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III.

** Synthesizing the Legal and Theological Thought of Master Vacarius **

** Von **

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Scholars have long sought to synthesize the diverse writings of Master Vacarius (c. 1115/20–c. 1200). To many he is known as the author of the legal text-book, the *Liber pauperum*, and the *magister* responsible for renewing Justinianic Roman law learning in England in the twelfth-century. But little attention has focused on his other, ‘supra-legal’ works, namely: on the hypostatic union of God and man in the incarnate Christ (*Tractatus de assumpto homine*); on marriage (*Summa de matrimonio*); and on various theological, sacramental, and ecclesiastical errors (*Liber contra multiplices et varios errores*). Why did Vacarius write these latter works? And how are we to understand them in light of the fact that their author also composed the *Liber pauperum*? What features underlie his legal and theological thought?

My own recent work attempted to go some way towards answering these questions. But it hardly stilled debate on a figure that has both intrigued and frustrated scholars for more than a century. The present paper, therefore, suggests a three-fold framework for understanding the Vacarian corpus. First, Vacarius’s works need to be understood as distinctively combining law and theology, a mix which is innovative, rather than obsolete. Second, the works are characterized by a style and content which blends pedagogic methodology with practical pastoral needs. Third, they focus on heurism or analysis, rather than doctrine. My paper attempts to explain these themes in each of Vacarius’s four works mentioned above.


I. Life and Works

Vacarius's career spanned the spheres of school and bureaucracy, the twin singular achievements of the 'twelfth-century renaissance'). Born c. 1115/20 in Lombardy (Robert of Torigni described him as a *gente Longobardus*), he studied law in the 1130s up to the 1140s at the schools at Bologna, or perhaps one of the lesser-known schools such as that at Pavia. When he arrived in England in the 1140s, he was known to Robert as *magister Vacarius*. Exactly why a master in Justinianic Roman law would seek a career in England has perplexed scholars. Gervase of Canterbury provides part of the explanation: he connects Vacarius's arrival with the legatine dispute between Theobald, Archbishop of Canterbury, and Henry, Bishop of Winchester. On this basis, it is most likely he joined the *familia* of Theobald in around 1144, when this dispute reached its peak. Despite his training in Roman law, it seems that he must have acquired some knowledge of canonistics too, for the legatine dispute involved issues of that nature. As I will discuss in this paper, Vacarius’s intellectual breadth extended beyond Justinianic Roman law to canon law, as well as speculative and practical theology. This would have made him a useful official in the busy episcopal seat of Canterbury. Further, it was at Canterbury that his life intersected with some of the great English intellectual lights of the century: John of Salisbury, Thomas Becket, Roger of York, Gilbert Foliot, Gerard Pucelle, and Theobald of Canterbury.

Some time after 1159 he moved to the north of England to join the house-

1) For the following biographical information, see my Law and Theology in Twelfth-Century England: The Works of Master Vacarius (c. 1115/20—c. 1200) (Disputatio 10; Turnhout 2006) 2–8 and the bibliography therein. On the one hand, the present paper is a response to Professor Anders Winroth’s observations, in his review of my book on Vacarius, Speculum 83.3 (2008) 768, that I do 'not quite create a new synthesis of Vacarius based on a fresh consideration of his [legal and theological] œuvre, as one might have hoped'. On the other, it is an affirmation of Professor Robert J. Somerville’s observation in his review, American Historical Review 113.4 (2008) 1216, that my book shows Vacarius as unique in that he was a medieval ‘lawyer-theologian’ whose ‘distinct mix of legal and theological thought is ... innovative rather than obsolete, blend[ing] pedagogy with a concern for practical pastoral needs’.

Further, with respect to Professor John E. Lynch’s lament that my book on Vacarius ‘will not be sufficient to promote Vacarius from his accustomed minor ranking’, Church History 77.1 (2008) 163, I submit that this was never the intention of my work. Rather, it was to demonstrate the uniqueness of his thought and the heterogenous quality of his works, as noted by Professor John Hudson, in his review in English Historical Review 123.501 (2008) 431: ‘Overall, this book will lead more readers to the diversity of Vacarius’ work, and, it is hoped, to the production of further writings on the subject.’
hold of Roger, Archbishop of York, and Vacarius remained there until his death c. 1200. These four decades were busy ones for Vacarius. He travelled to the Continent several times, most likely to the conciliar debate at Tours in 1163 (and it is probable that he attended the earlier Council of Reims in 1148–49 with Theobald); to Normandy in 1171, in the aftermath of the Beckett martyrdom; and to Rouen sometime between 1177 and 1186 (around the time of the Third Lateran Council in 1179). These travels abroad coincided with his period of literary productivity from the 1160s to the end of the twelfth century, a time when he composed the legal textbook, the Liber pauperum, and his three diverse works on legal and theological topics, the Tractatus de assumpto homine, the Summa de matrimonio, and the Liber contra multiplices et varios errores. In addition, a course of lectures on the Institutes also survives, written not by the master himself, but by an unidentified protegé in around 1200. Further, his status as a religious, possibly an ordained priest, seems likely; the pastoral concerns evident in his works mirror his appointment between 1164 and 1167, as a secular canon of the collegiate church at Southwell, which included the prebend of Northwell. Financial security and a commitment to his parishioners may have convinced him against returning to his native Lombardy in these years. Further, his legal expertise came to the attention of the pope: Alexander III appointed him papal judge delegate on seven occasions between 1176 and 1180. He was honored in the last years of his life with the responsibility of preaching the Fourth Crusade in York in 1198. Vacarius’s life very much epitomized that of the ‘academic in the real world’.

II. Law Teaching: The Liber pauperum

The Liber pauperum survives in seven complete manuscripts and nineteen fragments. Leonard Boyle’s analysis of these and the Prologue to the

2) Lectura ad Institutiones, in: The Teaching of Roman Law in England around 1200, ed. Francis De Zulueta and Peter Stein (Selden Society Supplementary Series 8; London 1990).

3) Listed in Taliadoros, Vacarius (supra, n. 1) 31–2. In preparing his edition of the text, Francis De Zulueta incorporated only six of these complete manuscripts (he was unaware of Trier, Stadtbibliothek, MS 842 (1636); cf. Stein, Introduction to supra, n. 2, xxx–xxxii): The Liber pauperum of Vacarius, ed. F. De Zulueta (Selden Society 44; London 1927) xxx–xxxviii [hereafter, I cite the text as ‘Liber pauperum’ and the commentary as ‘De Zulueta, Liber pauperum’]. On Vacarius’s legal teaching, see now Peter Landau, The Origins of Legal Science in England in the Twelfth Century: Lincoln, Oxford and the Career of Vacarius, in: Readers, Texts and Compilers: Studies in Medieval Canon Law in Honour of Linda Fowler-Magerl, ed. Martin Brett and Kathleen G. Cushing (Aldershot 2009), 179–82, who places Vacarius’s teaching,
work led him to suggest that the textbook was composed by Vacarius in two versions over the period between the late 1170s and c. 1200. The first version, no longer extant, was simply a book of extracts from the Code and Digest (De Zulueta called this the ‘Vacarian gloss’). There were no glosses. Instead the gloss space was sprinkled with further extracts from these and other sources. Boyle dates this version to the late 1170s or early 1180s.

In this form it contains a Prologue, followed by nine books, in imitation of the medieval version of the Code (that is, the first nine books of Justinian’s Code less books 10–12, the last three known as the *Tres Libri*), and two appendices. The books contain extracts chosen by Vacarius from the Code and Digest. But the title and order of these nine books of extracts do not strictly follow the medieval Code; sometimes titles are added from the Digest or from the Tres Libri or both, sometimes titles are omitted, and sometime the order of titles is varied. Thus, the Liber pauperum only very roughly follows the order of the nine books of the medieval Code, with substantial deviations in Books 1, 4, 7, and 8). Further, the Vacarian textbook contains passages from every book in the Code (except book 12) and Digest (except books 36 and 40) respectively. It is an impressive piece of epitomizing, since of the 546 titles from the first nine books of using the Liber Pauperum, at Lincoln in the 1170s and 1180s, while the beginnings of the university of Oxford are a bit later, probably between 1185 and 1190.

4) De Zulueta, Liber pauperum (supra, n. 3), xxvi.


