



Judicial Inquiry as an Instrument of Centralized Government : The Papacy's Criminal Proceedings against Prelates in the Age of Theocracy (mid-12th to mid-14th century)

Julien Théry

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Judicial Inquiry as an Instrument of Centralized Government: The Papacy's Criminal Proceedings against Prelates in the Age of Theocracy (Mid-Twelfth to Mid-Fourteenth Century)

JULIEN THÉRY-ASTRUC*

From the end of the twelfth century until the Great Schism, the papacy prosecuted hundreds of prelates who were charged with 'crimes' (*crimina*), 'excesses' (*excessus*), or 'enormities' (*enormia, enormitates*), these words being used interchangeably in the documents. These proceedings were often called *inquisitionis negocia*. Most of them were initiated at the papal Curia and sentences were usually reserved to the pope or to a cardinal appointed by the pope. This article is based on the study of 570 cases between 1198 and 1342. It presents a general introductory survey of this judicial practice, which has never been studied before and seems curious, because, although serious and shameful charges were involved, ultimately many processes had minimal consequences for the accused. After a discussion of the sources which were used to establish the list of cases, a typology of the accusations is proposed. Finally, after a brief description of the procedures' general characteristics, the various results of the processes are discussed.

In August 1308, Pope Clement V wrote to Raymond, abbot of the small Benedictine monastery of Tourtoirac in Périgord, in southwestern France,¹ to inform him that perpetual silence (*silentium perpetuum*) had been imposed on a monk of Tourtoirac named Jean de Chanteyrac. Jean had recently approached the papal Curia, then in Languedoc, to 'appeal' against his abbot and to report 'several crimes and defects' he attributed to him.² We know nothing more about the nature of these 'crimes', which is not specified in the papal letter. Less than two years before, in 1307, Clement had already ordered an inquiry into the 'many crimes' some monks of Tourtoirac attributed to abbot Raymond's predecessor, Adémar; and it is likely that abbot Adémar was deposed as a result of this procedure.³ This time though, the outcome was different, and the process initiated before papal justice by Jean de Chanteyrac ended favorably for the abbot. In his letter to Raymond, the pope blessed him, but also instructed him to readmit Jean to the community. Admonishing Raymond to treat Jean charitably, 'as a benevolent father', the pope ordered him to restore to Jean a church (*locus*) and the barn (*grangia*) of Malmont, which Jean claimed had been unjustly taken from him.⁴

Consider now another papal inquiry, which took place half a century earlier, in Bavaria. In the spring of 1258, papal investigators were sent to Regensburg to inquire into accusations of sodomy against bishop Albert von Pietengau. Before this, a papal

* I am most grateful to Elizabeth A.R. Brown, Sean L. Field and Jonathan Sly for correcting my English at different stages of the writing of this article.

1 Archivio Segreto Vaticano [ASV], Registra Vaticana 55, fol. 152, c. 738; see the abstract in *Regestum Clementis papae quinti*, Roma 1885 – 1892, n. 3105.

2 Ibid.: *Dudum siquidem, sicut asseritur, frater Johannes de Chanteyraco, monachus tui monasterii, tibi nonnulla crimina et defectus imponens, contra te super certis articulis ad Sedem apostolicam appellavit...*

3 See the abstract in *Regestum Clementis papae quinti* (n. 1), n. 1838.

4 ASV, Registra Vaticana 55, fol. 152, c. 738: *Eidem fratri Johanni super impositione et appellatione hujusmodi perpetuum silentium duximus imponendum, volentes quod ipse ad monasterium predictum redeat sub tua, ut tenetur, obedientia moraturus, ac unacum aliis dicti monasterii monachis perpetuo Domino serviturus. Tu itaque ipsum tanquam pater benivolut caritative pertractans locum et grangiam predictam ei sine difficultate qualibet restituere non postponas.*

procedure had already inquired into the 'numerous enormities' (*multa enormia*) which the chapter and provost of his cathedral had ascribed to Albert.⁵ During this previous procedure, bishop Albert had traveled from Bavaria to the Curia to confront his denouncers in the presence of Pope Alexander IV and some cardinals. At this consistory the chapter's representatives added 'the unmentionable vice' to the 'enormities' they had previously reported against Albert.⁶ As a result, the pope not only relaunched the first inquiry into the chapter's 'articles' (of which nothing specific is known), but also ordered a separate inquiry into the charge of 'sodomy'.⁷ A year later, in 1259, bishop Albert came again to central Italy and found the Curia in Anagni. There, on 11 May,⁸ he resigned his bishopric, placing it in Pope Alexander's hands. As the papal letter puts it, Albert took this action because of 'the unquenchable hatred with which he was still regarded in his diocese for having fought the late emperor Frederick II', and also because the inquiry ordered by the pope at the chapter's demand could 'inflict serious spiritual and temporal damage on the church of Regensburg'.⁹ In return for his resignation, Albert received from the pope several canonical dignities as well as important benefices and revenues.¹⁰ And at that point all charges against him were dropped.

There are hundreds of other tales of criminal processes brought by the popes of the thirteenth and fourteenth century against prelates to be told. I have found traces of 570 cases between 1198 and 1342, beginning with the pontificate of Innocent III and ending with that of Benedict XII. All these cases have at least two features in common. First, they directly involved the pope's ordinary jurisdiction, as distinct from his delegated jurisdiction. Most of them were initiated at the papal Curia and sentences were usually reserved to the pope or to a cardinal appointed by the pope. Second, all cases involved accusations of crimes. In each of these processes, a cleric was charged with what the ecclesiastical Latin designates as 'crimes' (*crimina*), or 'excesses' (*excessus*), or 'enormities'

5 C. Rodenberg, *Epistolae saeculi XIII e regestis pontificum romanorum*, Berlin 1883 – 1894, III, n. 479, 443 – 444 (1258, April 27): *Post multa enormia cordis nostri gravissime pungitiva que procuratores Ratisponensis capituli de venerabili fratre nostro .. episcopo Ratisponensi nobis olim pluries retulerunt...* See also *ibid.*, n. 467: Albert was *constitutus* at the papal Curia in October 1257.

