

# Licet Ecclesiae Catholicae

## I. TEXT.

The original is preserved in the *General Archives O. E. S. A.*, Rome in the collection of original papal bulls : Hh 2, n. 33.

Type : *Litterae gratiosae*. Membr.

Size : 480 × 640 mm.

Date : Lateran, 9 April 1256.

Script : chancery minuscule.

The pendent lead bull has been cut off, but the red and yellow silken threads remained.

On the fold at the right : the name of the *scriptor* : lac[obus].  
*scp* (i. e. *scriptor*). On the back :

|   |         |   |    |
|---|---------|---|----|
| 1 | 1       |   |    |
|   | 2 3 4 8 |   | 10 |
|   | 5       |   |    |
|   | 6       |   |    |
|   | 7       | 9 |    |

- 1 Traces of xiii<sup>th</sup> century script.
- 2 Alexandri 4  
cost. xviii (s. xvi).
- 3 Mark of the numbering in the Hh 2 collection : 33.
- 4 Heremitarum... sancti Augustini (s. xiii).
- 5 VNIO EREMITARVM  
ALEX. IIII. CONST. XVIII (s. xviii ?).
- 6 F. Lanphanco mediolanensi P. Generali (s. xv-xvi).

## 7 No 52

Vnio Congregationum S. Guglielmi, fabani, et Bricinensis  
ad Religionem S. P. Augustini sub uno Generale.

Alex. VIII (s. xvii).

8 R (i. e. Registered). Underneath the taxes are written which  
had to be paid for the bull. However, it is impossible to read  
the script on account of the fold which passes through it.

9 De unione (s. xv).

10 1256 (modern script).

The text of *Licet ecclesie* has been published in :

I *Bullarium Ordinis Eremitarum S. Augustini*, ed. L. Empoli  
(Rome, 1628), pp. 18-20.

II *Bullarium Diplomatum et Privilegiorum Summorum Romanorum  
Pontificum Taurinensis editio*, iii (Turin, 1858). pp. 635-36.

III *Les Registres d'Alexandre IV*, ed. Bourel de La Roncière, i  
(Paris, 1902). pp. 388-89 (= n. 1301), from *Reg. Vat.*, 24, f. 163,  
ann. II, c. 252.

IV *Analecta Augustiniana*, v (1913-14). pp. 1-4.

In A. POTTHAST, *Regesta Pontificum Romanorum*, ii (Berlin, 1875),  
1341 (= n. 16334).

- 1 ALEXANDER episcopus seruus seruorum dei. Dilectis filiis fratri <sup>1)</sup>  
Lanfranco Generali, Prouincialibus et Conuentualibus Prioribus <sup>2)</sup>  
ac <sup>3)</sup> uniuersis fratribus ordinis Heremitarum sancti Augustini tam  
2 presentibus quam fu- / -turis. Salutem et apostolicam benedic-  
tionem. Licet Ecclesie catholice integritatem corporis sui sincera  
membrorum diuersitas sumministret <sup>4)</sup> et circumamictus species  
multiplicibus in ea uarietatibus decoretur, nichil tamen in ipsa  
3 exprimit contrarietas incon- / -cinnum <sup>5)</sup>, in qua consensum nutrit  
inextimabilis <sup>6)</sup> concordia caritatis, et indiuiduam fouet uniuersi-  
tatis conformitas fideique simplicitas unitatem. Verum circa edi-  
ficationis fabricam que in templum sanctum in domino opera-  
4 riorum eius stu- / -dio moliente succrescit, credimus assidue  
prouidendum, ut in uarietatibus partium que ad decorem struc-

<sup>1)</sup> *Bull. Rom.* omits: fratri.

<sup>2)</sup> *Ibidem*: et prioribus.

<sup>3)</sup> *An. Aug.* reads: et, instead of: ac.

<sup>4)</sup> All the published texts have: subministret.

<sup>5)</sup> *Bull. Rom.* gives: incontinuum, while *Reg. Alex.* has: in continuum.

<sup>6)</sup> *An. Aug.* reads: inestimabilis.

ture dominice adhibentur, sic appareat distincta diuersitas, ut non sit confusio indiscreta, nec alterius forma importuna <sup>7)</sup> con- /  
5 -similitudine speciem pretendat alterius, sed singula queque certum proprii modi ordinem sortiantur. Hac sane consideratione commoniti, cum consona in uobis Heremitarum appellatio et  
6 parum diuersa professio disparibus titulis, et in / aliquibus dissimili habituum schemate <sup>8)</sup> discreparet, cogitauimus sponse xpi in cuius ueste <sup>9)</sup> pia sacre religionis [depinxit] <sup>10)</sup> institutio cetus uestros <sup>11)</sup> conuenire decori, si religiosa militie uestre castra que  
7 sub uno uocabulo non magna / discipline distantia secernebat, sub communi capite indifferenti <sup>12)</sup> concorporationis <sup>13)</sup> federe iungerentur et ex plur[ibus] <sup>14)</sup> cuneis acies <sup>15)</sup> una consurgeret fortior ad hostiles spiritualis nequitie impetus conterendos. Prop-  
8 terea dudum a no- / -bis mandatum apostolicum emanauit ut de singulis domibus uestris, quarum quedam sancti Guillelmi, quedam sancti Augustini ordinum <sup>16)</sup>, nonnullae autem fratris Iohannis boni <sup>17)</sup>, alique uero de fabali, alie uero de Britinis  
9 censebantur / et apud homines ambiguus interdum nuncupationibus uaccillabant, duo fratres cum pleno mandato ad nostram mitterentur presentiam, quod nostra circa <sup>18)</sup> uos salubriter ordinaret dispositio recepturi. Cumque fratres huiusmodi / ad sedem apostolicam accessissent coram dilecto filio nostro R[icardo], sancti [Angeli] <sup>19)</sup> diacono Cardinali <sup>20)</sup>, quem negotio unionis

<sup>7)</sup> *Reg. Alex.* has: inoportuna.

<sup>8)</sup> In the original it reads: scemate. *Reg. Alex.* reads: scemace.

<sup>9)</sup> *Bull. OESA* reads: vestrae, as is to be seen in the original text. But Empoli did not remark the little dot under the letter *r* which means a correction from *vestre* in *veste*.

<sup>10)</sup> There is a hole in the original by which this word has fallen out. We added from the *Reg. Alex.*; *Bull. OESA* gives:...

<sup>11)</sup> *Bull. Rom.* has: vestri.

<sup>12)</sup> *Reg. Alex.*: in differenti.

<sup>13)</sup> *Bull. Rom.* reads: incorporationis.

<sup>14)</sup> Another hole prevents us from reading this word. We added it from the *Reg. Alex.*

<sup>15)</sup> *Bull. OESA* wrongly reads: acierum.

<sup>16)</sup> *Reg. Alex.* omits: ordinum.

<sup>17)</sup> *Bull. Rom.* wrongly gives: Ioannis Doni.

<sup>18)</sup> *Bull. OESA* reads: cura, instead of: circa.

<sup>19)</sup> The original does not give: Angeli. We added it from the *Reg. Alex.*

<sup>20)</sup> *Cardinale*, as given in *Bull. Rom.* is an obvious printer's error.