6) According to De Zulueta, Liber pauperum (supra, n. 3), xli–xliv, the content of Vacarius’s work is as follows: Book 1 contains 25 titles containing passages from the Code 1,1–16, with the remaining nine titles extracted from Code 10 and 11; Book 2 contains excerpts from book 2 of the Code, reinforced by books 2–4 of the Digest; Book 3 follows the general order of book 3 of the Code, with additional texts from books 5–11 of the Digest (and occasionally earlier books); the first 35 titles of the fourth book of Vacarius’s work follows the order of book 4 of the Code, while the remaining 42 titles show small variations in favor of the Digest; the order of Book 5 is based on book 5 of the Code, although Digest 26,2 is preferred to Code 5,28 in title 21; Vacarius’s sixth book depends on book 6 of the Code, with extracts interwoven from Digest 28–38 or added as separate titles; Book 7 follows book 7 of the Code for the first 15 titles, book 41 of the Digest for titles 16–29, while the remaining 22 titles follow book 7 of the Code with assistance from books 42 and 49 of the Code; Book 8 in general follows the order of books 43–47 of the Digest, with some variations to allow for extracts from book 8 of the Code; finally, Book 9’s titles all derive from books 9 or 48 of the Digest, except title 14 which is from Code 9,19 and Digest 47,12.
the Code and 432 of the Digest, the Liber pauperum contains only 472
titles in nine books").

The second version of the Liber pauperum was an *apparatus*, that is it con-
tained no text at all, but was entirely a gloss written in the same order as the
text. Boyle suggests that this (also non-extant) apparatus developed in two
stages: an earlier, plain set of explanatory *notae* and a later more discursive
and longer series of *notae* replete with opinions of the Bolognese Four Doc-
tors. The second stage of this apparatus is dateable to around 1200, with the
earlier stage appearing perhaps a decade beforehand).

How was the text of the Liber pauperum (in its different versions) used as
a pedagogic text? De Zulueta suggested that it was used alongside the Insti-
tutes, the basic teaching text for the Corpus iuris civilis, in a separate school
of Roman law"). Indeed, the Liber pauperum provided the vehicle by which
to advance from the Institutes to the Code and Digest"). The choice of the
method of extraction was for Vacarius a purely practical one; in England few
students would have had access to the texts of the Code or Digest, a region
where those laws did not obtain"). Although the extraction and digesting of
texts from the Corpus iuris civilis had been specifically banned, Vacarius
justifies his methodology on two practical and pastoral bases: the prohibitive
cost for poor students (*pauperes*) to obtain the entire Justinian corpus, and
the utility of the work"). Jasonne Grabher and Michael Hoenlich suggest that
the Liber pauperum was a ‘finding-aid’ to the texts of the otherwise impen-
etrable Digest").

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7) De Zulueta, Liber pauperum (supra, n. 3), xliv.
8) The first stage is represented by the Worcester and Avranches manuscripts, while
the second stage by the Leningrad and Prague manuscripts: Boyle, Legal Studies at
Oxford (supra, n. 5), 125, referring to 157 original or ‘primary’ glosses of Vacarius identified
in some of the manuscripts and fragments by De Zulueta, Liber pauperum
(supra, n. 3), lxviii–lxxii.
9) De Zulueta, Liber pauperum (supra, n. 3), li.
11) Liber pauperum (supra, n. 3), Prologus 1: *eis maxime qui legibus istis [justini
iura] non utuntur*.
12) Liber pauperum (supra, n. 3), Prologus 1: *Incipit prologus libri ex uniuerso
enucleato iure excepti et pauperibus precipue destinati. Insita ratione a natura
sum in nobis non sine periculo ita maxime perdere potest officium, si nobis ipsis
more beliarum uiuere perperam studeamus. Allorum enim necessario non modo contemptu
nere nos oportebit utilitatem [my emphasis]*.
13) J. Grabher and M. Hoenlich, The Establishment of Normative Legal Texts:
The Beginnings of the Ius commune, in: The History of Medieval Canon Law in the
Classical Period, 1140–1234; from Gratian to the Decretals of Pope Gregory IX, ed.
Boyle’s reading of the Prologue to the Liber pauperum, however, goes further; he suggests instead that the work was meant as a ‘companion’ text to Gratian’s Decretum14). In a seminal passage from the Prologue, Vacarius states that there are two laws which we must observe: a natural law of relationship between all men (naturalis que inter omnes uersaturs homines cognationis lex), and a law established from heaven (lex sit posita celitus) which invites and indeed compels all of us to mutual and fraternal respect of one another and of all. What he attempted to achieve in his selection of extracts, he continues, was to enhance the observance of both of these laws (utriusque legis viam duce domino perficere). Boyle takes ‘lex sit posita celitus’ to mean ‘canon law’ and ‘naturalis que inter omnes uersaturs homines cognationis lex’ to mean ‘natural law’15). Combining these together, he argued, the Liber pauperum was an ‘aid for beginners to the study and equitable application of the canon law of the church’16). The principal basis for this, according to Boyle, was practicality: the Prologue stated that the work was to distil those passages from the Code and Digest which have a bearing on the day-to-day conduct of affairs and commonly are taught in the schools17). This function the Liber pauperum fulfilled admirably.

The appendices, with their lists of definitions and maxims provided further

Wilfried Hartmann and Kenneth Pennington (History of Medieval Canon Law 1; Washington 2008), 15.

14) Boyle, Legal Studies at Oxford (supra, n. 5), 114.
15) The relevant passage appears in Liber pauperum (supra, n. 3), Prologus 1: Al­iorum enim necessario non modo contempnere nos aportebit utilitatem, umer plur­rumque etiam insidiari saluti, quod nephas esse naturali que inter omnes uersaturs homines cognationis leges probatur. Cum et alia nobis lex sit po­tica celitus que nos omnes ad omnium uice mutua fraternum inuitat atque compellit obsequium, utriusque legis uiam duce domino perficere cupiens, quo facile omnes ad boni et equi scientiam provocarem. As mentioned in the text, Boyle (Legal Studies at Oxford, supra, n. 5, 116–118) takes ‘lex sit posita celitus’ to mean ‘canon law’ and ‘naturalis que inter om­nes uersaturs homines cognationis lex’ to mean ‘natural law’. Stein instead translates the two respectively as ‘equity’ and ‘reason’ (Vacarius and the Civil Law, in: Church and Government in the Middle Ages: Essays Presented to C. R. Cheney, ed. by D. E. Luscombe and others [Cambridge 1976] 137; repr. in: Peter Stein, The Character and Influence of the Roman Civil Law: Historical Essays [London 1988], 167–85), while De Zulueta renders them as ‘divine revelation’ and ‘natural law’ (De Zulueta, Liber pauperum, supra, n. 3, xlv–xlv).
16) Boyle, Legal Studies at Oxford (supra, n. 5), 118.
17) Liber pauperum (supra, n. 3), Prologus 1: et usum rerum cotidianarum neces­saria mihi uisa sunt, ex libris digestorum iustiniani et codice decerpendo, cum magno labore prestante domino plura in paruum collegi volumen. ... Sed cum ea que in scolis frequentari solent magis elegem.

evidence that the Liber pauperum could be applied to a mixed school of canon and Roman law. The two appendices are, respectively, lists of terms from Digest 50,16 (*De verborum significatione*) and of useful rules and maxims from Digest 50,17 (*De diversis regulis iuris antique*). The former worked as a sort of legal dictionary, while the latter provided *regulae iuris*18). But Stein also speculated that Vacarius’s teaching text supported a knowledge of the *ordo iudicorum* as well. He supposed that students learning in the ‘Vacarian school’ would have needed the following texts: the Institutes; the Liber pauperum; the ‘Vacarian apparatus’ of the Liber pauperum (per Boyle); two *ordo iudicorum* texts, namely *Olim edebantur actio* and *Dolum per subsequentia purgari*; and the two appendices, the latter comprising the *regulae iuris* and similar in nature to the *brocardia*19). In this way, the teaching of principles on procedure could bridge the gap in substantive norms between the two laws20).

Although the arrangement and extraction of texts in the Liber pauperum was novel, the doctrine contained within it was not. It was only in title 8 of Book 1, on the subjects of legislative and interpretative function, custom, and the nullity of acts forbidden by law, that Vacarius was ‘his own man’21). Originality, therefore, took second place to pedagogy in Vacarius’s work. This pedagogy was grounded in practicality, as a contemporary observer noted. Ralph Niger, a theologian, lamented the pragmatic mindset of those ‘smatterers’ in Justinianic Roman law: no doubt students of Vacarius and the Liber pauperum, the so-called *pauperistae*, wanted to take as much as they needed and no more from the Corpus iuris civilis so as to accommodate a knowledge of civilian studies sufficient to allow them to practice in the ecclesiastical and

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18) On the *regulae iuris*, see Peter Stein, Regulae iuris, From Juristic Rules to Legal Maxims (Edinburgh 1966).