6 Rodenberg, *Epistolae saeculi* (n. 5), n. 479, 443 – 444: *Eo tandem in nostra et fratrum nostrorum presentia constituto, fuit propositum quod episcopus ipse de vitio nefandissimo, propter quod ira Dei venit in filios diffidentie, infectus existat et graviter diffamatus.*

7 Rodenberg, *Epistolae saeculi XIII* (n. 5), n. 478, 479, 443 – 444.

8 Rodenberg, *Epistolae saeculi XIII* (n. 5), n. 3, at 460, quoting A. Potthast, *Regesta pontificum romanorum*, Berlin 1874 – 1875 (reprint Graz 1957), n° 17567.

9 Rodenberg, *Epistolae saeculi XIII* (n. 5), no 499, at 460 – 461: *Prudenter attendens quod odia que impugnando ad mandatum Ecclesie Romane quondam Fr[idericum] olim Romanorum imperatorem incurrit adhuc in illis partibus vigeant inextinguibiliter contra ipsum et quod ipse propter hoc maxime in regimine commisse sibi Ratisponensis ecclesie pacem corporis et animi non poterat obtinere nec sibi subditis, propter eorum duritiam, ut debebat proficere ad salutem, considerans etiam quod occasione inquisitionis quam sanctissimus pater et dominus Alexander papa ad instantiam capituli Ratisponensis mandavit fieri contra eum predicta Ratisponensis ecclesia grave poterat in spiritualibus et temporalibus incurrere detrimentum ac propter hoc eligens sibi pacem et tranquillitatem quoad corpus et animum procurare, prefata odia frangere dicteque Ratisponensis ecclesie ab huiusmodi dispendiis providere, in manibus ejusdem domini pape libere dictum regimen resignavit; idemque dominus, videns ipsius episcopi laudabilem intentionem, huiusmodi resignationem admisit.*

10 *Ibid.*; and C. Bourel de la Roncière et al., *Les registres d'Alexandre IV*, Paris 1902 – 1959, n. 3014.

(*enormia*, *enormitates*).¹¹ These three words were usually used interchangeably in the documents and were virtual synonyms.¹² As the statistics given in Appendix 1 show, most of the accused were prelates, strictly speaking: 260 of the 570 cases concern bishops and archbishops, whereas 260 involve abbots or other heads of regular communities. Thus secular and regular prelates happen to be equally represented. The remaining 50 cases mainly concern canons.

I wish here to present a general introductory survey of what appears to have been a fairly routine judicial practice of the papacy in the thirteenth and fourteenth centuries.¹³ This practice has never been studied before,¹⁴ and seems curious, because, although serious and shameful charges were involved, ultimately many processes had minimal consequences for the accused. I shall begin, however, with a discussion of the sources I used to establish the list of cases, in preparing my 'habilitation' thesis on *inquisitionis negocia* against prelates.¹⁵ I will then present a brief survey of the cases before proposing

- 11 The list of these cases can be found in J. Théry, 'Excès', 'affaires d'enquête' et gouvernement de l'Église (v. 1150 – v. 1350). Les procédures de la papauté contre les prélats 'criminels': première approche, in: P. Gilli (Ed.), *La pathologie du pouvoir: vices, crimes et délits des gouvernants (Antiquité, Moyen Âge, temps modernes)*, Leiden / Boston / Tokyo 2016, 164–236. See J. Théry, *Atrocitas / enormitas*. Esquisse pour une histoire de la catégorie de 'crime énorme' du Moyen Âge à l'époque moderne, in: *Clio@Themis*. Revue en ligne d'histoire du droit 4, 2011, online: <http://www.cliothemis.com/Clio-Themis-numero-4> (last visit: 2014 January 22).
- 12 See J. Théry, 'Excès' des prélats et gouvernement de l'Église au temps de la monarchie pontificale (vers 1150 – vers 1350): 'dilapidation', 'simonie', 'incontinence', 'dissolution', in: *Annuaire de l'École des hautes études en sciences sociales. Comptes rendus des cours et conférences 2010 – 2011*, Paris 2012, 621 – 623.
- 13 See in Appendix 2 an example of the standardization of the *arenge* in papal letters dealing with these procedures at the beginning of the fourteenth century. This standardization also occurred for the *narrationes* and *conclusiones*.
- 14 It is not mentioned, for instance, in K. Pennington, *Popes and Bishops: the Papal Monarchy in the Twelfth and Thirteenth Centuries*, Philadelphia 1984. A. Paravicini Bagliani, *Il trono di Pietro. L'universalità del papato da Alessandro III a Bonifacio VIII*, Roma 1996, at 129, notes that the inquisitorial procedure set up by Innocent III in the eighth canon of the 4th Lateran Council was meant (among other things) to allow inquiries against members of the high clergy that were guilty of crimes or reluctant to reform, but does not examine the practice of these inquiries. M. Hirte and L. Kéry have studied some particular cases: see M. Hirte, *Papst Innocenz III., das IV. Lateranum Konzil und die Strafverfahren gegen Kleriker: eine registergestützte Untersuchung zur Entwicklung der Verfahrensarten zwischen 1198 und 1216*, Tübingen 2005; L. Kéry, 'De plenitudo potestatis sed non de jure'. Eine inquisitio von 1209 / 1210 gegen Abt Walter von Corbie (X 5.1.22), in: L. Kéry / D. Lohrmann / H. Müller (Eds.), 'Licet preter solitum.' Ludwig Falkenstein zum 65. Geburtstag, Aachen 1998, 91 – 117. But no approach of the whole practice as a general phenomenon has ever been proposed.
- 15 J. Théry, 'Excès' et 'affaires d'enquête': les procès criminels du Siècle apostolique contre les prélats au temps d'épanouissement de la théocratie pontificale, fin XIIe-début XIVe s., mémoire de recherche original pour l'habilitation à diriger des recherches, typescript, Université de Montpellier III, 2010. See also J. Théry, *Fama: l'opinion publique comme preuve judiciaire. Aperçu sur la révolution médiévale de l'inquisiteur (XIIe – XIV^e siècles)*, in: B. Lemesle (Ed.), *La preuve en justice de l'Antiquité à nos jours*, Rennes 2003, 119 – 147; J. Théry, *Justice inquisitoire et construction de la souveraineté: le modèle ecclésial (XIIe – XIVe s.)*. Normes, pratiques, diffusion, in: *Annuaire de l'École des hautes études en sciences sociales. Comptes rendus des cours et conférences 2004 – 2005*, Paris 2006, 593 – 594; J. Théry, *Faide nobiliaire et justice inquisitoire de la papauté à Sienne au temps des Neuf: les recollections d'une enquête de Benoît XII contre l'évêque Donosdeo de Malavolti (ASV, Collectoriae 61A et 404A)*, in: S. Lepsius / Th. Wetzstein (Eds.), *Als die Welt in die Akten kam. Prozeßschriftgut im europäischen Mittelalter*, Frankfurt 2008, 275 – 345; P. Gilli / J. Théry, *Le gouvernement pontifical et l'Italie des villes au temps de la théocratie (fin XIIe – mi-XIVe s.)*, Montpellier

a typology of the accusations. Finally, after briefly describing the procedures' general characteristics, I will discuss the various results of the processes.

