



*SINE TESTIBUS TABULARIIS: A LATE-TWELFTH CENTURY CIVILIAN
NOTABILIMUM*

IN MEMORY OF PROFESSOR DR. PETER LANDAU

[ESP] *Sine testibus tabulariis: un notabilium civil de finales del siglo XII en
memoria del profesor Dr. Peter Landau*

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Abstract: *Sine testibus tabulariis*, a late twelfth-century *notabilium*, is preserved in Oxford, University College MS. 117. It originally belonged to St. Augustine's at Canterbury. This anonymous work appears to be entirely drawn from the *Authenticum*. The essay provides a transcription of *Sine testibus* and then a comparison of the work with similar, contemporary texts from the Anglo-Norman world. It concludes with a brief consideration of the *notabilium's* purpose.

Keywords: *Sine testibus tabulariis; Authenticum; Authenticae; Brocarda; Gratian; Notabilia; Novels.*

Zusammenfassung: Ein zivilrechtliches *Notabilium* des ausgehenden 12. Jahrhunderts, *Sine testibus tabulariis*, ist heute in Oxford, University College, 117, zu finden. Im Mittelalter war diese Handschrift Besitz der Klosterbibliothek St. Augustins zu Canterbury. Die Quelle des *Notabiliums* war das *Authenticum* der justinianischen Novellen. Auf Grund einer Transkription des Textes, wird der Inhalt zusammengefasst, die Arbeitsweise des unbekanntes Autors mit dem *Authenticum* analysiert und mit zeitgenössischen Werken aus dem anglo-normannischen Raum verglichen. Am Schluss wird die Absicht des Autors berücksichtigt.

Stichworten: *Sine testibus tabulariis; Authenticum; Authenticae; Brocarda; Gratian; Notabilia; Novellen.*



Oxford, University College MS. 117 dates to 1180-1200 and originally belonged to the library of St. Augustine's at Canterbury¹. It contains many canon and civil law texts, the best-known an early treatise on presumptions, the *Perpendiculum*². We also find several *notabilia*. One of these, *Sine testibus tabulariis*, (fol. 144vb) in a contemporary hand different from the texts surrounding it, is an anonymous work entirely derived from the *Novels* of Justinian. It occupies much of the right-hand column and spills into the bottom margin. A transcription of *Sine testibus* appears as an appendix to this note. In the following, I discuss its content, its possible formal sources, for example the *Authenticum*³, and also compare it with contemporary treatises, for example Vacarius' *Liber pauperum*. I conclude by briefly reflecting on the purpose of this short collection of excerpts.

While often very brief, most excerpts preserve the legal context of the original text which the author never cites. These treat secular issues such as legacies, who might bring a charge or the punishment for judicial misconduct, and ecclesiastical matters, for example the number of clergy at Constantinople. Others, however, stand as moral exhortations, for example to chastity or maintaining the purity of monastic profession. We shall return to this moralizing emphasis in my conclusion.

¹ COXE, H.O., *Catalogus codicum MSS. qui in collegiis aulisque Oxoniensibus hodie adservantur*, Oxford 1852, 1. 35. I thank Professor Anders Winroth for permitting me to examine a microfilm of this manuscript during a visit to the Stephan Kuttner Institute of Medieval Canon Law in May 2015.

² For example, a work derived from Sicard of Cremona's *Summa* on the *Decretum Gratiani*, fol. 129va-140rb and, on fol. 145(bis) rv, the *Summa de praesumptionibus (Perpendiculum)*, possibly composed by Walter of Coutances, on which see:

http://amesfoundation.law.harvard.edu/BioBibCanonists/Report_Biobib2.php?record_id=a369
accessed on 1 June 2017.

³ In general, WALLINGA, T., «Authenticum and authenticae: What's in a Name?», in *Tijdschrift voor rechtsgeschiedenis* 77 (2009), pp. 43-60; PENNINGTON, K., «The Beginning of Roman Law Jurisprudence and Teaching in the Twelfth Century», in *Rivista internazionale di diritto commune* 22 (2011), pp. 35-53.



The brevity of the excerpts is, I believe, quite intentional. Here we see how little the excerpt retains from a very lengthy Novel⁴:

Sine testibus tabulariis	Nov.1.1.4, Auth 9, 1.
<p><i>In eodem una est legis intencio ut que disposita sunt a morientibus seruentur. Mors est terminus omnibus hominibus.</i></p>	<p><i>Una enim est legis intentio, ut quae disposita sunt a morientibus impleantur; eum enim, qui ab ipso testatore propria substantia pulsus est, quomodo erit iustum vocare ad res, quarum eum expressim ille per exheredationem factam in eum fieri participem noluit? [...] Et nullus hanc legem duram habeat, tanquam relictis privatus, sed considerans, quia omnibus hominibus terminus est vitae mors, non solum ab aliis ipse percipere ontempletur, sed cogitet, quia et ipse aliis moriens imperabit, et si non huius legis mereatur auxilium, nihil horum, quae cum omni studio disposuerat, ad perfectum perducet. Npn enim his, qui sub nobis, neque qui nunc solum sunt honiinibus, sed omni et post hoc currenti tempori legem ponimus.</i></p>

⁴ Accessed on 17 December 2018 at <https://droitromain.univ-grenoble-alpes.fr/Corpus/Nov01.html>
Unless otherwise indicated, all references to the *Novellae* and *Authenticum* come from this site.