21) Liber pauperum (supra, n. 3), lxxiii-lxxxvii; Stein, Vacarius and the Civil Law (supra, n. 15), 129–130; Charles Duggan, The Reception of Canon Law in England in the Later Twelfth Century, in: Proceedings Boston (MIC C-1; Vatican City 1965), 337.
royal courts of England\textsuperscript{22}). That Vacarius composed this work for students preparing themselves for a career in the \textit{ius commune} of Europe seems to fit the evidence.

III. Christology – The Tractatus de assumpto homine

Vacarius’s treatise on the ‘assumed’ manhood in the incarnate Christ indicates an intellectual journey beyond law teaching but, arguably, not beyond the classroom. The Tractatus de assumpto homine survives in a single manuscript\textsuperscript{23}). A precise dating is not possible on the basis of codicological evidence, and therefore I have relied on internal evidence to attribute it to the period 1164 to 1170\textsuperscript{24}). This work has long puzzled scholars, as it has no trace of legal learning in it\textsuperscript{25}). Why would a teacher and practitioner in the \textit{ius commune} compose a speculative piece on the scholastic theological explanation of the incarnation? The answer lies in the tone, approach, and content of the treatise, and the observations that can be drawn therefrom.

In its modern edition, the Tractatus de assumpto homine is a little over thirteen pages in length and divided into forty chapters, prefaced by a short introduction. In truth, this provides an order and systemization to the work that Vacarius does not. The master’s treatise is somewhat dizzying in its treatment of the subject of the hypostatic union. At times it rushes headlong into debates concerning matters of extreme theological abstraction, at others it makes incursions into medieval logic and speculative grammar, while at others it cites long passages from the little-known figure of Claudianus Mamertus.

The treatise hints at the possibility that its subject matter arises in some sort of scholastic context, most likely a school of theological learning. In the opening words to the treatise, addressed to an unidentified ‘B.’, Vacarius refers to their ‘accustomed discussion’ (\textit{collatio habita}) on the subject of the \textit{assumptus}

\begin{itemize}
  \item \textsuperscript{22} Ralph Niger, \textit{Moralia regum}, 19, in: Ernst Kantorowicz and Beryl Smalley, \textit{An English Theologian’s View of Roman Law: Pepo, Imerius, Ralph Niger, Medieval and Renaissance Studies} (1941–43) 250.33–37: \textit{Sed et in multis partibus orbis legis periti, vel potius picati legibus, parum doeti}. Also see 252.7–12.
  \item \textsuperscript{23} Cambridge, University Library MS ii.3.9.1773, fol. 147va–152va; Vacarius, \textit{Tractatus de assumpto homine}, in: The “Tractatus De Assumpto Homine” by Magister Vacarius, ed. Nikolaus M. Häring, Mediaeval Studies 21 (1959) 62–75 [hereafter, I refer to the text as ‘Tractatus de assumpto homine’].
  \item \textsuperscript{24} Due to its close link to the doctrinal debates of 1163–1164: Taliadoros, Vacarius (supra, n. 1), 154.
  \item \textsuperscript{25} Stein additionally accused Vacarius of applying civil law ideas of possession to problems of christology, a claim unsupported by my reading of the treatise: Stein, The Vacarian School (supra, n. 20), 26–30.
\end{itemize}
homo, the man assumed by the Word of God\textsuperscript{26}). We can only speculate as to what this \textit{collatio habitam} means, but it would appear to be something more than a casual or passing conversation\textsuperscript{27}). That it would more likely represent an informal learned exchange of views between scholars, or perhaps a more formal quodlibetal exchange, is supported by what follows\textsuperscript{28}). For, Vacarius continues, he has also learnt of the ideas of the unknown ‘B.’ from the numerous others who follow his way (‘\textit{secta}’), an indication that ‘B.’ was a master who passed on his ideas to his students in a school setting\textsuperscript{29}). More explicitly, he labels the viewpoint of B. (which he later goes on to counter) as a doctrine held by certain well-known modern masters\textsuperscript{30}). Vacarius shows some deference to his unidentified interlocutor, humbly admitting his inadequacy in writing on the topic of the hypostatic union. It is only for the benefit of those who urge him on that he determines to complete the task now begun\textsuperscript{31}). This deference is typical of the type of rhetorical humility that characterized intellectual exchanges between men of learning in the twelfth century, particularly those ‘new men’ from the schools of higher learning. This is evident in a further passage, in which Vacarius demonstrates his commitment to truth and prudence\textsuperscript{32)}:

I have committed [the treatise] to you [B.], my friend, to inspect and discuss with the intention that you should carefully examine all that is written with love of the truth and, if something was inserted here imprudently, it may be corrected by the sharpness of your prudence before it reaches others.

The use of \textit{prudentia} and its antonym \textit{imprudentia} indicates Vacarius’s heightened awareness of the potential lack of judgment of B. and, more-

\begin{itemize}
\item \textsuperscript{26}) Tractatus de assumpto homine (supra, n. 23), § 1 147: \textit{Suo B. suus V(acarius) salutem. Post collationem de homine assumpto inter nos habitam.}
\item \textsuperscript{27}) Cf. Richard W. Southern, Scholastic Humanism and the Unification of Europe, vol. 2: The Heroic Age (Oxford 2001), 163.
\item \textsuperscript{28}) Gérard Fransen, Les questions disputées dans les facultés de Droit, in: Les questions disputées et les questions quodlibétiques dans les facultés de Théologie, de Droit et de Médecine, ed. B. Bazán et al. (Typologie des sources du Moyen Âge occidental 44–45; Turnhout 1985), 223–277.
\item \textsuperscript{29}) Tractatus de assumpto homine (supra, n. 23) § 1 147: \textit{saepe cum plerisque aliis vestigia opinionis vestrae sectantibus de re eadem tractatum habui, qui etiam rationem ipsius opinionis mihi exposuerunt praecepiam.}
\item \textsuperscript{30}) Ibid. § 2 162: \textit{Haec est doctrina celebris a quibusdam modernis inventa magistris. Haec est via in scholis maxime frequenata et trita hodie.}
\item \textsuperscript{31}) Ibid. (supra, n. 23), § 4 162–163.
\item \textsuperscript{32}) Ibid. § 5 163: \textit{Quod discretionem vestrae dilectionis eo studio inspiciendum discutiendumque commisi quo scriptum est ut veritatis amore singula diligenter examinetis et, si quid imprudenter ibi insertum fuerit, industria vestrae prudentiae antequam ad alium perveniat corrigatur.}
over, the latter’s straying from the ‘true’ path of orthodoxy. There is the sense here of the experienced Master Vacarius gently reproving a younger colleague, perhaps a master in arts seeking to make a name for himself in the schools.

There is more than internal evidence from the Tractatus de assumpto homine to suggest that Vacarius spent some time in a theological school environment. In a passage from the Liber contra mutliplices et varios errores, written some time later in the 1170s, Vacarius states that he spent some time ‘teaching’ or ‘learning’ (*causa studendi*) at the school in Northampton. Either way, Vacarius would have exposed himself to the cut-and-thrust of disputation among theologians and scholars of the *sacra pagina*, since there is evidence for a flourishing centre of theological studies at Northampton in the twelfth-century.

The question of the *assumptus homo*, with which Vacarius deals in the treatise, was an issue debated both in the schools and in Church councils convened between the 1140s and 1170s. Peter Lombard’s *Sententiae* (composed 1155–57) describe three competing theories on the doctrinal question in issue, specifically whether ‘Christ insofar as He was man was *aliquid*’ – the so-called ‘Christological Nihilianist’ debate. The ‘three theories’ and the Lombard’s own position on the debate, are controversial topics. Some scholars have attributed to Vacarius one of these, the *homo assumptus* position. Such an approach *a priori* would assume Vacarius’s familiarity with such debates. This is despite those same scholars’ reluctance in giving Vacarius or his work credit for having any scholastic currency. Added to this, Vacarius and the still-nascent schools of theology in England would have learned

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35) For an overview of the three theories and extensive bibliography, see Taliadoros, Vacarius (supra, n. 1), 133–145.

36) Southern, Scholastic Humanism: The Heroic Age (supra, n. 27), 163.
of these debates from the church councils between the 1140s and 1170s. As indicated in the outline of Vacarius's biography above, there is evidence to suggest Vacarius attended the Council of Rheims in 1148–49, the conciliar debate at Tours in 1163, and perhaps the Third Lateran in 1179 (not to mention being in France at the time of Alexander III's decretals – which considered the issue – in the period 1170 to 1179). Learning of the debates in this sort of context would have given Vacarius quite a different perspective beyond that of the more abstract and 'academic' view coming out of Paris schools; rather, Vacarius is confronted with the issue as an ecclesiastical bureaucrat who must return to England to deal with any error in doctrine among the clergy and parishioners within the see of York, even at his local prebendary in Norwell where he was a pastor of souls.