It is surprising that this papal practice has not attracted previous scholarly attention, since most of the accused were more or less prominent members of the ecclesiastical hierarchy. However, the nature of the documentation and the idiosyncrasies of historical research go far to explain this. The inquisitorial procedure, which was used in most of the criminal processes against prelates, has been closely studied by legal historians such as Winfried Trusen,¹⁶ Richard Fraher¹⁷ or Pier Virginio Aimone Braidà.¹⁸ The fundamental role of Innocent III in shaping the procedure has been clearly described. But, except for Markus Hirte's work about Innocent III's proceedings against clerics, the practice in the thirteenth and fourteenth centuries has not been studied.¹⁹ Scant attention has been paid to the fact that the eighth canon of the Fourth Lateran Council, *Qualiter et quando*, which set forth the main features of the procedure, specified that the *modus inquisitionis* was designed not only for proceedings against *subditi*, but also, when necessary, for proceedings against *prelati*.²⁰ Ecclesiastical historians have discussed only scattered and isolated cases. Now and then, in the course of their studies, they have remarked how some prelates had gotten into trouble before the papal jurisdiction at some stage.²¹ Since the

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- 2010, 369 – 377 and 391 – 418; Théry, *Atrocitas / enormitas* (n. 11); Théry, 'Excès' des prélats et gouvernement de l'Église (n. 12); J. Théry, Monaldeschi, Monaldo, in: *Dizionario biografico degli Italiani*, t. 75, Roma 2011, 539 – 542; J.-P. Boudet / J. Théry, Le procès de Jean XXII contre l'archevêque d'Aix Robert de Mauvoisin (1317 – 1318): astrologie, arts prohibés et politique, in: *Jean XXII et le Midi*, Toulouse 2012, 159 – 235 (*Cahiers de Fanjeaux* 45); J. Théry, L'Église, les Capétiens et le Languedoc au temps d'Alphonse de Poitiers: autour des enquêtes pontificales sur les crimes imputés à Vézian (OFM), évêque de Rodez (1261 – 1267), in: *Annales du Midi* 282, 2013, 217 – 238; J. Théry, Non pas 'voie de vie', mais 'cause de mort par ses enormia'. L'enquête pontificale contre Niccolò Lercari, évêque de Vintimille, et sa déposition (1236 – 1244), in: *Honos alit artes. Studi per il settantesimo compleanno di Mario Ascheri*, 4 vols., Florence 2014, 4, 427 – 438; J. Théry, Luxure cléricale, gouvernement de l'Église et royauté capétienne au temps de la "Bible de saint Louis", in: *Revue Mabillon* 25, 2014, 165 – 194; Théry, 'Excès', 'affaires d'enquête' (n. 11). Most of these papers are also available online: <https://univ-montp3.academia.edu/JulienThéry> (last visit: 2015 February 09).
- 16 W. Trusen, *Der Inquisitionsprozeß: seine historischen Grundlagen und frühen Formen*, in: *ZRG Kan. Abt.* 74, 1988, 171 – 215.
- 17 R.M. Fraher, *IV Lateran's Revolution in Criminal Procedure: The Birth of 'inquisitio', the End of Ordeals and Innocent III's Vision of Ecclesiastical Politics*, in: R. J. Castillo Lara (Ed.), *Studia in honorem eminentissimi cardinalis Alphonsi M. Stickler*, Roma 1992, 97 – 111.
- 18 P.V. Aimone Braidà, *Il processo inquisitorio: inizi e sviluppi secondo i primi decretalisti*, in: *Apollinaris. Commentarius Istituti Utriusque Juris*, 67/3-4, 1994, 591 – 634; see also, for instance, L. Kéry, *Inquisitio – denunciatio – exceptio: Möglichkeiten der Verfahrenseinleitung im Dekretalenrecht*, in: *ZRG Kan. Abt.* 87, 2001, 226 – 268; and H.A. Kelly, *Inquisition, Public Fame and Confession: General Rules and English Practice*, in: M.C. Flannery / K.T. Walter (Eds.), *The Culture of Inquisition in Medieval England*, Cambridge, 2013, 8 – 29.
- 19 Hirte, *Papst Innocenz III.* (n. 14). About this book, see Th. Wetzstein, *Neues aus der Registratur?*, in: *Rechtsgeschichte* 9, 2006, 180 – 183.
- 20 X 5.1.24: *Non solum quum subditus, verum etiam quum prelatus excedit, si per clamorem et famam ad aures superioris pervenerit, non quidem a malevolis et maledicis, sed a providis et honestis, nec semel tantum, sed sepe, quod clamor innuit et diffamatio manifestat, debet coram ecclesie senioribus veritatem diligentius perscrutari, ut, si rei poposcerit qualitas, canonica districtio culpam feriat delinquentis.*
- 21 See, for instance, L.-S. Le Nain de Tillemont, *Vie de saint Louis*, ed. J. De Gaulle, t. IV, Paris 1848, at 401 – 404, about the case of Raimon du Fauga, bishop of Toulouse (1264 – 1267); C.M. Fraser, *A History of Antony Bek, Bishop of Durham, 1283 – 1311*, Oxford 1957, at 153 – 175, about the case of Richard

charges involved such 'enormities' (*enormitates*) as homicide, sexual misconduct (*incontinentia*), or simony, scholars encountering such cases have generally passed over them, considering the accusations extravagant, excessive, and even embarrassing, and thus treating them anecdotally. But the chief reason for scholars' neglect of the cases is the nature of the sources, which are widely scattered around numerous repositories. No archival concentration of material can directly suggest the nearly routine character of these processes. At least 90 % of the documentation is found in the copies of papal letters contained in the *Registra Vaticana* and the *Registra Avinionensia* at the Archivio Segreto Vaticano. But in these papal registers, the relevant letters are dispersed among thousands of others. One has to specifically look for letters dealing with 'criminal' proceedings against prelates, as I did, to discover what appears to be a definite series of cases.