Elsewhere, *Sine testibus* not only drastically excerpts but also reverses the Novel's contents:

<i>Sine Testibus</i>	Nov. 14.1, Auth. 3.1
Lenones scilicet castitatis uastatores que castitatis possibilem est cum deo animas hominum representare	Sancimus igitur omnes quidem secundum quod possint castitatem agere, quae etiam sola deo cum fiducia possibilis est hominum animas praesentare. Quia vero plurima sunt humana, cum arte et dolo et necessitate quaslibet ad talium luxuriant deduci omnibus prohibemus modis [...], et nulli fiduciam esse pascere meretricem et in domo habere mulieres aut publice prostituere ad luxuriam, et pro alio et neque permisimus scelestos lenones, si quid dederunt eis, hoc ab eis auferre: sed etiam ipsos lenones iussimus extra hanc fieri felicissimam civitatem tamquam pestiferos et communes vastatores castitatis factos, et liberas ancillasque requirentes et deducentes ad huiusmodi necessitatem et decipientes et habentes educatas ad universam confusionem.

Clearly, the excerptor did not slavishly copy his texts. He could manipulate them to select and highlight what he thought most important in his source, which was most likely the *Authenticum*. Any connections to an *Authentica* seems remote, if not impossible:



Sine Testibus	Authentica R ⁵	Authentica P ⁶	Authentica LP ⁷
<p>§Nupcias uero clericici non contrahant cum castitas sit principium omnium uirtutum set cantores uel lectores nupcias contrahere possunt, §Clerici non si uero nupciis se coniunxerunt non ascendat ad culmen maioris ordinis quia preposuerunt affectum mulieris meliori prouectui.</p>	<p>R 15. De episcopis et clericis. Soli cantores et lectores nuptias permittitur contrahere, aliis amutem omnibus penitus sunt interdicte. (Cf. Auth. 1.3.19, ex Auth. 4.1.42=Nov. 22.42)</p>	<p>P. XXIV: Multo magis ergo cessant eorum coniugia. Soli enim cantores et lectores nuptias contrahere permittantur; aliis autem omnibus penitus sunt interdicte. <i>Other mss. add:</i> Dum tamen et ad secundas nuptias. pervenerint, nequaquam ad maioris sacerdotii culmen ascendant.</p>	<p>LP 1.3.19: glossae: Pr: Eum qu. Auth. Multo magis. Ii. Cit. Infra Auth. De interdictis nupciis (Nov. 12). iii. Mulerium consorcium interdictum esse uiris religiosis, exceptis matre sorrore uxore cum filiabus...Infra. Auth. De monachis. §Si ueros filios. Nov. 5.5.</p>

The first item, exhorting chastity among clergy, and prohibiting them, save for those in the minor orders of cantor and lector, to marry, does compare well with *Authenticae* that circulated during the period. One even appears as a *dictum* of Gratian in the second recension⁸. A similar congruence is found in the excerpt from the Novel on the judicial oath. However, there is also divergence, for example with the *Authentica* on Nov. 6.6. While this references the prohibition of deaconesses'

⁵ ROUMY, F., «Une Collection inédit d'authenticae composée en normandie à la fin du XII^e siècle», in *Novellae constitutiones. Atti del convegno internazionale*, ed. LOSCHIAVO, L., et al., Teramo 2009, pp. 155-205 (also in Naples 2011).

⁶ PALMIERI, J. P., «Authenticarum collectio antiqua ex codice ms. Cassiniensi xx, 313», in *Scripta anecdota glossatorum vel glossatorum aetate composite*, Bologna 1901, pp. 69-95.

⁷ DE ZULULETA, F., VACARIUS. *Liber pauperum*, London 1927.

⁸ C 15 q. 3 dpc 4 discussed by WINROTH, A., *The Making of Gratian's Decretum*, Cambridge 2004, p. 152 and n. 22.



ordination if they under the age of forty or remarried, the *Sine testibus* excerpts, instead, the Novel's exhortation to chastity.

There is almost no congruence between *Sine testibus* and contemporary civilian and canonistic works. There is only slight comparison with Vacarius⁹, and none at all with the contemporary, English brocardia, *Dolum*¹⁰. The same holds true for canonistic works, apart from the single *authentica* in Gratian II mentioned above. There is no echo in any Anglo-Norman decretist works, or in early procedural *ordines iudiciorum* such as the Pseudo-Ulpianus *De edendo* or the *Ordo Bambergensis*¹¹.