The outline of the treatise, therefore, reflects both Vacarius's scholastic and practical pastoral interest in the Christological issue. Its lack of system and order also, perhaps, reflects the absence of papal clarification of correct doctrine on the issue37). Vacarius deals squarely with the opinions of B and his 'followers', which are two-fold: first, they posit that the *assumptus homo* was absorbed or assumed by the Word as 'merely a soul and body', but not as a soul and body united together as a man38). Second, this *assumptus homo* that was absorbed was a divine substance or nature only39). Instead, Vacarius outlines, the Word absorbed or assumed the *assumptus homo* as a united body and soul together. In this way, it followed that Christ insofar as He was man was *aliquid*40).


38) Tractatus de assumpto homine (supra, n. 23), § 1 162: *Summa vero eiusdem opinionis ea est ut non sit aliquis homo qui pro nobis interpellet quem suscepit Deus-Verbum: sed animam et corpus tantum assumpsit.*

39) Ibid. § 4 162: *Unde quaerenti mihi: Cum substantia fuerit infans ille quem magi adoraverunt, quae substantia fuerit, responderunt quidam quod divina fuerit substantia et non humana.*

40) Ibid. § 2 162: *Nam cum dicimus Dei sapientiam seu Verbum suscepisse humanam naturam vel hominem, nihil nisi rationalem animam et humanam car- nem absque earum in unam substantiam compage significamus assumptas.*
These doctrinal matters constitute only part of the treatise, however. Vacarius's concerns extend also to the theological language used in this context; he is at pains to clarify the terms person, substance, and nature in the context of the hypostatic union. So too does he revert to a little-known authority to illustrate the erroneous position of B., the work of Claudianus Mamertus. Quoting extensively from that figure's explanation of the concept of compassus, Vacarius (implicitly) indicates that it was only through the united soul and body in the assumptus homo absorbed into the Word that the God Man, with both God and man suffering together, could achieve the salvific program of the New Testament. Returning to theological language, he warns of the dangers of speculative grammar, particularly in its application to mutual predication. Vacarius demonstrates that articulations of sameness and change in proprietas, part of the logica vetus derived from

See also the passage in rubrics ibid. § 6 163: De assumpto homine quod substantia sit ex anima et carne subsistens tam animalis quam hominis naturae proprietatibus subiecta, non autem divina, et quod homo sit persona, ipsa tamen assumptus dicitur et non ipsa persona; et quod homo 'Christus' et 'Dominus gloriae' et 'gigas gemiae substantiae' duarum sint substantiarum nomina, et non 'Deus', et ideo ex duplici substantia Christus esse una persona dicitur, et non Deus, non homo ita dicitur; et quod Deus vere et proprie inde est aliquid qua est homo: Concerning the assumptus homo, he is a substance subsisting from soul and flesh and a substrate to the properties of human and animal nature, but not a divine [substance]. And this [i.e. the assumptus homo] is a person, but is not properly called person when absorbed [in the incarnation]. And since the words 'Christ', 'Lord of Glory', and 'Giant of a dual substance' are words of two substances – and not [the word] 'God', on that account Christ – not 'God' not 'man' – is called one 'person' from a dual substance. And therefore God is truly and properly aliquid because He is a man.

41) On person, see ibid. § 16 166, § 17 166, § 32 172, § 37 173, § 38 174; on substance, see § 25 169, § 26 169–170, § 33 172, § 34 172 162; on nature, see § 31 171, § 33 172, § 34 172, § 36 173. Vacarius distinguishes person from nature in § 35 173, § 37 173 and from substance in § 37 173.


43) Tractatus de assumpto homine (supra, n. 23), § 22 168: Cum igitur, sicut Claudianus ait, innumera sint quae super hoc dici possunt et in tanto pelago disputationis periculo sae sint definitiones propter inundantes verborum profanitates et argumentorum latentes scopulos; cf. Claudianus Mamertus, De statu animae 1,3,9, PL 53: 706D: Innumera sunt quae super hoc dici promptissimum sit. See also Tractatus de assumpto homine (supra, n. 23), § 27 170.
the Aristotelian corpus via Boethius, are of assistance in explaining the hypostatic union).

Vacarius's position on the *assumptus homo* is in accordance with prevailing orthodoxy at the time of composition of the Tractatus de assumpto homine. It was only in the thirteenth century that the second theory (as articulated by the Lombard) became the 'orthodox' view, following the Fourth Lateran Council in 1215. Yet too little has been made of some of the features characterizing the group of scholars identified with the *assumptus homo* position in the context of the conciliar debates between the 1140s and 1170s. First, the involvement of English scholars is noteworthy: the figures of Robert Pullen (c. 1080–1146), Robert of Melun (d. 1167), and John of Cornwall (c. 1125/1130–before 1200), apart from Vacarius, all contributed significantly to the debates. Their involvement indicates that the issue of Christological Nihilianism was not merely an issue of intellectual debate among scholastics in the Parisian intellectual milieu, but one of immediate pastoral concern in other non-Parisian contexts.

Second, the writings of Vacarius and others connected with his position in favour of the *assumptus homo* position are not homogenous. This is perhaps a product of the church councils of the 1160s and 1170s, whose main focus was on rebutting the Christological Nihilianist position, despite the target of their polemic proving evasive; although the Lombard was identified with such an error, respective church councils refused to explicitly so associate that master.

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44) Ibid. § 27 170: *Essentia quoque animae et aliorum simillim eadem manet quidem sed ex tempore et natura mutabilis. Sunt autem res aliae quae non secundum ipsam sui essentiam sed magis propter eandem speciem ea[e]dem esse dicuntur ut flumen, homo et similia.* See also § 28 170 and § 29 170.


It is understandable then that Vacarius would refuse to explicitly name his interlocutor, for fear of identifying him so clearly with so great a theological error. This lack of clarity in focus had the added effect of encouraging some differing approaches by the assumptus homo proponents, certainly in the case of Vacarius. His Tractatus de assumpto homine, although doctrinally in accord with, differed in its tone and mood from, the works of Robert Pullen and John (and even more so from their Continental counterparts Walter of St Victor and Gerhoch of Reichersberg). While the latter works display a polemical intent that is vehement, raw, and undisguised, Vacarius’s tone is more detached. He treats the arguments of the unidentified ‘B.’ with deference, respecting them with a close reading and a detailed and rational account of their weaknesses. Vacarius’s reference to theological terms and speculative grammar, moreover, are rather identifiable with the complex and abstruse works of Robert of Melun. Thus, the Tractatus de assumpto homine has the attention to detail and to rational argument that we might characterize as ‘lawyerly’, but also the language to accommodate scholastic theological analysis.

Vacarius’s interest in the speculative explanation of the incarnation also suggests a close relationship between the teaching of law and theology in the nascent schools of higher learning in the twelfth century. In the early Middle Ages the two disciplines were closely related; Isidore of Seville subsumed law within the arts of the trivium in his Etymologiae. Medieval law and theology shared a common methodology, namely an emphasis on a dialectic approach, utilizing the scholastic techniques of the gloss and apparati, including summa, summulae, and so on. Although this overlap is clearly evident

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49) Joseph De Ghellinck, Le mouvement théologique du XIIe siècle, 2nd ed. Bruges 1948. The late Stephan Kuttner noted the dialectic technique common to Abelard and Gratian. Chodorow compares Kuttner’s view to that of Blicmetzrieder, who advocated the ‘School of Laon’ as the point of intersection: Stanley Chodorow, Christian Political Theory and Church Politics in the Mid-Twelfth Century: The Ecclesiology of Gratian’s Decretum, Berkeley 1972, 3. Also note the important paper of John Van Engen, From Practical Theology to Divine Law: The Work and Mind of Medieval Canonists, in: Proceedings Munich 1992 (MIC-C, vol. 10), 873–96. For the similarities between lawyers and theologians in the scholastic method of dialectic and deduction developed in the schools, see: T. J. Holopainen, Dialectic and The-
in the canonistic collections of the eleventh century, scholars have traditionally marked a distinction between the two disciplines as coinciding with the 'scientific jurisprudence' of law initiated in Gratian's Decretum around the middle of the twelfth century\(^50\)).

