

LEST THE KEYS BE SCORNE: THE IMPLICATIONS OF INDULGENCES FOR THE CHURCH HIERARCHY AND THIRTEENTH-CENTURY CANONISTS' RESISTANCE TO THE TREASURY OF MERIT

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Recent scholarship on indulgences has focused on the shared concepts theologians and canonists drew on to explain these remissions and advantageous effects of indulgences on popular piety, the mendicant orders, and the papacy. A closer examination of the work of thirteenth-century canonists reveals an uncertainty about the mechanism by which indulgences worked and concerns that diverged from those of theologians. While the treasury of merit was a popular theological explanation, it was generally ignored by most canonists, who preferred explanations based on jurisdiction, the power of the keys, and suffrages. A key distinction between suffrages, good works done with the intent of spiritually benefitting others, and the treasury of merit is that the former burdens the living while the latter does not, since it draws on merit stored from already completed actions. Since it makes granting indulgences burdensome, the suffrage theory offers a disincentive to granting indiscrete or excessive remissions. Abuse of indulgences underlined the tensions between the authority of God and the church, the penitential and public forums, and the overlapping jurisdictions of prelates. Unlike the suffrage theory of indulgences, the treasury of merit theory offers little incentive for restraint. This may explain its relative absence in the writings of thirteenth-century canonists.

“I will give to thee the keys of the kingdom of heaven. And whatsoever thou shalt bind upon earth, it shall be bound also in heaven: and whatsoever thou shalt loose upon earth, it shall be loosed also in heaven.”¹ Thus spoke Jesus Christ to his chief disciple, Simon Peter. According to Catholic teaching, this privilege given to Peter was passed down to all the apostles and their successors, the pope and the bishops. The salvific power of the keys was something to be feared on earth for its eternal consequences in heaven. But in the thirteenth century, theologians began to claim that the keys were not just keys to the kingdom, but also keys to a certain treasury filled with the merits of Christ and the saints. At the same time, canonists reflecting on the Fourth Lateran Council’s legislation on indulgences were keenly afraid that these remissions would cause

* The following abbreviations are used in this article: *Novella Commentaria* = Johannes Andreae, *Ioannis Andreae I. C. Bononiensis omnium canonici iuris interpretum facile principis, in quintum Decretalium librum Novella Commentaria*, ed. Petrus Vendramenus (Venice, 1612); and *Summa aurea* = Hostiensis, *Summa aurea* (Venice, 1674).

¹ Matt. 16:19.

the power of the keys to be scorned.² But what is the relationship between these two developments? If the keys are the keys to a treasury of merit, what does that mean for the power of binding and loosing that Christ granted to Peter? And what were the implications of this for the hierarchy of the church, in which this power was manifested in different degrees in different offices? With the revival of research in indulgences and the decline of the overly polemical historiography that had surrounded them for centuries, another look at medieval canon law texts on indulgences is vital to clarify the issues at stake.

Since Martin Luther published his *Ninety-five Theses* on the topic of indulgences, feuding Catholic and Protestant scholars have cast a shadow on the collective understanding of these documents.³ In the modern era, the main figures were Henry Charles Lea, Nikolaus Paulus, and Bernhard Poschmann. Lea, the leading protestant scholar on the topic, argued that indulgences were essentially a medieval novelty, an abuse invented and embraced by the Catholic church to enrich its prelates, especially the pope.⁴ This view, of course, ignores many nuances, including the fact that many indulgences were not granted for giving money, but for visiting churches, praying, listening to sermons, helping to build bridges and hospitals, or going on crusade. Nikolaus Paulus, the leading Catholic scholar, catalogued as many medieval theologians' and canonists' views on indulgences as he could, pointing to continuities with more ancient theological concepts.⁵ Bernhard Poschmann continued this trend, linking indulgences to early medieval penitential practices.⁶

The recent scholarship on indulgences has taken new directions under the leadership of influential scholars such as Robert Shaffern, Robert Swanson, and Étienne Doublier. Shaffern's *The Penitent's Treasury* and his many articles discuss the emergence of the idea of the treasury of merit from both older conceptions of redemption and twelfth- and thirteenth-century economic, social, and intellectual developments, in addition to tracing the various controversies, canonical and theological, that emerged from scholastic discussions of

² The term *remissiones*, meaning a releasing, relaxation, or lessening of the amount of penance owed, was the most common name for indulgences in the twelfth century, but beginning in the thirteenth century, the word *indulgentiae*, meaning pardon or grant of leniency, began to be used interchangeably with *remissiones* to refer to indulgences. See Robert Shaffern, *The Penitent's Treasury: Indulgences in Latin Christendom, 1175–1375* (Scranton, PA, 2007), 45.

³ For more on the early historiography of indulgences, see Shaffern, *The Penitent's Treasury*, 5–17.

⁴ Henry Charles Lea, *A History of Auricular Confession and Indulgences in the Latin Church, Volume 3* (Philadelphia, 1896).

⁵ Nikolaus Paulus, *Geschichte des Ablasses im Mittelalter: Vom Ursprunge bis zur Mitte des 14. Jahrhunderts* (Paderborn, 1922–23).

⁶ Bernhard Poschmann, *Der Ablass im Licht der Bußgeschichte* (Bonn, 1948); and idem, *Penance and the Anointing of the Sick* (New York, 1951).

indulgences.⁷ Swanson's work focuses mainly on the practical and devotional aspects of indulgences in the late medieval English context.⁸ And Doublier's recent work highlights the linkage between papal authority, the mendicants, and the rise of indulgences in the thirteenth and fourteenth centuries.⁹ With this new tide of scholarship, more attention is being paid to the development of indulgences, both in theory and in practice, within the social, economic, and religious contexts of the High Middle Ages. One can say that the study of indulgences has now found a firm footing in the realm of historical scholarship, rather than theological polemic.

There is, however, still some confusion surrounding indulgences, caused by the primacy given to theological sources and the issues emphasized in them. Because of this, the treasury of merit is still seen as the dominant theory for explaining indulgences, and the age-old issues of *pena* and *culpa* and indulgences for the dead still loom large. Swanson notes about William Lynwood's writings on indulgences that, by the fifteenth century, canon law and theology were heavily intertwined.¹⁰ But assuming the same was the case in the thirteenth century would be problematic. Already in the late twelfth century, Robert of Flamborough, unsatisfied with the lack of practical solutions in theological discussions of penance, had begun using Gratian's *Decretum* and Huguccio's canonistic commentaries as the basis of his own *Liber poenitentialis*.¹¹ By the mid-thirteenth century, almost all penitential handbooks, *summae confessorum*, were canonical in nature, rather

⁷ Shaffern, *The Penitent's Treasury*. See also idem, "Images, Jurisdiction, and the Treasury of Merit," *Journal of Medieval History* 20 (1996): 237–47; idem, "Indulgences and Sainly Devotionalisms in the Middle Ages," *Catholic Historical Review* 84 (1998): 643–61; idem, "A New Canonistic Text on Indulgences: *De quantitate indulgentiarum* of John of Dambach, O.P. (1288–1372)," *Bulletin of Medieval Canon Law* 25 (1991): 25–46; idem, "The Medieval Theology of Indulgences," in *Promissory Notes on the Treasury of Merits: Indulgences in Late Medieval Europe*, ed. R. N. Swanson (Leiden, 2006), 11–36; and idem, "Mendicant Friars and the Legacy of Indulgences," in *Ablaskampagnen des Spätmittelalters: Luthers Thesen von 1517 im Kontext*, ed. Andreas Rehberg (Berlin, 2017), 283–94.

⁸ R. N. Swanson, "Indulgences for Prayers for the Dead in the Diocese of Lincoln in the Early Fourteenth Century," *Journal of Ecclesiastical History* 52 (2001): 197–219; idem, "Intercessory Indulgence: Integrating Pardons with the Cults of Saints in Late Medieval England," in *Saints and Cults in Medieval England*, ed. Susan Powell (Donnington, UK, 2017), 41–57; and idem, "The Challenges of Indulgences in the Pre-Reformation Church," in *Ablaskampagnen des Spätmittelalters: Luthers Thesen von 1517 im Kontext*, ed. Andreas Rehberg (Berlin, 2017), 3–18.

⁹ Étienne Doublier, *Ablask, Papsttum und Bettelorden im 13. Jahrhundert* (Cologne, 2017); and idem, "*Libra Misericordiae* le Indulgenze di Bonifacio VIII," *Rivista di Storia della Chiesa in Italia* 64 (2010): 347–80.

¹⁰ Swanson, "The Challenges of Indulgences in the Pre-Reformation Church," 9.

¹¹ Robert of Flamborough, *Liber Poenitentialis: A Critical Edition with Introduction and Notes*, ed. J. J. Francis Firth (Toronto, 1971), 11–12 (prolegomena).

than theological.¹² And with the promulgation of the *Decretales* by Gregory IX in 1234, there was a new set of authorities, raising a new set of issues with respect to indulgences. Thus, canonistic discussions of indulgences gradually grew apart from theological ones. While theological issues are worth studying, as shown by Shaffern's work, the focus on these aspects obscures key distinctions that are sometimes more readily apparent in canonistic texts, most of which are seldom studied by scholars of indulgences.

A key distinction is that between suffrages and the merit stored in the treasury. While Shaffern and others have not always clearly distinguished between these related concepts, canonists of the thirteenth century did not think one entailed the other.¹³ The term *suffragia*, from *suffragor* ("to support"), refers to things that lend support or help to someone, such as votes; in the context of Christian theology, however, they denote actions done to spiritually help another. According to Megan McLaughlin, this idea originated in the late patristic period. Before this, prayers for the dead were celebratory rather than intercessory, but the legalization of Christianity and the ensuing flood of politically-motivated conversions produced a keen sense that not all baptized members of the church were spiritually healthy. With the salvation of some in doubt, theologians began thinking about the ways prayers and other actions done by the living could help these fellow Christians in peril.¹⁴ These patristic writers did not necessarily use the term *suffragia* to denote the concept. For example, Peter Lombard quotes Augustine's *Enchiridion*, stating that "It is not in doubt that the dead are helped by the prayers of the holy church, and by the sacrifice of salvation, and the alms which are offered for their souls, so that God should deal more mercifully with them than their sins may have

¹² Leonard E. Boyle, "Summae Confessorum," in *Les Genres littéraires dans les sources théologiques et philosophiques médiévales: Définition, critique et exploitation. Actes du Colloque international de Louvain-la Neuve, 25–27 mai 1981* (Louvain-la Neuve, 1982), 227–37, at 235.

¹³ For example, Shaffern, "The Medieval Theology of Indulgences," 20–22, speaks of prayers benefiting the dead in Robert de Courson's work and Thomas Aquinas's analogy of suffrages flowing through the mystical body and transitions quite seamlessly into discussions of the treasury of merit, as if the merit of saints and suffrages were the same. Likewise, Shaffern, *The Penitent's Treasury* (n. 2 above), 97, takes words from Raymond of Peñafort stating that the efficacy of indulgences depends on the number and devotion of those *qui suffragantur* (see n. 48 below), as referring to the number of bishops and the amount of remission they grant in indulgences, drawing from the treasury of merit, rather than a reference to the number of people bound by bishops to do suffrages for the recipients of indulgences, which as we shall see below, is one of Raymond's theories of how indulgences work. That Raymond means those doing suffrages rather than those issuing indulgences is shown by the fact that he notes that no human can know the number of them. This is clearly not the case with bishops granting indulgences, which are easily countable and usually stored in the church or monastery the indulgence is prompting pilgrims to visit.

¹⁴ Megan McLaughlin, *Consorting with Saints: Prayer for the Dead in Early Medieval France* (Ithaca, 1994), 183–85.

merited.”¹⁵ Augustine uses the term *adjuvari* rather than *suffragari* to describe the helping effect of these good works, but it is clear that he is referring to a whole host of helpful works, beyond intercessory prayer. By the early Middle Ages, due to the rise of private and tariffed penances, these helpful works began to be seen, especially in monastic circles, as vicarious penances done by one to alleviate the penitential burden of another.¹⁶ In other words, they could help the living and the dead. It is unclear when the term *suffragia* became the dominant word to refer to these works, but Peter Lombard in the mid-twelfth century calls these works *suffragia* several times, putting the discussion of them under the rubric *de suffragiis*.¹⁷ Around the same time, however, Gratian, or whoever composed the *Tractatus de poenitentia* now included in Gratian’s *Decretum*, does not use this term, but comes close, writing with respect to confession that sinners guilty of grave sins cannot be saved without confessing orally unless they have “the supporting (*suffragante*) intercession of the church,” and in reference to a priest’s duties, “He should help (*adiuuet*) the one confessing by praying, making alms, and doing other good things for him . . . he should be a participant in the labor who wishes to be a participant in the joy.”¹⁸ By the mid-thirteenth century, *suffragia* seems to have become the standard term to refer to these works in canonical as well as theological texts. Hostiensis, in his *Summa aurea*, has a section addressing the efficacy of suffrages, beginning by asking, “Which of the dead do the suffrages (*suffragia*) of the church benefit?” and then describing the suffrages as “namely masses, holy celebrations, prayers, alms of dear ones, and fasting of relatives.”¹⁹ Note that Hostiensis assumes the people doing the suffrages will be priests (who celebrate masses), friends, and relatives. The key point is that good deeds, whether called suffrages or not, are done by some of the living to benefit others, either living or dead in purgatory.

¹⁵ Peter Lombard, *Sententiarum libri quatuor* 4.45.2, PL 192, col. 948: “Orationibus ergo sanctae Ecclesiae, et sacrificio salutari et eleemosynis quae pro eorum spiritibus offeruntur, non est dubium mortuos adjuvari, ut cum eis misericordius agatur a Domino, quam eorum peccata meruerunt.” Translation from Peter Lombard, *The Sentences, Book 4: On the Doctrine of Signs*, trans. Giulio Silano (Toronto, 2010), 245. For Peter Lombard’s source, see Augustine, *Enchiridion ad Laurentium de fide et spe et caritate*, ed. E. Evans, in *Aurelii Augustini Opera pars 13*, CCL 46 (Turnhout, 1969), 108–9.

¹⁶ McLaughlin, *Consorting with Saints*, 221 and 226.

¹⁷ Peter Lombard, *Sententiarum libri quatuor* 4.45.2–4, PL 192, cols. 948–50.

¹⁸ *De pen.* D. 1 c. 60, D. 6 c. 1, from Atria A. Larson, *Gratian’s Tractatus de poenitentia: A New Latin Edition with English Translation* (Washington, D.C., 2016), 48 and 264: “Ille, quem macula grauioris culpe inficit, nisi confessione proprii oris uel ecclesie intercessione suffragante sanari non poterit.” “Adiuuet confitentem orando, elemosinas faciendo, et cetera bona pro eo faciendo . . . sit particeps laboris qui particeps uult fieri gaudii.”

¹⁹ *Summa aurea*, 1830: “Quibus mortuis suffragia ecclesie prosint . . . scilicet missarum, celebrationibus sanctis, orationibus, charorum eleemosynis, et ieiuniis cognatorum.”