uestre <sup>21)</sup> perficiendo deputauimus uice nostra, sufficientia ad id  
 11 exhibuere mandata, et in generali Capitu- / -lo uestro in Vrbe  
 celebriter congregato, nomine omnium a quibus fuerant destinati  
 et de communi Capituli eiusdem assensu, uos et domos uestras  
 in unam ordinis obseruantiam, et uiuendi <sup>22)</sup> formulam uniformem  
 12 redigi, / unumque ex eis ouile fieri Generalis Prioris presidentia  
 gubernandum unanimiter consenserunt, petentes ut per gra-  
 tiam <sup>23)</sup> unionis et conformitatis huiusmodi, eis iuxta conceptum  
 uotum paupertatis spontanee perpetua possessionum terre- /  
 13 -strium abdicatio remaneret, et ipsis Baculos uel ferulas deferendi  
 imposita necessitas tolleretur, collata in Cardinalem eundem  
 prouidendi uobis ea uice de Generali Priore totius ordinis ni-  
 14 chilominus potestate. Porro idem Car- / -dinalis, nostri auctori-  
 tate mandati uiuo ad eum sermone directi necnon et concordi  
 eorundem fratrum ac predicti Capituli consensione suffultus, uni-  
 uersas domos et congregationes uestras in unam ordinis Here-  
 15 mitarum / sancti Augustini professionem et regularem obser-  
 uantiam perpetuo cuniuit <sup>24)</sup>, sub generalis cura Prioris, cano-  
 nice instituendi <sup>25)</sup> pro tempore pre aliis Prouincialibus, necnon  
 16 et Conuentualibus singularum domorum Prio- / -ribus <sup>26)</sup> regula-  
 riter gubernandas. Et ut nouam ouilis dominici unionem uni-  
 uersalis capitis unitas consumaret <sup>27)</sup>, te, dilecte fili frater Lan-  
 france, in Generalem ordinis <sup>28)</sup> eiusdem Priorem et patrem <sup>29)</sup>,  
 17 spiritus sancti gratia inuoca- / -ta, prefecit, ac etiam prout a  
 nobis specialiter in mandatis acceperat, confirmauit. uos uni-  
 uersos et successores uestros a baculis uel ferulis deportandis, et  
 quod non cogamini ad recipiendas possessiones aliquas uel ha-  
 18 ben- / -das, decernens perpetuo liberos et exemptos. Nos igitur  
 prefati Cardinalis processum, conuenientem cum uol[untatis] <sup>30)</sup>

<sup>21)</sup> *Reg. Alex.* omits: vestre.

<sup>22)</sup> Only the *Reg. Alex.* wrongly reads: uniendi.

<sup>23)</sup> *Bull. OESA* has: ..., but in the original one can clearly read: gratiam.

<sup>24)</sup> *Reg. Alex.* gives: counirat. *An. Aug.* has a printer's error: conuivit.

<sup>25)</sup> The first part of this word in the original has fallen out by a little hole, but the space is too small for the syllable *con*, as printed in the *Bull. OESA* and *An. Aug.* It has to be read as: instituendi, as given in *Bull. Rom.* and *Reg. Alex.*

<sup>26)</sup> *Bull. Rom.* gives: a prioribus.

<sup>27)</sup> *Bull. OESA*: consummaret.

<sup>28)</sup> *An. Aug.* omits: ordinis.

<sup>29)</sup> *Reg. Alex.*: priorem ac patrem.

<sup>30)</sup> The second part of this word has fallen out. We added it from *Reg. Alex.*  
*Bull. OESA* has: ...

nostre <sup>31)</sup> proposito approbantes, premissa omnia grata habemus  
 19 et rata, ipsaque auctoritate apostolica / confirmamus, et presentis  
 scripti patrocinio communimus. Insuper autem personas et domos  
 uestras sub beatorum Petri et Pauli protectione suscipientes et  
 20 nostra, presentium auctoritate statuimus, / ut uos filii Priores  
 et fratres in professione predicti ordinis in prefato generali Capi-  
 tulo ordinata, quo quidem ordine uos perpetuo censi uolumus,  
 uobiscum super diuersarum professionum aut obseruationum de-  
 21 bito, / quas antea feceratis in predictis uel aliis ordinibus dis-  
 pensantes, sub deuota generalis Prioris quem nunc uobis diuina  
 ordinatio pretulit eiusque successorum obedientia perpetuo uir-  
 22 tutum domino seruietes, nigris dumtaxat / et nullis aliis alterius  
 coloris Cucullis, ut uniformis amictus normam eiusdem in uobis  
 professionis ostendat, utamini decetero <sup>32)</sup> uniuersi. Et ut hec  
 sancta unio, quam perpetue pacis tranquillitate gaudere uolu-  
 23 mus / omnibus integritatis sue perfecta partibus stabilis per-  
 seueret, decernimus ut omnes domus ordinum suprascriptorum,  
 quarum <sup>33)</sup> fratres iuxta mandati nostri formam ad nostram pre-  
 24 sentiam non uenerunt, ipsi uinio- / -ni tamquam corpori membra  
 absque diffugio ullius exceptionis <sup>34)</sup> inhereant, et ad obserua-  
 tionem predictorum omnium teneantur. Alioquin sententiam,  
 quam tu, dilecte fili Prior Generalis et successores tui rite tu- /  
 25 -leritis in rebelles ratam habebimus et faciemus auctore domino  
 usque ad satisfactionem condignam appellatione remota, inuio-  
 labiliter obseruari. Nulli ergo omnino <sup>35)</sup> liceat hanc nostre con-  
 26 firmationis, protectionis, dispensationis / et constitutionis pagi-  
 nam infringere, uel ei ausu temerario contraire. Si quis autem  
 hoc attemptare presumpserit, indignationem omnipotentis dei et  
 beatorum Petri et Pauli apostolorum eius se nouerit incursum.  
 27 Datum Laterani / V Id. Aprilis Pontificatus nostri anno Se-  
 cundo <sup>36)</sup>.

P. Alberic DE MEIJER, O. E. S. A.

<sup>31)</sup> *Bull. OESA* and *Bull. Rom.* wrongly read: vestre.

<sup>32)</sup> *Bull. OESA* and *An. Aug.* separated: de cetero.

<sup>33)</sup> *Bull. Rom.* reads: quorum.

<sup>34)</sup> *Bull. OESA* wrongly gives: receptionis.

<sup>35)</sup> *Bull. OESA* and *An. Aug.* added: hominum, the latter, however, in brackets. The other two printed texts give: Nulli ergo etc.

<sup>36)</sup> *Bull. Rom.* and *Reg. Alex.* give the other date: quarto nonas maii.

## II. THE COMMENTARY \*)

The bull *Licet ecclesiae* issued by Pope Alexander IV on April 9, 1256 is the most important single document in the history of the Augustinian Order. This document established the Order in its modern form and therefore marks the hour of its birth. The new life thus established has survived to this hour. Its 700th anniversary calls for a renewed, detailed study of this important charter, which is as important to an Augustinian as the *Magna Charta* is to an Englishman or the Declaration of Independence to a citizen of the United States of America.

*Licet ecclesiae* is a singular document in the history of Canon Law because it established principles for which its authors had no precedent. It legitimized for the first time the imposition of a certain rule on divers religious groups and the change from rules already approved. Its phraseology reveals the struggle which was taking place between the old and new forms of religious life, a struggle

\*) List of abbreviations:

AA = *Analecta Augustiniana* (Rome 1905 sqq).

ASS = *Acta Sanctorum* (latest edition, Paris).

BR = *Bullarium Romanum. Bullarum, diplomatum et privilegiorum sanctorum Romanorum Pontificum, Taurinensis editio.* Augustae Taurinorum 1857 sqq.

DDC = *Dictionnaire de Droit Canonique.*

EMPOLI = EMPOLI L., *Bullarium Ordinis Eremitarum sancti Augustini* (Romae 1628).

KNOWLES = KNOWLES D., *The religious Orders in England* (Cambridge 1950-1955), 2 vols.

MS 1390. This manuscript in the Biblioteca Angelica, Rome, contains papal bulls given to the Augustinian Order from 1190-1250, copied from the originals in the various archives of the Order. Its original number was T. 6. 4.

PL = MIGNE, *Patrologia Latina.*

POTTHAST = POTTHAST A., *Regesta Pontificum Romanorum*, 2 vols. (Berlin 1874).

ROTH = ROTH Francis, *Cardinal Richard Annibaldi, first protector of the Augustinian Order, 1243-1276*, in *Augustiniana* II-IV (1952-4).

TORELLI = TORELLI L., *Secoli Agostiniani* (Bologna 1659-1686) 8 vols.

VICAIRE = VICAIRE M. N., *Fondation de l'ordre des Prêcheurs*, in *Revue d'histoire ecclésiastique* 47 (1952).

Vfr. = *Jordani de Saxonia OESA Liber Vitasfratrum*, ed. R. Arbesmann and W. Hümpfner (New York 1943).

The yet incomplete edition of the Papal Registers, undertaken by the *Bibliothèque des écoles françaises d'Athènes et de Rome* will be quoted by the name of the pope in question. According to our argument on page 33 we prefer to quote the bulls themselves rather than copies in the papal registers.

in which the Roman Curia tried to cling to the established forms of monasticism without destroying the vigorous, healthy life of the new mendicant movement. In *Licet ecclesiae* and other contemporary diplomas, therefore, we find notable deviations in the content of papal documents from what had been customary earlier. We find, too, that the old classical terminology is used with new and constantly shifting meanings.