In Vacarius this distinction cannot be so clearly drawn. Although the Tractatus de assumpto homine is purely 'theological' in comparison to the 'legal' nature of the Liber pauperum, they both share some of the characteristics of teaching texts. Like the epitomizing technique employed in the latter, Vacarius's treatise on the *assumptus homo* covers a lot of scholastic ground in a limited (and somewhat un-scholastic unsystematic) space, including: medieval logic, speculative grammar, Boethian neo-platonizing of Aristotelian terms such as 'person', 'substance', and 'nature', and speculative theologizing on compassion and the nature of the hypostatic union. But this is in context. As I have shown, the need for clarifying the explanation of incarnation arose due to debates at conciliar and papal level on such issues. Moreover, such debates involved Vacarius and his fellow English scholastics in no small measure: these men, however, were not just schoolmasters, but men involved in the church politics and pastoral concerns of the day.

**IV. Marriage: The Summa de matrimonio**

Extant in the same manuscript as the Tractatus de assumpto homine, and composed some time after it in the period 1166-70, is Vacarius's treatise on marriage law: the *Summa de matrimonio*\(^51\). More attention has focused on this than any other of Vacarius's supra-legal works\(^52\). Like his textbook on Justinianic Roman law and the treatise on Christology, the *summa* on mar-
riage is directed towards pedagogy and heurism. Unlike these other works, however, it does not fall neatly within either discipline of law or theology, but straddles both. To call it a ‘canonistic’ work is not inaccurate, as it traces many of the matters that Gratian deals with in his ‘treatise on marriage’ in causae 27 to 36 of the Decretum53). But this is to underplay the ‘sacramental’ character of certain elements of Gratian’s work, which demonstrate that author’s knowledge of both canon law and theology54). To describe the Summa de matrimonio as canonistic is also to ignore the Justinianic Roman law sources that Vacarius employs.

A brief outline of the work is necessary to illustrate this similarity. The Summa de matrimonio is divided by its editor into 39 chapters, the first two of which provide a type of prologue. In it Vacarius explains the reason for the composition of the treatise: the love of truth and the common good55). He is concerned with a matter which is of no little consequence, but, indeed, is an issue dealt with by many ‘modern masters’ who provide ‘no useful guidance’: the union and dissolution of marriage. And, as he points out, it is dealt with in one way in canon law and another way at secular law, although the definition of marriage is in each law the same56).

The issue that causes the most difficulty is the joining and dissolving of marriage, mostly by reason of the confusing terms used by masters: initiate marriage (matrimonium initiatum), consummated marriage (consummatum), ratified marriage (ratum), and completed or ‘perfected’ marriage.
(perfectum). The intended audience is clearly one which would be interested in the marriage question; such readers would have included Church officials, but also may well have included those *ius commune* lawyers and advocates of the ecclesiastical courts, who, although trained in its theory, did not 'use Roman law'.

The treatise can be best understood as dealing with three issues. The first of these is the 'consummation' theory of marriage, focusing on Gratian's *dicta* that an 'initiate marriage' (*matrimonium initiatum* or *futurum*) is completed by the subsequent sexual act so as to comprise a consummated or ratified marriage (*matrimonium ratum* or *perfectum*). He critiques those terms denoting the idea that a marriage can be inchoate or indissoluble. He then determines that the legally relevant moment at which a marriage could be said to be formed is the *traditio*. The concept of *traditio*, as we shall see below, was a Roman law concept of physical delivery, which Vacarius applies in a unique way to marriage. Second, Vacarius turns to the consensual theory of Peter Lombard. In doing so, he highlights three issues which cause difficulties for the consensual theory and to which he returns at different moments in

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57) Ibid. § 2 270: [*Q*ue per magistrorum expositionem mihi magis turbata uidetur; [*...*] quod matrimonium aliud est initiatum tantum, aliud initiatum et consummatum et non ratum, aliud initiatum et consummatum et ratum siue perfectum.


61) Ibid. § 10 273–274 (canons *Si quis* and *Quapropter*), § 12 274 (*affectio martialis*), § 13 275 (quasi-*traditio*), § 30 283 (*traditio* and marital debt). See Taliadoros, Vacarius (supra, n. 1), 90–93, 96.


the treatise: concubinage, the unique marriage of Mary and Joseph, and the clandestine marriage of young girls\(^{64}\)). Again, he identifies the relevant legal moment of consent, not by way of distinguishing words of present from future intent, but with the concept of *traditio*\(^{65}\)). Third, he deals with the issue of dissolving marriage, and the grounds for doing so outlined by Rufinus\(^{66}\)). Vacarius explains the problematic nature of these three issues under the common principle of an absence of legal consent, that is the absence of *traditio*\(^{67}\)).

It has been the contention of this paper that Vacarius’s works combine pedagogy in a pastoral context. I will illustrate this by examining Vacarius’s use of the concept of *traditio* in the Summa de matrimonio to rebut the consummation theory. He does so in three steps. First, he attacks the idea of marriage as initiated in spousals (*sponsalis conventio*) and perfected in the act of sexual intercourse. A much-cited canon in support of this was *Si quis* (C.27 q.1 c.37, from Jerome)\(^{68}\)). Vacarius instead views the *sponsalis conventio* not as indicating future intent, but immediate and present binding intent: By *sponsalis conventio* [Jerome] meant that the *conventio* takes place in the *traditio* itself, in which each professes the willingness to take the other as spouse\(^{69}\)). Vacarius links his

\(^{64}\) On concubinage, see Summa de matrimonio (supra, n. 51), § 12 274, § 26 284, § 33 284; cf. Gratian, Decretum C.27 q.2 c.51 (Pope Hormisdas); on Mary and Joseph, see Summa de matrimonio l. c. §§ 13–15 275–276, § 34 284; cf. Gratian, Decretum C.27 q.2 d. p. c. 39; on clandestine marriage, see Summa de matrimonio l. c. § 16 276–277; cf. Gratian, Decretum C.27 q.5 c.1 (decretal Aliter).

\(^{65}\) Summa de matrimonio (supra, n. 51), § 11–12 274; see Taliadoros, Vacarius 96–7.


\(^{68}\) Gratian, Decretum C.27 q.1 c.37: *sponsali* *c*onven*tie*one initia*tantur* *et* *conni*ctione *corporum* *perficiuntur*.

\(^{69}\) Summa de matrimonio (supra, n. 51), § 10 274: *Potest etiam illud dici quod*
argument to another important canon in Gratian, *Quadpropter* (C.27 q.2 c.51, from Pope Hormisdas)\(^{70}\). Vacarius again identifies *traditio* with the future-intending equivalent of the *sponsalis conventio*, namely the *fides pactionis*\(^{71}\). Thus, the first of the two constituent parts of the consummation theory is displaced with the *traditio*. In a second step, Vacarius uses the phrase in *Quadpropter* (that a binding marriage arose ‘when one consents by heart and mouth to take the other, they give themselves each to the other by mutual agreement’) as indicative of the need not for sexual intercourse, but *traditio*\(^{72}\). Marriage is (a matter of) corporeal *traditio* and quasi-possession, he states; it is so proven in the words of the Decretum\(^{73}\). In this way, the sexual act is replaced with a concept of mutual quasi-possession of the type recognized in Justinianic Roman law\(^{74}\). This quasi-possession is the *traditio*. The third step by Vacarius is to utilise a pseudo-Alexander decretal from Rufinus to confirm the identification of *traditio* with the corporeal element required in marriage, and also with

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\(^{70}\) Gratian, Decretum C.27 q.2 c.51: *Duobus modis dicitur fides, pactioinis et consensus*. Si aliquid alicui mulieris fide ficerit pactioinis, non debet aliam ducere. Si aliam ducerit, penitenciam debet agere de fide mentita: maneat (amen cum illa, quam duxit. [...] Si autem ficerit fidei consensus, non licet aliam ducere. Si autem ducerit, dimitte eam, et adherebit priori.

\(^{71}\) Summa de matrimonio (supra, n. 51), § 10 274: *Eadem vero fides que promititur in sponsalibus de futura tradita postea in ipsa traditio*. Ergo eadem dicitur et pactioinis fides de futuro contugio et fides consensus de presenti.

\(^{72}\) Ibid. § 12 274: *quando corde et ore consentit ducere et unus alii consensiendo mutuo se suscipiunt* [editor’s emphasis]; § 19 279: *quando mutuo unus alii consentiendo se suscipiunt* [editor’s emphasis]; cf. Gratian, Decretum C.27 q.2 c.51.

