, p. 433: 'Sed primus homo et posterius eius, si stetisset, habuissent usum rerum usu consumptibilium sine proprietate et dominio earundem, secundum beatum Clementem, et ponitur 12 q.1 [c.2] *Dilectissimis*.'

¹⁵⁰ *Quia vir reprobus*, in *Chronica*, pp. 569-71. Guy Geltner has also discussed this part of John's response in *Quia vir reprobus*, but has failed to examine the short treatise on the origin of poverty contained in the second section of the bull: see Geltner, 'Eden Regained', pp. 77-78.

¹⁵¹ *Quia vir reprobus*, in *Chronica*, pp. 590-94.

private property was of divine origin and natural to man. He went on to pose the question of whether this referred to communal or individual property, and argued that it really amounted to a divine institution of individual property: it occurred before the creation of Eve, and therefore *dominium* was given to Adam alone. It could not have been the institution of common property for the simple reason that only one human being was alive at the time.¹⁵³ Later on in the same bull, he also made the point that for common *dominium* to exist, more than one person was needed, and that therefore Adam had to have had sole *dominium* before the creation of Eve.¹⁵⁴

The pope then backed the argument up by reference to the book of Sirach (Ecclesiasticus) where God was said to have given *dominium* over animals and birds to Adam (Sir 17:1-5),¹⁵⁵ and as Adam was the only person who could be called *dominus* at the time, he was the only person who could be said to have *dominium*, particularly as the creation of Eve was not mentioned until verse 5 of the passage.¹⁵⁶ John also argued that the *Decretum* did not invalidate this view: C. 12 q. 1 c. 2 did not claim that Adam and Eve did not have *dominium* but rather that their *dominium* was not divided.¹⁵⁷ John had already argued (in the context of the property relationships of the early Christian community in Jerusalem) that the division discussed in C. 12 q. 1 c. 2 had to be a division of *dominium* rather than

¹⁵² *Quia vir reprobus*, in *Chronica*, p. 569: 'Legitur enim Genesis 1 quod Dominus primis parentibus dixit: *Crescite et multiplicamini et replete terram et subicite eam*. Alia littera loco eius quod supra dicitur "et subicite eam" habet "et dominamini ei".' With reference to Gn 1:28.

¹⁵³ *Quia vir reprobus*, in *Chronica*, pp. 569-70: 'Et si quaeritur utrum illud dominium proprium fuerit vel commune, videtur dicendum quod si tempore benedictionis praedictae solus Adam formatus erat et non Eva, sicut ordo Scripturae sacrae evidenter innuit, cum illa benedictio fuerit data Adam extra paradisum exsistenti, Eva vero formata fuerit ipso Adam in paradisum translato, ut patet Genesis 1 et 2 capitulis, videtur quod ante formationem Evae dominium temporalium Adae proprium fuit, non commune. Commune enim quidem esse non potuit, cum solus pro tempore illo fuerit, et respectu unius, qui numquam alios socios habuit, nihil communi dici possit.'

¹⁵⁴ *Quia vir reprobus*, in *Chronica*, p. 591: 'commune dominium, cum solus esset, pro illo tempore habere non potuit, cum communio plures requirere dignoscatur.'

¹⁵⁵ See Sir 17:1-5: 'Deus creavit de terra hominem et secundum imaginem suam fecit illum et iterum convertit illum in ipsam et secundum se vestivit illum virtutem numerum dierum et tempus dedit illi et dedit illi potestatem eorum quae sunt super terram posuit timorem illius super omnem carnem et dominatus est bestiarum et volatiliu[m] creavit ex ipso adiutorium simile ipsi consilium et linguam et oculos aures et cor dedit illis excogitandi et disciplinam intellectus replevit illos.' For the pope's discussion of this, see *Quia vir reprobus*, in *Chronica*, p. 591.

¹⁵⁶ *Quia vir reprobus*, in *Chronica*, p. 570: 'Unde cum de solo Adam dicitur quod dominatus est bestiarum et volatiliu[m], sequitur quod et solus dominus fuit. Et quod Eva tunc formata non esset, quia statim post illa verba "et dominus est bestiarum et volatiliu[m]" sequitur [Eccli. 17,5]: *Creavit ex ipso adiutorium simile sibi*.' See also *Quia vir reprobus*, in *Chronica*, p. 591.

¹⁵⁷ *Quia vir reprobus*, in *Chronica*, pp. 570-71, especially p. 570: 'Nec obstat c. [2] *Dilectissimis*, in contrarium allegatum. Per illud enim concludi non potest quod primi parentes temporalium

use, and that therefore before the division, it was dominion that was common rather than use.¹⁵⁸ The pope claimed that this was supported by the fact that the same passage in the *Decretum* said that temporal things had been given to humans *ad habendum*, rather than *quoad facti usum*.¹⁵⁹

When John XXII returned to the question of the origin of *dominium* in the second section of *Quia vir reprobus*, the pope expanded his argument to include not only the state of innocence, but also biblical history. He had already discussed the property relationships of Adam before the creation of Eve and enumerated references to *dominium*, *dominus* and *dominare* in relation to Adam, and he now turned to the development of *dominium* as it appeared in the Old Testament. Implicitly the question of whether private property was a divine or human institution had already been answered by his insistence on its presence in paradise during the state of innocence, but the pope did come back to the question later on in the bull to discuss explicitly his idea that *dominium* was an institution of divine rather than human law.