And these deeds were seen to be present actions valid to help others because of the intention of the actor. Thomas Aquinas notes that a good work counts as a suffrage, first because of love which binds the body of Christ, but,

in another way according to which the act of one is transferred to another through intention, for example, if someone pays some debt for another. . . firstly, therefore, a good work is valid by way of merit, whose root is love, but secondly a work of one is valid for another by way of satisfaction, just as one can satisfy for another, if he intends to. And such value applies to suffrages, which are done in this way so that through them men can be freed from owed penalty.²⁰

In other words, love allows merit to flow through the mystical body of Christ, being transferred from one member to another, but the intention of the actor while acting determines the recipient of that transfer. If the person does not intend that the good work should benefit other specified people, it is not a suffrage. Again, it should be noted that Thomas sees suffrages not merely as intercessory prayers, but almost as a kind of substitutionary penance, using the phrase “satisfy for another” and the idea of penalty to describe the way suffrages work. Bonaventure is even clearer on this point, writing, “The obligation of penalty is diminished by the paying of the penalty done by him, or by another. . . suffrages do not remove the penalty. . . sin does not remain unpunished, since although it is not punished in [the sinner] himself, it is nevertheless punished by another way in others.”²¹

The idea of prelates drawing on stored merit from martyred saints and Christ for the help of the living and those in purgatory, while sharing the same idea of distribution of merit within the body of Christ, is very different. The exact origins of this treasury of merit are difficult to trace, with no evidence to support Hostiensis’s attribution of the idea to Hugh of St. Cher. It seems to have emerged in the early thirteenth century, and it became theologians’ preferred explanation for indulgences by mid-century, with Thomas Aquinas, Peter of

²⁰ Thomas Aquinas, *Quaestiones quodlibetales* 2.7.2, ed. Raimondo Spiazzi (Taurini, 1956), online at <https://www.corpusthomicum.org> (accessed 8 June 2021): “Alio modo secundum quod per intentionem alicuius actus eius transfertur in alterum; puta, si aliquis pro altero solvat aliquod debitum . . . Primo ergo modo valet opus bonum per modum meriti, cuius radix est caritas; sed secundo modo opus unius valet alteri per modum satisfactionis, prout unus pro altero satisfacere potest, si hoc intendat: et talis valor attenditur in suffragiis, quae ad hoc fiunt, ut per ea homines liberentur a debito poenae.”

²¹ Bonaventure of Bagnoregio, *Commentaria in quatuor libros sententiarum Magistri* (Quaracchi, 1889), 4:944: “Obligatio ad poenam minuitur solutione poenae facta ab ipso, vel ab alio . . . suffragia non auferunt a poena nec liberant . . . nec tamen peccatum remaneret impunitum, quia quamvis non puniatur in se, punitur tamen alio modo in aliis.” For more on the complex relationship between suffrages, indulgences, and substitutionary penance in this period, see Gavin Fort, “Suffering Another’s Sin: Proxy Penance in the Thirteenth Century,” *Journal of Medieval History* 44 (2018): 202–30, at 206–7, and McLaughlin, *Consorting with Saints* (n. 14 above), 221.

Tarentaise, and Bonaventure subscribing to the idea.²² As Shaffern notes, the treasury draws on many different metaphors and concepts shared by theologians and laypeople alike, such as the price paid for redemption, the wedding dowry in the marriage of Christ and the church, and the treasury of a king distributed for the good of his people.²³ The idea of suffrages does not contain within it the idea that the merit of the good deeds can be stored up somehow and applied to others after the fact, without the consent of the doer of the deeds, while the treasury of merit is fundamentally based on this idea. In line with this, throughout the Middle Ages, from Augustine to Hostiensis, the list of deeds considered to be suffrages include common penitential acts done by the living, such as prayer, fasting, and almsgiving, but never martyrdom, which is the main source of merit in the treasury of merit. It is clear then, that for the thirteenth-century canonist or theologian, suffrages and the treasury of merit were two separate ideas. The distinction is key because canonists in the thirteenth century struggled to find an appropriate theory of indulgences that would lessen the tensions inherent in the hierarchy of the church, tensions exacerbated by the practice of granting indulgences. And it was the idea of suffrages, in the traditional sense, not the idea of a treasury of merit embraced by theologians, that was one of the favored positions of canonists.

Such nuances have largely gone unnoticed by authors studying indulgences. Paulus, nearly a hundred years ago, catalogued many opinions on indulgences by thirteenth-century theologians and canonists alike.²⁴ Even before that, Franz Gillmann had published a similar account of some theological and canonical writings of early thirteenth-century scholastics.²⁵ While this early work on canonistic views of indulgences is foundational, there are some problems with it. First of all, both Gillman and Paulus at times mix discussions of theologians with those of canonists, assuming the main issues and assumptions regarding indulgences would be shared between them. Secondly, they both go from author to author, mainly summarizing views of each, but not really providing a systematic comparison and analysis of the canonists' views. Lastly, Paulus, in particular, tends to dismiss as unoriginal and therefore unimportant canonists who repeat opinions of other canonists, ignoring slight variations and differences that appear in these repetitions and ignoring the fact that such borrowings can tell us how prevalent certain views were in the canonistic tradition. More recently, Shaffern, in his work on John of Dambach's canonistic commentary on indulgences, provides a good survey of some of the legal and jurisdictional issues involved, putting them in the context of Dominican friars' desire to defend indulgences granted

²² Shaffern, *The Penitent's Treasury* (n. 2 above), 81 and 102–6.

²³ Shaffern, *The Penitent's Treasury* (n. 2 above), 84–85 and 103–4.

²⁴ Paulus, *Geschichte des Ablasses* (n. 5 above), 1:220–22, 225–27, 317–35, and 382–92.

²⁵ Franz Gillmann, "Zur Ablasslehre der Fröscholastik," *Der Katholik* 1 (1913): 365–76.

to their convents.²⁶ But this text is from the 1360s, when theological opinions on indulgences had already heavily influenced canonical ones and after the treasury of merit was officially used by the pope as a justification for indulgences in 1343.²⁷ In his treatment of the thirteenth-century canonistic tradition, Shaffern tends to assume this synthesis and shared understanding of indulgences between theologians and canonists was also present.²⁸ While undoubtedly much was shared, the differences are also worth considering.

This work will investigate opinions on indulgences in the works of twenty-five late twelfth- to early fourteenth-century canonists, including mendicant sum-
 mists: Huguccio (fl. 1190–1210); Alanus Anglicus (fl. 1190–1215); Johannes Teu-
 tonicus (1170–1245); Vincentius Hispanus (fl. ca. 1210), Bernard of Parma (fl.
 1241–1263); Godfrey of Trano (d. 1245); Innocent IV (fl. 1243–1254); Hostiensis
 (wrote *Summa*, ca. 1253); Abbas Antiquus (Bernardus de Montemirato) (1225–
 1296); Guillelmus Durantis the Elder (1236–1296); Johannes Monachus (b.
 1240–1250, gloss to *Liber Sextus* around 1301–1302); Guido de Baysio (born
 1246–1256, d. 1313); Johannes Andreae (ca. 1270–1348); Dominicans Paul of
 Hungary (wrote *Summa* ca. 1220–1221), Raymond of Peñafort (1180–1275), Guil-
 laume de Rennes (wrote apparatus to Raymond, ca. 1240–1245), and John of Frei-
 berg (1250–1304); Franciscans Henry of Merseburg (wrote a *Summa* ca. 1242),
 Henry of Barbeau (wrote apparatus to Henry of Merseburg, ca. 1260), Baldwin
 of Brandenburg (fl. 1266–1270, wrote additions to Henry of Merseburg), anonym-
 ous author of *Labia Sacerdotis*, anonymous author of Second Recension of Henry
 of Merseburg's *Summa*, Monaldus of Capodistria (wrote a *Summa* c. 1274), John of
 Erfurt (fl. 1295–1302), and Peter Quesnel (active in early fourteenth century).²⁹
 Instead of merely summarizing their views one by one, this article systematically
 examines all the different theories and explanations of how indulgences work to
 see what the main issues at stake were and which theories were favored over
 others and why. Then the implications of these theories on canonistic discussions
 of jurisdictional issues raised by indulgences will be explored.

Such an analysis reveals that the conflict between God's justice and the
 church's power, derived from the keys, was the central conundrum facing cano-
 nists as they struggled to settle on a theory of indulgences. Contrary to claims
 that canonists shared theological assumptions behind the treasury of merit
 theory of indulgences and embraced the theory, most thirteenth-century canonists

²⁶ Shaffern, *A New Canonistic Text on Indulgences* (n. 7 above), 45.

²⁷ Shaffern, *The Penitent's Treasury* (n. 2 above), 79.

²⁸ Shaffern, "Images, Jurisdiction and the Treasury of Merits" (n. 7 above), 238.

²⁹ For biographical information on these canonists, see Kenneth Pennington, *Medieval and Early Modern Jurists: A Bio-Bibliographical Listing* (Cambridge, MA, 2011–20), https://amesfoundation.law.harvard.edu/BioBibCanonists/HomePage_biobib2.php (accessed 8 June 2021).

did not even mention the theory and instead sought other means of explanation. One of the theories most commonly accepted by canonists was that indulgences somehow obligated the bishop granting them, and the bishop's church, to do suffrages and make intercessions on behalf of the recipients of the indulgences. The benefit of this explanation is that it served as a check on overly eager prelates who wished to issue superfluous indulgences, thereby lessening the tensions in the church hierarchy between the pope, archbishops, bishops, and parish priests that arose because of indulgences. Complicating the picture of broad consensus painted by Shaffern, there seems to be a significant amount of disagreement, uncertainty, and confusion surrounding the issue of indulgences, not only between canonists and theologians, but also between canonists themselves.³⁰

A MULTITUDE OF THEORIES: CONFLICT BETWEEN GOD AND THE KEYS

Looking carefully at the work of the twenty-five canonists, twenty-two distinct theories about the validity of indulgences emerge. The sheer number of theories is a testament to the great uncertainty of canonists concerning indulgences and the problematic implications they had for the theology and ecclesiology of the medieval church. The main issue was that the power of the keys seemed to challenge divine justice by prejudging what only God could judge. After all, only God has the full knowledge to decide what punishment a sinner deserves, yet an indulgence lessens the punishment not only on earth, but also in purgatory.

Out of these twenty-two theories, eleven try to lessen the indulgence's apparent affront to divine justice and penitential discipline by limiting what kinds of penances indulgences validly remitted. These theories are usually mentioned in passing by canonists, but not explicitly endorsed or denied. The first three of these theories are fairly common in thirteenth-century canonistic texts. Alanus Anglicus was one of the earliest to list these as views circulating among the learned. In his *Apparatus on Compilatio Prima*, Alanus writes:

What such remissions are valid for is the subject of longstanding argument . . . certain people say that they are valid with respect to God and not with respect to the church. With respect to God since if anyone without mortal sin dies, nevertheless not having [done] deserved acts of penance for sins, he feels less punishment in purgatory by means of the remission made to him, but in this life nevertheless the church does not relax the owed satisfaction for the living. Others say that they are valid with respect to the church . . . [for penances] that the church imposed from superabundance, and with respect to God and the church [the penance] is remitted through such remissions . . . Others say that they are valid for the remission of penances which are omitted negligently.³¹

³⁰ Shaffern, "The Medieval Theology of Indulgences" (n. 7 above), 36.

³¹ Alanus Anglicus, *Compilationes antiquae decretalium cum glossis*, ad X.5.38.4, in Munich, Bayerische Staatsbibliothek, Clm 3879, fol. 94v (*Quod autem* is included in

These three views also appear in the canonistic works of Vincentius Hispanus, Bernard of Parma, Hostiensis, and Johannes Andreae.³² The attraction of these views is that they do not diminish the rigor of penitential discipline nor do they put into doubt the ultimate judgment of God on all sinners. If indulgences only lessen punishment in purgatory, but do nothing to lighten the penitential load in this life, that means that sinners are still obliged to complete whatever satisfaction was enjoined on them by their confessor. God will take into account the good work done to receive the indulgence and shorten the penitent's time in purgatory as a just recompense. Likewise, if indulgences only remit penances on earth that were imposed excessively, the triumph of God's judgement over the faulty judgement of the confessor removes any doubts as to penitential justice. The sinner still has to do everything he deserves to do, from God's point of view, but whatever above and beyond this the priest had imposed on him he is freed from doing through the indulgence. In a similar way, according to the third view, if the priest negligently does not impose some satisfaction that the penitent deserves, that owed debt is paid by the indulgence in the eyes of God. In all three instances, God's judgment is the deciding factor and penitents are still required to do satisfaction despite the indulgence.

The remaining eight less common theories that limit the types of penances that are affected by indulgences have a similar rationale to the first three. Hostiensis notes that "certain people say that [indulgences] are valid with respect to venial [sins], some with respect to disgraceful faults . . . or less discretely chosen and enjoined [penances]."³³ Paul of Hungary, an early Dominican canonist, adds several theories to the list, namely that indulgences are valid for forgotten penances or penances not done because of anticipation of death.³⁴ Johannes

Compilatio Prima as 5.33.3 and later the *Decretales*): "Quid valeant remissiones tales vetus est querela . . . Quidam dicunt quod valent tantum quoad deum non quoad ecclesiam. Quoad deum, quoniam si quis [sine] mortali decedat non tamen [per]acta condigna penitentia de peccatis de pena purgatorii minus sentiat, pro modo remissionis sibi facte, in vita ista ecclesia tamen viventi ob hoc debitam satisfactionem non relaxat. Alii dicunt quod valent quoad ecclesiam . . . ex superhabundanti ecclesia imposuit, et quoad deum, et quoad ecclesiam omnino per tales remissiones remittitur . . . Alii dicunt quod valent tantum ad remissionem illius penitentiae que negligenter est omisa." See also a version of this text with minor differences published in Nikolaus Paulus, *Geschichte des Ablasses* (n. 5 above), 1:225–26. The text in brackets appears in Paulus's book and not in Munich, Bayerische Staatsbibliothek, Clm 3879.

³² Vincentius Hispanus, *Apparatus super quinque libros Decretalium Gregorii IX*, ad X.5.38.4, in Paris, BnF, Latin 3967, fol. 202r; Bernard of Parma, *Decretales D. Gregorii papae IX suae integritati una cum glossis restituae*, ad X.5.38.4 (Rome, 1582), 1865–66; *Summa Aurea*, 1870–71; and *Novella Commentaria*, ad X.5.38.4, fol. 124r.

³³ *Summa Aurea*, 1871: "Quidem dicunt quod valent quo ad venalia tamen alii quo ad delicta ignominiae . . . vel minus discrete arbitrata et iniuncta."

³⁴ Paul of Hungary, "Summa de poenitentia," in *Bibliotheca casiensis* (Monte Cassino, 1880), 4:198: "Valeant ad venalia oblivioni tradita . . . valent quo ad mitigationem pene . . . non peregit propter mortis preoccupationem."