\(^{73}\) Summa de matrimonio (supra, n. 51), § 12 274: *Quod autem corporalis etiam traditionis et quasi possessionis sit conjunctione matrimonii probatur in verbo decreti.*

the idea of *affectio maritalis*\(^{75}\)). According to Vacarius the words of the decretal state that\(^{76}\)

the man does not have power over his body but his wife does, and, on the other hand, he has power over his wife's body. Therefore, by the law itself, the body of the husband is the wife's and the body of the wife is the husband's. But what is each of these bodies unless it is flesh? Therefore, the flesh of each is the flesh of the other. And so, in this way, both are one flesh not by the mixing of flesh but by the lawful union.

Vacarius confirms the idea that the *traditio* displaces the right of the 'marital debt', rather than the sexual act itself. It is, he states, in the *traditio* itself that marriage is perfected and completed \([\ldots]\) For when the wife is delivered (*tradere*) to her husband, at once she is made his and he has the office and power of knowing her\(^{77}\)). By means of these three steps, therefore, Vacarius demonstrates the heuristic power of *traditio*, in which that term stood for both the physical and mental elements required for marriage.

Vacarius did not finish with a plea to his reader to reject the consummation-ist or consensualist model of marriage, or to adopt his own *traditio*-analysis. Instead he concludes\(^{78}\):

Because of these things, I wanted to choose from the aforesaid no opinion in particular, and to decline none, unless some reasoning is offered to me in one place and takes me to another position, without prejudice, however, of a better opinion, which by chance the skilled reader can find.

This is no mere attempt at rhetorical humility (as in the ending to the Tractatus de assumpto homine where Vacarius appeared deferential to his interlocutor, but in truth was strongly opposed to him). It instead reinforces the pedagogical and heuristic characteristics of the Summa de matrimonio. The *traditio* is not a 'third way' in the marriage debate against the consummation and consent theories, but a means of correctly analyzing the validity of the latter two. Vacarius's text is designed to assist priests and secular and ec-

\(^{75}\) Rufinus, *Summa* (supra, n. 66), C.27 q.2, p. 442.

\(^{76}\) Summa de matrimonio (supra, n. 51), § 20 279: *ut uir sui corporis potestatem non habeat sed mulier, et econtrario uir mulieris. Ipso ergo iure uiri corpus est mulieri, et corpus mulieris est uiri. Sed quid est utriusque corpus nisi caro? ergo utriusque caro alterius inuicem. et ita duo non commixtione carnali sed coniunctione legitima sunt una caro.*

\(^{77}\) Ibid. § 30 283: *quod in ipsa tradicione, ut sepe dictum est, perficiatur contigum. nam uiro tradita est uxor, confestim sua facta est ut plenum habeat iam cognoscendi eam officium et potestatem.*

\(^{78}\) Ibid. § 39 287: *Ea propter nullam ex propositis sentenciam eligere volui quasi precipuam, nullamque declarare, nisi ratio aliqua se mihi offerens in aliam me extra­hit partem, sine prejudicio tamen melioris sententiae, quam forte peritus lector poterit inuenire.*
clesiastical officials in approaching the marriage question. This issue was of particular moment in the mid-twelfth-century due to the absence of any clear papal declaration on the issue (this was only to come later in the decretals of Alexander III), as well as the consequential rise in the instances of clandestine unions which could have all sorts of unexpected consequences in the social, political, and political realm. As Vacarius observes of the canon Aliter (C.27 q.5 c.1): it was like much of the canon law in that it contained dissident meanings and varying forms, many of which were useless because they were not observed, and which everyday slipped and warbled. Canonists vainly sought to restore to a concordance the varying opinions throughout, despite slipping deeper into error in doing so79). Vacarius’s pamphlet is a work designed to meet the practical needs of its time.

V. Heresy and Error: The Liber contra

Composed after the Summa de matrimonio and Tractatus de assumpto homine, most likely in the period 1170–1177, is the longest of Vacarius’s supra-legal works, the Liber contra multiplices et varios errores. The treatise survives in a single manuscript in the Vatican Library80). This work is a long letter written by Vacarius to a friend, Hugo Speroni, explaining and warning him against certain heresies and errors that the latter espoused. It is composed as a virtual handbook against heresy, systematically detailing and explaining the objectionable heterodoxy and then its orthodox counterpart. As such, it quite clearly serves a pedagogic purpose with the care of souls in mind.

79) Ibid. § 16 276: Ecclesiastica namque iura dissonas recipiunt sentencias et varias formas, plerumque inutiles, quia non obseruantur; § 16 277: quasi ius ecclesiasticum, quod cotidie cum ipso humano genere labitur et defluit, maxime circa ea que sunt moris et consuetudinis, contrarietatem recipere non posit? Illi enim qui ad hoc frustra laborant ut quamlibet passim contrarietas discordiam reuocent ad concordiam, ple­rumque, ut uicium huismodi contra ueritatem euitare contendunt, in ueritate labuntur in peius, ut etiam in hoc casu. Note Vacarius’s use of the term contrarietas, almost certainly a play on words contrasting with the Concordia discordantium canonum of Gratian. For the title “Concordia discordantium canonum”, rather than “Concordantia discordantium canonum”, see: Peter Landau, Gratian and the Decretum Gratiani, in: History of Medieval Canon Law (supra, n. 13), 22.

80) Vatican City, Biblioteca Apostolica Vaticana, MS Chigiano A.V. 156; Vacarius, Liber contra multiplices et varios errores, in: L’Eresia di Ugo Speroni nella confutazione del Maestro Vacario: Testo inedito del secolo XII con studio storico e dottrinale, ed. Ilarino Da Milano (Studi e Testi 115; Vatican City 1945) 475–483 [hereafter the text will be cited as ‘Liber contra’ and the commentary/analysis as ‘Da Milano, L’Eresia di Ugo Speroni’].
Its structure is explicit and ordered such that its editor has identified Vacarius’s pro- and contra-arguments and the division of these into chapters and sub-sections. Vacarius begins the prologue to the Liber contra outlining the three sacramental matters that will dominate the work, namely holy orders, baptism, and the Eucharist\(^{81}\). Underpinning these matters, however, Vacarius notes Speroni’s idiosyncratic notion that justification will take place by predestination alone, without the need for good works\(^{82}\). In addition, he sets out Speroni’s flawed understanding of who could be a Christian and the inefficacy of ecclesiastical orders and institutions\(^{83}\). The body of the Liber contra discusses these ideas in more detail, although considerable overlap and repetition occur as a result of Vacarius taking an argument-by-argument approach to the ideas of Speroni’s non-extant piece, rather than a thematic one. The treatise comprises thirty-two chapters (\textit{capitulae}), of which twelve (including the first eight) relate to ‘unworthy’ priests\(^{84}\), thirteen to baptism\(^{85}\), six to the Eucharist\(^{86}\), and the final one to the topic of Christology (in a slightly modified form from the Tractatus de assumpto homine)\(^{87}\). Discussion of the sacraments of confession, baptism, and the Eucharist occupy all but seven sections of the treatise, while justification takes up eight\(^{88}\).

The prologue to the Liber contra mentions that Speroni had sent Vacarius

\(^{81}\) On priests, see Liber contra (supra, n. 80), Prologue, [B] (and their office of holy orders), [C] (and their role in administering sacraments) 475–76; on baptism of children, Prologue, [D] 477; and on the Eucharist, Prologue, [E]–[F] 477–79. As to the identity and number of the sacraments in the mid-twelfth-century, see Van Engen, Observations on “De consecratione” (supra, n. 54), 313.

\(^{82}\) On predestination, see Liber contra (supra, n. 80), Prologue, [C] 476; on predestination vis-à-vis works, Prologue, [H]–[I] 480–81.

\(^{83}\) On religiosity, see Liber contra (supra, n. 80), Prologue, [G] 479; on orders and institutions, Prologue, [G] 479–80.

\(^{84}\) Liber contra (supra, n. 80), §§ 1–8 483–99; §§ 19–20 521–44; § 26 552–53; § 28 557–60.

\(^{85}\) On baptism, see ibid. § 9 499–50; §§ 11–13 502–13; § 15 516; § 18 519–21; § 31 565–72; on baptism (particularly of infants) and Original Sin, §§ 16–17 517–19; § 28 557–60; and on baptism and circumcision, § 13 510–13; § 18 519–21; § 23 547–48.

\(^{86}\) Ibid. § 10 501–02; §§ 19–20 521–44. See also §§ 30–32 562–583.

\(^{87}\) Ibid. § 32 572–83.