In many letters, one, two, or three papal judges, especially appointed, are ordered to inquire *in partibus*, that is, in the city and diocese where the suspect prelate is said to be 'defamed' (*diffamatus, infamatus*) for having committed the crimes.²² These papal inquisitors (as they are also called) were commanded to send to the Curia the results of their inquiry in the form of authentic copies of witnesses' depositions. In addition, they were often required to summon the 'defamed' prelate to appear before the pope to respond to the charges and the evidence collected during the investigation, and to 'receive what justice will suggest' (*recepturus quod iusticia suadebit*). Less commonly, other letters cast light on various aspects of the procedures or on other details of the affairs.²³ In many cases, the *narrationes* present useful summaries of the steps that have already been taken, including possible oral preliminary phases of *inquisitio fame* (that is, an investigation into the extent of popular knowledge of the crimes). This information often permits more or less precise reconstruction of the stages of the proceedings, even when few documents survive.

Hoton, prior of Durham (1306 – 1308); A. Debat, Vivian: un évêque de Rodez vindicatif et contesté (1247 – 1274), in: *Revue du Rouergue*, nouv. sér. 11, 1987, 275 – 310, at 301 – 305, about the case of Vézian, bishop of Rodez (1261 – 1267); J.H. Mundy, Des hommes et des femmes: le procès de Pierre de Dalbs, ab. de Lézat, in: *Médiévales* 12, 1987, 85 – 99, about the case of Peire de Dalbs, abbot of Lézat; V. Polonio, Frati in cattedra. I primi vescovi mendicanti in ambito ligure (1244 – 1330), in: *Legislazione e società nell'Italia medievale. Per il VII centenario degli statuti di Albenga* (1288), Bordighera 1990, 459 – 501, at 468 – 472 (Collana storico-archeologica della Liguria occidentale 25), about the case of Niccolò Lercari, bishop of Ventimiglia (1236 – 1244), et cetera.

- 22 See, among dozens of possible examples, O. Hageneder / A. Haidacher, *Die Register Innocenz' III.*, 1. Pontifikatsjahr, 1198 / 1199, Graz / Köln 1964, n. 231, at 329 – 331 (inquiry against Jean de Saint-Vallier, bishop of Angoulême, 1198), and n. 329, at 477 – 480 (against Giusto, bishop of Oristano); Rodenberg, *Epistolae saeculi XIII* (n. 5), t. I, n. 90, at 65 (against Robert, bishop of Olmütz); L. Auvray, *Les registres de Grégoire IX*, Paris 1896 / 1955, n. 1013 (against the archbishop of Crete, 1232), 1017, 2062 (against the bishop of Laon, 1233 and 1234); É. Berger, *Les registres d'Innocent IV* (1243 – 1254), Paris 1884 / 1921, n. 57 (against the bishop of Byblus, 1243), 1101 (against Rüdiger von Bergheim, bishop of Passau, 1245), 7259 (against the bishop of Squillace, 1253), et cetera.
- 23 For instance, some letters deal with the expenses of the papal commissioners. See C.A. Horoy, *Honorii III Romani pontificis opera omnia*, Paris 1879 – 1882, t. IV, n. 31, c. 718 – 719 (expenses for an inquiry against the abbot of Saint-Symphorien of Beauvais, 1224); E. Sáinz Ripa, *La documentación pontificia de Gregorio IX* (1227 – 1241), Roma 2001, at 368, n. 287 (expenses for an inquiry against Guilhem of Taveret, archbishop of Vic, 1232); *Regestum Clementis papae quinti* (n. 1), n. 9562 (expenses for an inquiry against the abbot of Saint-Victor of Marseille, 1313), et cetera.

In rare cases, documents other than papal letters have been preserved. Depositions of witnesses from the *inquisitiones in partibus* have sometimes survived. In my doctoral dissertation, I analyzed the testimony concerning bishop Bernard de Castanet's alleged crimes that 114 witnesses from Albi gave to papal commissioners in 1308.²⁴ In the case of the archbishop of Aix-en-Provence, Robert de Mauvoisin, in 1317 – 1318, witnesses came to Avignon to testify before papal judges, and the records also include the answers of Robert himself.²⁵ Just as in the case of bishop of Cahors, Hugues Géraud, in 1317, a deposition of Robert before Pope John XXII himself has also survived.²⁶ Summaries (*recollectiones*) of testimonies against the bishop of Siena Donosdeo dei Malavolti, who was accused of embezzlement in 1338, were made at the Curia from the records of the hearings *in partibus*, to assist Pope Benedict XII or his appointed cardinal or auditor in evaluating the evidence.²⁷ A different and very interesting summary report has survived from the case of the archbishop of Trier, Heinrich of Vistingen, who was charged with many *enormia* from 1261 until 1272. This long document, which was apparently named *Declaratorie* (though this name might have been chosen by its editors in the eighteenth century), was prepared at the Curia for Pope Clement IV.²⁸ It included copies of papal letters and of other official acts, but also lengthy comments, with legal analyses, and concluded with a statement to the pope advising how he should bring the case to an end.

Finally, other types of documents can be found in local archives. Accounts of papal inquisitors' accommodation and expenses are sometimes preserved, since these expenses

24 These depositions are kept at the Vatican Archives in register 404 of the Collectorie series. See J. Théry, *Fama, enormia. L'enquête sur les crimes de l'évêque d'Albi Bernard de Castanet (1307 – 1308)*. Gouvernement et contestation au temps de la théocratie pontificale et de l'hérésie des bons hommes, typescript, Université Lumière – Lyon 2, décembre 2003, to be published by the École des chartes in the 'Mémoires et documents' series (see the abstracts in: *Revue Mabillon*, n. s., 15, 2004, 277 – 279, and in: *Heresis* 40, 2004, 192 – 197). See also J. Théry, *Les Albigeois et la procédure inquisitoire: le procès pontifical contre Bernard de Castanet, évêque d'Albi et inquisiteur (1307 – 1308)*, in: *Heresis* 33, 2000, 7 – 48; J. Théry, *Une politique de la terreur. L'évêque d'Albi Bernard de Castanet (v. 1240 – 1317) et l'Inquisition*, in: L. Albaret (Ed.), *Les inquisiteurs. Portraits de défenseurs de la foi en Languedoc (XIIIe – XIVe siècles)*, Toulouse 2001, 71 – 87; Théry, *Fama: l'opinion publique comme preuve judiciaire* (n. 15). These three articles are also available online: <https://univ-montp3.academia.edu/JulienThéry> (last visit : 2014 January 22).