He defined divine law as the law that was found in Scripture, while human law was what could be found in the laws of kings.¹⁶⁰ He reused the argument about Adam and Eve to support his theory that things could be called ‘mine’ and ‘yours’ even before there was a law of kings which meant that some form of property ownership was part of divine law even in the state of innocence. He then moved forward in history to argue that after the fall, but before the flood and before the laws of kings, God told Adam that he should eat his bread in the sweat of his face (Gn 3:19), while Abel offered a sacrifice of his flock (Gn 4:4). In both cases, he interpreted the possessive pronoun used in the Bible as implying ownership over material goods for Adam and Abel.¹⁶¹

dominium non habuerint, sed quod illud non habuerunt divisim.’ See also *Quia vir reprobus*, in *Chronica*, p. 590 where John repeated the argument.

¹⁵⁸ *Quia vir reprobus*, in *Chronica*, p. 564.

¹⁵⁹ *Quia vir reprobus*, in *Chronica*, p. 564: ‘Et hoc clarius per sequentia in eodem canone patet, ubi sequitur: “Et sicut non potest dividi aer neque splendor solis, ita nec reliqua quae communiter data sunt omnibus hominibus ad habendum.” Non dicit quoad facti usum, sed dicit ad habendum, quia usus facti haberi nullatenus potest, ut superius est probatum.’ See also Töpfer, ‘Anschauungen’, p. 300.

¹⁶⁰ *Quia vir reprobus*, in *Chronica*, p. 590 with reference to D. 8 c. 1 (in CIC, I, cols 12-13).

¹⁶¹ *Quia vir reprobus*, in *Chronica*, p. 591: ‘Item, quod post lapsum primorum parentum, ante diluvium et antequam essent reges, potuerit aliquis dicere “hoc est meum”, probatur Genesis 3, 19, ubi Dominus ad Adam dixit: *In sudore vultus tui vesceris pane tuo*. Ergo patet quod Adam tunc portuit dicere panem suum, et tamen tunc non erant reges nec homines alii nisi soli primi parentes.

After the flood, but still before the institution of the law of kings, Noah could refer to wine and vineyards as his (Gn 9:20-21), and when God promised land to Abraham's seed (Gn 12:7), the implication according to John was that Abraham's successors would be able to call the land theirs, not through an institution of human law, but as a direct gift from God.¹⁶² Again, the implication was spelled out by the pope in detail: people could say that things were theirs in the state of innocence and in the time when innocence had been lost but before the institution of the law of kings.¹⁶³

Dominium was therefore not introduced by natural law (which in the pope's definition here was the law that all sentient beings had in common), nor by the *ius gentium* nor by the *ius regum*, but directly by God as the *dominus* of his creation.¹⁶⁴ It was part of creation and existed by the will of God. What positive law introduced was a variety of ways of acquiring things and different ways of dealing with property, as well as the possibility of taking legal action in defence of one's property.¹⁶⁵ John also made a point of drawing attention to his interpretation of C. 12 q. 1 c. 2, arguing that the *iniquitas* referred to in the *Decretum* did not actually mean that the *ius gentium* was unjust, but that this solely referred to the sin of Adam and Eve. This sin had corrupted human nature so that it was now not content with communal property anymore, but wanted to own things privately.¹⁶⁶ This led to the division of common dominion, not to the institution of *dominium* itself; as the desire for individual property was part of Adam's sin, the connection between property and sin was still present in the

De Abel quoque, qui fuit secundogenitus primorum parentum, dicitur Genesis 4, 4 quod Abel obtulit de primogenitis gregis sui. Ex quo patet quod Abel potuit tunc dicere "iste grex est meus".

¹⁶² *Quia vir reprobus*, in *Chronica*, pp. 591-92: 'Item Genesis 12, 7 c. dixit Dominus ad Abraham, existentem in terra Canaan: *Semini tuo dabo terram hanc*. Quod et fecit. Constat autem quod illi de semine suo potuerunt dicere "terra ista mea"; et non per iura regum, quia eam ex collatione Dei habuerunt, non regum.' Other passages quoted by John to support his argument were Gn 26:3, Nm 31:53, Nm 35:2-3 and chapter 14 of the book of Joshua (Jos 14:1-15).

¹⁶³ *Quia vir reprobus*, in *Chronica*, p. 592 with reference to the *Decretum*: C. 23 q. 7 c. 1 (in CIC, I, col. 950).

¹⁶⁴ *Quia vir reprobus*, in *Chronica*, pp. 592-93: 'Unde patet quod nec iure naturali primaevo, si ponatur, pro illo iure quod omnibus animantibus est commune, cum illud ius nihil statuat sed inclinatur seu dirigit ad aliqua omnibus animantibus communia facienda; nec iure gentium nec iure regum seu imperatorum fuit dominium rerum temporalium introductum, sed per Deum, qui est et erat earum rerum dominus, fuit collatum primis parentibus, ut patet Genesis 1, 23-30 c.'

¹⁶⁵ *Quia vir reprobus*, in *Chronica*, p. 593 with reference to D. 8 c. 1 (in CIC, I, cols 12-13), C. 23 q. 1 c. 1 (in CIC, I, col. 890) and C. 12 q. 1 c. 2 (in CIC, I, cols 676-77).