\(^{88}\) Four sections deal with justification and its relationship to predestination: Liber contra (supra, n. 80), § 8 497–99; § 12 506–10; § 17 518–19; § 31 565–72. Four sections deal with its link to works: § 24 548–50; § 27 553–57; § 30 562–65; § 31 565–72. Other matters not mentioned and dealt with in treatise are: sainthood and Christian religiosity (§§ 21–22 544–47; § 25 550–52); aids to the Christian life, including feast days (§ 27 553–57) and ecclesiastical buildings and objects (§ 14 514–515, § 19 521–31); and confession (§ 31 565–72).
a book, no longer extant, in which he set out his ideas of a new religious schema. It is these ideas which Vacarius’s Liber contra rebuts\(^89\)). It would appear that Speroni was comfortable in relating his radical ideas to Vacarius because of their pre-existing friendship. In the opening to the Liber contra, Vacarius greets Speroni as a onetime friend and associate: To Hugo Speroni, erstwhile companion and friend, Master Vacarius sends his greetings [...] I cannot bring myself to believe that you have forgotten that fraternal bond and fond friendship\(^90\)). He recalls their times as students together when they shared lodgings, and when Speroni used to trust his affairs to the more senior Vacarius, probably when they studied Romano-Justinianic law together in the schools at Bologna\(^91\)). It seems that Speroni studied law there around 1145\(^92\)), while Vacarius would have studied a decade earlier, in the 1130s; thus Vacarius may have been a tutor to Speroni and this might explain how they came to share lodgings. The relationship of mentor-pupil, and their common interest in Romano-Justinianic law, no doubt prompted Speroni to confide in Vacarius his challenging vision of a religious revolution.

Their common grounding in the Romano-Justinianic law becomes increasingly apparent, since Vacarius frequently relies on analogies from this juristic background and assumes Speroni’s knowledge of it throughout the treatise. The intellectual friendship between the two is evident in the tone of the work, yet it is also significant that Vacarius signs himself *dictus magister* in his salutation to Speroni. He does not do this in any of his other works, but insists, in this context, on his didactic status as ‘master’. In this same tone, Vacarius comments that, although he had found in Speroni’s work many worthwhile aspects, they were corrupted by the addition of many falsities and made useless, and led to an improper conclusion\(^93\)). This pastoral tone is evident in the example which follows.

\(^89\) Liber contra (supra, n. 80), Prologue, [A] 475: *Multa enim contra Ecclesiam proponis in quodam libro, quem Leonardus, nepos meus, mihi tuo nomine tradidit. Quem legi et iterum et iterum relegi.*

\(^90\) Ibid. [A] 475: *Hugoni Sperono, quondam socio et amico suo, Vacarius, dictus magister, salutem ... Nolo te credere me oblivioni tradidisse fraternal societatis et familiaritatis dilectionem.*

\(^91\) Da Milano, L’Eresia di Ugo Speroni (supra, n. 80), 81.


\(^93\) Liber contra (supra, n. 80), Prologue, [A] 475 *Et cum in eo quedam egregie scripta inveniuntur, plura postea repperi que quamvis bona sint et vera, quorumdam tamen falsorum adictione corrumpuntur et inutilia sunt; maxime quia ad improbum finem revertuntur et deducuntur.*
It is apparent to Vacarius that Speroni’s antisacerdotal and predestinarian views lead him to reject the sacramental power of unworthy priests, that is, their ability to confer the sacraments. Speroni did so on three bases: their lack of personal merit, their inappropriate partnership (societas) with God, and their mere agency for God. Vacarius counters Speroni’s position by combining Scriptural exegesis, legal analogy, dialectical reasoning, and orthodox theological understanding. To Speroni’s first argument, Vacarius counters that the office held by a person (ius officii), in this case a priest’s Holy Orders, differs from the personal merit of the person (meritum personae) in that office. As a consequence, even though a priest may be impure (immundus) by reason of acts of criminality, he nevertheless retained the right to his office until he was legitimately removed by reason of just cause. By way of illustration, Vacarius notes that the priesthood is like other offices that exist under Justinianic Roman law, for example a procurator (litigation representative), debtor, or tutor (guardian): the office was recognized at law as quite distinct from the person occupying that office. The holder of such an office, Vacarius argues, has a ‘debt’ to that office to carry out the appointed duties, whether they be preaching, carrying out the litigation, paying the debt, or fulfilling the guardianship. By way of Scriptural exegesis, Vacarius notes the example from the Old Testament of the high priest Eli who, although ‘spiritually blind’ in failing to prevent the sinning of his sons against the faith, nevertheless retained his status as priest.

As for the second argument, Speroni suggested that morally unworthy priests could not confer the sacraments because, by doing so, the Holy Spirit would be contracting a partnership with a priest who was, say, a thief or an

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97) Liber contra (supra, n. 80), § 1 [2] 485: Ex officio namque Heli pastor erat et filli eius Ophni et Finees sacerdotes Domini dicebatur. Cf. I Samuel (known in the Middle Ages as I Kings) 2,17–22. See also, in the context of the arguments about the need for oral confession in D.1 c.38–c.89, Gratian’s drawing a parallel between priests as the present-day versions of Old Testament figures such as Moses and David, who mediated between sinful humans and God: L a r s o n , Gratian’s Tractatus de Penitentia (supra, n. 54) 70–71.
adulterer. Vacarius responds that God did not form a partnership with a priest, even an unworthy one, just as a master did not form a partnership with his slave in Justinianic Roman law; it was an incontestable legal argument that there could be no societas between a slave and his master, since a dominus held full legal capacity to own and contract while a servus held no status or capacity to do so.98) Vacarius uses this civil law analogy in correcting Speroni, mindful of its appositeness for his erstwhile colleague who was 'skilled in the law and a master'99). As to the third argument of Speroni, Vacarius counters on theological grounds that it is God who affects the sacrament of baptism and the Eucharist, not the 'unworthy' priest. Vacarius states that God performs the true efficient action of the sacrament as the principal cause; the priest, as the secondary, or ministering, cause, cannot frustrate this100). For Vacarius, God alone gives the increase: the virtue of the priest is irrelevant, since God is the principal cause101).

Commentators have accused Vacarius of failing to deal with the issue of the sacramental power of unworthy priests as it was debated by Gratian and the decretists and of using Roman law inappropriately in this context102). This criticism goes to the very heart of whether Vacarius merely dabbled in canon law or whether he might be regarded as a serious practitioner of that science. Seen against the debates of Rufinus and other decre­
tists, who more closely considered the issue of sacramental power versus its actual exercise, this accusation may be justified to some extent. But


102) Kuttner/Rathbone, Anglo-Norman Canonists (supra, n. 33), 287–88 n. 22 cite five passages from the Liber contra, the first four of which deal with the issue of 'the sacramental power of unworthy priests': § 1 [3] 486; § 2 [1] 489; § 5 [II–2] 494; § 11 [1] 503; and the fifth with baptism: § 13 [3] 511–12. They also refer to Da Milano, L'Eresia di Ugo Speroni (supra, n. 80), 92 n. 1 and 223 (Vacarius on baptism); 135–83 (Vacarius on priests).
several considerations should be borne in mind. First, Gratian and decre­
tist commentary on the matter was inconclusive and, moreover, unclear. Second, Vacarius’s recourse to Roman law, in the context of an apologetic
and polemic work, is deliberate. Vacarius is trying to put Speroni’s radical
theological ideas back on track by directing him via analogies and illus­
trations from Roman law.