Teutonicus, Paul of Hungary, and the Dominican Raymond of Peñafort all mention the theory that indulgences are only valid for penances for sins done out of ignorance.³⁵ Monaldus of Capodistria, a Franciscan canonist, notes the view of some that indulgences remit only penances of those not in mortal sin or only if contrition has sufficiently paid for the mortal sin.³⁶ Lastly, Johannes Teutonicus, in the ordinary gloss to Gratian's *Decretum*, puts forth a rather strange theory that the indulgence remits penances for mortal and venial sins, but "in proportion" rather than "in quantity, and something always remains, even if all silver is spent."³⁷ This means that if an indulgence is offered for giving money, no matter how much one gives, it will never relax all of one's penance, since there is no one to one correlation between the money given and the penances remitted. Seven of these theories try to decrease the seeming affront to God's justice and penitential discipline that indulgences pose by positing that they only work on sins that are not that serious for one reason or another, either because they already have been punished by infamy or contrition, or because the nature of the sin itself is not very grave, such as with venial sins or those done out of ignorance. The problem with all such theories is they seem to undermine the power of the indulgence and of the prelates who grant them, as Huguccio and Johannes Andreae note.³⁸ Johannes Teutonicus's theory that they are valid for all sins but never remit so much penance that there is nothing left for God or the church to punish is an interesting way around the problem, but also one that is vague and uncertain. Unsurprisingly, it was not widely cited.

³⁵ Johannes Teutonicus, *Constitutiones Concilii quarti Lateranensis, una cum commentariis glossatorum*, ad X.5.38.14, ed. Antonio García y García (Rome, 1981), 375: "Ualent ad delicta ignorantie"; Paul of Hungary, "Summa," 198; and Raymond of Peñafort, *Summa Sti. Raymundi de Peniafort Barcinonensis Ord. Praedicator. de Poenitentia et Matrimonio cum glossis Ioannis de Friburgo* (Rome, 1603), 494.

³⁶ Monaldus of Capodistria, *Summa perutilis atque aurea venerabilis viri fratris Monaldi in utroque iure* (Lyons, 1516), fol. 86v: "Valebunt eis, secundum quosdam, si sunt sine mortali peccato, alioquin tunc valebunt eis tantum, secundum quosdam, quando pro contritionem [sic] peccatum fuerit eis remissum." This is slightly different from indulgences only being valid with respect to venial sins, since it suggests they are valid only for penances of those with only venial sins, while the former suggests one can have mortal and venial sins and have the penances for only the venial ones relaxed by indulgences.

³⁷ Johannes Teutonicus, *Decretum cum glossa ordinaria*, ad C. 13, q. 2, c. 23 (Lyon, 1497), fol. 175r: "Si propter oblationem unius denarii tollitur quarta pars peccatorum mortalium vel venialium, per oblationem secundi denarii tollitur tantum in proportione non tantum in quantitate et semper aliquid remanet licet omne argentum effunderetur."

³⁸ Huguccio, *Summa decretorum*, ad *De pen.* D. 1, c. 88, in Paris, BnF, Latin 3892, fol. 329v: "Ubi ergo sunt illi qui dicunt quod remissiones . . . non valent nisi ad revelandas negligentias . . . Christus dixit in evangelio si cui peccata remisieris remittentur ei . . . ut evidenter et quecumque solveritis super terram erunt soluta et in celo . . . plane et firmiter credendum est quod remissiones que fiunt a prelatibus ecclesie . . . valent." Similarly, *Novella Commentaria*, ad X.5.38.4, fol. 124r.

In addition to these eleven theories about indulgences which limit the kinds of penances remitted, there are also four theories that state that indulgences remit all types of penance, but restrict their effectiveness by limiting who they can benefit. These four views are more explicitly supported by canonists than the ones previously mentioned. Drawing from the canon *Quod autem*, a letter from Alexander III to the archbishop of Canterbury, which states that indulgences of outside bishops are invalid without the consent of the penitent's own judge, the earlier canonists, such as Huguccio, Alanus Anglicus, Vincentius Hispanus, and Bernard of Parma, all prefer the theory that indulgences do decrease the amount of satisfaction penitents have to do in this life so long as they are granted or allowed by the penitents' own judge (that is, a bishop or perhaps a priest).³⁹ Alanus goes on to even state that "if a bishop enjoins on anyone a seven-year penance and does not concede that he can redeem it, although he or another issued a general remission for a bridge . . . penance is not diminished with respect to the church."⁴⁰ The implied corollary is that if the bishop does consent, seven years of penance can be relaxed simply by giving money or helping to build a bridge. This explanation is a close literal interpretation of *Quod autem*. If indulgences are valid with the proper judge's consent, then they are completely valid for all penances for all types of sin, with respect to both God and the church. Contrary to the aforementioned eleven theories that restricted the validity to only certain types of penances, this preferred theory relies only on the authority and jurisdiction of the episcopate and does not question episcopal indulgences' applicability to all types of penance. It does, however, limit indulgences' effectiveness based on the boundaries of an ordinary judge's jurisdiction.

Another related theory commonly advocated for by canonists such as Innocent IV was that "it seems that indulgences do not benefit those who are in purgatory, since by then they have no judge on earth but are left to the judgment of God . . . if, nevertheless, the Pope does it, we do not deny it, that they are valid for the

³⁹ For more on *Quod autem* (X.5.38.4) and the canon on indulgences from the Fourth Lateran, *Cum ex eo* (X.5.28.14), see Étienne Doublier, "«Claues ecclesie contempnuntur et penitentialis satisfactio enervatur»: La regolamentazione della prassi indulgenziale nelle costituzioni 60 e 62 del IV Concilio Lateranense," in *Il Lateranense IV le ragioni di un concilio: Atti del LIII Convegno storico internazionale, Todi, 9–12 ottobre 2016* (Spoleto, 2017), 449–72.

⁴⁰ Alanus Anglicus, *Compilationes antiquae*, ad X.5.38.4, in Munich, Bayerische Staatsbibliothek, Clm 3879, fol. 94v: "Sic igitur si episcopus iniungit alicui septennem penitentiam et ut possit redimere non concedit . . . quo ad ecclesiam non diminuit." Similarly, see Huguccio, *Summa decretorum*, ad *De pen.* D. 1, c. 88, in Paris, BnF, Latin 3892, fol. 329v, where he interprets judge as priest, rather than bishop: "Penitentie ecclesiastice omnes arbitrarie sunt, idest in arbitrio sacerdotum ponite, ut possit eas artare, vel protellare"; Vincentius Hispanus, *Apparatus*, ad X.5.38.4, in Paris, BnF, Latin 3967, fol. 202r; and Bernard of Parma, *Decretales*, ad X.5.38.4, 1865–66, who notes simply, "Illis tantum prosunt, qui remittenti vel indulgenti subsunt."

deceased.”⁴¹ Hostiensis, Johannes Andreae, and the Dominican Raymond of Peñafort all argue for this theory, with the latter two repeating Innocent’s caveat that if a future pope says indulgences are valid for those in purgatory, they do not dare go against it.⁴² Shaffern interprets Innocent’s comments as emphasizing the ultimate power of the papacy.⁴³ The main thrust of the argument, however, is that episcopal jurisdiction is valid for remitting all penances for the living but not for the dead by virtue of jurisdiction. The caveat about the pope seems to be an afterthought, especially since Innocent himself was pope at the time and had just stated he did not believe indulgences as such benefited the dead. Another related theory states that indulgences are valid for the dead, but only if they had received the indulgence in life and completed the task enjoined by the document. The Franciscan John of Erfurt argues in favor of this theory, writing that God takes an indulgence granted by a bishop and received in life into account when calculating time in purgatory.⁴⁴ Since the dead sinner was still under the prelate’s jurisdiction when he received the indulgence and fulfilled the task it required, he still benefits from it in purgatory, almost as an aftereffect. A final variation states simply that the pope has authority to grant remissions even to the dead in purgatory; if the form of the indulgence and intention of the pope agrees, one can get an indulgence for one’s dead relative. The Dominicans Guillaume de Rennes and John of Freiburg, along with the *Summa* of the Franciscan Henry of Merseburg and two Franciscan *summae* based on it (*Labia Sacerdotis* and the so-called second recension of Henry of Merseburg’s *Summa*), and the *summae* of Franciscans John of Erfurt and Peter Quesnel

⁴¹ Innocent IV, *Apparatus in quinque libros Decretalium*, ad X.5.38.4 (Frankfurt, 1570), 544r: “Videtur quod indulgentiae non valeant illis, qui sunt in purgatorio, quia iam non habent iudicem in terra, sed Dei iudicio relictus sunt . . . si tamen Papa facit, non negemus, quin valeant in defunctis.”

⁴² *Summa aurea*, 1873–74; *Novella Commentaria*, ad X.5.38.4, fol. 123v; and Raymond of Peñafort, *Summa de poenitentia*, 494–95.

⁴³ Shaffern, “The Medieval Theology of Indulgences” (n. 7 above), 34; and idem, “Learned Discussions of Indulgences for the Dead in the Middle Ages,” *Church History* 61 (1992): 367–81, at 375. Shaffern interprets Innocent as confusing indulgences with suffrages, but Innocent in fact does make the distinction. His point is that indulgences are jurisdictional grants to the living and therefore are not valid for the dead except as suffrages. But he notes that perhaps as suffrages they have more weight than other good deeds because these particular deeds are encouraged by prelates in indulgences.

⁴⁴ John of Erfurt, *Die Summa Confessorum des Johannes von Erfurt*, ed. and trans. Norbert Brieskorn (Frankfurt, 1980), 898: “Intelligitur de poenitentia iniuncta a deo . . . de illa poenitentia relaxat episcopus.” This is different from the above-stated theory that indulgences only are valid with respect only to God and not the church, because that theory essentially makes the penitential effect only take place after death. John’s explanation is that bishops, by virtue of jurisdiction, grant indulgences to the living that can continue to have effect after death because they remit the real penance as calculated by God, not merely penance imposed by a confessor.

all argue for this view, with Henry's *Summa* and its recensions adding that this only applies if the dead "merited this while living and died in love."⁴⁵ These three theories are grappling with the tension between the plenitude of power that the pope has and the jurisdiction of God over the dead. Innocent upholds God's ultimate judgment, but does not want to rule out that a future pope may say otherwise. John of Erfurt suggests that God takes indulgences into account in his judgment, but still has the ultimate say. And others like John of Freiburg assert that the form of the indulgence is the most important thing. If the pope states the indulgence can help the dead, it can, although Henry of Merseburg makes room for God's judgment by noting that the dead must be deserving. The commonality between these three views about indulgences in purgatory and the view that only subjects of proper judges can benefit from them is that they all try to use ideas of jurisdiction to determine the effect of an indulgence, unlike the first eleven theories which limited indulgences by type of sin or penance to be remitted.

The sixteenth theory is less nuanced. Raymond writes, "indeed another opinion is favorable and more common, and I approve of it, namely that they are valid just as they sound. For when the pope is called in plenitude of power and inferior prelates moreover in part of the solicitude . . . it would be stubborn to dispute against the power of the keys."⁴⁶ While some other canonists mention this view and are ambivalent about it, Godfrey of Trano, Hostiensis, Johannes Andreae, Henry of Merseburg, and the so-called second recension of Henry's work all argue in favor of this simple understanding of indulgences based on the power of the

⁴⁵ Guillaume de Rennes, "Glossae," in Raymond of Peñafort, *Summa de poenitentia*, 495. Concerning whether a pope's plenary crusade indulgences free from purgatory, if the crusader tries but fails to fulfill his vow, "recurrendum est tamen ad formam indulgentiae et intentionem Papae . . . cum habeat plenitudinem potestatis . . . latissime interpretanda est huiusmodi indulgentia generalis." John of Freiburg, *Summa confessorum reverendi patris Joannis de Friburgo Ordinis Predicatorum* (Paris, 1519), fol. 206r, is even more explicit: "Indulgentie possunt per papam extendi ad eos qui sunt in purgatorio, ut cum hoc in litteris remissionis ponitur." See also Henry of Merseburg, *Summa Henrici Mersebergensis*, in Jena, Thüringer Universitäts und Landesbibliothek, Bibliotheca Electoralis, MS El. q. 11., fol. 120v (El.q.11): "Qui dum vixerunt hoc meruerunt, et in caritate decesserunt.;" *Labia sacerdotis*, in Munich, Bayerische Staatsbibliothek, Clm 28216, fol. 87r; Second Recension of *Summa Henrici Mersebergensis*, in Berkeley, UC Berkeley, Robbins Collection, MS 75, fol. 81v (hereafter Robbins 75); John of Erfurt, *Summa*, 896; and Peter Quesnel, *Directorium iuris in foro conscientiae et iudiciali*, in Paris, BnF, MS Latin 8934, fol. 34v. This suggests they thought of indulgences as working through suffrages, since this quote reflects Peter Lombard's *Sentences*, which states that suffrages only benefit those who merit it in life. See Peter Lombard, *Sententiarum libri quatuor* (n. 15 above), 4.45.2, 948.

⁴⁶ Raymond of Peñafort, *Summa de poenitentia* (n. 35 above), 494–95: "Verum alia sententia est fauorabilis, et magis communis, et illam approbo, videlicet quod valeant sicut sonant. Cum enim Papa sit vocatus in plenitudinem potestatis, inferiores autem prelati in partem sollicitudinis . . . durum esset contra tantam potestatem clauium disputare."

pope's office.⁴⁷ This view is opposed to the first eleven theories above, which limited the types of penance remitted by indulgences, since the simple understanding is that they remit all penance they claim to remit. There is no need for further questions about their validity for certain sins or for those in purgatory. This also complements the view of Alanus Anglicus that indulgences remit penance if one's proper judge consents, since one draws on the idea of power while the other draws on the concept of jurisdiction, both of which are usually attached to the episcopal office. This simple interpretation also accords with the view that if the pope's indulgence states that the dead in purgatory have their sins remitted, they do, since the plain reading of the text is upheld in both cases. The problem with this explanation, however, is that it ignores the troubling issue of conflict between God's judgement and that of man, which many of the previously discussed theories tried to address. This is evident from the fact that Raymond himself presents an additional theory about indulgences that is contradictory to this simple reading he himself endorsed.

In response to the hypothetical question of whether a penitent receiving an indulgence allowing him to pay seven coins for the remission of seven years of penance, which seems contrary to divine justice, actually receives such a lessening of penance, Raymond writes, "Neither do I know nor do I believe any mortal knows, unless he is inspired by some divinity," because to know how much penance is actually remitted requires knowledge of factors such as the level of devotion of the penitent, the number of people doing suffrages for the penitent, and their level of devotion, and "since therefore no one can know the measure, or number, also by consequence no one can know the measure of remission."⁴⁸ Another possible unknown factor to take into account is the faculty of the giver, since one view is that one who is able to more easily give money, or fulfill other conditions of indulgences, receives less remission than one who does it with more difficulty.⁴⁹

⁴⁷ Godfrey of Trano, *Summa super titulis Decretalium* (Lyon, 1519), fol. 240v: "Ego tamen simpliciter intelligo sicut sonat . . . absolutus est quem ecclesia absoluit."; *Summa aurea*, 1871; *Novella Commentaria*, ad X.5.38.4, fol. 124r; Henry of Merseburg, *Summa*, El. q.11, fol. 120r; and *Summa Henrici*, Robbins 75, fol. 81r.