¹⁶⁶ *Quia vir reprobus*, in *Chronica*, pp. 593-94: 'Dicimus quod hoc est falsum, quia per iniquitatem non intelligitur ius gentium, cum sit aequum, sed intelligitur peccatum primorum parentum per quod natura corrupta fuit, et post non fuit contenta communibus sed sibi propria voluit possidere.'

pope's thought, but in a much more indirect form than in the traditional accounts of the fall. *Dominium* was not the result of the fall, however, and communal *dominium* had been part of God's plan for humanity.

A small indication that he was thinking along those lines can be seen even at the very beginning of the poverty controversy: in Bertrand de la Tour's answer to the question posed by the pope in 1322 and preserved in MS Vat. lat. 3740, the pope wrote a marginal *contra* next to the cardinal's argument that the apostles had exercised a right of using without *dominium*. The pope followed this marginal comment with a quotation of the texts in Genesis in which God gave dominion over the earth to man.¹⁶⁷

The Franciscans claimed to be able to recreate the common factual use of goods characteristic of the state of innocence where there had been no private property.¹⁶⁸ John XXII not only questioned whether it was possible to live without dominion in this post-lapsarian world, he also argued that the Franciscan view of the state of innocence was wrong: *dominium* was not the result of sin, but divinely instituted and natural to man. Contemporary property relationships and laws did not represent a complete break with the state of innocence; on the contrary, they were a re-development of the divine order that had already existed in paradise.¹⁶⁹ The pope thus sidestepped the question of whether it was possible to recreate the state of innocence in this world. Instead, he focused on his argument that the state of innocence could certainly not be recreated by renouncing *dominium* because *dominium* had been part of the state of innocence. Nothing could therefore be gained from the renunciation of communal property.

V.5 The Legal Status of the Franciscan Order

A smaller, but nevertheless interesting part of John's legal discussion was his examination of the legal status of the Franciscan order in *Quia quorundam*

¹⁶⁷ See Lambert, *Franciscan Poverty*, p. 257 and Maier, 'Annotazioni autografe', p. 321 on fol. 50^{rb}: 'Contra. Genesis primo ibi: "faciamus hominem" et sequitur "ut presit" et ibi... Item ibi "ecce dedi vobis omnem turbam etc." et sequitur "ut sint vobis in escam".'

¹⁶⁸ Geltner, 'Eden Regained', pp. 70-71 has drawn attention to the fact that the first explicit link between the state of innocence and mendicant poverty had been made in the *Sacrum commercium sancti Francisci cum domina paupertate* (ca. 1227), and that Franciscan texts had not made much use of this link before the fourteenth century.

mentes, where he pointed out that the use of fact could not pertain to a community. The problem had first been brought up by Bonagratia in his *Tractatus* in the summer of 1322. He had referred to the question of corporations and legal persons when he discussed the various ways in which goods could be had at the beginning of his treatise. Bonagratia had distinguished between having something as *dominium*, having something as an administrator and having the simple use of fact. He had argued that the pope's question of whether Christ and the apostles had something in common could only refer to the first type of having something as *dominium*, as both the simple use of fact and the rights of an administrator could only pertain to individuals rather than a group, just as an *universitas* could not act as a person *in his que facti sunt*. A corporation could act as a representative of the legal claims of an individual, but it could not act for an individual in fact – in that case a concrete act by a real person was necessary.¹⁷⁰ The Franciscan simple use could (and did) pertain to several people simultaneously, but it could not pertain to them as a group. Bonagratia argued from this that the inability of a group to represent individuals in facts put the Franciscan simple use outside the scope of the papal inquiry – asking whether Christ and the apostles as a group had something according to the simple use of fact was meaningless. The pope's question could therefore only refer to the problem of whether Christ and the apostles had common dominion, and that, according to Bonagratia, was a completely different issue.¹⁷¹

The same problem was also briefly discussed in at least one of the other contributions to the poverty debate: Cardinal Bertrand de Montfavez argued that the use of fact could only pertain to individual people, not to communities, and

¹⁶⁹ See Töpfer, 'Anschauungen', p. 303 as well as Leff, 'Bible and Rights', p. 232.

¹⁷⁰ Oliger, 'Tractatus', pp. 325-26: 'Tum quia etsi detinere res de facto seu uti rebus simplicis facti usu, aut amministrare res aut dispensare, vel per modum custodie seu depositi tenere, possit competere pluribus ut singularibus, non tamen potest competere collegio sive universitati. Nam quamvis in hiis que iuris sunt, seu que spectant ad ius hereditatis, collegium et universitas vicem persone obtineant, ff. *de fideiussoribus*, l. *mortuo* et in fine, *de stipul. servorum* in principio, in hiis tamen que facti sunt, seu in quibus factum persone requiritur, sive ubi sine certa persona quid fieri non potest, non obtinet collegium vicem persone, ff. *de acquiren. re. do.*, l. *hereditas*.' See also Wittneben, *Bonagratia*, p. 127 and Horst, *Evangelische Armut und päpstliches Lehramt*, pp. 37-38.