Our excerptor's method differs as well from that found in other legal *notabilia*. Compare, for example, the canonistic collection of excerpts, *Qui multum (nimium) emungit*, in London, BL Add. 18325, fol. 13r-17v¹². In this work, the excerptor systematically went through his source, Gratian, and excerpted passages he found interesting. Our scribe, instead, does not entirely preserve the sequence of texts taken from the *Authenticum*¹³. He is more clearly interested in certain themes rather than trying to cover as much of his source as possible.

⁹ I have also compared the *notabilium*'s excerpts with Vacarius' *Lectura* on the *Institutes* and have found no clear connection. On the *Lectura*, DE ZULULETA, F., STEIN, P., *The Teaching of Roman Law in England Around 1200*, London 1990, pp. 62-93. Treating the title on legacies, including the *Lex Falcidia*, (Dig. 35.2, Cod. 650, Inst. 2.22 and also Nov. 1 and 131), and the non-deliverance of dowry.

¹⁰ SCHWAIBOLD, M., *Brocardica* "Dolum per subsequentia purgari." *Eine englische Sammlung von Argumenten des römischen Rechts aus dem 12. Jahrhundert*, Frankfurt am Main 1985.

¹¹ On which see BRASINGTON, B. C., *Order in the Court. Medieval Procedural Treatises in Translation*, Leiden and Boston 2016, p. 317.

¹² On this *notabilia*, the London manuscript, and others possibly related to it, http://amesfoundation.law.harvard.edu/BioBibCanonists/Report_Biobib2.php?record_id=a349 accessed on 7 June 2019. I thank the British Library for the opportunity to examine this manuscript in the summer of 2017.

¹³ There is more structural similarity with the much longer *Brocardia, Dolum*, but it is worth noting that this work does not reference the *Novels/Authenticum*.



Sine testibus is certainly not an unusual text. Collections of legal excerpts are common in twelfth-century manuscripts¹⁴. At first glance, our texts appear random and also not too carefully copied, as we see from the likely error of *naciones* for *exceptions* or *exoruat* for *exornat*. But I should like to think that there is more at work that, at the very least, there are some themes. To begin with, some of the excerpts from the Novels were legally relevant in terms of procedure. Requiring witnesses to be notarized demonstrates the growing influence of civil law in the Anglo-Norman world. Professor Cheney noted some years ago that the contemporary English church was familiar with papal notarial practice, not only through travels to Rome but also, and especially, as evidenced by Alexander III's decretal "Meminimus," written ca. 1167-1169 to Bishop Roger of Worcester¹⁵, though we should note that the decretal, unlike our excerpt, did not require notarization of witnesses. Likewise, even a brief glance at contemporary works such as episcopal *acta* reveals how disputes could arise over legacies when those bequests were intended for ecclesiastical foundations¹⁶. As contemporary canonistic and civilian works demonstrate, there was also a considerable interest in the qualifications and duties of the ecclesiastical judge¹⁷. If only an individual thoroughly familiar with the Novels could have recognized them as the ultimate source for the excerpts, the phrases themselves would have been useful not only to

¹⁴ For example, London, BL Egerton 2819, fol. 9va-10va, DROSSBACH, G., *Die Collectio Cheltenhamensis. Eine englische Decretalensammlung. Analyse beruhend auf Vorarbeiten von Walther Holzmann*, Vatican City 2014, p. 16.

¹⁵ (JL 13162, X 2.22.2), on which see CHENEY, C., *Notaries Public in England in the 13th and 14th Centuries*, Oxford 1972, pp. 5-6 (and 123-124, also noting Nov. 74); also CHENEY, M. G., *Roger, Bishop of Worcester 1164-1179*, Oxford 1980, pp. 179-180.

¹⁶ Compare common law litigation against clerics for trespass, on which, though from a later period, HELMHOLZ, R., *The Ius Commune in England. Four Studies*, New York 2001, p. 223. That even in the classical Roman law heirs might be reluctant to accept legacies, "not worth their while", and also on the *Lex Falcidia*, JOLOWICZ, H. F., BARRY, N., *Historical Introduction to the Study of Roman Law*, Cambridge 1972³, pp. 254-255.

¹⁷ For example the brief *distinctio Coram*, on which see BRASINGTON, B. C., «Advice to the Judge: The *Distinctio Delicto coram iudicis manifestato*, with a Note on the Question of 'Unjust Mercy' in Canon Law», in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Kanonistische Abteilung* 134 (2017), pp. 131-145.



someone studying or practicing the civil or canon law but also for anyone seeking useful quotations for other works, for example sermons or letters.

The overall tone of *Sine testibus* is moralizing. It notes both virtue and vice. Perhaps the excerptor intended a series of maxims, pointed, in particular, towards the judge. We note how often chastity is emphasized, whether in marriage, the purity of deaconesses, the prohibition of marriage towards higher clergy; etc. The judge is to rule in a similarly “chaste” way, as emphasized by the multiple excerpts from Nov.8. Proper authority is also emphasized, with the requirement of the notarized witness at the start of list and the judicial oath towards its end. After the excerpts from Nov. 8, one wonders as well if the seemingly startling reference to pandering might not also, by extension, remind the judge not to prostitute his judgment.