25 ASV, Coll. 17. See the edition in J. Shatzmiller, *Justice et injustice au début du XIVe siècle: l'enquête sur l'archevêque d'Aix et sa renonciation en 1318*, Roma 1999, 167 – 296; and in Boudet / Théry, *Le procès de Jean XXII contre l'archevêque d'Aix* (n. 15).

26 ASV, Coll. 493 ; see E. Albe, *Autour de Jean XXII: Hugues Géraud, évêque de Cahors. L'affaire des poisons et des envoûtements en 1317*, in: *Bulletin trimestriel de la Société des études littéraires, scientifiques et artistiques du Lot*, 29, 1904, 5 – 206; L. Kern, *Autour du procès d'Hugues Géraud, évêque de Cahors*, in: *Revue d'histoire ecclésiastique suisse* 1938, 1 – 19; J. Shatzmiller, *Justice et injustice au début du XIVe siècle* (n. 25), 174 – 181.

27 These summaries are also kept in the Collectorie series, n. 61A and 404A. See Théry, *Faide nobiliaire et justice inquisitoire de la papauté à Sienne* (n. 15), with photos and partial edition of the *recollectiones*.

28 E. Martène / U. Durand, *Veterum scriptorum et monumentorum historicorum, dogmaticorum, moralium, amplissima collectio*, Paris 1724 – 1733, t. IV, c. 458 – 504. The manuscript, which may still be preserved in the *fondo Ottoboni* of the Biblioteca Apostolica Vaticana, was copied by Jean Mabillon during his stay in Rome; Martène and Durand then printed Mabillon's copy.

had to be paid from the episcopal or abbatial *mensa*.²⁹ One unusual piece, preserved in the archives of Brindisi, is a medical certificate drawn up in 1273 for archbishop Peregrino, who was alleged to have been too ill to respond to a summons by Gregory X to appear at the Curia after canons of his cathedral had denounced his *enormia*.³⁰

There are two further observations to make concerning the cases. Firstly, the list of 570 cases that I have established is not exhaustive. It contains nearly all cases recorded in the papal registers from the pontificate of Innocent III through that of Clement V, but I have not yet carried out a systematic study of later registers. Furthermore, although I have not included them in my survey, a few comparable inquiries were held earlier, in the twelfth century, especially during and after the pontificate of Alexander III (1159 – 1181). These earlier procedures deserve close study. Their legal *ordo* had not yet become what it would evolve into from the beginning of the thirteenth century onwards.

Secondly, some cases, with no traces in the papal registers, are known only through documents preserved in local archives,³¹ far from the Vatican. Evidently, there must be other proceedings for which no evidence survives. Thus, statistics based on the list of cases can give only orders of magnitude.

The body of cases that I have established shows that the papacy launched criminal processes against prelates throughout Christendom. Some regions attracted more attention than others: central and northern Italy (17,5 % of the cases), Languedoc (16,5 %), France north of Languedoc (about 16,3 %), the Empire (14,4 %), and southern Italy (14 %). Further, some popes launched more processes than others. 110 cases are found for Innocent III's pontificate (1198 – 1216), 81 under Honorius III (1216 – 1227), 62 under Boniface VIII (1294 – 1303), 52 under Gregory IX (1227 – 1241), only nine cases under Martin IV (1281 – 1285) and under Honorius IV (1285 – 1287), three under Gregory X (1271 – 1276) and one under John XXI (1276 – 1277). But if account is taken of the duration of the pontificates, Innocent III is found to have initiated approximately 5.9 new processes each year, Honorius III some 7.6, Urban IV (1261 – 1264) some 6.2, Nicolas IV (1288 – 1292) approximately 6.1, Boniface VIII 7.1, and Benedict XI (1303 – 1304) some 17.4. The elevated figure for Benedict XI probably results at least partly from his having seen to completion proceedings whose origins are undocumented but were in fact initiated under Boniface VIII or one of his predecessors.

As for the charges against the prelates, it is difficult to be statistically precise, since often the exact nature of the *excessus* is not described, or the prelate is said to have committed *alia enormia* in addition to the specific crimes enumerated. Still, the most frequent

29 For example, a receipt delivered by a papal inquisitor who came to Rodez for an inquiry against the bishop of Rodez Vézian (Archives Départementales du Cher, G1, at 456 – 457, 1264), or an acknowledgement of a debt by the proctor of the episcopal *mensa* in Albi, related to the inquiry against the local bishop Bernard of Castanet (1308), found in Paris, BN, Collection Doat, t. 108, fol. 180v-183 (see the abstract in C. Devic / J.-J. Vaissète, *Histoire générale du Languedoc*, ed. A. Molinier, t. V, Toulouse 1875, c. 1363, n. clxxxviii).

30 A. De Leo, *Codice diplomatico brindisino*. Volume primo (492 – 1299), Bari 1977, n. 88, at 169 – 172; Gilli / Théry, *Le gouvernement pontifical et l'Italie des villes* (n. 15), at 399 – 410, also online: <https://univ-montp3.academia.edu/JulienThéry> (last visit : 2014 January 22).

31 One example is the proceeding against Peregrino, the archbishop of Brindisi (see above, n. 30).

charges by far are *dilapidatio* (mismanagement of ecclesiastical temporalities), simony and sexual misconduct.

The accusation of *dilapidatio*, novel in the thirteenth century, appears in more than half of the proceedings, whereas simony and sexual misconduct, which had already been frequent accusations in the Gregorian and post-Gregorian periods, appear in, respectively, more than a third and a quarter of the cases. The importance assumed by *dilapidatio* doubtless reflects the papacy's increased ambition to control the administration of ecclesiastical temporalities throughout the West.³²

The interpretation of the charges always requires detailed knowledge of the contexts and is usually rather difficult.³³ The accusations were very often at least partly made up, either by local opponents or by the papacy itself. For instance, it seems very likely that Jean de Chanteyrac denounced abbot Raymond of Tourtoirac's 'crimes' simply because Raymond had seized Jean's priory. And there can be no doubt that some enemies of the bishop of Regensburg who were related to the imperial party contrived the charges of sodomy that were laid against him. On the other hand, in some cases, the charges seem to have been at least partly true. As to the accusations against the archbishop Robert of Mauvoisin of Aix-en-Provence, for instance, at least one of them, employing a Jewish astrologer, is substantiated by the depositions of witnesses and by his own confession.³⁴ Furthermore, it seems that one charge very often led to another. For instance, the dynamics of accusation clearly connected the prelate's personal behavior, his 'government of himself', to his government of others. Thus, a philandering bishop might need money to support his illegitimate children, which is why he would embezzle or squander his church's temporalities or require rewards for the attribution of ecclesiastical benefices.