⁴⁸ Raymond of Peñafort, *Summa de poenitentia* (n. 35 above), 495–96: "Nec scio, nec credo aliquem mortalem scire, nisi esset alicui diuinitus inspiratum . . . maioritas et minoritas remissionis paenitentiae attenditur secundum tria, scilicet secundum maiorem et minorem deuotionem ipsius paenitentis, et ipsorum qui suffragantur, et secundum maiorem et minorem numerum eorundem suffragantium, cum igitur nullus possit scire mensuram, vel numerum talium, nec per consequens potest scire remissionis mensuram." Shaffern, *The Penitent's Treasury* (n. 2 above), 97, refers to the same passage only to note that Raymond thought the level of contrition was linked to the amount of remission received, but does not focus on the entire point of the argument, that the actual amount is unknown to everyone except God.

⁴⁹ Guillaume de Rennes, "Glossae," 496: "Non potest esse certum de facili danti, vtrum dederit secundum facultates suas."

Raymond's view takes a highly respectful stance on God's justice. Even if a remission states that a certain amount of penance is remitted, God alone has full knowledge of the variables and can actually calculate what deserves to be relaxed; therefore, the actual effect of the indulgence is uncertain to humans. The problem with this, as Guillaume de Rennes, the glossator of Raymond's work, points out is "how therefore are remissions of this kind valid as they sound, as is said above? It seems the Master is contrary to himself."⁵⁰ Despite the obvious fact that these two theories of indulgences are mutually exclusive, Raymond's views are repeated by other canonists.⁵¹ The contradiction comes from two competing impulses on the part of canonists: to uphold the unquestionable power of the keys and to acknowledge God's judgment as ultimate. If indulgences are not valid simply as they sound, then the power to bind and loose that lies behind them is in doubt; however, if the indulgences are able to do whatever is written in them, they could be seen as forcing God to make unjust judgments, lessening the punishments of those who do not deserve it.

The last five theories of indulgences try to reconcile this contradiction. The first, put forth by Guillaume in response to Raymond's self-contradiction, is to say that, "indulgences do not nevertheless prejudice divine justice, since any sin will be sufficiently punished, whether here or in purgatory."⁵² In other words, the power of the church makes indulgences remit penance on earth, but if it is unjustly done, God will make things right by punishing the penitent more in purgatory. This is not very comforting for the recipient of an indulgence. Innocent IV gives a more uplifting version of this theory, saying, "God, who moderates all things in number, weight, and measure, beyond the boundaries of the church imposed by prelates, will give more or less grace."⁵³ Prelates are given free rein on earth, but their mistakes will be rectified later. This is not a satisfactory resolution to the problem because it suggests that whatever is bound on earth is not in fact bound in heaven, undermining the power of the keys. An additional theory proposed, but not preferred, by Paul of Hungary is that indulgences "are valid just as any good [deed], nevertheless more so because of the authority of the church."⁵⁴ This view makes indulgences nothing but an amplifier of merit for

⁵⁰ Guillaume de Rennes, "Glossae," 495–96: "Quomodo ergo valent huiusmodi remissiones sicut sonant, vt dictum est supra? Videtur Magister contrarius sibi ipsi."

⁵¹ *Summa aurea*, 1871; *Novella Commentaria*, ad X.5.38.4, fol. 124r; and John of Freiburg, *Summa* (n. 45 above), fol. 205r.

⁵² Guillaume de Rennes, "Glossae," 496: "Tamen remissiones non praeiudicant diuinae iustitiae, quando cuiuslibet peccatum sufficienter puniatur, vel hic, vel in purgatorio."

⁵³ Innocent IV, *Apparatus* (n. 41 above), ad X.5.38.4, 543v: "Deus, qui omnia moderatur in numero pondere et mensura, vltra metam in ecclesia a praelato impositam, de gratia dabit alij plus, alij minus."

⁵⁴ Paul of Hungary, "Summa" (n. 34 above), 198: "Valent tanquam quodlibet bonum, tamen amplius propter au[c]toritatem ecclesie."

the good work prescribed in it, but does not solve the issue of God's justice, since the only thing making the good work worth more is the earthly church's approval of it, not any consideration of the merits of the doer in the eyes of God.

Another solution is to say that although indulgences do remit penances on earth, which also can decrease time in purgatory, it makes no practical difference for the way the penitent should conduct himself. He still ought to do all penance enjoined on him by his confessor. This view was almost universal amongst canonists. Hostiensis's explanation is perhaps the fullest, stating:

For although concerning necessity he is not held to do enjoined penance, since through remissions of this kind, even if they were indiscreetly made, satisfaction of penance is still weakened . . . nevertheless since he does not know whether the priest enjoined on him the penance that he ought to have . . . and that which is not purged in this life must be purged in purgatory, he is a fool and simple who does not reserve indulgences of this kind [for purgatory] . . . since graver is one day of penance there than a hundred here.⁵⁵

Many other canonists throughout the thirteenth century echo this opinion, with slightly different reasoning. For example, Vincentius Hispanus says even though penances are remitted, the sinner should still do them all anyway out of a sincere heart, since scorning to do so would be a mortal sin.⁵⁶ This approach, although popular among canonists, is extremely damaging to the idea of the indulgence and the power of the keys. If a document issued by a bishop lessens enjoined penance and those who receive it still have to do that enjoined penance or else face more punishment in purgatory or even worse eternal damnation in hell for scorning to do penance, the indulgence has practically no power on earth.

For this reason, two final theories were proposed by the canonists. The first, which was often mentioned and commonly accepted up to the end of the

⁵⁵ *Summa aurea*, 1872: "Quamuis enim de necessitate non teneatur hic facere poenitentiam iniunctam, quia per remissiones huiusmodi, etsi indiscrete fiant, satisfactiones tamen poenitentiae enervantur . . . tamen quia nescit vtrum sacerdos iniunxerit ei poenitentiam quam tamen debuisse . . . et id quod non est purgatum in hac vita, debeat purgari in purgatorio, fatuus est et simplex, qui ibidem huiusmodi indulgentias non reseruat . . . grauior sit ibi poenitentia vnus diei quam hic centum."

⁵⁶ Vincentius Hispanus, *Apparatus* (n. 32 above), ad X.5.38.4 in Paris, BnF, Latin 3967, fol. 202r: "Non tenetur iam ex necessitate ieiunare sed ex honestate, et si contempnit mortaliter peccat"; Bernard of Parma, *Decretales* (n. 32 above), ad 5.38.4, 1866; Paul of Hungary, "Summa" (n. 34 above), 198; Raymond of Peñafort, *Summa de poenitentia* (n. 35 above), 497; Guillaume de Rennes, "Glossae" (n. 45 above), 496; John of Freiburg, *Summa* (n. 45 above), fol. 205r; *Labia Sacerdotis* (n. 45 above), in Munich, Bayerische Staatsbibliothek, Clm 28216, fols. 87r–87v; *Summa Henrici* (n. 45 above), Robbins 75, fol. 82v; John of Erfurt, *Summa* (n. 44 above), 897; Huguccio, *Summa decretorum* (n. 38 above), ad *De pen.* D. 1, c. 88, in Paris, BnF, Latin 3892, fol. 329v, notes that one does not receive an indulgence with the attitude of exchanging money for less penance, but instead of accepting an invitation to do whatever good work is required in the indulgence. He does not go as far as to say one should still do the penance that is relaxed.

thirteenth century, was that indulgences obligate the granter to do suffrages to make up for the penances remitted.⁵⁷ Henry of Merseburg offers a typical wording of this view, writing that indulgences are valid, “because of two things, namely because of the devoted giving, and because it obligates him who made the remission, or rather also the entire church, to make suffrages for him [who received the remission].”⁵⁸ The reason for the popularity of this theory seems to be that it negates the possibility of any injustice being done by excessive indulgences given to underserving sinners. If a bishop, or the pope, gives these indiscrete indulgences, all they are doing is binding themselves and their subjects to do more penance to make up for what is remitted. It is important to note that suffrages are not just intercessory prayers. As Thomas Aquinas noted, suffrages are good deeds (satisfactory works) that by the intention of the actor are beneficial for others.⁵⁹ This acts as a disincentive for prelates issuing indulgences, but it also means that God’s justice is done no matter what. There is still a penalty paid for sin, just not by the penitent. Indulgences are merely tools by which the burden of penance is transferred from the sinners to prelates and their subjects. A similar view seems to have been held by theologians in the twelfth and early thirteenth centuries.⁶⁰ For example, Thomas Chobham notes the view of some, writing “this is the sense of the words [in an indulgence], ‘we relax to you ten days of enjoined penance,’ that is we oblige ourselves and our church to do for you ten days of penance.”⁶¹ One can imagine how these obligations could add up if many indulgences were granted, especially with much larger amounts of

⁵⁷ The following mention the theory in passing without contradicting it: Alanus Anglicus, *Compilationes antiquae* (n. 31 above), ad X.5.38.4, in Munich, Bayerische Staatsbibliothek, Clm 3879, fol. 94v; Vincentius Hispanus, *Apparatus* (n. 32 above), ad X.5.38.4, in Paris, BnF, Latin 3967, fol. 202r; and Bernard of Parma, *Decretales* (n. 32 above), ad X.5.38.4, 1865. The others, on the other hand, seem to endorse or assume this theory is true. *Summa aurea*, 1867 and 1871–72, uses it as a warning against excessive remissions, “licet oneret se si incaute hoc faciat,” and an explanation for why indulgences benefit the giver of alms, “quia obligat eum qui facit remissionem, secundum Raymundum.” See also Paul of Hungary, “Summa” (n. 34 above), 198; Raymond of Peñafort, *Summa de poenitentia* (n. 35 above), 495–96: “Obligat eum . . . vt suffragetur ei”; Guillaume de Rennes, “Glossa” (n. 45 above), 496; John of Freiburg, *Summa* (n. 45 above), fol. 205r; Henry of Merseburg, *Summa* (n. 45 above), El.q.11, fol. 120r; *Summa Henrici* (n. 45 above), Robbins 75, fol. 81r; and Monaldus of Capodistria, *Summa* (n. 36 above), fol. 87r.

⁵⁸ Henry of Merseburg, *Summa* (n. 45 above), El.q.11, fol. 120r: “Hoc propter duo, scilicet propter devotam erogationem, et quia obligat eum qui facit remissionem, immo et totam ecclesiam, ut ei suffragetur.” Henry is likely drawing from Raymond of Peñafort, *Summa de poenitentia* (n. 35 above), 495.

⁵⁹ Thomas Aquinas, *Quaestiones quodlibetales* (n. 20 above), 2.7.2.

⁶⁰ Doublier, “Claues ecclesie contempnuntur” (n. 39 above), 463.

⁶¹ Thomas Chobham, *Summa confessorum*, ed. F. Broomfield (Louvain, 1968), 209: “Et est sensus verborum talis: nos relaxamus vobis decem dies de iniuncta penitentia, id est obligamus nos et ecclesiam nostram ad faciendum pro vobis penitentiam decem dierum.”

penance remitted. The obvious disadvantage of this theory is that it likely would not be accepted by many bishops, who both wanted to grant many indulgences and likely did not want to do more penance themselves.

The last theory, which was almost completely ignored or dismissed by canonists, was the idea that the remitted penances are paid for by a treasury of Christ's and the saints' merits. Before the end of the thirteenth century, only two canonists even mention this theory, Paul of Hungary and Hostiensis; and only Hostiensis seems to give it any credence. Paul notes among other theories that some say indulgences, "are valid just as a certain treasury, so that when other things fail and we cannot be deserving, they receive us into eternal tabernacles, like the iniquitous manager in the gospel."⁶² But he ultimately settles on the competing theory that indulgences are valid because they obligate the granter and his church to do suffrages for the penitent. Hostiensis seems more convinced. In response to the objection that indulgences seem to leave sin unpunished, he writes:

The smallest drop of the Blood of Christ suffices for the expiation of all sins and redemption of all men . . . and the son of God shed not only one drop but all his blood for sinners, and because of this, martyrs for the faith and the church shed their blood . . . this effusion of blood is a treasury reposit in the chest of the church, whose keys the church has, from which, whenever it wishes, it can open the chest and communicate the treasure to whomever it wishes, making remissions and indulgences to the faithful, and thus sin does not remain unpunished, since it is punished in the son of God and his holy martyrs.⁶³

Despite having read and cited Hostiensis frequently, other canonists such as Guillaume de Rennes, Henry of Merseburg and his glossators, and Monaldus of Capodistria, do not mention this treasury. It was not until the end of the century, when the mendicant summists John of Erfurt and John of Freiburg actively began to incorporate theology into the previously canonistic confessors' handbooks, that

⁶² Paul of Hungary, "Summa" (n. 34 above), 198: "Dicunt quod valent tanquam quidam thesaurus, ut cum alia defecerint et iam mereri non possumus, recipiant nos in eterna tabernacula, ut de villico iniquitatis legitur in evangelio . . . amplectimur et imitamur, quod in veritate valent . . . quia ecclesia obligat se pro illo orare." This version of the treasury of merit is an odd one, drawing the metaphor from the parable of the shrewd manager who defrauds his master who is relieving him of his duties in order to ingratiate himself with his master's debtors so that he might survive afterwards (Luke 16:1–13).

⁶³ *Summa aurea*, 1871–72: "Sed minima gutta sanguinis Christi sufficeret ad expiationem omnium peccatorum et redemptionem omnium hominum . . . et filius Dei non solum guttam, sed totum sanguinem fuderit pro peccatoribus, et propterea martyres pro fide, et ecclesia sanguinem suum fuderunt . . . et haec sanguinis effusio est thesaurus in scrinio ecclesiae repositus, cuius claves habet ecclesia, vnde quando vult potest scrinium aperire, et thesaurum suum cui voluerit communicare, remissiones et indulgentias fidelibus faciendo, et sic peccatum non remanent impunitum, quia punitum fuit in filio Dei et martyribus sanctis suis."

the theory reappeared.⁶⁴ It is clear, however, from Johannes Andreae, writing years after these two summists, that this idea was still not widely accepted by canonists in the early fourteenth century. In his discussion of whether indulgences benefit the dead in purgatory, he cites Innocent IV's good canonistic opinion that they do not since the prelates of the church have no jurisdiction in purgatory. But then he adds, "Theologians say, which reason does not oppose, that the church cannot communicate its treasure to the dead as to the living."⁶⁵ Although not opposing the idea of a treasury, he does seem to suggest this is a properly theological idea, not a canonistic one.