While we cannot measure its audience, there was surely interest in what the Novels could teach the church. By the time the *Sine testibus* was written, all sorts of ecclesiastics had at least some exposure to the civil law and, for the Anglo-Norman world, this could be had close to home at places such as Oxford, Northampton, and Lincoln¹⁸. Explicit references to the law appear as well in the letters of men such as Gilbert Foliot who, according to Morey and Brooke, chiefly relied on the *Codex*¹⁹. Perhaps this cache of maxims from the *Novellae* not only reminded the reader of the law’s moral dimension, and in particular, the responsibilities of the judge, but also furnished phrases, even *exempla*, for letters and other works²⁰. If far more modest a contribution than that made by the elaborate *summae* of the glossators or the sophisticated procedural manuals of the *ius commune*, *Sine testibus* still contributed

¹⁸ LANDAU, P., «The Origins of Legal Science in England in the Twelfth Century: Lincoln, Oxford, and the Career of Vacarius», in *Readers, Texts and Compilers in the Earlier Middle Ages. Studies in Medieval Canon Law in Honour of Linda Fowler-Magerl*, ed. BRETT, M., CUSHING, K.G., Farnham 2009, pp. 165-182.

¹⁹ MOREY, A., BROOKE, C. N. L., *Gilbert Foliot and His Letters*, Cambridge 1965, 64 noting Gilbert’s reliance more on the *Codex* than on the *Digest* and that he may have had some knowledge of the Novels.

²⁰ That this would be a common reading of the civil law in the future, STEIN, P., «Civil Law Maxims in Moral Philosophy», in *Tulane Law Review* (1974), pp. 1075-1085.



to the enterprise of enabling the church to live, as an ancient maxim had declared, “by the Roman law”²¹.

Historians have described *notabilia* such as *Sine testibus* as a “minor genre”²². That is unquestionably true, particularly when one compares the *Sine testibus*, itself brief by the standards of *notabilia*, to the sprawling commentaries by civilians like Placentinus or decretists like Huguccio. But no source is minor if we are to understand the emergence of the legal profession and Romano-canonical jurisprudence in the twelfth century²³. In this regard, we might consider the following excerpts from Peter Goodrich²⁴:

“Lawyers were called glossators. They were trained to write in the margins and between the lines. And at the top and the bottom of the page...The margin is where the reader writes [...] We ignore the marginalia and we overlook the near misses [...] As a culture we tend to pay rather little attention to the peripherally visible”.

Paying more attention to such ‘peripheral’ works should help better understand legal study in the late twelfth century. For there, in the margins, we may glimpse the elusive reader, teacher, student of the early *ius commune*.

²¹ Lex Riburaria 61§1. See also BRASINGTON, B. C., *Order in the Court. Medieval Procedural Treatises in Translation*, cit., p. 52 and n. 1.

²² PENNINGTON, K., MÜLLER, H., «The Decretists: The Italian School», in *The History of Medieval Canon Law in the Classical Period, 1140-1234*, ed. HARTMANN, W., PENNINGTON, K., Washington 2008, p. 160.

²³ Emphasized by BRUNDAGE, J., *The Medieval Origins of the Legal Profession*, Chicago and London 2008, p. 492.

²⁴ GOODRICH, P., «A Fragment on Cnutism with Brief Divagations on the Philosophy of the Near Miss», in *Journal of Law and Society* 31.1 (2004), p. 135.

APPENDIX: TRANSCRIPTION OF *SINE TESTIBUS TABULARIIS*

§*Sine testibus tabulariis non est credendum*²⁵. §*In eodem una est legis intencio ut que disposita sunt a morientibus seruentur. Mors est terminus omnibus hominibus*²⁶. §*Caste nupcie dicuntur licet secunde*²⁷. §*In eodem sumus enim amatores equalitatis et iusticie ergo si uiro mulier nichil dederit nil omnino percipiat*²⁸. §*Nil pene*

²⁵ Cf. Nov. 73.8 (Auth. 6.30): “*Oportet vero in his qui litteras nesciunt et testes et omnino tabularios adhiberi, in quibus locis sunt tabularii, maxime autem testes non ignotos contrahentibus, ut quidam scribant pro illiterato aut paucas litteras scienti, alii vero attestentur quia etiam praesentibus eis haec gesta sunt et scierunt eum, et ita talium instrumentorum suscipiatur fides: manifestum existens quia non minus quinque testes in his talibus adhibendi sunt, inter quos erit et qui scribit pro contrahente aut totem aut [post] ea quae post paucas litteras illius posita sunt, quatenus nihil omittatur de summa subtilitate*”.