¹⁷¹ Oliger, 'Tractatus', p. 326. See also Miethke, *Sozialphilosophie*, pp. 372-73.

that Christ and the apostles therefore could not have had a simple use of fact as a group.¹⁷²

John XXII agreed with Bonagratia and Bertrand de Montfavez: in *Quia quorundam mentes*, he argued that facts pertained to real persons, while a community could only be counted as a legal or represented person. The order, being a legal rather than real person, could therefore not perform factual acts, and the *simplex usus facti* could not be the basis of the order's life although there were certain rights that could pertain to the order as a whole, such as the *usus iuris*.¹⁷³ It was therefore impossible for the order to claim that Franciscan life and poverty was based on the *simplex usus facti*. Jürgen Miethke has argued that John's reasoning in this instance contains a fallacy: John XXII assumed that the *usus facti* could only pertain to individuals rather than groups, and he argued from this that the *usus facti* and the *usus iuris* had to be identical for the Franciscans. The pope did not, however, prove that the basis of the Franciscan way of life was a communal simple use, ignoring the possibility (implied by Bonagratia) that the *simplex usus facti* applied to all members of the order simultaneously, but not to the order as a legal entity.¹⁷⁴

The argument used by the John XXII has been attributed by Jürgen Miethke to the influence of decretalist theories and of Pope Innocent IV's notion of the *universitas* as a *nomen iuris*. The root of the problem was the question of the liability of corporations, and Innocent's theory had developed with a particular emphasis on the fact that corporations could not be excommunicated as a whole (as excommunications could only be applied to individuals), but that they could be fined and that they were liable in terms of property law.¹⁷⁵ Another possible source of the pope's argument not mentioned by Miethke may be found in John

¹⁷² Tocco, *Quistione della povertà*, pp. 117-28 (p. 124): 'Et cum dicitur quod in communi habuit usum facti, non bene dicitur; quia usus, dum ad factum reducitur, oportet de necessitate descendere ad personas singulares, et recedere a communitate ut a communitate, Dig. *Si servitus vindicetur* L. *Testatrix § plures* (Dig. VIII. 5. 20. 1) et optime Dig. *De contrahenda emptione* L. *Qui tabernas* (Dig. XVIII. 1. 32).' See also Tabarroni, *Paupertas Christi*, p. 52.

¹⁷³ *Quia quorundam mentes*, in Tarrant, *Extrauagantes*, p. 267: 'Facta quidem que singulorum sunt personam ueram exigent et requirunt; ordo autem uera persona non est sed representata et imaginaria potius est censenda. Quare que facti sunt sibi uere conuenire nequeunt, licet ei possint congruere que sunt iuris.' John repeated the argument in *Quia vir reprobus*, in *Chronica*, p. 559: 'Rursus, quia usus facti communitati non convenit, cum talis usus personam ueram requirat et exigat, quam non gerit communitas, sed potius imaginariam seu etiam repraesentatam.' See also Miethke, *Sozialphilosophie*, pp. 503-504 and Heft, *Papal Teaching Authority*, p. 73.

¹⁷⁴ Miethke, *Sozialphilosophie*, p. 504.

¹⁷⁵ See Miethke, *Sozialphilosophie*, pp. 503-504.

XXII's past: the notion of the *persona repraesentata* had been developed at the law school of Orléans where it had been used to refer to the legal personality of a community (such as a monastery or town) that existed independently from the persons who belonged to it. As a legal idea, this derived from the distinction between office and person, and although it had its origins in canon law, it was transferred and applied to civil law by Jacques de Révigny.¹⁷⁶ As the term used by John in *Quia quorundam mentes* was that of the *persona repraesentata*,¹⁷⁷ this could be one of the few instances where John's training at Orléans had a direct influence on the poverty debate in the 1320s, although the pope did not explicitly refer to Jacques de Révigny and his work.

In his commentary on *Quia quorundam mentes*, Jesselinus de Cassagnes explained that there were things which could be classed as persons in some circumstances; his examples were drawn from the Roman law of inheritance, as well as that of corporate bodies.¹⁷⁸ Jesselinus referred to the problem of the *hereditas iacens*, which in Roman law designated an inheritance while the outside heir made up his mind whether or not to accept. While the inheritance was lying dormant, it was seen as representing the person of the deceased, although some lawyers preferred to assume that it represented the person of the heir.¹⁷⁹ Jesselinus argued that factual things could not pertain to the order due to its status as a represented rather than a real person,¹⁸⁰ as well as adding some of the things that the order could do: elect superiors, make statutes or receive friars into the order.¹⁸¹ Bonagratia had also referred to the law of inheritance when he himself had

¹⁷⁶ Bezemer, 'Law School at Orléans', pp. 249-51.

¹⁷⁷ For John's use of the term *persona repraesentata*, see *Quia quorundam mentes*, in Tarrant, *Extravagantes*, p. 267 and *Quia vir reprobus*, in *Chronica*, p. 559.

¹⁷⁸ See Jesselinus's commentary on *non est* (fol. 56^{vb}): 'Cum sit nomen intellectuale carens anima: sed vice persone fungi possit dici: sicut hereditas: municipium: societas: collegium: vniuersitas. ff. de fideius. l. mortuo. insti de stipu. servorum in principio. C. depositi. l. cum hereditas,' and on *sed representata* (fol. 56^{vb}): 'Scilicet iuris dispositione: sicut hereditas iacens personam defuncti representat. ff. de noua. l. nouatio. in fi. de acqui. rerum do. l. hereditas enim. insti. de heredi. insti. l. seruus alienus.'

¹⁷⁹ See William M. Gordon, 'Succession', in *A Companion to Justinian's 'Institutes'*, ed. by Ernest Metzger (Ithaca: Cornell University Press, 1998), pp. 80-126 (p. 101) with reference to Inst. 2.14.2 (in CICiv, I, p. 20).