*Licet ecclesiae* does not precede the Great Union, but follows it, and is the only official report still available. It gives the reasons why the Pope wanted it and the ways and means used to effect it ; most of all it confirms the definitions of the first General Chapter and gives them the form of binding law.

\* \* \*

In *Licet ecclesiae* Pope Alexander IV lists the principal groups which he intends to unite. He does not present a meticulously scientific catalogue but states only that some of the affected houses belong to:

1. The Order of St. William ;
2. The Order(s) of St. Augustine ;
3. The followers of Friar John Bonus ;
4. The Brethren of Favali ;
5. The Bricitinenses.

The first-mentioned of these groups comprised the followers of St. William of Maleval (d. Feb. 10, 1157). Gregory IX had recently mitigated the austerity of their way of life, and the Order had consequently begun to flourish. Although the Williamites and the Brethren of Favali withdrew from the Union after four months, the German and Hungarian houses of both groups remained with the Hermits of St. Augustine. These houses helped the new Order to spread in Germany and Hungary.

The Order of St. Augustine consisted principally of the Hermits of Tuscany, who were united in 1243 by Cardinal Richard and by 1256 numbered over 70 houses. The Order also included groups with seemingly independent superiors (priors general ?) in Spain, Germany and France-England.

The followers of Blessed John Bonus, who died on October 23, 1249 were concentrated in Lombardy and Romandiola. They had 26 houses that are known to us.

Favali, a branch of the Williamites, was acknowledged by the Holy See as early as March 9, 1224 <sup>1)</sup>, making its confirmation only a year later than that of the Friars Minor. In their bull of confirmation they are called « Hermits of St. Benedict on Mount Favali » who followed the Rule of St. William. Nothing is known about the number of their houses.

The Hermits of Brettino (Bricitinenses) were settled mostly in the March of Ancona and possessed at least 45 houses.

The history of these congregations has been treated in detail by Francis Roth in *Augustiniana* 1952/4 and therefore many historical points in the following canonical commentary are omitted. The data given above are borrowed from his study.

### *The Address*

*Licet ecclesiae* was directed « to the Prior General Lanfranc, the provincial and conventual priors and all the brethren of the Order of Hermits of St. Augustine ». This mode of address occurs frequently from now on <sup>2)</sup>. In all previous papal letters to the various

<sup>1)</sup> ASS Febr. 10 p. 450.

<sup>2)</sup> The address for the Johnbonites was at first « priori ac fratribus heremitarum sanctae Mariae de Budriolo, Cesenatis dioecesis » (*Vota devotorum* of September 28, 1246: *Les registres d'Innocent IV*, no 2103). From the end of their schism in 1253 it was « Priori generali et universis fratribus ordinis Eremitarum » (*Quanto studiosius* of March 14, 1253: *ibid.* no 2103).

The Bricitinenses were addressed until the Great Union as « Priori et fratribus (ecclesiae) eremi de Bricitinis ordinis sancti Augustini, Fanensis dioecesis » (*Sacro-sancta Romana* of November 26, 1227: EMPOLI 122).

Letters to the Hermits of Tuscany were at first directed to « Priori et fratribus ordinis sancti Augustini in Tuscia » (*Vestra devotorum* of March 23, 1244: *Les registres d'Innocent IV*, no 577) and only in 1254 is a prior general mentioned: « Priori generali et universis fratribus heremitis in Tuscia ordinis sancti Augustini » (*Cum a nobis* of February 15, 1254: *Les registres d'Innocent IV*, no 7278).

Letters to other groups were sent to « Priori et fratribus eremitis in partibus ultramontanis » (*Religiosam vitam* of May 31, 1253: EMPOLI 181). The same letter was given on March 31, 1249 to Hermits in both Germany and Hungary (*Les reg. d'Innocent IV*, no 4430): « Priori et fratribus heremitis in Alamannia »... « in Hungaria ». In these last three documents it is stated towards the end of the long text that they belonged to the « ordo canonicus ordinis sancti Augustini » which disproves the opinion of Father Sat. Lopez (expressed in his *Bullarium*, MS in the archives of the prior general) that these bulls were sent to the Williamites. *Quia salutem* of July 5, 1255 was addressed to « Priori generali fratrum

groups involved in the Union the word 'prior provincial' is mentioned only once<sup>3)</sup>. This is surprising in view of the fact that each of the more important congregations was divided into provinces before 1256. The Johnbonites and Tuscans had at least three provinces each and the Bricitinenses two. France and England were combined into a single province, while Spain, Germany and Hungary each had a province of its own<sup>4)</sup>.

The number of houses can be estimated at 200<sup>5)</sup>. A papal letter written three weeks after the promulgation of *Licet ecclesiae* entitled every Augustinian church connected with a convent to be called a conventual church<sup>6)</sup>. Permission was included for the celebration of Divine Office (Choir and Holy Mass) as well as for preaching and administering the sacraments. Thus these churches acquired a certain resemblance to the churches of the Canons (*ecclesiae regulares*)<sup>7)</sup>. This meant that henceforth the difference between the Augustinian Canons and the Hermits of St. Augustine was to be small. Some communities of hermits were known as convents as early as 1253, when their places outside of Fano and Milan were called by that name<sup>8)</sup>. This also proves that the word convent had not yet the meaning of monastery (which at times is used already in the next century) but designated primarily a religious group under a superior living together in a common house.

eremitarum ordinis sancti Augustini in Francia et Anglia »: TORELLI IV, 506/7. In a letter to all archbishops and bishops Innocent IV speaks about the hermits as « Dilecti filii Priores et Fratres Ordinis Eremitarum S. Augustini (*Dilecti filii* of August 3, 1253: EMPOLI 181).

<sup>3)</sup> In *Admonet nos* of April 15, 1253: EMPOLI 176.

<sup>4)</sup> ROTH (1952) 126, 301, 136.

<sup>5)</sup> ROTH (1953) 32.

<sup>6)</sup> *Cum tamquam* of April 27, 1256: AA IV, 442. At the Fourth Lateran Council the bishops, especially those of the larger dioceses, were charged to appoint preachers in the cathedral and conventual churches to assist the bishops when they could not preach personally, and also to assign confessors to give absolution and impose penances: Decr. Gregorii IX, lib. I t. 31, c. 14.

<sup>7)</sup> Henry of Susa (Hostiensis) who died in 1271, mentions in his famous *Summa aurea* only the monk and the regular canon as properly so-called regulars; and yet the Rule of St. Albert, approved in 1226 and practised by the Carmelites before the Council of the Lateran speaks explicitly of an eremitical way of life, instituted by Holy Fathers: BR III, 415, LXXVIII, January 30, 1226.

<sup>8)</sup> For Fano see *Providentia laudabilis* of July 1, 1253 (EMPOLI 184): for Milan *Sua nobis* of July 10, 1253 (MS 1390 f. 22). Vide note 24 *infra*.

*Monastic termini and their meaning*

Before we explain the new title given to the Augustinian Hermits it is desirable to clarify the usage of certain terms. The religious profession of a person meant in the first place his binding himself to a superior as his master and to a corporation as his spiritual milieu. In the time of Alexander IV the words *ordo*, *religio*, *regula* and *institutio* had not yet acquired the fixed meaning they bear in our own day. *Ordo* is still the 'way of life', *religio* refers to the 'binding' connected with religious profession; *regula* is still primarily regulation, and *institutio* 'design'. Thus it is possible to speak of the *congregatio* or grouping together according to the Order of St. Augustine, and also of *ordinis religio* and *religio ordinis*. *Ordo* and *institutio* can stand separately, so that one may follow the *Ordo* (way of life) of St. Augustine according to the *institutio* (design) of John Bonus or that of the Brictinenses<sup>9)</sup>.