The new inquisitorial procedure set up by Innocent III surely had a major role in producing the series of ensuing proceedings. Indeed, it seems unlikely that the morals of thirteenth- and fourteenth-century prelates were radically different from those of their twelfth-century predecessors; nonetheless, they were prosecuted much more often. In this respect, the key procedural notion was *fama*, that is, reputation and public knowledge or report.³⁵ Innocent III clearly designed the new *modus inquisitionis* to permit lower clergy to trigger prosecutions against prelates by denouncing their misbehavior before papal justice.³⁶ The procedure allowed a superior judge, in this case the pope, to prosecute anyone on the basis of *diffamatio* (or *infamia* or *infamatio*) alone, without any formal accusation being made. The prosecution was thus initiated *quasi deferente fama*

32 See Théry, 'Excès' des prélats et gouvernement de l'Église (n. 12).

33 See, for example, Théry, Les Albigeois et la procédure inquisitoire (n. 24); Théry, L'Église, les Capétiens et le Languedoc au temps d'Alphonse de Poitiers (n. 15).

34 Shatzmiller, Justice et injustice au début du XIV^e siècle (n. 25); Boudet / Théry, Le procès de Jean XXII contre l'archevêque d'Aix (n. 15).

35 See Théry, Fama: l'opinion publique comme preuve judiciaire (n. 15); Théry, Faide nobiliaire et justice inquisitoire de la papauté à Sienne (n. 15); A. Fiori, 'Quasi fama denunciante'. Note sull'introduzione del processo tra rito accusatorio e inquisitorio, in: O. Condorelli et alii (Ed.), Der Einfluss der Kanonistik auf die europäische Rechtskultur. vol. 3: Straf- und Strafprozessrecht, Köln / Weimar / Vienna 2012, 351 – 367.

36 This was hardly ever possible before, with the *accusatio* system. See R. Knox, Accusing Higher Up, in: ZRG Kan. Abt. 77, 1991, 1 – 31.

vel denunciante clamore, 'as if *fama* had made a complaint or public outcry had made a denunciation', as stated in the canon *Qualiter et quando*.

This procedure enabled the papacy to exercise an impressive amount of control over all levels of the clergy and over local ecclesiastical government throughout Christendom. Early in the thirteenth century, the traditional procedure by denunciation merged with the inquisitorial procedure *infamia precedente*.³⁷ Before resorting to papal justice, monks or canons had to issue three successive warnings to their abbot or bishop, a procedure known as *tria monitio*, derived from the scriptural passage Matt. 18, 15. If the prelate did not change his conduct, the denouncers could resort to the *itineris arreptio*: they could leave their cathedral or monastery to approach the Curia in person and present charges. At the Curia such petitions are likely to have been presented first to papal chaplains or auditors of the Sacred Palace. But there does not appear to have been any clear and well-defined procedure to deal with these 'criminal' *diffamationes* against prelates. Once the *articuli* reached the pope, he had to decide whether or not to appoint a cardinal or auditor to examine the denunciation. The *articuli* attributed the charges to *fama*. Rather than presenting the accusations in their own names and thus taking the risk of retaliation if they failed to prove their case, as was the rule in the accusatorial procedure, the monks and canons who were denouncing their superiors only presented themselves as the mouthpiece of *infamia*.

The pope or his cardinal or auditor then freely decided what action to take. *Silentium perpetuum* might be imposed on the denouncers. Alternatively, they might be permitted to present their charges in their own names, in other words to 'accuse', starting a traditional procedure of *accusatio*, and if they decided to do so, then they would have the burden of proof; in case of failure, they might face the same punishment as the accused if their accusation had proven successful. Another possibility was that an *inquisitio cum promovente* might be launched, in which the denouncers would be associated with the inquisitors in the investigation. The pope could also launch an *inquisitio ex officio*, in which the denouncer's identity would be concealed.

In any case, the 'defamed' prelates were permitted to defend themselves, as the canon *Qualiter and quando* required.³⁸ Such defense generally took the shape of *exceptiones*, which were treated as separate processes and often involved the hearing of witnesses.³⁹ *Exceptiones* could be raised, for instance, if the prelate claimed he had not been summoned according to the rules of canon law before the beginning of the inquiry *in partibus*, or if he claimed that some of the witnesses were his personal enemies. These claims would

37 See mainly P. Bellini, *Denunciatio evangelica e denunciatio iudicialis privata: un capitolo di storia disciplinare della Chiesa*, Milano 1986; L. Kéry, *Inquisitio – denunciatio – exceptio* (n. 18); A. Koch, *Denunciatio. Zur Geschichte eines strafprozessualen Rechtsinstituts*, Frankfurt 2006.

38 X 5.1.24: *Debet igitur esse presens is, contra quem facienda est inquisitio, nisi se per contumaciam absentaverit, et exponenda sunt ei illa capitula de quibus fuerit inquirendum, ut facultatem habeat defendendi se ipsum. Et non solum dicta, sed etiam nomina ipsa testium sunt ei, ut quid et a quo sit dictum appareat, publicanda, nec non exceptiones et replicationes legitime admittende, ne per suppressionem nominum infamandi, per exceptionum vero exclusionem deponendi falsum audacia prebeat.*

39 See, for instance, G. Dolezalek, *Reus in exceptione actor est, et probare debet quod excipitur*, in: J. E. Spruit / M. van de Vrugt (Eds.), *Brocardica in honorem G.C.J.J. van den Bergh*, Deventer 1987, 27 – 30.

have to be proven, generally by testimony. Another common means of defense was to appeal to the pope against action taken by his commissioners. One possible motive for appeal was that the *infamia* had not been proven before the *inquisitio veritatis* was started. But the commissioners often rejected such appeals as 'frivolous', just as they did for many *exceptiones*.⁴⁰