Gratian’s position on the issue is not entirely clear. The starting point for
Gratian and the canonists was Augustine’s trenchant criticism of the Donatists
for their failure to distinguish sacramental power (sacramentum) from the
right to exercise such power (usus sacramenti, or, more simply, officium)103).
For Augustine, when a cleric was deprived of his officium, he lost the author­
ity to confer sacraments; but the conferment was nevertheless effective, and
the sacramentum valid104). This was so, Augustine explained, since the true
sacrament came not from the unworthy minister but from God105). Thus, a
sacrament did not cease to be such simply because heretics and even the impi­
ous and iniquitous used them unlawfully; such men were to be punished, but
their sacraments were to be acknowledged and venerated106). Gratian accepted
a similar distinction: sacramental power (not sacramentum, but now officium,
or potestas, or potestas officii) was distinct from its lawful use and exercise
(no longer officium, but now executio officii or executio potestatis)107). At
one point, his dicta consider that the consecration performed by a hereti­
cal priest is invalid (C.I, q.1, d. p. c. 75, commenting on ‘Jerome’)108), and
yet a little later (C.I, q.1, d. p. c. 97) he unreservedly admits the validity of
the consecration performed by heretical priests, using the words of Alger of Liège (d. 1190) to explain Jerome in exactly this sense. But, for unauthor­
ized priests, he is adamant that no power is left to them to perform the Mass

103) Robert L. Benson, The Bishop Elect, A Study in Medieval Ecclesiastical
104) Augustine, De baptismo 1.1.2, 6.1.2, PL 43: 109, 107; Contra epistolam Par­
meniani, 2,28, PL 43: 70; De bono coniugali, 32, PL 40: 394. See Benson, Bishop Elect (supra, n. 103), 50 n. 27.
105) Augustine, Contra litteras Petillani, 2,69, PL 43: 281; Contra Cresconium, 2,12,
PL 43: 473. See Benson, Bishop Elect (supra, n. 103), 50 n. 28.
106) Maurice de La Taille, The Mystery of Faith: Regarding the Most August
Sacrament and Sacrifice of the Body and Blood of Christ, 2 vols. (London 1941),
trans. J. Carroll and P. J. Dalton, 2.237; Augustine, Contra Donatistas, 1,3,10,
PL 43: 144.
107) Benson, Bishop Elect (supra, n. 103), 50–51.
108) Or performed by a priest with a concubine: Gratian, Decretum D.32, d. p. c. 6.
Note that this was not St Jerome, but Alger of Liège: Friedberg, col. 384.
(C.1, q.1, c.9). Thus, what he permits the heretic he denies the unauthorized priest. Gratian’s dicta therefore discourage moral unworthiness, but do not go so far as pronouncing such actions as sacramentally invalid. In sum, he does not deal squarely with the issue of morally unworthy priests and the effect of their ministration of the sacrament. It is little wonder then that Vacarius did not make use of the Decretum.

Theologians such as Peter Lombard demonstrate similar confusion\(^{109}\). In the fourth book of the Sentences, he denies the validity of the Mass as conferred by excommunicated and heretical priests\(^{110}\). But he later appears to follow the teaching of Alger, and asserts that simoniacal (i.e., heretical) priests have authority to confer the sacraments of holy orders and the Eucharist\(^{111}\). It was the deprivation of authority to use the power rather than heresy that inhibited sacrificial power. He restated the principle that the efficacy of the sacrament lay in God’s power, while the human minister played an essentially instrumental role, and God would not allow his grace to be impeded by the unworthiness of his intermediaries.

A paragraph late in the treatise indicates Vacarius’s intention to correct his young colleague in terms that are not only unambiguous and free from doctrinal uncertainty, but that are supported in law. He labels Speroni a ‘heretic’ in these terms\(^{112}\):

\[
\text{I cannot, nor ought I, spare you, so that these errors of yours now not be condemned as though they were depraved heresies, for your correction. And since you are the leader and teacher of these same errors, you cannot be excused since you are involved in reality and in name in heretical doctrine, [but] truly and properly you must be called}
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\(^{110}\) Peter Lombard, Sententiae (supra, n. 63), 4. d.13. c.1–c.7, 2.335–336.

\(^{111}\) Unless these priests are degraded from the priesthood: Peter Lombard, Sententiae (supra, n. 63), 4. d.25, 2.350.

a ‘heretic’, even according to this legal definition: under the name of ‘heretics’ are included those who ought to be convicted of having violated laws passed against them; or who, on frivolous grounds, have been found to have deviated from the judgment and principles of the Catholic religion.

This passage reflects the general tenor of the treatise, as illustrated by the example of Vacarius’s treatment of the sacramental power of priests. Law and theology combine to educate, warn, and convince Speroni, clarifying for him the error of his ways, Vacarius hopes to bring his erstwhile colleague back to the sheepfold via the pathway of truth. Like priests, whose mediating status in the divine sacraments he attempts to illustrate using rules from the ius commune and theology, Vacarius can merely point the way but cannot ultimately affect change in Speroni.

VI. Towards a Synthesis?

The diversity of Vacarius’s works deny any attempt at neat synthesis, but offer up several strong elements of commonality, as this paper has shown. Let us return to the framework I suggested at the outset to draw these common elements together. First, Vacarius’s works are those of a ‘lawyer-theologian’. While the Liber pauperum is purely legal and the Tractatus de assumpto homine purely theological, their common author displays a more than trivial capacity to cross disciplines. This inter- or cross-disciplinarity is illustrated particularly by the treatises on marriage and the Liber contra, where legal rules and theological principles work together hand in glove to resolve issues that lie beyond the immediate boundaries of each discipline. Beginning with Gratian himself (or themselves), scholarship is renewing interest in the theological influences and sources in ostensibly purely legal texts, as well as the willingness of lawyers to engage in apparently ex professo incursions into theological subject matter. Elsewhere, I have made similar findings in my own recent analyses of the ex professo applications of law or theology or both in the works of Anglo-Norman figures such as Master Vacarius (c. 1115/20–c. 1200), Gilbert of Foliot (c. 1105/10–1187), Peter of Blois ‘the Younger’ (1125/30–1212), and Bartholomew of Exeter (d. 1184). The evidence sug-

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On Gilbert Foliot, see: Jason Taliadoros, Law and Theology in Gilbert of
suggests that the ‘lawyer-theologian’ was a figure of innovation and insight in the twelfth century, playing their skills to resolve problems that did not fit neatly in either category. The establishment of the university faculties in the early thirteenth century, however, would soon set in place the limits of each of these disciplines.

Second, the elements of pedagogy and practical pastoral needs lie at the heart of all Vacarius’s works. Boyle and Stein have shown that the pedagogic reach of the Liber pauperum went beyond Justinianic law; it was an auxiliary text that facilitated the interaction of Justinian’s corpus with the specific needs of its students in mind: canon and local law in England. It may have been just this parochial nature that made the Liber pauperum obsolete by the time the more sophisticated law schools and the greater availability of texts became the norm in the thirteenth century. The treatises on Christology and the ‘errors’ of Speroni attempt to instruct, warn, and convince their respective interlocutors against heresy through a dialogue of common language: now theological, now legal. As Michael Clanchy has suggested, theological and canonical scholastic *summae* such as these, although ostensibly non-official writings, were, for this reason ‘practical’ – in the sense that they provided shortcuts for those who were ‘in a hurry’ or ‘unlearned’

The treatises on Christology and marriage provide particularly strong examples of such texts. The Liber contra, perhaps, was more of a ‘handbook’ and so could be a constant companion to guard against error, much like Alain of Lille’s work.


Also compare Ralph of Diss: Bruce Brasington, “A Lawyer of Sorts”: The Legal Knowledge of Ralph Diss, unpublished paper, to appear in: Proceedings of the Law and Learning Conference, Copenhagen, May 2005. I am grateful to Professor Brasington for kindly providing this paper to me in advance of its publication.

The third element, more accurately a corollary of the second, posits that the Vacarian oeuvre is synthesized and united by its emphasis on heurism rather than doctrine. The important part of the Liber pauperum was not the gloss, but the selection of passages in the text and gloss spaces; only did the later version become completely dominated by the gloss, and so manifest itself as an apparatus. The marriage treatise, likewise, utilized the Roman law concept of *traditio* to suggest a unifying concept for understanding when a marriage was formed or dissolved whether in terms of canon or Justinianic Roman law, or sacramental theology. While more polemic in their articulation of specific doctrine, the Tractatus de assumpto homine and Liber contra were nevertheless heuristic too. The former employed logic, grammar, as well as illustrations from an obscure authority such as Claudianus, to explain matters of high theological abstractedness. The latter focused on biblical exegesis and Justinianic Roman law analogies to make its point. Thus, providing the means to know, the episteme, was for Vacarius the unifying thread among his diverse works.

Leonard Boyle and Augustine Thompson labelled penitentials and confession instruction manuals of the mid-twelfth and early thirteenth-century ‘pastoral’ writings and ‘practical’ theology. A related approach was taken by John Baldwin, in the context of twelfth- and early thirteenth-century scholastic theologians and lawyers in the Parisian scholastic milieu. His study challenged the type-casting of scholasticism as a learned and academic, yet wholly abstract, method. Instead, Baldwin’s study reveals that these schoolmen applied legal and theological principles to resolving everyday problems and conflicts in Parisian political and social life, notably to conflicts in the schools, the courts, and in business (e.g. usury). In similar manner, Vacarius was a man broad in learning and in real-world interests. He sought to use this higher learning to resolve those real-world problems, but did so in an innovative way: as a lawyer-theologian.

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117) Compare Biller’s work in the context of medieval population and birth control: Peter J. Biller, Measure of Multitude (Oxford 2000); also see J. T. Noonan, Jr., The Scholastic Analysis of Usury (Cambridge/MA 1957).