<sup>9)</sup> To give some idea of what *ordo* and the other terms employed may signify, we insert here some fragments from divers bulls. The Hermits of Tuscany are told in *Incumbit nobis* of December 16, 1243 (EMPOLI 164): «... mandamus, quatenus in unum vos regulare propositum conformantes, Regulam B. Augustini et Ordinem assumatis, ac secundum eum profiteamini de cetero vos victuros: salvis observantiis seu constitutionibus faciendis a vobis, dummodo ejusdem Ordinis non obvient institutis». *Officii nostri* of June 15, 1256 (BR III, 638) protects the Camaldulenses who as hermits might have been worried about their independence: «... ne... cuiquam liceat congregationes illas et loca illa, quae Camaldulensis eremi, sive coenobii disciplinam et ordinem susceperunt... ab ejus ullo modo subjectione et unitate dividere». In *Religiosam vitam* given to the Williamites on August 28, 1256 (BR III, 642): «... statuantes, ut ordo eremiticus, qui secundum Deum et beati Benedicti regulam atque institutionem fratrum S. Willelmi in eremis ipsis institutus esse dignoscitur». To the united Hermits of St. Augustine in *Oblata nobis* of April 20, 1257 (EMPOLI 25): «... Apostolica Sedes nonnullas domos vestri ordinis, antequam essetis in unius religionis corpus de mandato nostro redacti...» «Hujus (Cisterciensis) siquidem Ordinis sacra religio, a suae institutionis auspiciis quasi deserta et invia, utpote paucis adhuc cultoribus...» (BR III, 730, *Parvus fons*): «... monachorum religionem ejusdem spiritus perseverantia custodire» (Urban II AD 1092: PL 151, 338). See also A. WALZ, *Compendium historiae ordinis Praedicatorum* (Romae 1948) 52 sqq. VICAIRE 138 gives the meaning of *institutio* as the elementary way of living in a house (or in the corporation) as guaranteed by *Religiosam vitam*. In our opinion the word 'institution' means rather the design of life in a religious movement as prescribed by the founder. This 'institution' as a rule indicates the particular character of that *religio*, for which the traditional prescriptions in *Religiosam vitam* form the general juridical frame as is now the case with the *Codex Juris*

*The new name of the Order*

The 13th decree of the Fourth Lateran Council (1215) had limited religious ways to the *ordo monasticus* according to the Rule of St. Benedict and the *ordo canonicus* according to the Rule of St. Augustine. This regulation, intended as it was to reduce confusion, lost much of its force as the two titles gradually degenerated into mere juridical formulas. Innocent IV wrote to the Italian Clares that he had given them the approved Rule of St. Benedict in order to authenticate their way of life, but he did not mean to oblige them to follow it <sup>10</sup>). In the same manner Innocent III compelled the Dominicans to choose between the Rule of St. Augustine and that of Benedict, although he knew that they had a rule of their own, the *institutio* of St. Dominic <sup>11</sup>). Similarly the Bricinenses and the Hermits of Tuscany were compelled to receive the Rule of St. Augustine, though they had their own constitutions.

*Licet ecclesiae* gave the Augustinians the new name by which they are still officially designated : *Ordo Eremitarum Sancti Augustini*. It was to be a union, therefore, according to the way of life of St. Augustine, but in the manner of hermits. To understand this we must refer to the shifting meaning of the word *ordo*.

When the Hermits of Tuscany were combined in 1243 into a *regulare propositum* with the rule and order of St. Augustine, the word *ordo* was used in the above explained meaning of *ordo canonicus* as opposed to the *ordo monasticus* <sup>12</sup>). In like manner, when

Canonici Lib. 2, pt. 2 De religiosis. In this manner the way of life of the Bricinenses was « framed » in 1255 (EMPOLI 6). The Caulites are spoken of as a « novella institutio ordinis » (Vallis Caulium): BR III, 192. Again there is the expression « monasterium monialium... ordinis sancti Augustini secundum institutionem fratrum Praedicatorum » in 1261 (Potthast 18079). See also Du Cange for other expressions and Ch. DEREINE, *Vie commune, Règle de St. Augustin et chanoines réguliers au XI<sup>e</sup> siècle*, in *Revue d'histoire ecclésiastique* XLI (1946) 394 sqq. and J. MOIS, *Das Stift Rottenbuch*, München 1953, 246 sqq.

<sup>10</sup>) VICAIRE 138, note.

<sup>11</sup>) *ib.* 137 sqq. Like the Dominicans the Order of Mercedarians was forced to accept the Rule of St. Augustine in 1235 (BR III, 485). The Camaldulenses were united on June 15, 1256 under the Rule of St. Benedict (note 9 *supra*). Innocent IV enjoined the Hermits of Tuscany on March 28, 1244, to follow the Rule of St. Augustine and freed them at the same time from the Rule of St. Benedict and other rules (*Cum a nobis*: MS 1390, fol. 11).

<sup>12</sup>) PL 179, 197 Innocent II, January 23, 1143.

the hermits in the ultramontane sections were confirmed in 1253, they were described as the *ordo canonicus* according to the rule of St. Augustine <sup>13)</sup>, while in the confirmation of the Johnbonites Pope Innocent IV determined that they should be called only *Ordo Eremitarum*, although they had accepted the rule and order of St. Augustine <sup>14)</sup>.

The new name « *Ordo Eremitarum Sancti Augustini* » seems to be used in conformance with both contemporary general use (*ordo eremitarum*) and the strict legal terminology of the time (*ordo canonicus sancti Augustini*). The word *ordo* seems to be in transition from the exclusive and proper sense of 'way of life' to the later sense of 'corporation'. The title « Order of St. Augustine », having been applied to corporations which observed many different institutions and constitutions, no longer means a way of life according to the mind of St. Augustine but only a certain corporation which has received his rule. The expression *ordo eremitarum* i. e. corporation of hermits as used in *Licet ecclesiae* distinguishes them from other corporations such as the Franciscans and Dominicans, though the latter share in the approved way of life according to the Rule of St. Augustine. Because Canon Law at that time envisaged no other possibility the hermits had to be either canonical (that is Augustinian) or monastic (that is Benedictine). The Clares who actually followed the Rule of St. Francis, but had been constrained to official acceptance of the Rule of St. Benedict, were known as *ordo monasticus* as late as 1343. In their case the « monastic » designation was scarcely more than a legal fiction from the beginning and the fiction wore thinner with the passage of time until it disappeared.

The Dominicans and Hermits, on the other hand, have maintained down to the present day the Augustinian Rule, which was originally prescribed for them on account of their status as *ordo canonicus*.

Neither Order, however, neglected the Augustinian way of life. The Order of Hermits cultivated it — at least since the beginning of the Fourteenth Century — more exclusively than any other Order and slowly came to be regarded as the main exponent of Augustinian monachism; so much so that its members became

<sup>13)</sup> EMPOLI 181.

<sup>14)</sup> EMPOLI 180.

more widely known as Augustinians than as Hermits. The articles on Henry Friemar and our theologians in this issue give some of the reasons for this development. It is to be noted that the Dominicans were to some extent inhibited by their special institutions from turning to the mind and spirit of St. Augustine. These special institutions were a source of strength to the Dominicans ; but the lack of them was providential for the Hermits, who were left free to rebuild the pure Augustinian life.

The « new » name which the Pope gave to the combined congregations could not have been very acceptable to those who had not lived according to the Rule of St. Augustine. It nullified the desired effect of the cautious terms *concorporatio* and *co-unio*, which was to indicate that incorporation of one group into another had not taken place and that all groups held equal rights. The name was not even new ; it had been used three years before. A second pre-Union term, ' *Eremitarum ordinis Sancti Augustini* ', was used in another document addressed to Lanfranc on the very day *Licet ecclesiae* was issued. This was a plain affront to the non-Augustinian groups. Seemingly, here was a union of Hermits of St. Augustine <sup>15)</sup> into which some others (e. gr. the Williamites) with a divergent rule of life and a different holy founder were incorporated. It might seem at first like a technical blunder, but it expressed, no doubt, the real mind if not of the Roman Curia then at least of Cardinal Richard, who was the real author of these documents. This induced the Williamites to ask for their release from the union with the followers of St. Augustine, and from the austere observance of poverty which was in use among

<sup>15)</sup> The name *Ord. Her. S. Aug.* was used for the first time in *Dilecti filii* of August 3, 1253 (EMPOLI 181), the expression *Eremit. OSA* in *Ut eo libentius* (ór *liberius*) Sept. 25, 1245 (*Les registres d'Innocent IV* no 1534).