²⁶ Nov. 1.1.4 (Auth. 1.1): “*Exheredatos autem filios, si iuste a patre exclusi sint et nihil ex patris habeant voluntate, non vocamus neque respicimus, licet decies milies velint. Una enim est legis intentio, ut quae disposita sunt a morientibus impleantur; eum enim, qui ab ipso testatore propria substantia pulsus est, quomodo erit iustum vocare ad res, quarum eum ille per exheredationem factam in eum expressim fieri participem noluit? Si vero ablatam partem a non complente morientis voluntatem prius deduximus ad substitutos, deinde ad coheredes, et post illos ad legatarios et fideicommissarios, nec non et servos, et ita ad eos, qui ab intestato vocantur, et ad extraneos atque fiscum venimus, non absurde hoc factum est nec inaniter, nec quasi aliquem lateat quod decet, sed ex providentia et secundum legem, ut finitis primum omnibus secundum testamenta personis, deinde abrenuntiantibus, ita ad eam quae est ab intestato vocationem et alios veniremus. In omnibus autem, in quibus scriptis non complentibus vocamus aut ex testamento personas aut ab intestato et ceteros, damus omnibus talibus personis fieri heredes et aditionis aut pro herede gestionis habere ius (haec enim legis verba sunt), et tanquam heredes omnia gerere, et conventos et convenientes: hoc quod etiam antiquissimae leges ex propria auctoritate praestabant, et heredes faciebant eos, qui neque scripti heredes neque ab intestato ad hereditatem vocabantur. His omnibus obtinentibus, licet non ab herede, sed a legatario aut fideicommissario aut mortis causa percipiente dari aliquid aut fieri testator voluerit; eodem ordine in occasione ablatarum rerum servando, et incohante quidem ab substitutis legatarii, terminante vero in fisco. Et nullus hanc legem habeat tanquam relictis privatus, sed considerans, quia omnibus hominibus terminus est vitae mors, non solum ab aliis ipse se percipere contempletur, sed cogitet, quia et ipse aliis moriens imperabit, et si non huius legis mereatur auxilium, nihil horum, quae cum omni studio disposuerat, ad perfectum perducet. Non enim his, qui sub nobis neque qui nunc solum sunt hominibus, sed omni et post haec currenti tempori legem ponimus*”.

²⁷ Nov. 2.3 (Auth. 1.2): “*Nec enim amariores poenas adversus mulieres, quae ad secundas veniunt viri nuptias, facimus, neque ex hoc eas ad necessitatem deducimus amaram et nostrorum temporum indignam, ut metu castarum nuptiarum, licet secundae sint, ab his quidem abstineant et descendant ad quasdam interdictas permixtiones, et forsitan etiam ad servorum corruptiones, et quoniam non licet legaliter caste vivere, contra leges luxurientur*”.

²⁸ Nov. 2.5 (Auth. 1.2): “*Si autem etiam non totam dederit, et ipsa pro tanto exigat donationem, in quantum dederit dotem. Aequalitatis enim et iustitiae sumus amatores, quam in omnibus aliis et in consortiis volumus obtinere. Quapropter quae nil omnino dat, nil omnino percipiat; quae vero minus quam professa est dedit, tantum recipiat solum, quantum obtulerit, sitque etiam hoc optimum in praesenti lege incrementum plurima decernente, quae semper in dubitatione sunt, vix autem modo ad legislationem deducta*”.



*immensum bonum est*²⁹. §Creditor autem intelligit³⁰ quod aliam accionem habet³¹. §Non enim facilis est uite mutacio set cum anime fit labore³². §Uniuersa bene et competenter gerentur si rei principium fiat amabile deo³³. §Nupcias uero clerici non contrahant cum castitas sit principium omnium uirtutum set cantores uel lectores nupcias contrahere possunt³⁴. § Clerici non si uero nupciis se coniunxerunt non ascendant ad culmen maioris ordinis quia preposuerunt affectum mulieris meliori

²⁹ Nov. 3pr. (Auth. 1.3): “*Quia enim paene nihil immensum bonum est, competens est neque ordinationes, quae super reverentissimis clericis fiunt aut super reverentissimis diaconissis, fieri tantas, ut illorum expensis sanctissima ecclesia incidat in causam mutuorum maximorum et paulatim ad novissimam inopiam deponatur*”.

³⁰ sic

³¹ Cf. Nov. 4.3.1 (Auth. 1.4): “*Et absolute creditorem ponimus, antiquas sequentes leges, omnem, qui actionem habere contra aliquem potest, licet non sit mutuuum gestum, sed alter quidam contractus consistat*”.

³² Nov. 5.2 (Auth. 1.5): “*Hinc autem nobis etiam de singulis monachis cogitandum est, quo convenit fieri modo, et utrum liberos solum aut etiam forte servos, eo quod omnes similiter divina suscipit gratia, praedicans palam quia, quantum ad dei cultum, non est masculus neque femina, neque liber neque servos: omnes enim in Christo unam mercedem percipere. Sancimus igitur sacras sequentes regulas, eos qui singularem conversationem profitentur, non prompte mox a reverentissimis praesulibus venerabilium monasteriorum habitum percipere monachilem, sed per triennium totum (sive liberi forte sive servi sint) tolerare, nondum monachicum habitum promerentes, sed tonsura et veste eorum qui laici vocantur uti, et manere divina discentes eloquia; et reverentissimos eorum abbates requirere eos, sive liberi sint sive servi, et unde eis desiderium vitae singularis accesserit, et discentes ab eis, quia nulla maligna occasio ad hoc eos adduxit, habere eos inter eos qui docentur adhuc atque monentur, et experimento percipere eorum tolerantiam et honestatem. Non enim. facilis est vitae mutatio, sed cum animae fit labore*”.