All twenty-two theories concerning indulgences struggle with the tension between the church's power to bind and loose and God's omniscience and ultimate just judgement. The first eleven, which limit the indulgence's power by claiming they only remit penances for certain less serious sins, preserve God's justice by not allowing for undeserved diminishing of punishment, but undermine the keys by curtailing the power of prelates to loosen penances on earth. The four theories that limit indulgences by jurisdiction, whether on earth or in purgatory, preserve the power of the keys, within legal limits, but are open to the possibility of prelates confounding God's justice by granting undeserved remissions within their jurisdictions. Raymond's theory that indulgences are simply valid as they sound faces the same issue, while Raymond's alternate view that humans can never know how much penance is actually remitted faces the opposite problem, that of rendering the keys powerless. The view that God will adjust for indulgences and punish what needs to be punished in purgatory and the view that penitents ought to still do all enjoined penance despite receiving indulgences also undermine the authority of the prelates issuing indulgences. The only two viable options that preserve God's justice in punishing all sin and the church's power to forgive and remit are the final two theories, that remitted penances are either done by prelates as suffrages or made up for by the treasury of merit.

Many of these views were also circulating amongst theologians in the twelfth and early thirteenth centuries. Alan of Lille, for example, in his late twelfth-century *Liber poenitentialis*, discusses several relevant theories. Similar to Raymond, Alan suggests that priests and bishops can remit or lessen enjoined penances and accept them on themselves, but the efficacy of this is uncertain. He writes, "For he is a minister of remission. Indeed, if it is asked whether he

⁶⁴ John of Erfurt, *Summa* (n. 44 above), 896, states that Christ gave the church a bridal gift of an inexhaustible treasure, which his representatives, the pope and bishops, can draw from. John of Freiburg, *Summa* (n. 45 above), fol. 204v, cites the Dominican theologian Peter of Tarantaise (later Pope Innocent V), stating that there is a treasury of merits of the whole church and prelates have the keys and therefore can distribute it for the necessities of the church.

⁶⁵ *Novella Commentaria*, ad X.5.38.4, fol. 123v: "Dicunt theologi, quod non occurrit ratio, quare non possit ecclesia thesaurum suum communicare mortuis sicut viuis."

can accept the penance on himself, we respond: He can humbly say: so that God may have mercy on you, I accept this penance on myself to complete it for you. Whether he will therefore be absolved? God knows.”⁶⁶ Alan also has a version of Johannes Teutonicus’s theory, in which no matter how much is remitted, some penance always remains: “For some say it is done in this way, namely if a three-year penance is enjoined on someone, that prelate can relax a third of it for him. . . another prelate can relax a third of the remaining penance, and thus infinitely, so that always something remains for the person to do himself.”⁶⁷ He also suggests a theory based on suffrages that make up for any injustice in the indulgence, writing, “The church through prayers, fasting, alms, and other salutary works takes upon itself to do this [lacking penance]. Moreover, the members of the supporting church ought to carry each other’s burdens and thus fulfill the law of Christ.”⁶⁸ But Alan rejects these in favor of the idea that “the church does not remit temporal penalty, but purgatorial.”⁶⁹ It would appear that Alan was not concerned with the jurisdictional issues involving purgatory that worried the canonists. But, as Shaffern notes, by the 1250s, theologians had abandoned these early ideas in favor of the treasury of merit, which synthesized many older ideas with relevant analogies.⁷⁰

The question that arises is why canonists favored older theories, especially those involving suffrages, over the treasury of merit for so long. Given the fact that the treasury of merit was already adopted in theological circles in the early to mid-thirteenth century and would become the dominant and papally recognized theory of indulgences by the mid-fourteenth century, it is shocking that almost none of the canonists of the thirteenth century supported this view.⁷¹ A definitive answer cannot be found, since canonists often do not explicitly

⁶⁶ Alan of Lille, *Alan of Lille: Liber poenitentialis*, ed. Jean Longere (Louvain, 1965), 153: “Minister enim est remissionis. Si vero quaeritur, utrum poenitentiam possit accipere super se, respondemus: potest humiliter dicere: ut Deus misereatur tui, ego hanc poenitentiam pro te suscipio implendam. Utrum autem ille absolvatur? Deus novit.”

⁶⁷ Alan of Lille, *Liber poenitentialis*, 174–75: “Quidam enim dicunt hoc licite fieri hoc modo, scilicet, si alicui est injuncta poenitentia triennis, iste praelatus potest ei tertiam partem relaxare . . . alius etiam praelatus potest ei tertiam partem residuae poenitentiae relaxare et sic in infinitum, ut semper et aliquid restet in propria persona peragendum.”

⁶⁸ Alan of Lille, *Liber poenitentialis*, 176: “Ecclesia per orationes, jejunia, elemosynas et alia quaecumque opera salutis hoc in se suscipit peragendum. Suffraganea autem sunt Ecclesiae membra et alter alterius onera portare debet, ut sic adimpleatur lex Christi.”

⁶⁹ Alan of Lille, *Liber poenitentialis*, 176–77: “Ecclesia non remittit ei poenam temporalem, sed purgatoriam.”

⁷⁰ Shaffern, *The Penitent’s Treasury* (n. 2 above), 102–6.

⁷¹ Doublier, “Claues ecclesie contempnuntur” (n. 39 above), 463 and 469, notes that theologians had held to a suffrage-based theory of indulgences before adopting the treasury of merit explanation. Both Doublier here and Shaffern, *The Penitent’s Treasury* (n. 2 above), 80–106, present a smooth evolution with much continuity between the idea of indulgences as drawing on suffrages and that of them drawing from a treasury of merits. However, this

explain why they favor one theory over another. To explore this further, it is helpful, therefore, to put this theoretical issue in the context of the other more practical problems surrounding indulgences discussed by the canonists, namely problems involving the church hierarchy.

THE TENSION BETWEEN THE POPE AND BISHOPS

In 1215, at the Fourth Lateran Council, the canon *Cum ex eo* was promulgated. It stated:

Since through indiscrete and superfluous indulgences, which certain prelates of the church have not feared to grant, both the keys of the church are scorned and penitential satisfaction weakened, we declare that when a basilica is dedicated the indulgence should not exceed one year, whether dedicated by one or multiple bishops, and furthermore in the anniversary of the dedication the granted remission of enjoined penances should not exceed 40 days . . . since the Roman Pontiff, who has the plenitude of power, is accustomed govern this way in such things.⁷²

This canon deals with several issues that were seen to undermine Christianity and the church, namely the veneration of doubtful saints, the proliferation of fake relics, the monetary demands of *quaestarii* (alms seekers), and lastly the proliferation of indulgences. As Stephan Kuttner notes, the emergence of papal canonization of saints was a long process, largely originating in local episcopal desire for papal approbation of local saints, rather than an imposition from the papacy.⁷³ Likewise, as Christine Oakland points out, synodal statutes, like that promulgated by Bishop Robert Courson of Paris in 1215, show that there was a great deal of concern amongst local prelates about fraud, abuse, and shameful treatment of relics.⁷⁴ Indulgences were related to these other issues because the *quaestarii* would often collect money using fake indulgences promising remission for

view does not take into consideration the key difference between these views: the first puts burdens on the living, the second does not.

⁷² *Conciliorum oecumenicorum generaliumque decreta: Editio critica 2, The General Councils of Latin Christendom*, part 1, *From Constantinople IV to Pavia-Siena (869–1424)*, ed. Antonio García y García (Turnhout, 2013), 196–97 = X.5.38.14 in *Corpus iuris canonici: Pars secunda, Decretalium Collectiones*, ed. Emile Friedberg (Leipzig, 1881), 889: “Quia per indiscretas et superfluas indulgentias, quas quidam ecclesiarum prelati facere non verentur, et claves ecclesie contempnuntur et penitentialis satisfactio enervatur, decernimus ut cum dedicatur basilica, non extendatur indulgentia ultra annum, sive ab uno solo sive a pluribus episcopis dedictur; ac deinde in anniversario dedicationis tempore quadraginta dies de iniunctis penitentiis indulta remissio non excedat . . . cum romanus pontifex, qui plenitudinem optinet potestatis, hoc in talibus moderamen consueverit observare.”

⁷³ Stephan Kuttner, “La réserve papale du droit de canonization,” *Revue historique de droit français et étranger* 17 (1938): 172–228, at 187–88.

⁷⁴ Christine Oakland, “The Legacy of Canon 62 in the Diocese of Sens in Northern France (1215–1469),” in *The Fourth Lateran Council and the Development of Canon Law and the ius commune*, ed. Atria A. Larson and Andrea Massironi (Turnhout, 2018), 187–204, at 188–90.

the veneration of a saint in a specific local church. The monetization of indulgences was a side-effect of a broader tendency to count and value penitential acts.⁷⁵ Indulgences themselves underwent a transformation in the late twelfth century, becoming more precise and arithmetic in the amount of remission offered.⁷⁶ These trends facilitated the abuse of indulgences that the council opposed. After the Lateran council, however, the reception of the canon was inconsistent at best. Oakland notes, “different diocesan synods adopted one or more of these elements, and sometimes none. . . the four principal points addressed in Lateran IV’s *Cum ex eo*. . . failed to be represented together as originally intended.”⁷⁷

The reception of the canon by canonists was no different. They tended to break up their discussions of the canon into different sections and address them separately. Thus, in commentaries on the *Decretales* and in *Summae*, the section of *Cum ex eo* that deals with indulgences is addressed within the context of penance, and there is never any mention of saints or relics. Innocent IV’s *Apparatus* is typical of this way of discussing canons. He addresses them as they appear in the *Decretales*, with the relevant section of *Cum ex eo* grouped with other canons related to penance and indulgences under the rubric *de poenitentia et remissionibus*. Along with theoretical musings about the way indulgences work, Innocent then discusses specific canonical issues raised by textual details in the canon.⁷⁸ And these issues were primarily about the relationship of different members of the church hierarchy with regard to penance and indulgences. Thus, although canonical limits on indulgences may not have been issued with issues of hierarchy in mind, canonists’ discussions of these restrictions came to focus on those very issues.

The canonistic views concerning this limit on episcopal indulgences relate to the tension between the pope’s jurisdictional power over bishops and the rights of the episcopal office. These tensions threatened to upset the carefully balanced order of the church, the *status ecclesiae*.⁷⁹ According to canonical norms, the pope had a plenitude of power, but the bishops also had rights; and these were often in tension. Kenneth Pennington notes many canonical issues in which this tension emerged, for example translations, depositions, abdications, granting of benefices, and exempting clerics from ordinary jurisdiction. With regard to exemptions, the

⁷⁵ Thomas Lentz, “Counting Piety in the Late Middle Ages,” in *Ordering Medieval Society: Perspectives on Intellectual and Practical Modes of Shaping Social Relations*, ed. Bernhard Jussen (Philadelphia, 2001), 55–91.

⁷⁶ Shaffern, *The Penitent’s Treasury* (n. 2 above), 92–93.

⁷⁷ Oakland, “The Legacy of Canon 62,” 193–95.

⁷⁸ Innocent IV, *Apparatus* (n. 41 above), 546r.

⁷⁹ For more on this term and its meaning for medieval jurists, see John H. Hackett, “State of the Church: A Concept of the Medieval Canonists,” *The Jurist* 23 (1963): 259–90, at 275 and 290.

idea that the pope could prohibit a bishop from judging those in his own diocese seemed to detract from the bishop's rights, and thus canonists and eventually even popes limited the situations in which exemptions could be applied.⁸⁰ In general, canonists appealed to the idea that the hierarchical order of the church was established by Christ, just as the papacy was, and therefore the pope could not disregard the *status ecclesiae*. But this idea always had to be balanced with the pope's *plenitudo potestatis*.⁸¹ Given the ubiquity of this issue, it is no surprise that canonists discussing indulgences were also concerned about how they might impact the delicate balance between the pope and bishops.

Early on, canonists like Vincentius Hispanus noted that the pope is not subject to jurisdictional restrictions, such as those imposed by *Quod autem*, which states that a bishop's indulgence is only valid for his own subjects unless the penitents' own bishop consents.⁸² Because he has universal jurisdiction, every Christian is the pope's subject, and he is everyone's ordinary judge. Similarly, there is no limit on the amount of remission the pope can give. Peter Quesnel notes that for bishops' indulgences that relax a finite amount of penance, the effect is better reserved for purgatory, and enjoined penance should still be done on earth; but "concerning enjoined penance we relax it differently with respect to the general or universal [remission] through which all satisfaction is remitted, which is accustomed to be granted only by the pope."⁸³ Peter is speaking of plenary indulgences, usually given to crusaders but also issued for pilgrims visiting various churches, such as the Portiuncula outside of Assisi and St. Peter's Basilica in Rome.⁸⁴ Anyone from any diocese can get these papal indulgences and afterwards be freed from all enjoined penances on earth, and from all

⁸⁰ Kenneth Pennington, *Popes and Bishops: The Papal Monarchy in the Twelfth and Thirteenth Centuries* (Philadelphia, 1984), 177–86.

⁸¹ Pennington, *Popes and Bishops*, 192–93.

⁸² Vincentius Hispanus, *Apparatus* (n. 32 above), ad X.5.38.4, in Paris, BnF, Latin 3967, fol. 202r: "Non loquitur de remissionibus que fiunt a domino papa sed ab aliis episcopis." This was also noted by later jurists: *Novella Commentaria*, ad X.5.38.4, fol. 123v; and John of Freiburg, *Summa* (n. 45 above), fol. 205r.

⁸³ Peter Quesnel, *Directorium* (n. 45 above), in Paris, BnF, Latin 8934, fol. 34v: "Fatus est et simplex qui ibidem huiusmodi indulgentias non reservat . . . De iniuncta penitentia relaxamus secus de generali et universali per quam omnis satisfactio remittitur, que a solo papa fieri consuevit." This is echoed in Vincentius Hispanus, *Apparatus* (n. 32 above), ad X.5.38.4, in Paris, BnF, Latin 3967, fol. 202r.

⁸⁴ For more on various theological and practical debates regarding plenary indulgences for pilgrimage to the Portiuncula and Peter John Olivi's response, see Fortunato Iozzelli, "Pietro di Giovanni Olivi e l'indulgenza della Porziuncola," in *Il Perdono di Assisi e le indulgenze plenarie: Atti dell'incontro di studio in occasione dell'VIII Centenario dell'Indulgenza della Porziuncola (1216–2016) S. Maria degli Angeli, 15–16 luglio 2016*, ed. Stefano Brufani (Spoleto, 2017), 117–44. Of note is the objection made by opponents of the indulgence that obtaining such an easy remission of all penance is the greatest incentive to sin. The potential for papal excesses in indulgences was clearly on the minds of many.

purgation for past sins in purgatory. This is quite problematic. In claiming that the pope is immune from *Cum ex eo*'s restrictions on the amount of penance remitted because of his plenitude of power and jurisdiction, canonists left the door wide open for papal action that could cause the keys to be scorned and penitential satisfaction to be weakened. If local clerics could abuse indulgences, so could popes. *Cum ex eo* states that the pope is accustomed to moderation in indulgences, but canonists must admit that there is nothing stopping the pope from being excessive in them.