Of the words *concorporatio* and *counio* the first is the more important. When the provincial of the Poor Catholics of Milan was ordered to join his men and houses to the Hermits of St. Augustine in 1257, the word *co-unio* is used, but instead of *concorporatio* the expression *incorporatio* is substituted: *Iustis petentium* October 23, 1257 (*Les registres d'Alexandre IV*, no 2299; TORELLI IV, 607). On Dec. 2, 1253, when St. Mary Magdalene's in the Valley of Preda was united with the congregation of the Brictinenses the expression *incorporare* was used, which means joining to someone else (*Oblata nobis*: TORELLI IV, 488).

Jordan of Saxony states falsely that all religious groups mentioned in *Licet ecclesiae* were concorporated to the Order of St. Augustine: *Ordini Eremitarum Sancti Augustini... concorporavit ac univit: Vfr. 47.*

the Augustinian Hermits. As early as August 22, 1256, only four months after the promulgation of *Licet ecclesiae*, their request was granted. They were permitted to live according to the Rule of St. Benedict and the institutions of St. William<sup>16</sup>). The next day they received the explicit permission to keep the material goods brought in by their candidates, a privilege almost identical with the one granted the Cistercians in 1247<sup>17</sup>). On August 28, six days after their exodus, they received the classic form of confirmation in the bull *Religiosam vitam*<sup>18</sup>).

It could be asked whether the Williamites thus relapsed to the old *ordo monasticus* according to the Rule of St. Benedict, and whether they were finally deprived of the treasured institutions originated by St. William and handed down by his young follower Albert<sup>19</sup>). The answer is in the negative. The bull *Religiosam vitam* addressed to them called them *ordo eremiticus*. It was a most unusual privilege, since this denomination was not granted to any other group, at least not in any documents which have come down to us; neither the Johnbonites nor the Hermits of Tuscany, nor the united orders of 1256, nor even the Hermits of Vallumbrosa or Camaldoli succeeded in obtaining it.

In our opinion this favor is to be explained by a profound conviction of the Holy See that the decree of the Fourth Lateran Council had been outlived; that religious life ought no longer be required to choose between *ordo canonicus* and *ordo monasticus* as the only possibilities available. A breach was made in the centralizing and schematizing policy of Innocent III, who preferred to perpetuate the choice between the two approved rules rather than establish an *ordo minoriticus*. The Papal Curia, however, is rarely

<sup>16</sup>) The release was granted in *Licet olim* (TORELLI IV, 553; *Les registres d'Alexandre IV*, no 1452). Monte Favali also left the union: ROTH (1952) 244. Concerning the power to form a union and break it, see P. FAGNANI, *Commentarius in III. librum Decretalium* (Venetiis 1729) *Ne sede vacante*, I, n. 41, p. 201.

<sup>17</sup>) BR III, 522 *Devotionis vestrae* of October 22, 1246.

<sup>18</sup>) BR III, 641, POTTHAST 16533.

<sup>19</sup>) ASS Febr. 10, p. 473. The mentioned Rule of St. William derives from his disciple Albert and describes the daily religious practices and mortifications of the saint. For the adoption of the Rule of St. Benedict by the Williamites see ROTH (1952) 122. It is remarkable that the Williamites of Favali as early as 1224 were called Hermits of St. Benedict, though in that document (note 1 *supra*) the Rule of St. William was approved. See also note 9 *supra*.

precipitate in its decisions, and the structure was to remain standing for many years to come. The Clares for instance remained *ordo monasticus* until 1289, at which time they were renamed *Ordo Sanctae Clarae* and given the official right to follow the Rule of St. Francis (approved by Urban VI) instead of that of St. Benedict, but even after this the Curia occasionally lapsed into applying the name *ordo monasticus* to the Clares <sup>20</sup>).

### *Title and Preamble*

The title *Licet ecclesiae* does not conform to the pattern which since the reign of Gregory VII and particularly since Innocent III had become classic for the opening words of a bull approving a religious Order. If the first words were *Religiosam vitam eligentibus* or the earlier form *Regularem vitam* or *Solet annuere*, the reader would be prepared for a solemn approbation of an existing state of affairs. In this manner the Dominicans and Franciscans were confirmed as religious Orders. Our title which is rare, if not unique, leaves the subject of the bull in doubt.

Since this bull is not a formal rescript issued at the occasion of a consistory, the great length of its preamble is unusual. It justifies the Union, as designed to eliminate the fear of 'confusion' expressed by Lateran IV. It states that the integrity of the body of the church is not handicapped by the diversity of its members as long as the various parts fit harmoniously into the whole; each part, however, must be easily distinguishable from the others and must have an orderly arrangement of its own. But the religious bearing the general name of Hermits, who follow substantially the same way of life, are called by many different names and wear different habits. The Pope means to provide for the better adornment of Christ's spouse (for whom each Order is like a beautiful garment), and for the greater spiritual power of the Hermits themselves <sup>21</sup>).

<sup>20</sup>) WADDING L., *Annales Minorum*, X, April 4, 1343 (Clement VI).

<sup>21</sup>) The suppression of the definitions of the General Chapter of the Carthusians in 1268 necessitated a similarly long introduction: BR III, 800.

The confirmation of the Hermits of Camaldoli begins also with an extraordinary address: *Officii nostri* (vide note 9). The bull uses the terms « ex pluribus acierum una »; the same terms are used in the bull to the Cistercians: *Parvus fons*: BR III, 729 (AD 1265).

The differences among the Orders were greater than Alexander IV seems to admit. Some did not even bear the name Hermits and were simply designed as *Sancti Augustini ordo* (*ordines*?). Others did not follow the Rule of St. Augustine but that of St. Benedict. The followers of St. Augustine wore black, those of St. William grey. And even though these differences are relatively insignificant, it is easy to see why the Pope introduces his intentions cautiously. His disposition to minimize the differences is on the whole fully understandable, but the *co-unio* and *concorporatio* which he meant to enforce were precarious indeed. The difficulties involved surpassed by far those encountered in the union of the Hermits of Tuscany in 1243, which had effected only hermits of a single region and with nearly the same *ordo* and *institutio* <sup>22)</sup>. The Tuscans, moreover, were not subject to the strong, almost feudal attachment (*commendatio*) to a great personality as were the followers of John Bonus and William of Maleval. The reverence of the Williamites for their founder was further increased by his prompt canonization, while the fervor of the Johnbonites was somewhat lessened, when the propitiously begun process of their founder ended with a mere provisional permission of his cult <sup>23)</sup>.

It is not clear, whether the groups to be united differed greatly in religious discipline, though the Britinenses were heroically poor and the Williamites were not mendicants at this time. The admission of non-hermits, on the other hand, to an eremitical Order seems less strange, when we remember that some eremitical groups already possessed houses with convent life near the large cities <sup>24)</sup>.

#### THE HISTORY OF THE UNION

After having expressed his desire for unity Pope Alexander describes the manner of bringing it about.

##### *The Call to a chapter general*

On July 15, 1255 a mandate with the rather customary beginning

<sup>22)</sup> ROTH (1952) 123.

<sup>23)</sup> He was beatified in 1483 (EMPOLI 392).

<sup>24)</sup> There were non-hermits in the house of Milan (St. Augustine by name) to whom Innocent IV wrote a letter in 1253 concerning a difference of opinion

*Cum quaedam* <sup>25)</sup> was sent to all Hermits of the Orders of St. Augustine and St. Willim. Two representatives from each house, with full proxy powers, were summoned to a general chapter in Rome. The Bricinenses, the Hermits of Favali and the followers of John Bonus apparently received special invitations, though they followed one or the other of the above rules. The beginning of *Cum quaedam* is almost the same as *Praesentium vobis* <sup>26)</sup>, which contained the call for union to the Tuscans, but the rest is somewhat different. Innocent IV had simply said: « One or two must come from each house with full mandate of prior and convent to listen to whatever we deem beneficial concerning the reformation of your way of life ». Alexander's letter also has the style of a mandate bull, but its author expresses himself more cautiously: he desires their presence « to give them some salutary regulations regarding the bond of charity and conformity with regular observance ». As in 1243 so now Cardinal Richard Annibaldi was to designate time and place. Again he selected St. Maria del Popolo and required the meeting to take place in March of the following year.