³³ Nov. 6 pr.(Auth. 1.6): “*Maxima quidem in hominibus sunt dona dei a superna collata clementia sacerdotium et imperium, illud quidem divinis ministrans, hoc autem humanis praesidens ac diligentiam exhibens; ex uno eodemque principio utraque procedentia humanam exornant vitam. Ideoque nihil sic erit studiosum imperatoribus, sicut sacerdotum honestas, cum utique et pro illis ipsis semper deo supplicent. Nam si hoc quidem inculpabile sit undique et apud deum fiducia plenum, imperium autem recte et competenter exornet traditam sibi rempublicam, erit consonantia quaedam bona, omne quicquid utile est humano conferens generi. Nos igitur maximam habemus sollicitudinem circa vera dei dogmata et circa sacerdotum honestatem, quam illis obtinentibus credimus quia per eam maxima nobis dona dabuntur a deo, et ea, quae sunt, firma habebimus, et quae nondum hactenus venerunt, adquirimus. Bene autem universa geruntur et competenter, si rei principium fiat decens et amabile deo. Hoc autem futurum esse credimus, si sacrarum regularum observatio custodiatur, quam iuste laudati et adorandi inspectores et ministri dei verbi tradiderunt apostoli, et sancti patres et custodierunt et explanaverunt*”.

³⁴ Cf. Nov. 5.8 (Auth. 1.5): “*Si quis autem monachicam profitentium conversationem meruerit clerici ordinationem, maneat etiam sic puram servans conversationem. Quodsi facti clerici abutatur fiducia et ad nuptias venire praesumat, quippe tali gradu constitutus inter clericos, qui ei uxorem ducere permittat (dicimus autem cantorum aut lectorum: aliis enim omnibus nuptias secundum sacras regulas penitus interdiximus, aut concubinas habere aut luxurus tradere vitam), excludatur modis omnibus a clero, tamquam priorem conversationem et solitariam confundens vitam, et privatus sit de cetero, ad militiam quidem aut aliud officium venire non praesumens, nisi voluerit dudum interminatis a nobis subiacere poenis, ipse autem apud semetipsum degens et agnoscens, qualem pro hoc daturus sit magno deo satisfactionem*”.



*prouectui*³⁵. *§In eodem pudicia namque seruanda que maxime mulieres exoruat*³⁶. *§Set quoniam omnis noster status sub perpetuo motu consistit*³⁷ *ideo alias naciones quasdam nunc permittimus*³⁸. *§Nichil dandum est per amminstrationem publicam preterquam codicilis et cartis*³⁹ *sicut nec accipiat a subditis set fiat contentus is que sibi a fisco dantur. Est enim per quam iniquiam uendere auro iusticiam*⁴⁰. *Set puniendi sunt enim qui reos dimitunt uedentes eorum delictum res namque non delinquent set qui eas possident. Assumunt iniuriarum consiliarium cum sit turpius*

³⁵ Cf. Nov. 6.5 (Auth. 1.6): “*Neque autem secundas habentem, aut eum qui habuit, nuptias ordinari diaconum aut presbyterum, neque si mulieri coniungatur seiunctae et proprium virum derelinquenti, neque si concubinam habeat, sed et ipsam uxorem si cum castitate et ex virginitate sit. Nihil enim sic in sacris ordinationibus quam cum castitate viventem, aut uxoris non cohabitantes, aut unius uxoris virum qui vel fuerit vel sit, et ipsam castitatem eligentem, primum principium et fundamentum manifestum secundum divinas regulas et residuae virtutis constitutam. Si autem et aliquis presbyter aut diaconus aut subdiaconus postea ducat uxorem aut concubinam aut palam aut occulte, sacro statim cadat ordine, et deinceps idiota sit. Quodsi et lector secundam ducat uxorem propter quaedam, et hoc forsitan inrecusabili necessitate, nullatenus ad altiore accedat, neque perfruatur gradu maiore in sacerdotio, maneat autem in eodem gradu perpetue. Sed non ad tertias veniat nuptias; satis est enim, si ad secundas. Si vero tale aliquid egerit, et ad secundas veniens nuptias ad maiorem gradum venire festinaverit, exinde idiota erit et laicus, omni sacro ministerio cadens. Pudice enim nobis per omnia pertinet vivere. Si enim tales constituti hi qui in clero adducuntur ordinentur, facilis eis ad episcopatum ascensus erit, et ex multis viris bonis facilius invenientur, qui adducantur ad primum gradum sacerdotii digni*”.