Significant procedural changes occurred during the thirteenth century. After Honorius III's decretal *Licet dilectus* had admitted *testes reprobatorii* and *reprobatorii reprobatoriorum*,⁴¹ and especially from the pontificate of Alexander IV onward, popes more frequently planned this admission from the start, without waiting for a possible exception or appeal. Witnesses would be heard, chosen by the 'diffamed' bishop or abbot, to testify that the witnesses who had testified against him were his enemies or were unreliable for one reason or another. In this case, yet another hearing had to then be included in the procedure to challenge the testimony of these *testes reprobatorii*...⁴² Some modifications may have occurred with the rise of summary procedure (*de plano, sine strepitu et figura iudicii*) from the second half of the thirteenth century on.⁴³ In addition, with two decrees of the *Liber sextus* (1298), Boniface VIII denied the invalidation of the procedure on the grounds that the judge had omitted to prove the existence of an *infamia* before inquiring about the facts, if the accused had spontaneously confessed the crimes or if he had neglected to appeal against the omission of proof of *diffamatio*.⁴⁴ But it remains to be seen if in practice, these changes significantly restricted the possibilities open to defendant prelates.

To conclude, I wish to provide a brief description of the various outcomes of the proceedings. Some *inquisitionis negocia* ended with the accused prelates losing their offices. In the case of bishops and archbishops⁴⁵ this was rare enough, but it was much less un-

40 See, for instance, PL 216, c. 652 (proceedings against Robert, bishop of Waterford, 1212); and J. Guiraud / S. Clémencet, Les registres d'Urbain IV, Paris 1901 – 1958, n. 2970 (proceedings against Vézian, bishop of Rodez, 1263).

41 X 2.20.49. See Y. Mausen, Veritatis adjutor. La procédure du témoignage dans le droit savant et la pratique française (XIIe – XIV^e siècles), Milano 2006, 392 – 394.

42 See, for instance, E. Jordan, Les registres de Clément IV (1265 – 1268): recueil des bulles de ce pape, Paris 1894 – 1945, n. 389 (proceedings against Raimon du Fauga, bishop of Toulouse, 1266); J. Gay / S. Vitte-Clémencet, Les registres de Nicolas III (1277 – 1280), Paris 1898 – 1938, n. 628 (proceedings against Guillaume of Châtillon, bishop-elect of Laon); G. Digard et al., Les registres de Boniface VIII, Paris 1907 – 1939, n. 4269 (proceedings against Bernard Saisset, bishop of Pamiers, 1302).

43 See Ch. Lefebvre, Les origines romaines de la procédure sommaire aux XIIe et XIIIe siècles, in: Ephemerides iuris canonici 12, 1956, 149 – 197; D. Müller, Die Entstehung des summarischen Verfahrens im Strafrecht des Mittelalters, in: H. Schlosser / D. Willoweit (Eds.), Neue Wege strafrechtsgeschichtlicher Forschung, Köln / Weimar / Wien 1999, 299 – 311; O. Descamps, Aux origines de la procédure sommaire: remarques sur la constitution 'Saepe contingit' (Clem. V, 11, 2), in: O. Condorelli et alii (Eds.), Der Einfluss der Kanonistik auf die europäische Rechtskultur, vol. 4: Prozessrecht, Köln / Weimar / Vienna 2014, 45 – 64.

44 VI 5.1.1 (*Postquam*) and VI 5.1.2 (*Si is*). See Kelly, Inquisition, Public Fame and Confession (n. 18).

45 See PL 216, c. 169 – 170 (deposition of Maheu, bishop of Toul, 1210), c. 651 (deposition of Oberto, bishop of Vicenza, 1212); Sáinz Ripa, La documentación pontificia de Gregorio IX (n. 23), n. 320, at 392 (resignation of Guilhem of Tavertet, bishop of Vic, 1233); Berger, Les registres d'Innocent IV (n. 22), n. 584; and Théry, Non pas 'voie de vie' (n. 15), about the deposition of Niccolò Lercari, bishop of Ventimiglia (1244), etc.

common in that of abbots.⁴⁶ Secular prelates were in some instances required to undergo canonical purgation if the investigation was fruitless, in order to put a formal end to the initial *diffamatio* which had justified the opening of the procedure.⁴⁷ It was the pope who decided how the purgation would be performed, that is, where it would take place, and the number and statuses of the compurgators.⁴⁸

In most cases, there is no surviving document to verify precisely how and why proceedings ended. One possible source is Eubel's *Hierarchia catholica*, where we often see that 'diffamed' prelates remained in charge for many years after the beginning of the procedure, until death or promotion to another see. It seems clear that many *inquisitionis negocia* were abandoned by the papacy before any formal decision was reached. Sometimes the 'diffamed' prelate petitioned for *restitutio fame*, restitution of his good name and reputation. The bishop of Albi succeeded in his petition in 1308, and Clement V admitted in his letter of *restitutio* that the canons of Albi had denounced their bishop *minus veraciter*, that is to say, falsely.⁴⁹

In many cases, the real problem that had led to the accusations was resolved without any apparent connection to the proceedings. As I showed earlier, the bishop of Regensburg reached an agreement with the pope and resigned, as the inquiry about his alleged crime of sodomy and other *enormia* had been abandoned. In many instances, the accused prelate may have changed his behavior or political position or whatever had displeased the pope. In these cases the criminal proceedings served to put the prelate on notice; so too did suspension from office, which often occurred during the *negocia*. Proceedings usually lasted a long time, at least a few years. After archbishop Monaldo of Benevento had been accused of murdering a canon of his cathedral, among other crimes, in 1303, his case dragged on for twenty-eight years until, in 1331, John XXII finally ordered him to perform canonical compurgation. But Monaldo died on his way from Avignon before reaching Benevento, where the pope had sent him to find compurgators with enough knowledge of the case to swear his innocence.⁵⁰

Thus we not only find here the blend of negotiated and hegemonic justice that Mario Sbriccoli has ascribed to thirteenth- and fourteenth-century secular jurisdictions,⁵¹

46 See, for instance, the case of Matteo, abbot of San Lorenzo d'Aversa, who was deposed between 1218 and 1222 (P. Pressuti, *Regesta Honorii papae III*, 2 vol, Roma 1888 – 1895, n. 4008), and Henri, abbot of Gembloux, who was deposed before 1234, according to a letter edited by Auvray, *Les registres de Grégoire IX* (n. 22), n. 1766.