#### *The decisions of the chapter general*

Richard was further appointed to preside at the general chapter and to carry out the orders which the pope had given him orally. The delegates, after showing their credentials, unanimously consented to the proposed union of their constituents. The claim of the Williamites eight years later <sup>27)</sup> that they had not agreed but violently opposed the union, does not necessarily give the lie to the Pope's assertion. It might only have concerned their bitter resentment of their complete submersion in the Augustinian way of life after they had consented to the inclusion of their Order in the proposed union. *Licet ecclesiae*, however, speaks only of complete harmony amongst the delegates.

between their convent and the rector of St. Babilla: *Sua nobis*, Ms. 1390, fol. 22; ROTH (1952) 245. (The habitants of the house are called Ordinis S. Aug.).

<sup>25)</sup> AA IV, 297; BR III, 256; *Bullarii Franciscani epitome*, ed. K. Eubel no 1310. Compare PL 125, 504.

<sup>26)</sup> TORELLI IV, 378; *Les Registres d'Innocent IV* no 336: 16. December 1243.

<sup>27)</sup> Statement made in *Ea quae iudicio* of August 29, 1266: ROTH (1952), 242 note 331.

To effect the union four objectives had to be gained : a uniform way of life, a common government under one prior general, one name and a common habit.

### *A uniform way of life*

When discussions were completed, Cardinal Richard united all houses into « one profession and regular observance forever ». The same profession and the same way of life was thus made the unifying force of the houses and individuals.

Only one point pertaining to special constitutions found its way into *Licet ecclesiae*. It treated in a clausula the request of one or several groups <sup>28)</sup> that « for the sake of the above said grace of the union and for the sake of conformity » they be allowed to retain that particular practice of religious POVERTY, which renounced forever all earthly possessions « juxta conceptum votum paupertatis spontaneae ». The expression is not, in our opinion, a precise technical term. True, a « libera et spontanea paupertas » is also mentioned in a letter of Cardinal-Legate Rayner to the Servites of Mary, which obliged them to relinquish all things to the Holy See under the administration of the local Ordinary, who was empowered to use the income from such holdings for the benefit of the Servites or others, as the occasion might require it <sup>29)</sup>. Sentiment in favor of this kind of poverty was wide spread before the middle of the thirteenth century and then quickly subsided. Whether the question raised at the Chapter refers to this kind of poverty cannot be fully ascertained <sup>30)</sup>.

<sup>28)</sup> Jordan of Saxony (*Vfr.* 342) writes: « Cum... quidam ex fratribus ipsis devotione paupertatis affecti desiderarent et hoc apud Sedem apostolicam procurarent, ut iuxta conceptum votum paupertatis spontaneae perpetua eis possessionum terrestrium abdicatio remaneret, super quo etiam privilegium obtentum extitit cum clausula, quod fratres non possent cogi ad recipiendas possessiones aliquas vel habendas ». See also p. 349. The clausula, however, was not taken from *Et ut fortius* (AA IV, 371) as the introduction to *Vfr.* LIII states, since the very word occurs in *Iis quae nostri*. See note 31 *infra*.

<sup>29)</sup> In *Deo grata* of March 23, 1256 (BR III, 633).

<sup>30)</sup> The Dominicans changed to a less rigorous form in 1220 (VICAIRE 136). The Carmelites followed the same path in 1247 (BR III, 535 & DDC, Carmes chaussés 1355) even the Franciscans — through the influence of St. Bonaventure — mitigated in 1260 the original severity (*Dict. théol. cathol.* Frères mineurs, 813). Though the Friars Minor give all their movable and immovable goods to the

The stipulation concerning poverty reveals a division of opinion among the assembled hermits. The poverty requested was apparently of the Franciscan kind ; the Williamites, however, had practised the classical form of poverty — joint property and personal abdication of possessions — which was usual in the *ordo monasticus* as well as in the *ordo canonicus*. To the Williamites the other position seemed exceptional and religious tradition supported their views. It was clearly impossible to arrive at a uniform conception of poverty and the union accordingly involved a compromise that left every house and every congregation to its former customary practice. Any other course might have caused the whole project of the union to fail. The wording of the bull, however, was such that it gave the stricter observance a chance to demand equal austerity from all members. The Williamites drew the necessary conclusions and obtained their release from the union.

Their departure did not stop the differences of opinion among the remaining members. Cardinal Richard was, therefore, delegated by special oral mandate of the pope to solve the doubts which had arisen. His decision is included in the bull *Is quae nostri* on July 17, 1257<sup>31</sup>). He observes that in view of local disparities and altered circumstances *Licet ecclesiae* contains things which seem not only dubious and obscure, but even quite onerous to some. He thinks it would be unfortunate if this bull promulgated for the very purpose of promoting unity and loving harmony should be the cause of division. To achieve harmony he grants permission to those who had hitherto eschewed all possessions, but could no longer survive under such conditions, to receive temporal goods from the faithful

Holy See, they are allowed to give objects of minor value to others, if the permission of the guardian is obtained (Bull. Francisc. epitome, Suppl. XI, 239 — compare the Decret. Bonifacii VIII, l. 5, t. 12, c. 3). The Rule of St. Francis says: « Fratres nihil sibi appropriant nec domum nec locum nec aliquam rem ». For the missionaries this form of poverty had been relaxed in 1226 (BR III, 417).

The current phrasing of this poverty is *paupertas voluntaria* (WALZ, *Hist. Ord. Praed.* 14, n. 1) *paupertas evangelica* (VICAIRE 136, n. 4) in *paupertate fundatus* (sc. Ordo) Boniface VIII in *Ad consequendam gloriam* of Febr. 19, 1295 (EMPOLI 40). See also VAN ESPEN, *Ius ecclesiasticum universum* (Lovanii 1753) 281 sqq., and cap. gen. of 1290: AA II, 291.

<sup>31</sup>) Neither the edition of this document in AA III, 29-31 nor Ms 1390 f. 31 harmonize fully with the new edition in Loye-Cenival, *Les registres d'Alexandre IV* no 1967.

without infringing on the decisions of *Licet ecclesiae*. Furthermore, those who had possessions and wish to keep them may do so, while those who wish to possess all things by possessing nothing are permitted to continue in their spontaneous poverty. This authentic interpretation undoubtedly contributed to the success of the union. Jordan of Saxony has misled most commentators to the belief that all the assembled members agreed to the abdication of property. He even claims that the contrary privileges had been extorted by brethren whom the Pope otherwise could not have made stay in the union. Cardinal Richard, however, stated that this decision in *lis quae* expressed the mind of the General Chapter, even though nothing was said clearly about it in *Licet ecclesiae* <sup>32</sup>). The right to follow that form of spontaneous poverty had been asked by those already pledged to it as a special favor. It had not been clearly stipulated in the bull, however, that the use of spontaneous poverty was a privilege granted to some, rather than an obligation binding on all. This point was now clarified. It begins to look as if a certain measure of common property was to be the norm toward which both wings of the union would guardedly move. History tells us that such development did take place generally among the mendicant Orders in the latter part of the Thirteenth Century and that the Council of Trent granted the right of common property to all religious except the Capuchins and the Franciscans of the Observance <sup>33</sup>).

<sup>32</sup>) « Sed Ordo totus concorditer faciendo Constitutionem, elegit paupertatem et abdicavit possessiones »: *Vfr.* 347. « ... illa indulgentia papae videtur fuisse extorta per improbitatem sive importunitatem et dissensionem fratrum, quos alias papa non potuit ad unionem reducere » (*ib.* 348). ESTEBAN (AA IV, 442) and ROTH (1952) 241 follow Jordan's narrative. Cardinal Richard, however stated in *lis quae* that there was a thorough discussion (*alta deliberatio*) about this question at the General Chapter May 1, 1257 and afterwards the Cardinal made his decision in this question as stated above, because « precipue cum tempore concessi Vobis privilegii antedicti, quamvis in ipsius tenore non existat, haec fuerit vestra intentio et talis voluntas extiterit singulorum ».

<sup>33</sup>) VAN ESPEN, *Ius eccl.* I, t. 20, c. V no 24-26. The Council of Trent Sess. 25 c. 3 numbered the Augustinian Hermits and Carmelites among the mendicant Orders. While the mendicancy in the first decades might be doubted by some, they cannot longer do so after 1290, when Boniface VIII modified the provision of the Council of Lyons (1274) from 'Caeterum Carmelitarum et Eremitarum St. Augustini Ordines... in suo statu manere concedimus' to « in solido statu volumus permanere ». Since Boniface VIII places these two Orders beside the

In one point, however, everyone agreed and even the strictest groups joined in the request to be freed from carrying the staff, formerly a distinguishing feature of their life <sup>34</sup>). The Pope granted it as a special favor, but personally ordered that all groups must wear the black habit from now on. As papal legate he personally had been involved in the dispute between the Franciscans and some eremitical groups, especially the Britinenses and Johnbonites, which arose from the similarity of their clothing to that of the Franciscans <sup>35</sup>); even as Pope he had been occupied with it at several occasions <sup>36</sup>). He now settled it forever.

mendicant Franciscans and Dominicans, there cannot remain any doubt about their status as mendicants.