¹⁸⁰ See also Jesselinus's commentary on *convenire nequeunt* (fol. 56^{vb}): 'vnde vniuersitas vel collegium que facti sunt per se explicare non possunt: sed per membra sua illa explicat et explicare cogitur.'

¹⁸¹ Jesselinus on *que sunt iuris* (fol. 56^{vb}): 'ut eligere: statuta facere: aliquem in fratrem recipere: et similia. argu. xvj. q. vlti. congregatio. extra de electi. nullus. et ca. in genesi. et potestas acquirendi ea quorum ordo capax est. argu. ff. de stipula. servo. l. vsufructus. quibus mo. vsufu. amit. l. servo hereditario.'

claimed that the simple use of fact could not pertain to Christ and the apostles as a group and therefore had to apply to them individually.¹⁸²

The legal status of the Franciscan order was never more than a minor point in John's argumentation against the order; the focus of the pope's argument even in this discussion remained on the inadmissibility of the *usus facti* for the order, and the discussion of the Franciscan legal identity seems to have been mostly intended to add another argument to the pope's list of reasons why the order could not have a simple use of fact over material goods.

V.6 Conclusion

John XXII's legal discussion of the Franciscan poverty ideal centred on the question of the simple use of fact, and most of the pope's time seems to have been spent on demonstrating that the existence of the simple use of fact in the Franciscan definition was impossible. He used a wide array of different concepts and ideas from Roman civil law as well as canon law for this purpose, focusing particularly on the Roman laws of usufruct. They provided him with some of the standard arguments against assigning the simple use of fact to consumable items and the impossibility of separating dominion and use in perpetuity. The laws of usufruct also showed the legal problems created by the concept of the simple use of fact and the difficulties of integrating this idea into the system of property law created by Justinian. But the pope's unease about Franciscan poverty went deeper than just the difficulties of reconciling the simple use of fact with Roman civil law. This can be seen in the pope's assertion that there was no possibility of a legitimate, extra-legal use of material goods; it was John's view that nothing outside the law could be legitimate. His more general unease about the validity of the Franciscan ideal is also betrayed by his discussion of the origin of *dominium* in *Quia vir reprobus*.

John seems to have used the concept of the simple use of fact because it was a very convenient argument for him rather than because it was the cause of his real dissatisfaction with the Franciscan ideal. In a way, the *simplex usus facti*

¹⁸² Oligier, 'Tractatus', p. 326. See Miethke, *Sozialphilosophie*, pp. 372-73.

represented the most obvious and superficial common denominator of anti-Franciscan criticism. As a legal idea, simple use had always been controversial, and the pope could therefore be reasonably sure that there would be very little non-Franciscan opposition to a legal attack on this concept. It was relatively easy to discuss simple use on John's terms and very hard to refute his arguments, and it provided enough arguments to dismantle the Franciscan defence without getting the pope embroiled in a potentially very damaging and divisive discussion about his views on the state of innocence and the relationship between law, right(s) and justice. It was, of course, standard legal practice to focus on an opponent's weakness and to make that position untenable, and it would have been unnecessary (and maybe not even desirable) to do this to more than one issue. The Franciscan concept of the simple use of fact provided enough of a basis for John XXII to dismantle the Franciscan poverty ideal, and there was no need for him to have the debate move away from this particular discussion although this does not make the simple use the primary reason for the pope's dissatisfaction with the ideal itself.

The legal discussion was at the heart of his case against the Franciscans, partly because he was at home with the legal arguments and could therefore relatively easily discuss and discredit the legal implications of the Franciscan ideal, and partly because his alternative view of voluntary poverty and the role of *dominium* was informed by his legal thought. This does not mean, however, that his response to the Franciscan ideal was an exclusively legal one. It also does not mean that the Franciscan legal case was necessarily weaker than that of the pope. Bonagratia of Bergamo was a lawyer, and his discussion of the *peculium* of an unemancipated son provided valid examples of legally recognised exceptions to the rule that *dominium* and use could not be separated. Likewise John's use of the legal tradition of an equation of *ius* and *iustum* was not necessarily more valid than Bonagratia's arguments that the two were not identical.

There was, however, a difference in the way John and his Franciscan opponent approached the question of the legal status of Franciscan poverty; at least in his early bulls, John XXII tended to argue from legal principles rather than precedents, with no overt reference to supporting legislation. Bonagratia of Bergamo, on the other hand, used individual cases as starting points, and then argued why these were applicable to the Franciscan situation. The Franciscan

procurator's approach used the evidence of legal precedents such as the *peculium* to establish what was essentially an exception to a general rule. In the final bull *Quia vir reprobus*, the pope's argumentation became more like that of Bonagratia in his *Tractatus* and appeal: only here did the pope use direct references to, and quotations from, legal sources (especially the *Decretum* and Justinian's *Institutes*), rather than just refer to general principles against a backdrop of civil law. Even in the case of *Quia vir reprobus*, however, John's discussion remained based on an argument from legal principles rather than precedent.