47 On canonical compurgation, see A. Fiori, *Il giuramento di innocenza nel processo canonico medievale. Storia e disciplina della purgatio canonica*, Frankfurt 2013.

48 See, for instance, the compurgations imposed to Walter Langton, the bishop of Coventry and Lichfield, in 1303 (T. Rymer, *Foedera, conventiones, literae et cujuscumque generis acta publica inter reges Angliae et alios*, London, 1816 – 1830, t. II, at 956 – 957) and to the archbishop of Benevento, Monaldo dei Monaldeschi, in 1331 (ASV, *Registra Avinionensia* 38, fol. 102, ep. Mccccxxiii; and *Registra Vaticana* 99, fol. 178 – 179, ep. 1424); G. Mollat, *Jean XXII. Lettres communes*, Paris 1904 – 1946, n. 54329; Théry, *Monaldeschi*, Monaldo (n. 15).

49 ASV, *Registra Vaticana* 55, cap. 540, fol. 105v-106; *Regestum Clementis papae quinti* (n. 1), n. 2893.

50 See Théry, *Monaldeschi*, Monaldo (n. 15).

51 M. Sbriccoli, *Justice négociée, justice hégémonique: l'émergence du pénal public dans les villes italiennes des XIII^e et XIV^e siècles*, in: A. Zorzi et al. (Eds.), *Pratiques sociales et politiques judiciaires dans les villes de*

we find more: that the papacy, in the age of theocracy, clearly used criminal inquiries as a means of control over the ecclesiastical hierarchy and, ultimately, as an instrument of centralized government.

l'Occident à la fin du Moyen Âge, Roma 2007, 389 – 421.

Appendix 1

Statutes of the Accused

	Number of cases	% of all accused	% of prelates (strictly speaking)	Nb (reg. / sec. prelates)	% (reg. / sec. prelates)
Cardinal	1	0.18	0.19	260	50
Archbishops	52	9.12	10		
Bishops	207	36.32	39.81		
Master of the Hospitallers	1	0.18	0.19	260	50
Preceptor of the Teutonics	1	0.18	0.19		
General ministers OFM	2	0.35	0.38		
Genl master of the order of Crusaders	1	0.18	0.19		
Prior of the order of Grandmont	1	0.18	0.19		
Provost of the order of Augustines	1	0.18	0.19		
Provincial minister OP	1	0.18	0.19		
Abbot of the order of Vallombrosa	1	38.95	42.69		
Abbots ¹	220				
Archimandrite	1				
Regular priors	21	3.68	4.04		
Regular provosts	6	1.05	1.15		
Regular dean	1	0.18	0.19		
Franciscan inquisitors	2	0.35	0.38		

Knight of the order of Calatrava	1	0.18			
Chancellor ²	1	0.18			
Archdeacons ²	8	1.4			
Provosts ²	5	0.88			
Master of theology	1	0.18			
Deans ²	2	0.35			
Chanters ³	5	0.88			
Sacristans ²	1	0.18			
Scholar ²	1	0.18			
Canons ²	17	2.98			
<i>Plebani</i> ⁴	4	0.7			
Parish priest	1	0.18			
Pontifical <i>scriptores</i>	3	0.53			
Total	570	100	100	520	100
Table Footnotes ¹ Among which 10 abbesses. ² Secular or regular status non established. ³ Among which one papal chaplain. ⁴ Among which one former regular cleric passed to secular state.					

Appendix 2

The Standardization of Papal Letters for Procedures against Prelates
(an Example)

Boniface VIII's letter of inquiry
against Walter Langton, b. of Co-
ventry and Lichfield (6/02/1301)

Grave nimis non immerito gerimus et molestum quamplurimum redditur votis nostris cum ecclesiarum prelati, qui ex debito pastoralis officii laudabilium actionum exemplum tenentur ceteris exhibere, per abrupta viciorum incedere ausu dampnabili presumentes nephandis actibus, relaxatis habenis, ea committere non verentur per que divina majestas offenditur, fame derogatur ipsorum, saluti detrahitur, mentesque fidelium gravi scandalo perturbantur. Quamobrem dignis motibus ducimur et rationabilibus studiis excitamur quod ad corrigendos seu puniendos prout jus exigit prelatorum ipsorum excessus hujusmodi provisionis accelerate remedium adhibemus.¹

Clement V's letter of inquiry
against Bartolomeo, b. of L'Aquila
(31/05/1311)

Grave nimis non immerito gerimus et molestum quam plurimum redditur votis nostris, cum ecclesiarum prelati, qui ex debito pastoralis officii laudabilium actionum exemplum tenentur ceteris exhibere, per arrupta vitiorum incedere ausu dampnabili presumentes nephandis actibus, relaxatis habenis, ea committere non verentur per que divina majestas offenditur, fame derogatur ipsorum, saluti detrahitur mentesque fidelium gravi scandalo perturbantur. Quamobrem dignis motibus ducimur et rationabilibus studiis excitamur ut, cum de prelati ipsis auribus nostris talia referuntur, ne, si relinquantur negligentie, prestant aliis audaciam committendi peiora, super hiis oportune provisionis accelerare remedium debeamus.²

John XXII's letter of summons to
appear to Monaldo Monaldeschi,
archb. of Benevento (17/09/1318)

Grave nimis non immerito gerimus et molestum quamplurimum redditur votis nostris cum ecclesiarum prelati, qui ex debito pastoralis officii laudabilium actionum exemplum tenemur [*sic*] ceteris exhibere, per abrupta vitiorum incedere ausu dampnabili presumentes nephandis actibus, relaxatis habenis, ea committere non verentur per que divina majestas offenditur, fame derogatur ipsorum, saluti detrahitur mentesque fidelium gravi scandalo perturbantur. Propter quod dignis motibus ducimur et rationabilibus studiis excitamur ut ad corrigendos seu puniendos hujusmodi prelatorum excessus prout jus exigit per provisionis accelerare remedium sollicitate intendamus.³

Column Footnotes

¹ R. Graham, *Registrum Roberti Winchelsey, Cantuariensis archiepiscopi, A.D. 1294 – 1313*, Oxford 1952 – 1956, t. II, at 600 – 601.

² *Regestum Clementis papae quinti* (n. 1), n. 6925.

³ ASV, *Registra Avinionensia* 11, fol. 4v-5, ep. ix; *Registra Vaticana* 69, fol. 3, ep. 9.