This contradiction becomes even more apparent when canonists try to explain why the pope can restrict the ability of bishops to grant indulgences. Innocent IV notes that "The pope can make this restriction because lesser prelates all have this power from him, and he only from God . . . also he can because he rules and has jurisdiction over all . . . and he does this with just cause, since they abuse this power."⁸⁵ Guido de Baysio elaborates on this, writing, "For such power is not given for abuse . . . he [who abuses indulgences] deserves to be deprived of it . . . from this he does not deprive himself of power with respect to truth, but he is seen to deprive [himself of it]."⁸⁶ Guido cites a canon by Gregory the Great included in Gratian's *Decretum*, which states that "He deprives himself of the power to bind and loose who for his own wishes and not for the morals of his subjects exercises it."⁸⁷ He is implying that bishops who grant indulgences of over a year for a dedication of a church, or over forty days for an anniversary of a dedication, are doing so for their own selfish motives and thereby seem to deserve to lose their power to bind and loose using indulgences. Although they do not actually deprive themselves of this power, they deserve to be deprived of it, which is why the pope places limits on their power. The problem with this is that the pope is still seen to possess unlimited power to grant indulgences beyond the limits he sets on others, meaning that he could also abuse that

⁸⁵ Innocent IV, *Apparatus* (n. 41 above), ad X.5.38.14, 546r: "Hanc restrictionem facere potuit Papa, quia minores praelati omnes habent hanc potestatem ab eo, et ipse a solo Deo . . . Item potuit ratione principatus et iurisdictionis, quam habet super omnes . . . Et hoc facit ex iusta causa, quia hac potestate abutebantur." See also *Novella Commentaria*, ad X.5.38.14, fol. 129v; and Guido de Baysio, *Apparatus super sexto decretalium*, ad VI^o.5.10.3, in Munich, Bayerische Staatsbibliothek, Clm 3888, fol. 112v. Guillaume de Rennes, "Glossae" (n. 45 above), 492, notes that Christ instituted the power in Peter first, then through Peter to the other apostles, so that the unity of the church would be manifest: "Vt vnitatem manifestaret, vnitatis eiusdem originem, ab vno Petro incipientem, sua auctoritate disposuit."

⁸⁶ Guido de Baysio, *Apparatus*, ad VI^o.5.10.3, in Munich, Bayerische Staatsbibliothek, Clm 3888, fol. 112v: "Nam talis potestas non datur ad abusum . . . privari meretur . . . ex hec se non privat potestate quo ad veritatem, sed privare videtur."

⁸⁷ Gratian, *Decretum*, C. 11, q. 3, c. 60, in *Corpus iuris canonici: Pars Prima*, ed. Emile Friedberg (Leipzig, 1879), accessed online through <https://geschichte.digitale-sammlungen.de/decretum-gratianii/online/angebot> (accessed 8 June 2021): "Ipse ligandi atque soluendi se potestate priuat qui hanc pro suis uoluntatibus, et non pro subditorum moribus exercet."

power and deserve to have it taken away; but there is no one to deprive him of it. Doublier notes that in many ways, indulgences were the concrete manifestations of papal claims to universal power.⁸⁸ They could also undermine that power, however.

In addition to the freedom to possibly abuse the keys given to the pope, there is an additional issue with *Cum ex eo* that essentially makes the entire restriction void and gives bishops free rein to defy papal wishes. It seems most canonists believed that if a bishop violated the norm and issued an indulgence beyond a year or forty days, it was still valid, despite being against the wishes of the pope and the general council. Bernard of Parma writes, “I believe that it holds, although they do it against that command, since it does not add here that if they do it contrarily, we command it not to be valid.”⁸⁹ Vincentius Hispanus and Abbas Antiquus give another possible way the canonical limit on episcopal indulgences can be circumvented, stating that as long as the penitent does what is required in the indulgence, he gets the remission. Vincentius writes, “as often as he gives the coin, can it be that so often he will receive forty days? I believe so, as long as the time or predetermined days of remission last.”⁹⁰ In this way, bishops exceeding the limit of forty days is not that much of an issue, since anyone can receive more than forty days just by doing what the indulgence asks multiple times. The Franciscan canonists in particular latched on to Bernard’s reasoning, repeating the claim that the lack of a specific clause invalidating excessive indulgences means that they remain valid.⁹¹ We cannot assume, however, that Bernard or the Franciscans necessarily wanted to encourage bishops to exceed canonical limits, since they also all state that bishops ought to be discrete about indulgences. This loophole in *Cum ex eo* was finally resolved nearly eighty years after the Fourth Lateran Council, with Boniface VIII’s

⁸⁸ Étienne Doublier, “Die Päpste und der Siegeszug des Ablasses im 13. Jahrhundert,” in *Die Päpste: Amt und Herrschaft in Antike, Mittelalter und Renaissance*, ed. Bernd Schneidmüller et al. (Regensburg, 2016), 341–55, at 354–55.

⁸⁹ Bernard of Parma, *Decretales* (n. 32 above), ad X.5.38.14, 1874–75: “Credo quod teneat, licet ibi faciant contra mandatum istud, quia non adicit hic quod si secus fecerint, decernimus non valere.”

⁹⁰ Vincentius Hispanus, *Apparatus* (n. 32 above), ad X.5.38.14, in Paris, BnF, Latin 3967, fol. 202v: “Sepius dat denarium numquid sepius habebit xl dies, et credo quod sic dum durat tempus vel dies remissionis prefixus.” Similarly, Abbas Antiquus, *Lectura aurea domini Abbatis antiqui, super quinque libris Decretalium*, ad X.5.38.14 (Strasbourg, 1511), fol. 217v.

⁹¹ Henry of Barbeau, *Apparatus summae Henrici*, in Jena, Thüringer Universitäts- und Landesbibliothek, Bibliotheca Electoralis, MS El. q. 11, fol. 200r; Baldwin of Brandenburg, *Additiones fratri Baldwini*, in Jena, Thüringer Universitäts- und Landesbibliothek, Bibliotheca Electoralis, MS El. q. 11, fol. 120v; *Labia sacerdotis* (n. 45 above), in Munich, Bayerische Staatsbibliothek, Clm 28216, fol. 87r; *Summa Henrici* (n. 45 above), Robbins 75, fol. 82r; Monaldus of Capodistria, *Summa* (n. 36 above), fol. 87r; John of Erfurt, *Summa* (n. 44 above), 898; and Peter Quesnel, *Directorium* (n. 45 above), in Paris, BnF, Latin 8934, fol. 34r.

Indulgentiae, which stated that “indulgences conceded by one or multiple bishops in dedications of churches or other cases do not keep their strength if they exceed the statute of the general council.”⁹² But even then, some canonists, such as Peter Quesnel, were prevaricating, stating “but if a bishop or archbishop concedes indulgences beyond the aforesaid [limit] will they at least be valid for the number of days up to the number of days that bishops can give? . . . Yes.”⁹³ Shaffern notes that John of Dambach, by the mid-fourteenth century, even went as far as to claim that *Indulgentiae* did not immediately invalidate excessive indulgences at all but merely reserved for the pope the right to invalidate them on a case-by-case basis, and even then, only for indulgences granted after *Indulgentiae* was promulgated.⁹⁴

In contrast to these loose readings of the text, Hostiensis, Johannes Monachus, and Guido de Baysio seek to uphold the intention of *Cum ex eo*. Hostiensis says that if multiple bishops grant up to the limit, it does not exceed the limit because each only grants to his own subjects. Thus no one gets more than a year or forty days of remission. He also notes that, to be safe, bishops ought to divide the year or forty days between them, so the total amount they remit reaches the limit. He does ominously admit, however, that “many things ought not to be done, which nevertheless hold when done.”⁹⁵ Guido repeats Hostiensis’s argument, while Johannes Monachus, writing after *Indulgentiae*, claims that bishops granting indulgences that exceed the limit “are seen to commit fraud against the said council” and their indulgences are “in no way valid,” in contrast to Peter Quesnel who asserts they are valid up to the limit.⁹⁶

The tension between papal and episcopal power that arises in these discussions of indulgences is not surprising, given the importance of the *status ecclesiae* in

⁹² *Liber Sextus*, 5.10.3, in Friedberg, *Corpus iuris canonici: Pars secunda* (n. 72 above), 1093: “Indulgentiae, quae ab uno vel pluribus episcopis in ecclesiarum dedicationibus vel aliis quibuscunque casibus conceduntur, vires non obtinent, si statutum excesserint concilii generalis.”

⁹³ Peter Quesnel, *Directorium* (n. 45 above), in Paris, BnF, Latin 8934, fol. 34r: “Sed quid si episcopus vel archiepiscopus concedit indulgentiam ultra predicta numquid saltem valebit pro numero dierum quo numero vel quibus dierum potest dare episcopus? . . . sic.”

⁹⁴ Shaffern, “A New Canonistic Text on Indulgences” (n. 7 above), 39.

⁹⁵ *Summa aurea*, 1869: “Si centum sint episcopi, nolumus tamen quod quilibet annum det, sed omnes simul annum tamen diuidant sicut placet, vt sic in hoc casu tamen possit vnus solus quantum centum . . . Non prodest indulgentia, nisi subditis . . . sic diuersi subditi diuersorum episcoporum annum tamen, vel 40 dies tamen reportant, et non vltra . . . Multa fieri non debent, que tamen facta tenent.” Similarly, Guido de Baysio, *Apparatus* (n. 85 above), ad VI^o.5.10.3, in Munich, Bayerische Staatsbibliothek, Clm 3888, fol. 112v.

⁹⁶ Johannes Monachus, *Ioannis monachi picardi cardinalis ac vicecancellarii apostolici in sextum librum decretalium dilucida commentaria glossa aurea nuncupate: additionibus clarissimi I.C. Philippi Probi Biturci*, ad VI^o.5.10.3 (Venice, 1585), fol. 363v: “quos vidi facere fraudem dicto Concilio . . . in nullo valere.”

canon law as a whole. Although discussions of the hierarchy are not often interwoven with the aforementioned theoretical discussions about how indulgences work, there are some hints that the preference for the suffrage theory of indulgences relates to the hierarchical tensions pervading the canonical discussions of specific canons about indulgences. In his discussion on whether indulgences are valid in purgatory, Guillaume de Rennes brings up the difference between papal and episcopal power, stating that, “the pope can obligate the entire church and bishops their particular churches to pray for those [in purgatory].”⁹⁷ Prayer for the dead, as mentioned earlier, is a type of suffrage. If indulgences are merely documents that obligate the church to do suffrages for the recipients, the violation of canonical limits does not really pose much of a problem to the *status ecclesiae*. When a bishop defies the pope and general council and issues an indulgence remitting more than forty days, all he is doing is hurting himself and his diocese, since he is burdening himself and his church with the duty of doing more suffrages to make up for the remitted penances. This interpretation lessens the tension in the hierarchy caused by the *Cum ex eo* loophole. It also gives an incentive to both pope and bishop to grant indulgences only discretely, while the treasury of merit would give the pope free rein to be as excessive as he wanted, since he would be drawing from an infinite source and would not be obligating himself or the entire church to make up for the remissions, and give bishops no reason not to exploit technicalities that allowed them to violate the general council’s restrictions. I do not mean to argue that the absence of one theory and the prevalence of another in the writings of canonists in any way caused the canonical restrictions on indulgences in the first place, only that it may have alleviated some of the tensions that the canonists themselves mention when discussing those limitations.

THE RIGHTS OF ARCHBISHOPS OVER SUFFRAGAN BISHOPS

In addition to the conflict between God and the church, and the pope and his fellow bishops, there was another tension between the archiepiscopal and episcopal jurisdictions. The origins of this tension lie in a decretal written by Honorius III to an unknown archbishop, *Nostro postulasti*, which states that “we therefore briefly respond to you that you can freely concede letters of this kind through your province, nevertheless you should not exceed the statute of the general council.”⁹⁸ In

⁹⁷ Guillaume de Rennes, “Glossae” (n. 45 above), 497: “Papa tamen generalem Ecclesiam ceteri vero Episcopi particulares Ecclesias suas obligare possunt ad orandum pro talibus.”

⁹⁸ X.5.38.15 in Friedberg, *Corpus iuris canonici: Pars secunda* (n. 72 above), 889: “Nos igitur fraternitati tuae breviter respondemus, quod per provinciam tuam libere potes huiusmodi concedere literas, ita tamen, quod statutum generalis concilii non excedas.” The original context of this decretal is lost. The recipient of the letter was the Abbot of Preaux, but

other words, an archbishop can freely give indulgences up to a year or forty days to anyone in his suffragans' dioceses, in addition to those in his own diocese. This ability is mentioned with some uncertainty by some thirteenth-century canonists, such as Vincentius Hispanus, Godfrey of Trano, and Henry of Merseburg. Vincentius asks, "but how can he grant [an indulgence] when he cannot engage in a case with respect to the subject of a suffragan? . . . concerning these 'letters' there are diverse opinions."⁹⁹ Godfrey elaborates, "But a metropolitan can concede letters of indulgence or remission throughout his whole province . . . which is special since generally he cannot otherwise exercise his jurisdiction over subjects of his suffragans except in eight cases."¹⁰⁰ Canon law strictly forbids an archbishop from meddling in the dioceses of his suffragan bishops except when an appeal is brought before him, his consultation is sought, the suffragan is negligent, there is disagreement among suffragans, or disagreement between a suffragan and his subject, when a suffragan diocese is without a bishop, when a suffragan diocese's episcopal election is disputed, or in other cases in which ancient custom allows.¹⁰¹ Therefore, Godfrey concludes that *Nostro postulasti* is a special privilege granting archbishops the power to issue indulgences, rather than an alteration of the *status ecclesiae* that favors archbishops over bishops. Henry of Merseburg echoes this uncertainty, noting that "concerning this it was once doubted, since otherwise the metropolitan in the diocese of his suffragan could neither concede a privilege nor dispose of anything."¹⁰²

Bernard of Parma introduces a new view, stating that "although the archbishop is not the ordinary judge of all in his province . . . and does not have contentious jurisdiction in his province except in certain cases . . . he does not have contentious but voluntary jurisdiction."¹⁰³ Bernard cites civil law, Dig. 1.16.2,

Friedberg rejects this as false since the text suggests an archbishop as the intended recipient. Abbots do not have provinces.

⁹⁹ Vincentius Hispanus, *Apparatus* (n. 32 above), ad X.5.38.15, in Paris, BnF, Latin 3967, fol. 203r: "Sed quomodo potest eas dare cum non possit comittere causam subdito suffraganei . . . de istis licetis diverse sunt opinionones."

¹⁰⁰ Godfrey of Trano, *Summa* (n. 47 above), fol. 240v: "Sed metropolitanus potest per totam provinciam suam concedere litteras indulgentie seu remissionis . . . quod est speciale cum alias subiectos suffraganeorum suorum iurisdictionem suam generaliter execere non possit preterquam in viii casibus."