The problem of the role of *dominium* within Christianity was the most important part of the pope's argumentation. The pope's concentration on dominion was not just an attempt to safeguard the possessions of the church against the criticism of the poor Franciscans;¹⁸³ even in John's discussion of the applicability of the Roman laws of usufruct to the Franciscan poverty ideal, it was the question of *dominium* that marked his most fundamental disagreement with the Franciscan order. The pope's view of *dominium* went beyond the narrowly legal interpretation of *dominium* as ownership; it was a much broader concept that encompassed legal and theological aspects and was tied to his view of the human condition. In the eyes of John XXII, property was not just a necessary evil: it derived from humanity's natural and God-given dominion that had been present since the creation of Adam. While overcoming the soul's attachment to temporalities and concentrating mind and soul on higher things were necessary to salvation, the renunciation of all forms of dominion was not only counterproductive, it was also wrong because it negated God's original plans for humanity which had always included *dominium*. Dominion was a divine institution that predated the fall, and it was part both of natural law and of human nature. The essential dignity of the human condition was tied to humanity's *dominium* over the natural world, and this was something that God had always intended for his creation. Christ therefore did not and could not renounce common dominion, and neither did he ask the apostles to do so. Renunciation of all property rights was not possible or desirable, and spiritually valuable poverty did not consist of, much less depend upon, the renunciation of *dominium*. It was this fundamental disagreement over the role of dominion in the history of salvation

¹⁸³ See especially Töpfer, 'Anschauungen', p. 304 for an example of this type of argument.

that was at the heart of John XXII's unease about the Franciscan poverty ideal, however strongly he may have disapproved of the order's ideal on theological and ecclesiological grounds, and however much he may have objected to the administrative problems the order had created during his pontificate.

Conclusion

This study has explored the range of John XXII's objections to the Franciscan ideal of the absolute poverty of Christ and the apostles, focusing on the pope's perception, rather than the historical reality, of the Franciscan order. It has investigated the series of bulls published by John which dealt with the Franciscan poverty ideal, addressing the pope's administrative, ecclesiological, theological and legal concerns.

My study has highlighted the significance of the curial and political context in which John XXII took his decisions with regard to the Franciscan order. Both the process of consultation at the curia and the political circumstances of the later 1320s informed the bulls in which the pope discussed his objections to Franciscan poverty. The investigation of the curial debate has shown how crucial the papal consultation was in the process of decision-making; not necessarily in the sense of influencing John's view of the potential problems of the Franciscan ideal, but in establishing a broad, if fairly low-key, consensus that some forms of the doctrine of the absolute poverty of Christ and the apostles could be heretical under some circumstances. While this does not necessarily mean that everyone at the curia would have agreed with the pope's final decision in *Cum inter nonnullos*, the curial debates established the fact that there would be no substantial non-Franciscan opposition to John's declaration.

The investigation into the process of decision-making has shed light not only on John XXII's approach to the Franciscan order, but also on his views of his role as pope and on the political culture of the Avignon curia. One of the interesting features that has emerged from the investigation of John's approach to the question of Franciscan poverty, as well as to the Spiritual crisis and the problem of the order of Grandmont, was his habit of insisting on examining all the available evidence in written form – this included not just his careful reading of the *consilia* on Franciscan poverty, but additionally his examination of evidence such as the Franciscan rule, and in the case of Grandmont, the statutes of the order. This may be one of the instances where his legal training and his experience as an administrator in secular and ecclesiastical government influenced at least the decision-making process, if not his final decisions.

This study has also established that the significance of John's legal training and experience should neither be over- nor underestimated: his legal training undoubtedly had an influence on his approach to the pontificate in general and to his attitude towards the Franciscans in particular, and it has been shown that his Franciscan decisions were informed to a large extent by his legal sensibilities. Particularly important in this context is the way in which the pope argued his case in his bulls; the pope's emphasis was on legal principles rather than precedent, and both this and his positive view of *dominium* do reflect the approach of the law school at Orléans, as well as his legal training more generally. John's objections to the Franciscan ideal, though influenced by his legal training, were not predetermined by his education, however, just as they were not predetermined by the fact that he did not have a degree in theology.

There are some points in the pope's handling of the Spiritual crisis which resonate both with his earlier experiences and legal training, and with his later discussion of the more theoretical aspects of Franciscan poverty. One of these is his interest in putting the order onto a 'proper' procedural footing which can be seen very directly in his handling of the Spiritual crisis, but which is also present in the later debate. It has been suggested that the Spiritual controversy was crucial in raising John's awareness of the more general problems posed by the Franciscan poverty doctrine.¹ The comparison between the pope's handling of the crisis in the order of Grandmont and his approach to the Franciscan Spirituals has been instructive here: in both cases, John XXII became involved in the affairs of a religious order because of internal tensions and moved on from this to a re-organisation of the order's constitutional affairs. John's attempts at reforming the Franciscan order's teaching on poverty can in this respect be compared to his radical changes to the Grandmontine constitution, and it is important to keep the examples of Grandmont and the pope's reform of the Hospitallers in mind when discussing John's drastic approach to the problem of the Franciscan order. The Franciscans were not alone in their experience of drastic papal intervention.²

The Spiritual crisis almost certainly drew John's attention to the property arrangements of *Exiit*, and it made the pope aware of the problems of papal

¹ See for instance Burr, *Spiritual Franciscans*, pp. 264 and 266, and Turley, 'John XXII and the Franciscans', especially p. 80.