³⁶ Nov. 6.6 (Auth. 1.6): “*Si enim in antiquis legibus virginibus illis, quae in eorum errorem vocabantur, mortis incumbibat damnum corruptis, quomodo non magis nos in his, quae a deo glorificantur, definimus, pudicitiam, quae quam maxime mulieres ornat, conservari volentes competens venerabilibus diaconissis, ut et quod decet naturae custodiant et quod debetur sacerdotio conservent*”.

³⁷ Compare London, BL Egerton, 2819, fol. 3va-9va, n. 15 above.

³⁸ Nov. 7.2 (Auth. 2.1): “*Ut autem lex ad humanae naturae varietatem et quod semper venit moderata per omnia immota permaneat (quid enim erit stabile inter homines et ita immobile, ut nullam patiat mutationem, cum omnis noster status sub perpetuo motu consistat?), necessarium aestimavimus quasdam exceptiones dare legi cum multis vigiliis et subtilitate adinventas, ut eas habens in auxilio lex nequaquam moveatur*”.

³⁹ Nov. 8.1 (Auth. 2.2): “*Haec omnia apud nos cogitantes et hic quoque participem consilii sumentes eam quae a deo data nobis est reverentissimam coniugem, et tuae celsitudini causam communicantes et quiddam etiam a tuo sumentes consilio, ad hanc sacram venimus legem: per quam sancimus, neque proconsulariam ullam neque hactenus vocatam vicariam neque comitem Orientis neque aliam quamlibet administrationem, neque proconsularem neque praesidalem, quas consularias et correctivas vocant (quarum expressim meminit supposita huic sacrae nostrae legi descriptio, quasque solas sub hac lege ducimus), dare aliquod suffragium neque pro administratione quamlibet donationem, neque iudici ulli neque horum qui circa administrationem sunt alicui neque alteri per occasionem patrocini: sed gratis quidem sumere administrationes, pauca vero praeberere occasione horum quae pro singulis dantur cingulis, codicillis et chartis*”.

⁴⁰ Nov. 8 pr..1 (Auth. 2.2): “*Cogitatio igitur nobis facta est, quid agentes omnia quaecumque in nostris provinciis sunt, uno actu communi ad meliora migraremus. Hoc enim omnino eventurum credimus, si praesides gentium, quicumque civiles administrationes provinciarum habent, puris procuraremus uti manibus et omni abstinere acceptione pro illis, solis contentos eis quae a fisco dantur*”.



*per alium delinquere est enim auaricia mater omnium malorum et maxime cum inheret animis iudicium*⁴¹. *§In eodem enim debet amministrator innoxios custodire reos punire et antequam patres filiis se habere ut iusticiam que est in lege tueri ualeamus et iudicium possit frui iusticiam*⁴². *§Iudices iurare debent quod iudicabunt secundum quod eis melius uisum fuerit*⁴³. *§Multitudo numerosa nil habet honestum*⁴⁴.

⁴¹ Nov. 8.pr. 1 (Auth. 2.2): “*Et non haec fiunt sola, sed etiam ciuitatum seditioes et publicae turbae plurumque fiunt sedantur: et omnino una quaedam est haec omnium occasio malorum et accipere suffragium a iudicibus totius nequitate est principium et terminus: est quoque hoc sacrorum eloquiorum mirabile et uerum, quod auaritia omnium sit mater malorum, et maxime quando non priuatorum, sed iudicium inhaeret animum*”.

⁴² Nov. 8.8pr: (Auth. 2.2): “*Eos autem, qui ita sine mercede sumunt administrationes, prae omnibus studium habere decet fiscalia uigilanter inspicere, et indevotos quidem et egentes necessitate cum omni exigere fortitudine, in nullo flexos neque pro hoc ipso lucrum aliquod omnino considerantes, deuotis autem paterne se exhibere; deinde nostros subiectos reservare undique sine uolentia, nihil ab ullo eorum percipientes: sed aequi sint in iudiciis, aequi uero in publicis disciplinis, exequentes quoque delicta, innoxios quidem undique custodientes eos qui puri sunt, reis autem imponentes secundum legem <poenam>, et ita praesidentes collatoribus, tamquam patres filiis, diligentes quidem eos qui sunt innocentes, qui uero rei monstrantur, castigantes ac punientes, omnemque iustitiam et in publicis et in privatis documentis eis seruantes; et non ipsi soli hoc agentes, sed etiam semper consiliarium talem sumentes et qui circa eos sunt omnes: ut non uideantur illi quidem uelut innoxii esse, per alios autem delinquant atque furentur, hoc quod magis turpius est, ut et participes iniustitiarum sumant. Ideoque licebit tuae celsitudini honestiorum quosdam ad administrationes dirigere et scientium tributa fiscalia, curialium quippe et aliarum personarum, experimentum sui dantium bonum et ad magistratus opportunorum. Quis enim non diligit eum et honestate compleri magna putet, si nostro decreto iudicioque tui culminis ad cingulum ueniat, testimonium quidem habens quia sit optimus, gratis uero eum suscipiens, non uacans omnino per provinciam ulli prauitati, nec quemadmodum quod dedit congreget nec unde colligat aurum, sed ut hoc solum habeat studium, deo nobisque semet ipsum commendare et gloria frui optima et repensationem sperare praecipuam?”.*