The modification of Boniface VIII was made in Rome on March 3, 1290 and given to the Hermits in the form of a bull on May 5, 1298 (EMPOLI 46). In it the Pope uses the expression that he edited the decree of the Council of Lyons « cum quibusdam mutilationibus et detractationibus » (Decr. VI, l. 3, t. 17, cap. unum, POTTHAST 24675). Van Espen, the most erudite canonist of his time, overlooking the fact that Boniface VIII made the change, speaks of the mutation and mutilation of the text of the Council during the reign of that pope.

It is strange that even modern writers commit so many errors concerning this matter, when already Jordan of Saxony cited the decretal of Boniface VIII as proof that the Hermits of St. Augustine are mendicants « tam in iure quam in facto » (Vfr. 345). The DDC in its article on the Carmes chaussés cites the decretal of Boniface as an approbation of that Order, but does not recognize that it also classed the Carmelites as mendicants. Nolet and Boeren in their work *Kerkelijke Instellingen* (Amsterdam 1951) 436 places the admission of the Hermits of St. Augustine to the mendicants in the year 1567, because Pius V mentions them as such in *Romanus Pontifex* of October 3 of the same year. The Franciscans are also mentioned in this document as mendicants, but no one would date their mendicant state from the 16th century!!

If one part of an Order owns possessions and the other does not, it may still be called « in paupertate fundatus » as Boniface VIII wrote in *Ad consequendam gloriam* of Febr. 19, 1295 (EMPOLI 48).

<sup>34</sup>) During the wars of Frederic II some hermits were regarded as enemy scouts (exploratores) when they appeared with staff and, therefore had much to suffer. For this reason they received a temporary release from their obligation of bearing it (*Ex parte tua* of September 7, 1250). For sources see Vfr. 453 n. 14. Emperor Frederic died on December 13, 1250, but his son-in-law Ezzelino kept Italy in unrest until his death in 1269.

<sup>35</sup>) See EMPOLI 128 and 16. When cardinal-bishop of Ostia he was papal legate in the Lombardy in 1253.

<sup>36</sup>) He did so in *Recordamur liquido* of February 22, 1256 and June 17, 1256 as well as in *Litteras nostras* of October 15, 1256 (POTTHAST 16261, 16425, 16383 and ROTH (1952) 137).

When the Williamites left the union for the sake of their own way of life as hermits according to the rule or institution of St. William, the groups remaining in the union tended to retain much of their old identity and practice. The Hermits of Tuscany and the Bricitinenses were still different and to a considerable degree modeled on the constitutions and institutions of old. Uniformity was achieved gradually, the most significant single step being agreement on the Constitutions of 1290 which had been brought up-to-date by Augustinus Novellus. Jordan of Saxony opined that they were derived from the constitutions of the Hermits of Tuscany<sup>37)</sup> which had been confirmed by Alexander IV as late as 1254. In view of the fact that Augustinus Novellus was a member of Lecceto near Siena, Jordan's opinion is likely correct<sup>38)</sup>.

### *The uniformity of Government*

The assembled brethren authorized Cardinal Richard to select a prior general for the entire Order. To understand this action we have to suppose that the delegates were faced with a deadlock which they could not resolve even by referring the selection to a committee<sup>39)</sup>. Perhaps it was feared that the group presenting the successful candidate would have too much to say concerning the observances to be required by all houses. The Williamites especially would dread the administration of a common discipline by a general from the Franciscan-minded group. Also the Chapter may have been apprehensive, lest some group such as the Williamites or Bonites might take umbrage if its candidate were rejected. The best way out of the difficulty was to leave the decision in the hands of the Papal Legate.

The Cardinal's selection fell on Friar Lanfranc of Milan, the life-time general of the Johnbonites, who had practical experience

<sup>37)</sup> *Vfr.* 174. These constitutions are not preceded by the text of the Rule of St. Augustine as in later editions, nor are they frequently cited except concerning poverty.

<sup>38)</sup> *ASS*, Maii IV, p. 619; Compare *Vfr.* 458 and *AA* VI, 120 (article by Nicolaus Concetti). The constitutions were confirmed by the bull *Cum a nobis* of February 15, 1254: *EMPOLI* 12 and note 25 *supra*.

<sup>39)</sup> Lanfranc had been elected by a committee of four at the General Chapter of the Johnbonites at Bologna in 1252 (*Admonet nos* of April 15, 1253; *EMPOLI* 14. *BR* III, 566 has falsely April 25).

in unification, because he had brought together the two separated branches of his own Order. From a tactical point of view, the resignation of the other generals — who were only temporary superiors — must have been expected to be less disruptive than the resignation of the General of the Johnbonites, who had been confirmed in office for life <sup>40)</sup>. The Cardinal accordingly appointed and confirmed Friar Lanfranc as the first Prior General of the new Order, having obtained a special mandate from the Pope. It is to be noted that such papal confirmation was not immediately necessary in every case. In later years the Popes tolerated the custom by which the Franciscan Friars did not have to ask for the confirmation of their Minister General, while much earlier the General of the Cluniac monks had obtained the right to begin his reign without waiting for confirmation. This privilege of Cluny Pope Alexander IV had also extended to the Hermits of Tuscany in 1255 <sup>41)</sup>.

After having detailed the Cardinal's achievements the Pope confirmed his actions with apostolic authority, supporting it and wishing to reinforce it with his protection by the bull *Licet ecclesiae*. The formula of protection calls for special comment. He placed the

<sup>40)</sup> « ad vitam »: Ms 1390, fol. 30 in margine of *Solet annuere* of Juli 17, 1255.

<sup>41)</sup> *Solet annuere* of Juli 17, 1255 (EMPOLI 14). After Lanfranc was elected Prior General of the Johnbonites (note 39 *supra*) representatives were sent to Rome to obtain his confirmation. All his successors were bound in *Admonet nos* to obtain a like confirmation. The Clares had the same statute (BR III, 718).

The General of the Franciscans could rule without any restrictions from the moment of his election, because he was confirmed *ipso facto*. This usage was made law in 1265 (BR III, 735). The Cistercians received the same privilege in the same year. The Dominicans also enjoyed this advantage (VICAIRE 133 sqq). The united Hermits could have made use of the privilege of the Tuscans whose newly elected General was confirmed *ipso facto*. This would have been possible because *Oblata nobis* of April 20, 1257 extended all privileges of individual houses or congregations to the entire Order (EMPOLI 25). But this surmise seems less probable in view of the records still available, which show that Francis of Reggio, the fourth prior general, was confirmed by Gregory X (GUIRAUD, *Les registres de Grégoire X* no 1067) and so was Clement of Osimo, the third prior general, after his second election in 1284 by Martin IV (OLIVIER-MARTIN, *Les registres de Martin IV* no 513).

Clement V granted the privilege that a newly elected prior general of the Augustinian Hermits was confirmed *ipso facto*, but would have to report to the Holy See within a year (*In ordine vestro* of June 18, 1309: AA III, 103). This restriction was abolished by Sixtus IV in 1474 (AA III, 104 n. 1).

persons and houses under the protection of Saints Peter and Paul and himself. It is interesting that the persons and houses are mentioned rather than the order (corporation). The concept of corporation as a legal person capable of entering into the relationship of master and subject would seem to be as yet not completely developed. Also unusual is the expression « beatorum Petri et Pauli et nostra », for the accustomed reference is to Peter alone. This protection of old corresponds in our days to the elevation of a congregation from diocesan to papal law <sup>42)</sup>.

The protection of the Holy See in *Religiosam vitam* transformed the religious group to which it was directed into a religious institution with papal approbation and confirmation. The different precepts which the new institution received on this occasion placed it in a permanent and classic framework. The use of the longer formula in *Licet ecclesiae* suggests an anticipatory favor of immediate protection ; it could not be equal to that granted years later in *Religiosam vitam* <sup>43)</sup>. One reason might be that it was yet necessary for the General to make a uniform profession and observance prevail, even among houses that had not sent representatives, although they had been notified. Stability and pacific possession had not yet been achieved.