² It has to be kept in mind, however, that the order of Grandmont at least was used to radical papal interventions, and that John's actions may therefore have been something less of a shock.

dominion over Franciscan goods, both in theory and in practice. Neither the debates of the Spiritual crisis nor any of the attempts to solve it provided an adequate forum for the discussion of papal ownership on behalf of the Franciscans or the question of whether Christ and the apostles had renounced all property rights and practised the *simplex usus facti*, however, and the pope may have decided to deal with these problems once the immediate crisis was past. The order's lifestyle depended on papal ownership of Franciscan goods, and tackling the Franciscan problem from this angle enabled John to attempt to reform the order's teachings on poverty without doctrinally contradicting *Exiit*.

One of the important issues highlighted by the Spiritual crisis was the question of the structure of the church, and the ecclesiological implications of the Franciscan ideal were a subtext to both the Spiritual crisis and the theoretical poverty controversy. The dissident Franciscans' failure to observe established hierarchical structures was one of the main reasons for John's condemnation of the Spiritual groups in both *Sancta Romana* and *Gloriosam ecclesiam*.³

It has also been shown, however, that the major part of John XXII's discussion of the ecclesiological implications of the Franciscan poverty ideal was a reaction to accusations made by his opponents; both in the Spiritual crisis and in the theoretical poverty controversy, the pope only explicitly started discussing the question of papal authority once he was accused of having gone beyond its limits. This does not mean that he was not aware of the potential problems of the Franciscan ideal for both episcopal and papal office, but John XXII seems to have tried not to get involved in a debate about episcopal status and the exact nature, extent and limits of papal authority. He seems to have been concerned mostly with defending both the decisions he made during the poverty controversy and the fact that he had the right to make these decisions. Again, this does recall his actions during the Spiritual controversy, where the pope was also concerned to establish that he had the right to act as he had done when he published *Quorundam exigit*.

This study has also drawn attention to the fact that the most explicit ecclesiological concern voiced by the pope in his Franciscan bulls has usually

³ See *Sancta Romana*, in Tarrant, *Extrauagantes*, pp. 200-21 and *Gloriosam ecclesiam*, in *Bullarium Franciscanum*, V, pp. 137-142.

been overlooked in modern scholarship.⁴ The pope expressed serious ecclesiological objections to the Franciscan ideal, or at least to the property arrangements underpinning it, and this concern revolved around the implications of papal ownership on behalf of the Franciscan order for the relationship between the papacy and the secular clergy. John XXII was clearly concerned about the rifts that could potentially be created between the papacy and the secular clergy as a result of papal dominion of Franciscan goods, and he viewed the Franciscan practice of litigating in the name of the curia as a serious problem for the church.

The ecclesiological implications of the Franciscan poverty ideal were an important subtext to the pope's relationship with the Franciscan order, but they do not seem to have been John's main issue with the order's doctrine of absolute poverty. His disagreement with this ideal cannot be traced exclusively to his experience of the Spiritual controversy, and this study has demonstrated that John's disagreement with the Franciscan poverty ideal went deeper than administrative unease over the constitutional issues raised by the Spiritual crisis. The pope's arguments betray a much deeper dissatisfaction with the legal and biblical premises of the doctrine of absolute poverty.

The analysis carried out in this study has revealed the extent of the pope's legal and theological (especially scriptural) concerns about the Franciscan poverty ideal, and it has been shown that the problem of the definition of *dominium*, the question of the *dominium* of Christ, and the role of *dominium* in the history of salvation were the main points of contention between John XXII and the Franciscan order.

The detailed discussion of the more specifically theological and spiritual arguments used by the pope in his discussion of Franciscan poverty has demonstrated that they deserve to be taken seriously. John's theological arguments were not necessarily very original, but this does not invalidate the fact that they seem to have been a major impetus behind John's unease about Franciscan poverty. Most of John's arguments rested on theological assumptions although these usually remained unspoken. An example for this is his implicit

⁴ While the pope's discussion of the problem of Franciscan litigation is mentioned in most modern studies that deal with the two versions of *Ad conditorem canonum*, few go beyond summarising the pope's argument: see for instance Nold, *John XXII and his Franciscan Cardinal*, pp. 157-58 and Miethke, *Sozialphilosophie*, p. 378.

acceptance of Aquinas's theory of the instrumentality of poverty.⁵ This was already present in his Spiritual bulls, and it was an important feature of John's discussion of the theological aspects of the Franciscan poverty ideal. In his discussion of the Spirituals, the pope emphasised the pre-eminence of obedience over poverty in the hierarchy of the instruments of perfection, while during the theoretical poverty controversy, he focused on the fact that the Franciscan renunciation of property rights had failed to remove anxiety about temporal goods from the hearts of the friars. It is characteristic of the pope's approach to this, however, that John XXII took this instrumentality for granted to such an extent that he never explicitly discussed the concept or its origins.

It also seems quite clear from the pope's marginalia that he had a keen interest in non-Franciscan definitions of the state of innocence, the spiritual value of poverty, and the question of the nature of evangelical perfection.⁶ Here, the pope mainly focused on the question of *sollicitudo* and the fact that the spiritual value of voluntary poverty manifested itself in the absence of anxiety about worldly goods. John XXII argued that experience had shown that the Franciscans were not any less anxious about material goods than orders which did not practice communal poverty, and that this also showed that the renunciation of property (rights) did not necessarily lead to perfect poverty: the sign of such perfect poverty was contempt for temporal things rather than non-ownership of material goods. In this rejection of the definition of poverty as non-ownership, the pope distanced himself from both Franciscan and non-Franciscan definitions of mendicant poverty, and his focus on the role of refraining from the use of dominion rather than on lack of ownership recalls some of the earlier Spiritual criticisms of the order's practice.