¹⁰¹ Godfrey of Trano, *Summa* (n. 47 above), fol. 54v: "per appellationem . . . per consultationem . . . per negligentiam episcopi . . . per discrepationem in officiis . . . per questionem inter episcopum et subiectum ipsius . . . per episcopalis ecclesie vacationem . . . per duorum contentiosam electionem . . . si prisca consuetudo plus ei contulit in antiqua."

¹⁰² Henry of Merseburg, *Summa* (n. 45 above), El.q.11, fol. 120v: "De quo olim dubitacio fuit, cum alias metropolitanus in diocesi suffraganei sui nec privilegium concedere nec aliud quicquam disponere possit."

¹⁰³ Bernard of Parma, *Decretales* (n. 32 above), ad X.5.38.15, 1875: "Licet archiepiscopus non sit iudex ordinarius omnium de prouincia sua . . . et iurisdictionem contentiosam non

which states that the proconsul, when he leaves his city, does not have contentious jurisdiction, but only voluntary, “so that thus both free and slave can be manumitted and make adoptions in his presence.”¹⁰⁴ The connection is tendentious. Although, as Alphonse Popek notes, the institution of metropolitan archbishops and provinces had its origin in the Roman provincial system, the purpose of its adoption was to facilitate administrative and judicial functions of the church.¹⁰⁵ Archbishops are not proconsuls, and granting an indulgence is not the same as freeing a slave. In addition, the norms of canon law and civil law are different since they derive from different authorities. There really was no equivalent to the penitential forum in Roman civil law, as this forum was based on the sacramental power of the church.

Despite this, Bernard’s more generous reading of the archiepiscopal powers was advocated by later jurists. Hostiensis writes simply, “the subjects of the archbishop are understood to be not only those who live in his diocese but in his whole province.”¹⁰⁶ He is making the claim that the archbishop is in some sense the ordinary judge of all in his province, quite a dramatic empowerment compared to Henry’s statement that an archbishop cannot usually intervene outside his diocese. Abbas Antiquus, Guillelmus Durantis, and Guido de Baysio all note that archbishops can grant indulgences throughout their province, but they give no opinion on what this means for their power over suffragans.¹⁰⁷ Guillaume de Rennes, on the other hand, argues that,

although he is not the ordinary with respect to the contentious forum, except in cases specified by law. . . that, however, he is the ordinary of the subjects with respect to the penitential forum is proved through that which says the archbishop can concede general letters of remission throughout his province . . . therefore the subjects of the suffragans, with respect to this, are the subjects of the archbishop.¹⁰⁸

habet in sua prouincia, nisi in certis casibus . . . iurisdictionem habet non contentiosam, sed voluntariam.”

¹⁰⁴ *Digesta* 1.16.2, in *Corpus iuris civilis*, ed. Paul Krueger and Theodor Mommsen (Berolini, 1889), 1:14: “Omnes proconsules statim quam urbem egressi fuerint habent iurisdictionem, sed non contentiosam, sed voluntariam: ut ecce manumitti apud eos possunt tam liberi quam servi et adoptiones fieri.”

¹⁰⁵ Alphonse Sylvester Popek, *The Rights and Obligations of Metropolitans: A Historical Synopsis and Commentary* (Washington D. C., 1947), 5.

¹⁰⁶ *Summa aurea*, 1870: “Subditi intelliguntur archiepiscopi, nedum hi qui habitant in sua diocesi sed in tota sua prouincia.”

¹⁰⁷ Abbas Antiquus, *Lectura aurea* (n. 90 above), ad X.5.38.15, fol. 217v; Guillelmus Durantis, *Repertorium aureum*, ad X.5.38.15 (Rome, 1474), 102r; and Guido de Baysio, *Apparatus* (n. 85 above), ad VI°.5.10.3, in Munich, Bayerische Staatsbibliothek, Clm 3888, fol. 112v.

¹⁰⁸ Guillaume de Rennes, “Glossae” (n. 45 above), 498: “Quamuis non sit ordinarius quoad forum contentiosum, nisi in casibus expressis a iure . . . quod autem sit ordinarius ipsius subditi quoad forum paenitentialem, probatur per hoc quod Archiepiscopus per

This is a bold statement. Guillaume is claiming that in all matters of penance, the archbishop is the ordinary judge over and above the penitents' own bishop. All the bishop's subjects are the archbishop's subjects as well, and he can impose or relax any penance on them. But the canonical proof Guillaume gives is *Nostrō postulasti*, which makes his argument quite circular. The issue of the archbishop's power arose because *Nostrō postulasti* seems to grant archbishops a special privilege that extended their power beyond what was traditionally accepted. And Guillaume uses this special privilege to show that archbishops always had that power, which is tendentious. Nevertheless, the same argument is repeated by later canonists, such as John of Freiburg and Monaldus of Capodistria.¹⁰⁹

This uncertainty and debate were not new. As Robert Benson notes, the episcopate was a rather vague concept. In one sense, the pope, archbishops, and bishops were all consecrated bishops with the same sacramental power. But with respect to jurisdictional power, they differed, with the pope, patriarchs, and metropolitans being above simple bishops. But the debate over what kind of power archbishops had over suffragans was a complex one, with Gratian and early decretists claiming it was severely limited based on various rationales, including that of archiepiscopal abuse.¹¹⁰ Popek notes that this decrease in the power of archbishops was brought about by conciliar decisions in the East and by the weakening of the Carolingian Empire and growth in the unitive role of the papacy in the West.¹¹¹ Pennington's discussions of papal and episcopal power also suggest that the decline in the archbishop's power over his suffragans is related to the rise of the pope's power over all bishops. For example, twelfth-century canonists including Gratian seemed to assume judging, deposing, and translating bishops were the responsibilities of either provincial synods or archbishops, but later canonists such as Huguccio stated that papal approval for such decisions was required.¹¹² With regard to episcopal elections, Popek notes that by Innocent III's pontificate, papal confirmation of bishops was increasing, but archbishops still normally participated in nominating, confirming, and consecrating suffragan bishops. For example, in 1200, the Archbishop of Canterbury refused to confirm an archdeacon as bishop of Worcester upon hearing in his private confession that he was illegitimate. Papal confirmation was not required

provinciam suam potest concedere remissionis litteras generales . . . ergo subditi suffraganeorum, quoad hoc sunt subditi Archiepiscopi.”

¹⁰⁹ John of Freiburg, *Summa* (n. 45 above), fol. 199v; and Monaldus of Capodistria, *Summa* (n. 36 above), fol. 175v.

¹¹⁰ Robert L. Benson, “Bishop, Metropolitan, and Primate: A Study on the Conceptions of Office and Hierarchy in the Eleventh and Twelfth Centuries,” in *Law, Rulership, and Rhetoric: Selected Essays of Robert L. Benson*, ed. Loren J. Weber, Giles Constable, and Richard H. Rouse (Notre Dame, 2014), 20–36, at 22–23 and 25–31.

¹¹¹ Popek, *The Rights and Obligations of Metropolitans* (n. 105 above), 65–88.

¹¹² Pennington, *Popes and Bishops* (n. 80 above), 78 and 83–88.

until the pontificate of Clement IV (1265–1268), and papal nomination not until the eighteenth century.¹¹³ Despite this, the marked decline of the power of metropolitans in the judicial forum is undeniable. However, based on the commentaries, glosses, and *summae* discussed above, it seems that within the limits of the penitential forum some canonists were more willing to broaden the scope of archiepiscopal jurisdiction, with indulgences being the key justification for this increase in metropolitan power. While they state explicitly that all in an archbishop's province are his subjects in the penitential forum, they do not elaborate on what the practical implications of this are, which makes their claims somewhat vague.

Again, the canonists do not explicitly intertwine their theoretical discussions about how indulgences work with their discussions of issues of hierarchy, so it cannot be definitively proven how they relate. The theories do, however, have clear logical implications on the issues of hierarchy being discussed. If, as many canonists postulated, remissions must be compensated for by the suffrages of the granting prelate and those under his jurisdiction, and if, as the canon *Nostro postulasti* states, the archbishop can grant indulgences to everyone in his province, then the archbishop's indulgence is essentially an act obligating all of his and his suffragans' subjects to do suffrages for those receiving the indulgence. The archiepiscopal province is essentially normalized along the model of a diocese, in which the prelate has power to relax and impose acts of satisfaction on all. This interpretation harmonizes with Hostiensis, Guillaume de Rennes, and Monaldus's view of the archbishop's power in the penitential forum.

If the treasury of merit theory is accepted, the logical implications for the debate about the archbishop's power would be different. The keys to the treasury were seen to belong to bishops, but first and foremost to the pope. For example, Bonaventure uses the analogy of a wedding, in which keys to the treasury belong to the pope as husband of the universal church, and bishops as husbands of their local churches.¹¹⁴ The pope's power to grant indulgences universally, and without limits, stems from his place as Peter's successor and vicar of Christ, the husband of the entire church. In fitting with this position, the pope had all sorts of extraordinary power over other bishops and their subjects in the judicial and penitential forums. The archbishop, however, has no such special status. Thus, granting him the power to dispense from the treasury of merit in his suffragan bishops' dioceses makes little sense, especially since in most other respects he has no more power than a normal bishop. While we cannot say for certain that their concerns about the ambiguity of the archbishop's power had any influence on the decision of the canonists to leave out the treasury of merit in their treatments of

¹¹³ Popek, *The Rights and Obligations of Metropolitans* (n. 105 above), 114–16.

¹¹⁴ Bonaventure, *Commentaria in quatuor libros sententiarum* (n. 21 above), 4:534: "Summus Pontifex, qui est totius universalis Ecclesiae sponsus . . . Ideo omnes episcopi, qui habent prolem, possunt facere indulgentias, et Summus Pontifex praecipue inter omnes."

indulgences, it does seem that the theory would contribute little to the discussion, unlike the theory of suffrages.

TENSION BETWEEN THE PENITENTIAL AND PUBLIC FORUMS

The clearest tension raised by indulgences regarding the hierarchy of the church was between the priest's power in the penitential forum (also known as the private forum, voluntary forum, forum of conscience, and after the Council of Trent, the internal forum) and that of all prelates, whether they be the pope, bishops, or archbishops, in the public forum (also known as the contentious, judicial, or external forum). The idea that the ministers of the church judge according to two forums was a relatively new concept in the thirteenth century, emerging gradually only after Gratian had already written his *Decretum*.¹¹⁵ In the penitential forum, the priest was judge, the penitent was the judged, and the judgment was voluntary, since the penitent was not forced to confess; his conscience had to be moved by contrition to do so willingly. This forum also was private and secret, since things confessed could not be revealed by the priest. The public forum was the realm of the ecclesiastical courts, where higher prelates like bishops judged, and the judged were compelled to appear under the threat of ecclesiastical censure. It was usually reserved for public and notorious crimes, or crimes whose nature required public resolution, such as unlawful marriages.¹¹⁶ The important thing to note is that these two forums were interrelated and often the boundaries between them were porous. Such is the case with indulgences.

One of the earliest canonistic statements on indulgences, that of Huguccio, already uses ambiguous language to describe indulgences. In response to those who doubt the efficacy of indulgences, he writes:

For Christ said in the gospel, if you forgive his sins, they will be forgiven for him . . . and whatever you loose on earth will be loosed in heaven etc. Also all ecclesiastical penances are arbitrary, that is subject to the discretion of priests, so that he can tighten them or lessen them, with cause considered . . . plainly and firmly it should be believed that remissions which are granted by prelates of the church so that men are invited to do some good work are valid, but nevertheless to them who are under them and to them on whom thus penance was imposed so that they [indulgences] can be made useful to them by whatever priest.¹¹⁷

¹¹⁵ Joseph Goering, "The Internal Forum and the Literature of Penance and Confession," *Traditio* 59 (2004): 175–227, at 175.

¹¹⁶ Goering, "The Internal Forum," 176.

¹¹⁷ Huguccio, *Summa decretorum* (n. 38 above), ad *De pen.* D. 1, c. 88, in Paris, BnF, Latin 3892, fol. 329v: "Ipse enim Christus dixit in evangelio si cui peccata remiseritis remittentur ei . . . et quecumque solveritis supra terram erunt soluta et in celo etc. Item penitentie ecclesiastice omnes arbitrarie sunt idest in arbitrio sacerdotum ponite, ut possit eas artare, vel protellare, inspecta causa . . . plane et firmiter credendum est quod remissiones que fiunt a prelatibus

In Huguccio's description, although it is the prelate who grants the indulgence, the priest (*sacerdos*) is described as having the power of the keys to bind and loose and forgive sins. The penance, whether it should be tightened or relaxed, is completely up to the priest's discretion. Therefore, the power of the indulgence only benefits penitents whom the priest allows to benefit from them. In this case, what the prelate does in public (granting an indulgence) the priest can frustrate in private (by prohibiting a penitent from benefiting from the indulgence). Although the prelates have other prerogatives in the penitential forum, such as hearing confessions and absolving in cases reserved for bishops or the pope, it seems from Huguccio's statement that, at least with respect to remitting penances, the final say in the penitential forum lies not with the bishops, archbishops, or even the pope who grant remissions, but with the simple parish priest.

Bernard of Parma takes this idea up with some uncertainty. In his gloss to the part of *Quod autem* that states that indulgences only benefit if issued or consented to by the penitents' proper judge, Bernard writes:

Judges, that is bishops, since other inferior prelates cannot make remissions of this kind . . . Or say judges, that is their own priests who enjoin penances on their parishioners, they can concede to them that such remissions benefit them, if they offer their goods at the prescribed places, and this is in favor of penance, so that thus they can be freed from sin in diverse ways.¹¹⁸

Here Bernard is not sure whether *iudices* in the text of the canon refers to bishops granting indulgences or parish priests, because the priest (or confessor) is the one with the ultimate say in the penitential forum and without the priest's consent no sinner can benefit from indulgences. Innocent IV similarly notes that only bishops can grant indulgences, but "others say that any priest can do this, for one is the general liberty of indulgences, which is of jurisdiction, the other is in absolution of penitents, to provide diverse ways to be liberated from penances, which belongs to the priestly office."¹¹⁹ Innocent does not comment on which position he endorses, but there is a clear tension here between the priestly sacramental office and the

ecclesie ut homines invitentur ad aliquod bonum faciendum valent, sed eis tamen qui sub eis sunt et eis quibus sic est imposita penitentia ut possit fieri eis a quocumque sacerdote."

¹¹⁸ Bernard of Parma, *Decretales* (n. 32 above), ad X.5.38.4, 1866: "*Iudices*, id est, episcopi: quia alii inferiores Praelati huiusmodi remissiones facere non possunt . . . Vel dic iudices, id est, proprii sacerdotes cum iniungunt poenitentias suis parochianis, possunt eis concedere, quod tales remissiones sibi prosint, si de bonis suis contulerint praedictis locis: et hoc fauore poenitentiae: vt sic diuersis modis possint liberari a peccatis." Similarly, Guido de Baysio, *Apparatus* (n. 85 above), ad VI^o.5.10.3, fol. 112v.