⁴³ Nov. 8. (Auth. 2.3): “*Iusiurandum quod praestatur ab his qui administrationes accipiant. Et aequus in causis utriusque parti et in publicis disciplinis ero, nullique parti citra quam iustum est praestabo, sed exequar uniuersa delicta, et omnem aequitatem seruabo, secundum quod uisum fuerit mihi iustum: et eos quidem, qui innoxii sunt, undique innoxios illaesosque seruabo, noxiis autem impono supplicium secundum legem; et omnem iustitiam, sicut dictum est, in publicis privatisque contractibus eis seruabo, et si comperero fiscum iniustitiam pati*”.

⁴⁴ Nov. 10.1 (Auth. 2.5): “*Sed apparuerunt quidam nostram largitatem in immensum uocantes, et multos quidem nobis introducentes supplicantes, multis autem petitionibus usi, ita semper adiectione in immensum incompetens causam sic perdiderunt honestam. Nihil enim petentibus factum est finituum, donec in quattuor et decem eorum numerus exiret. Propterea igitur, utpote causa forsitan a nobis honorata, deinde in multitudine effusa propria imminuatur honestate, praueidimus certa eorum numerum comprehendere mensura, non ut, qui sunt, auferamus eis concessa (nec enim hoc imperialis est proprium maiestatis: sed ut omnium placentium nobis et honeste ministrantium foras aliquos ex his constituamus a nostro ministerio, nullo omnino concedimus modo); sed manere quidem eos sancimus secundum figuram qua sunt, neminem tamen adici omnino, donec in octo uirorum perueniat numerus: ut ii perpetue octo <sint> constituti, numero quidem hoc per nullum modum aut tempus aucto, festinantibus autem ipsis perpetue inuicem transcendere circa nos et imperium cura et deuotione; nemine licentiam habente neque petere aliquid deinceps tale, sed sciente quod neque impetrabit petita, pro eadem autem petitione non solum obligatus erit poenae auri librarum decem, sed etiam propria spoliabitur militia. Volumus etiam eos mensura quidem usque ad dictum numerum contineri, iustitia uero et aliis uirtutibus augeri et ad maius apparere. Multitudo enim numerosa nihil*



§ *Lenones scilicet castitatis uastatores que castitatis possibilem est cum deo animas hominum representare*⁴⁵. § *Uxores coruscant radiis maritorum*⁴⁶.

habet honestum, quoniam in paucis ex multis quae secundum virtutem est vita salvatur. Maneant igitur secundum quod praediximus nunc in eadem figura".

⁴⁵ Nov. 14.1 (Auth. 3.1): "*Sancimus igitur omnes quidem secundum quod possint castitatem agere, quae etiam sola deo cum fiducia possibilis est hominum animas praesentare. Quia vero plurima sunt humana, cum arte et dolo et necessitate quaslibet ad talium luxuriant deduci omnibus prohibemus modis, et nulli fiduciam esse pascere meretricem et in domo habere mulieres aut publice prostituere ad luxuriam, et pro alio quodam negotio talia mercari, neque conscriptiones super hoc percipere neque fideiussores exigere nec aliquid tale agere, quod cogat miseram et invitam suam castitatem confundere, neque sperare quia licebit de cetero eis vestium donatione aut ornamentorum forsitan aut alimenti decipere, ut etiam invitae sustineant. Non enim permittimus quicquam fieri tale, sed etiam nunc omnia talia breviter competenti cura disposuimus, statuentes etiam reddi eis omnem quam contigit cautionem occasione sceleris huius exponi; et neque permisimus scelestos lenones, si quid dederunt eis, hoc ab eis auferre: sed etiam ipsos lenones iussimus extra hanc fieri felicissimam civitatem tamquam pestiferos et communes vastatores castitatis factos, et liberas ancillasque requirentes et deducentes ad huiusmodi necessitatem et decipientes et habentes educatas ad universam confusionem*".

⁴⁶ Nov. 105.2pr. (Auth. 4.3): "*Si autem etiam uxorem consul habeat, definita est a nobis et circa illam expensarum mensura: decet enim frui eas et coniugis claritate. Si vero non copulatus <sit> uxori, his sat est, nisi mater eius consistat iam consulatus digna et prius honorata, et velit eam una frui secum schemate. Et hoc in sola matre praebemus, alia vero non decorabitur mulier penitus praeter coniugem et matrem, illae quidem omnibus modis, quoniam uxores concoruscant radiis maritorum hoc lege dante, matres vero, si consul hoc voluerit; nam neque filia neque soror forte, non uxor filii, et multo magis si nec pertinens ad genus sit: hoc enim et pure illicitum existebat*".