It is important to keep in mind in this context that to a degree, the pope followed Franciscan tradition in his legal expression of his spiritual concerns – one of the problems behind the theoretical poverty controversy was the fact that

⁵ While there is still scope for debate on the extent and nature of Thomist influences on John XXII and his decisions, Aquinas's thought underpinned the contributions of most non-Franciscans to the debate (including those of the pope), despite the fact that Aquinas is rarely quoted or referred to directly.

⁶ See John's marginal comments to the contributions of Durandus de Saint-Pourçain and Hervaeus Natalis, both of whose contributions also included ecclesiological discussions of Franciscan poverty which seem to have caught the pope's attention to a far lesser degree.

the Franciscan concept of the *simplex usus facti* was an attempt to express St. Francis's poverty ideal in purely legal terms.

That John's theological concerns about Franciscan poverty deserve to be taken seriously can especially be seen through an investigation of *Quia vir reprobus*. Although this is the longest and most detailed bull in which the pope presented his views on the ideal of absolute poverty, it has not been discussed very much in modern scholarship. The range and depth of John's objections to the Franciscan ideal have only become clear through an analysis of *Quia vir reprobus* where his argument was predominantly scriptural and legal.

The pope's attempt to establish temporal dominion for Christ and the apostles is the most significant aspect of his scriptural discussion and the one which modern scholars have found most puzzling.⁷ John went to great lengths to establish that Christ had temporal *dominium* and did not renounce any property rights, although it is just as significant that the other half of the pope's argument revolved around the fact that Christ did not, in fact, make use of this dominion. Within the context of the controversy, John XXII was primarily interested in the *dominium* of Christ and the apostles rather than in their poverty although it has to be kept in mind that his Franciscan bulls, and the controversial context in which they were published, were hardly an appropriate forum for a meditation on the nature of the poverty of Christ, no matter what the pope's true feelings in the matter were.

John's argument both hinged on, and was characterised by, the conflation of the two senses of *dominium* as lordship and property. This study has argued that this conflation is significant because it is a sign of the depth of the pope's disquiet about the Franciscan ideal. He was certainly capable of using the term in a very precise, technical sense when discussing Roman civil law, and the fact that in *Quia vir reprobus*, his use of the term moved between the various senses of *dominium* and often covered all of them simultaneously was not just for rhetorical effect. For the pope, dominion was much more than property or lordship, and his rejection of poverty as non-ownership was linked to this alternative view of *dominium*. Dominion was of divine origin and natural to human nature, and it was much more than just a necessary evil.

⁷ See for instance Schlageter, 'Armutsauffassung', p. 115.

This definition of *dominium* was informed by John's legal thought, and it was this legal discussion which was at the heart of his case against the Franciscans. The pope's legal unease about Franciscan poverty went a lot deeper than the difficulties of reconciling the simple use of fact with the Roman laws of usufruct. The Franciscan theory of the simple use of fact, while causing administrative and ecclesiological problems, was only a symptom of what was wrong with Franciscan poverty rather than the problem itself. The simple use of fact did provide, however, a very convenient and (among non-Franciscans) uncontroversial attacking point for the pope, once he had decided against the Franciscan ideal. It was relatively easy to discredit the basis of the Franciscan ideal by attacking the *simplex usus facti* without alienating the other mendicant orders.

Closely linked to John's alternative view of *dominium* was his opinion that nothing outside the law could be legitimate. This link between *ius* and *iustum* informed the most central part of John's legal argument and his view that *dominium* was tied to the human condition: it was a divine institution that predated the fall, and it was part of both natural law and human nature. Nothing could be gained by renouncing dominion, and such a renunciation would definitely contravene God's plans for humanity. In the words of Gordon Leff, 'lack of legal rights meant lack of justice, of which legal rights were part, and so lack of perfection of which justice was part'.⁸ Renunciation of all civil property rights, even if possible, would be unjust, and even if just, would not be necessary, as it was entirely possible to have *dominium* and be poor at the same time.⁹ Evangelical poverty was not characterised by lack of *dominium*, and the crucial point about Christ's poverty from the papal point of view was not that he did not have any *dominium*, but that he had *dominium* and chose not to use it. The fact that Christ refrained from using his rights was the distinguishing factor of his poverty and humility.

My discussion of John's bulls has thus narrowed down the source of John's dissatisfaction with the Franciscan poverty ideal from a fairly general unease about the ecclesiological, theological and legal foundations and implications of the doctrine of absolute poverty to a fundamental disagreement

⁸ Leff, 'Bible and Rights', p. 231.

⁹ See for instance *Quia vir reprobus*, in *Chronica*, p. 598.

over the nature and function of dominion. For the pope, *dominium* was natural to mankind and had been divinely instituted; it was an essential part of the human condition and part of God's plan for his creation. Renunciation of *dominium* was neither possible nor desirable, and perfect poverty had nothing to do with the renunciation of property rights. However strongly the pope may have objected to the order's ideal because of what he perceived to be its shaky scriptural foundations, dubious legal principles and resultant administrative problems, the question of the role of *dominium* in the history of salvation was at the heart of his case against the Franciscan poverty ideal.

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