The full executive power of the prior general could not become effective during the lifetime of Cardinal Richard. Innocent IV had already appointed him corrector and provisor of the Hermits of Tuscany and had entrusted their care and administration to him. In 1257 Alexander IV made him Cardinal Protector of the Order of Hermits, giving him powers equal to those of the Cardinal Protector of the Franciscans, who was set above the Minister General, the Provincials and all of the Franciscan friars, and possessed the

<sup>42)</sup> *Codex Juris Canonici* can. 488 n. 3 St. Francis was the first founder to ask Rome for approbation. The Augustinians received their full exemption from Boniface VIII in *Sacer Ordo vester* of January 21, 1298 (EMPOLI 44). This bull could be found in almost every important archives of the Order; one authentic copy is also at the Public Record Office of Maestricht.

<sup>43)</sup> Most authentic copies in former Augustinian archives are only versions of *Religiosam vitam* given to the Johnbonites on September 7, 1254 (EMPOLI 335). It was sufficient on the basis of the privilege mentioned in note 41 *supra*. This exemption protected the houses against undesirable intervention on the part of local authorities. Decr. Gregorii X, l. 2, t. 28, c. 18 or PL 215, 498.

greatest power and supreme authority after the pope <sup>44</sup>). Richard used his powers sometimes against the wishes of the entire Order and his autocratic ways seem to have brought about the resignation of Blessed Clement of Osimo, the third prior general. Notwithstanding this, his protectorate was in general a tremendous boon to the Order. In the next two centuries, however, the power of the cardinal protectors in the various Orders was considerably curtailed, in the end being confined to matters concerning the Order as a whole.

The hand of the prior general was, nevertheless, greatly strengthened in *Licet ecclesiae*, when the pope forbade all appeals <sup>45</sup>) against his decisions in bringing about the union of the reluctant and laggard houses and when he commanded that all must obey with filial love their Prior General, whom « divine ordination » had placed over them. This term « by divine ordination » is seldom used ; it must not be construed, however, as referring directly to the supernatural vision which supposedly suggested the union to the Pope.

#### *The date of « Licet Ecclesiae »*

Several authors have already described the discrepancy between the date mentioned in the bull and that given in the papal registers. The original charter, which is still preserved in the Roman archives of the Prior General, gives the date of promulgation 5 Idibus Aprilis, that is April Ninth ; the papal register on the other hand gives quarto Nonas Maii, the Fourth of May. Since our interest in the problem thus raised is with a view to consequences, it is proper

<sup>44</sup>) EMPOLI 164, 23. See ROTH (1954) 24, 33; D. BOUIX, *Tractatus de iure regularium* (Parisiis 1857) II, 161 sqq.

<sup>45</sup>) From the time of Alexander III privileges were sought and obtained which would prevent subjects from appealing the decisions of their superiors to the Apostolic See (or the local bishops): Decr. Gregorii IX l. 2, t. 27, c. 3. The last will of St. Francis prohibited his brethren from approaching the Holy See individually, nevertheless they asked in 1230 for an explanation of the Rule: BR III, 449.

In order to check direct appeals the Orders instituted the office of the procurator general. In the Augustinian Order we see it in existence already in 1261. He had to transact all business with the Holy See (EMPOLI 392). The Constitutions of 1290 chap. LII (ed. Veneta 1508) outline for the first time his duties. See also AA II, 35 sqq.

for us to ask which of the two documents is legal evidence for the contents and date of promulgation.

So far as the Holy See and other authorities were concerned the addressee of a letter had no document at his disposal but the letter itself. The registers of the Pope begun under Innocent III were simply not public property. A genuine bull gives unimpeachable evidence.

A letter of Innocent III inserted in his Decretals <sup>46)</sup> details indications of authenticity or forgery in terms of style, chirography and the lead or gold of the bulla <sup>47)</sup>. The bulla or seal, of course, clasps the two ends of a piece of thread passed through cuts in the parchment. Innocent IV found one bull a forgery because one end of the thread was but lightly attached at a part of the seal that was somewhat puffed up. The seal was genuine but it had been taken from another letter <sup>48)</sup>. Innocent III mentions a case in which forgery was proved from stylistic considerations <sup>49)</sup>. Such care to detect forgeries shows the impressive evidential weight attributed to authentic bulls. In case of falsification, however, the papal register was not consulted. Not a single case of the twelfth and thirteenth centuries cites contrary evidence from the register, although (what is quite another matter) the Pope does occasionally refer to the register to replace a lost bull and thus enables the addressee to defend his rights. We are, then, fully justified in following the genuine bull that is kept in the archives of the Order. It is to be noted that the date is in the same hand and style as the rest of the bull.

It does sometimes occur that the Pope quotes the register in making provisions concerning matters connected with preceding bulls. We refer, for instance, to the beginning of a letter from Alexander IV to the Hermits of St. Augustine :

Litteras quasdam felicis recordationis Innocentii Papae Quarti praedecessoris nostri, vobis dudum concessas in regesto ipsius reperimus, quarum tenorem sumptum ex eodem regesto fideliter vestris inclinati precibus duximus praesentibus ad rei memoriam inseren-

<sup>46)</sup> See *Decr. Gregorii IX*, l. 5, t. 20, c. 6 *de crimine falsi*.

<sup>47)</sup> A letter with gold seal is for instance that of Innocent III to the King of the Bulgarians (PL 215, 291). See Du Cange and DDC under « Bulla ».

<sup>48)</sup> PL 214, 322.

<sup>49)</sup> PL 214, 919. The words *filius* and *vester* were applied to the bishop of Antivari (Bar in Jugoslavia); but the Pope addresses a bishop as *Frater venerabilis* and he never uses the plural form in addressing a single person.

dum, volentes ex hoc ius, quod per easdem litteras vobis competit, conservari. Tenor autem ipse talis est... <sup>50)</sup>.

The succeeding text repeats Innocent's letter as it is found in the register. Since Alexander is not founding a right but conserving it, the right became effective with the date of Innocent's letter, not with its re-statement by Alexander IV.

It was and is the law that a right begins with the date given in a papal letter, which is the reply to a query <sup>51)</sup>. In *Litteras quasdam* the date, which Alexander IV gives, is valid simply because he gives it in this official writing, not because it appears in the register. We conclude, therefore, that the date of *Licet ecclesiae* given in the papal register has no juridical significance; the bull alone exists, juridically speaking, if its authenticity has been proved.

#### CONCLUSION

*Licet ecclesiae* had but one purpose: to congregate divers groups of Hermits into one Order. In this it succeeded better than could be anticipated and if the non-Augustinian groups had been left out nothing would have disrupted the harmony.

The bull carefully avoided everything which might have provoked bitter feelings; none of the manifold difficulties which each group had been undergoing and which were a principal reason for uniting them is mentioned, not even the quarrel with the Franciscans over the habit and collection of alms. Every expression is chosen with much care, so no one would take offense and feel that another group had gained the upper hand. It did not deal with problems like constitutions and organization which must have been discussed at the first General Chapter. Most of all, it keeps silent on the required transfer into the cities, which is emphasized so much by Henry of Friemar and Jordan of Saxony. Here, as in the first sentence of the Rule, composed by St. Augustine eight and a half centuries before, the central theme is unity — to have one heart and soul in God.

<sup>50)</sup> EMPOLI 12: *Litteras quasdam* (v. note 36).

<sup>51)</sup> The text is inserted in the Decretals of Gregory IX, l. 1, t. 3, c. 7 (Vide *Codex Juris Canonici* 38). Compare the Decretals of Boniface VIII, l. 3, t. 4, c. 7. A right given through an executor is something different; vide *Codex Juris Canonici* 38.

The Order was not united by negotiation among the component groups nor even through the inspiration of a saint ; rather it was established by the Catholic Church herself. In Jordan's solemn words <sup>52)</sup> :

« What, therefore, Holy Mother Church herself founded, I regard as more authentic than if it had been done by a saint. For there cannot be a doubt that she is directed by the Holy Spirit and what she demands and institutes, is accomplished by the guidance of the Holy Spirit ».

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<sup>52)</sup> Vfr. 69. Vide also KNOWLES I, 200; II, 148.