¹¹⁹ Innocent IV, *Apparatus* (n. 41 above), ad X.5.38.4, 544r: "Alij dicunt hoc posse quemlibet facere sacerdotem, nam aliud est libertas generalis indulgentiarum, quod est iurisdictionis, aliud in absolutione poenitentis prouidere diuersos modos liberandi a poenitentijs, quod est tantum officij sacerdotalis."

jurisdictional power of prelates.¹²⁰ Bernard cites *Accidentibus* (X.5.31.12) to back up the first statement that bishops, and not inferior prelates, have the power of granting indulgences. This canon condemns certain abbots and other prelates inferior to bishops who “extend their hand to those things which are of the episcopal dignity, investigating marriage cases, imposing public penance, issuing letters of indulgence, and similar things.”¹²¹ He nevertheless, without citing any canons, offers the second view immediately after, without saying which is correct. The ambiguity arises because the canonists use the same terms, *remissiones* and *indulgentiae*, to refer to both the documents issued by prelates, presumably in the public forum, and the relaxations of penances done by priests, in the penitential forum. If indulgences were considered strictly a matter of the public forum, like marriage cases and public penances mentioned in *Accidentibus*, the second opinion would be invalid. But canonists nevertheless offer priests as a valid alternative to bishops when discussing who can grant indulgences.

This uncertainty is quickly replaced by certainty in the writings of other canonists. Godfrey of Trano writes, “It should be known that priests can make private remissions in the judgment of souls . . . moreover qualities and times of penances are committed to the discretion of priests.”¹²² Here he gives priests the right to grant indulgences but simply calls them “private” to contrast them with the documents issued by bishops. Hostiensis echoes this, writing, “Private [remissions] which are in confession any priest having care, or any other priest with his license . . . can grant.”¹²³ He notes, “The priest therefore remits satisfaction of sins, whether in whole or in part, with respect to the displeasure of God and the church, although he burdens himself if he does this incautiously.”¹²⁴ Furthermore, Hostiensis even states:

¹²⁰ Benson, “Bishop, Metropolitan, and Primate” (n. 110 above), 23, lays out a threefold system advocated by the twelfth-century summist Rufinus, in which priestly sacramental power (*ordo*), episcopal sacramental power (*consecratio*), and jurisdiction (*administratio*) all serve to distinguish members of the church hierarchy. With regard to indulgences, we see these three in tension. For more on the ambiguity within the system, see R. N. Swanson, “Apostolic Successors: Priests and Priesthood, Bishops and Episcopacy in Medieval Western Europe,” in *A Companion to the Priesthood and Holy Orders in the Middle Ages*, ed. Greg Peters and C. Colt Anderson (Leiden, 2016), 4–42.

¹²¹ X. 5.31.12, in Friedberg, *Corpus iuris canonici: Pars secunda* (n. 72 above), 840–41: “Qui manus ad ea, quae sunt episcopalis dignitatis, extendunt, de causis matrimonialibus cognoscendo, iniugendo publicas poenitentias, concedendo etiam indulgentiarum literas, et similia.”

¹²² Godfrey of Trano, *Summa* (n. 47 above), 240v: “Et est sciendum quod remissiones priuatas in iudiciis animarum sacerdotes facere possunt . . . qualitates autem et tempora penitentiarum committuntur arbitrio sacerdotum.”

¹²³ *Summa aurea*, 1868: “Priuatas que fiunt in confessionis[sic] quilibet sacerdos habens curam, vel de licentia ipsius quiuus alius . . . facere potest.”

¹²⁴ *Summa aurea*, 1867: “Remittit igitur sacerdos satisfactionem de peccatis, vel in totum, vel in partem, quo ad offensionem Dei, et ecclesiae, licet oneret se si incaute hoc faciat.”

If a simple priest limits penance, saying ‘we absolve you from all these sins, and enjoin for penance that you go beyond the sea, or that you fast for three years, remitting all other satisfaction by our authority and that of the church’ . . . it should not be believed that they are afflicted any more in purgatory, although the priest burdens himself. . . Thus, although in the penitential forum and in private the priest can grant remission, even in full, according to what is said, in public nevertheless, and solemnly, a bishop cannot, since his power is restricted to [remitting] a year or forty days.¹²⁵

This statement pushes the logic of Huguccio and Bernard to a strange conclusion, namely, that a simple priest can grant the equivalent of a plenary indulgence whenever he wants while a bishop can only grant a year or forty day’s remission, and even then, it will have no effect if the penitent’s parish priest refuses to let him receive it. Indulgences as a whole seem to be pointless in this case. The prelate’s power of remission in the public forum is far more restricted than the priest’s in the penitential forum. Therefore, it would seem better for the overly burdened penitent to petition his confessor for leniency, rather than seeking out a bishop’s indulgence. The tension here is between the power of remission in the two forums, not necessarily between the priest and bishop per se, since the bishop can also be a confessor in the penitential forum in certain cases.

Some canonists moderated their views on this matter. Abbas Antiquus said that anyone in the penitential forum, priest or bishop, could give indulgences to his subjects, while Guillelmus Durantis notes that priests can give seven years’ remission by saying that it can be remitted through indulgences.¹²⁶ Neither stated that plenary indulgences could be granted privately in the way Hostiensis did. But the early fourteenth-century Franciscan jurist Peter Quesnel had no problem endorsing the most extreme formulation of the priest’s relationship to indulgences, stating that archbishops and bishops were limited to a year or forty days, “nevertheless, [indulgences] are not restricted in the penitential

¹²⁵ *Summa aurea*, 1872: “Si simplex sacerdos poenitentiam limitet, dicens ab omnibus his peccatis . . . absoluius te, et iniungimus pro poenitentia quod vadas vltra mare, vel quod ieiunes per triennium tibi autoritate Ecclesiae et nostra omnem satisfactionem aliam remittentes . . . non est credendum quod vltorius in purgatorio affligatur, licet presbyter oneret se alioquin . . . Sic licet in foro poenitentiali, et priuato possit sacerdos remissionem facere et in totum, secundum quod dictum est, in publico tamen et solenniter hoc non potest episcopus, cum ipsius potestas circa annum et 40 dies restringatur.”

¹²⁶ Abbas Antiquus, *Lectura aurea* (n. 90 above), ad X.5.38.4, fol. 216r: “Quia cum sacerdos vel episcopus iniunxisset in foro penitentiali subdito suo ut ieiunaret . . . dixit ei quod si contingeret aliquem illum accedere cum litteris indulgentialibus posset illum redimere penitentiam”; and Guillelmus Durantis, *Breviarium aureum* (Paris, 1513), 181, cited in Paulus, *Geschichte des ablasses* (n. 5 above), 1:329: “Sacerdos debet dicere . . . concedo tibi quod prosint tibi omnes remissiones a quocunque fierent, alias enim non prodessent.” For similar views, see *Labia sacerdotis* (n. 45 above), in Munich, Bayerische Staatsbibliothek, Clm 28216, fol. 87r; *Summa Henrici* (n. 45 above), Robbins 75, fol. 82r; Monaldus of Capodistria, *Summa* (n. 36 above), fol. 86v; and John of Erfurt, *Summa* (n. 44 above), 898.

forum, so that a priest can grant indulgences of years and days as he wishes, while he does it discretely.”¹²⁷ It seems canonists had little recourse but to admit that, with respect to remitting sins, the power of the simple priest in the penitential forum was greater than that of the prelate, and even the pope, in the public forum. As Guido de Baysio notes, while arguing against bishops having their own penances remitted by granting indulgences, “if the pope or a bishop subjects himself to a priest, he cannot remit himself of the penance of the priest.”¹²⁸ In other words, in the penitential forum, the confessor’s authority is absolute. Thus, a pope must submit himself to a simple priest and cannot even benefit from an indulgence he himself issues.

There are two canonical contexts behind the power of the confessor. One is the idea that he is one’s own priest, *proprius sacerdos*. The other is that the penitential forum itself, according to canonists, operates according to principles that are often independent of the strict hierarchy of the church. According to Canon 21 of the Fourth Lateran Council, *Omnis utriusque sexus*, all the faithful must confess at least once a year to their own priest, *proprio sacerdoti*.¹²⁹ As Atria Larson notes, the language of one’s “own priest” in this canon echoes discussions in Gratian’s *de penitentia*. The original meaning of “proprius” had to do with jurisdiction. Bishops had power over their own churches, that is their dioceses. The designation “proprius,” then, denoted the person with rightful jurisdiction over someone. The cleric’s own bishop was the one who ruled the diocese in which the cleric lived. As an extension, the layperson’s own priest is the priest who shepherds the parish in which the layperson lives and has rightful jurisdiction over him or her.¹³⁰ By this definition, however, anyone with jurisdiction over a penitent could be his or her own priest, including a parish priest, bishop, archbishop, and the pope. Why then, did the “simple priest,” as the canonists refer to him, have the final say to negate the effect of a bishop’s indulgence for his penitents?

This has to do with the way in which authority and hierarchy are often irrelevant in the penitential forum. Because the confessor hears the confession of penitents and knows their circumstances and spiritual needs best, he has ultimate responsibility to care for the penitents’ souls. This holds regardless of the confessor’s rank in the hierarchy. So even if the penitent is the pope and the confessor a

¹²⁷ Peter Quesnel, *Directorium* (n. 45 above), in Paris, BnF, Latin 8934, fol. 34r: “Sed licet indulgentie sint restricte que fuerint in publice, non tamen sunt restricte in foro penitentiali quin possit annos et dies prout vult indulgere dum modo discrete faciat sacerdos.”

¹²⁸ Guido de Baysio, *Apparatus* (n. 85 above), ad VI^o.5.10.3, in Munich, Bayerische Staatsbibliothek, Clm 3888, fol. 112v: “Si papa vel episcopus se subiciat sacerdoti non potest sibi remittere de penitentia ipsius sacerdotis.”

¹²⁹ *Conciliorum oecumenicorum generaliumque decreta* (n. 72 above), 2.1:178.

¹³⁰ Atria Larson, “Lateran IV’s Decree on Confession, Gratian’s *De penitentia*, Confession to One’s *Sacerdos proprius*: A Re-Evaluation of *Omnis utriusque* in its Canonistic Context,” *Catholic Historical Review* 104 (2018): 415–37, at 425–27.

simple priest, the priest's power as judge is supreme in that forum. This seeming inversion of the hierarchy was not lost on the canonists. Hostiensis writes, "Thus also in the penitential forum, the pope is made lesser, and the confessor greater."¹³¹ He cites Gratian, who puts it this way: "Whoever sits well on the throne accepts the honor of the throne, whoever badly sits, does injury to the throne . . . just as he appears greater than all, so he seems to be inferior to all, since he who is greater in honor is not thereby more righteous, but he who is more righteous, he is greater."¹³² Hostiensis's point in citing Gratian is not to claim that the pope is actually a worse sinner than those beneath him, but that in the penitential forum, the pope's status is irrelevant, he is but a sinner, a penitent, and therefore accepts the position inferior to his confessor, even if he is a simple priest. By this logic, it seems acceptable that indulgences granted by prelates in the public forum should be able to be checked and hindered by confessors in the private forum. But not all canonists were comfortable with this idea.

Johannes Andreae resisted pushing this too far with respect to indulgences. He writes, "If a penitent wishes to use a remission not granted by his own judge, he ought to obtain license from his bishop or his confessor. Therefore, if he wishes to use a remission of the pope, legate, archbishop, or [his own] bishop, it seems enough that in this case he can do so without the special license of his confessor."¹³³ Johannes tries to make a distinction between one's own judge and another. Since the pope, the archbishop of the province one lives in, and the bishop of the diocese one lives in, are all one's ordinary or proper judges, one can accept their indulgences without permission from one's confessor. It is only when trying to obtain an outside bishop's or archbishop's indulgence that this is necessary. Aside from the importance of ordinary jurisdiction, Johannes may also have been worried that one might be forced to reveal sins and imposed penances of superior ordinary judges (the pope, or one's own archbishop or bishop) to a simple priest confessor in order to obtain license to use an indulgence, which he admits one can do for outside prelates.¹³⁴ The key difference here is that, as noted above, other canonists following Bernard of Parma asserted that the

¹³¹ *Summa aurea*, 1770: "Et sic etiam in foro penitentiali factus est Papa minor, et confessor maior."

¹³² Gratian, *Decretum* (n. 87 above), D. 40, c. 12: "Qui bene sederit super cathedram honorem accipit cathedrae; qui male sederit, iniuriam facit cathedrae . . . quomodo appareat aliis maior, sed quomodo omnibus inferior uideatur, quoniam non qui maior fuerit in honore, ille est iustior, sed qui fuerit iustior, ille maior est."

¹³³ *Novella Commentaria*, ad X.5.38.4, fol. 123v: "Quod si penitens vult vti remissione non sui iudicis debet hoc facere de licentia vel sui episcopi, vel sui confessoris, si igitur vti vult remissione pape, legati, archiepiscopi, vel episcopi, satis videtur, quod hoc casu id possit sine licentia confessoris specialiter."

¹³⁴ *Novella Commentaria*, ad X.5.38.4, fol. 123v: "Per indulgentias etiam non suorum episcoporum possit penitentiam revelare."

confessor's license was necessary even if the bishop granting the indulgence was one's own bishop. The important thing was that one's confessor had the final authority in the penitential forum. This view seems to have been inherited from some earlier theologians writing prior to the rise in popularity of the treasury of merit theory. Alan of Lille notes, disapprovingly, that some interpret indulgences in this way, stating, "The prelate implies this [in the indulgence]: whoever contributes money or a coin for the building of this church, may be absolved from a third of his enjoined penance at the discretion of his priest, who knows more fully his subjects' consciences . . . but according to this opinion they seem to be deceived whose penances are relaxed."¹³⁵ Perhaps Johannes Andreae had a similar reason for rejecting this view as Alan did. It seems though, that few canonists before this had tried to limit the confessor's power in the way Johannes did. Instead, most insisted on the confessor's sacerdotal power in the penitential forum as final with respect to the efficacy of indulgences, although Raymond and some of his fellow Dominican jurists largely ignored the issue altogether.

One possible solution to the tension, alluded to by Abbas Antiquus above, was that anyone in the penitential forum could grant as much remission as he saw fit, whether he be a priest, bishop, archbishop, or pope. This is because all of them have the priestly sacramental office that allows them to carry out the sacrament of penance. As Swanson suggests, in terms of order, a bishop was nothing more than a priest.¹³⁶ In practicality, however, the tension remains because the vast majority of laypeople would not be confessing to prelates but to parish priests. Seeing the priests' power as delegated power, as Swanson notes, is another possible solution.¹³⁷ But it does not eliminate the tension between the confessor's power in the penitential forum and the prelate's power in the contentious forum with regard to indulgences, since that delegated power would be used in one forum to undermine the efficacy of the action of the delegator in the other forum.

The theory of indulgences as drawing on suffrages seems to mitigate the problem somewhat. As noted above, Hostiensis took the most extreme position, saying a priest could even grant the equivalent of plenary indulgences for all sins to his parishioners in the penitential forum. But he moderated this with

¹³⁵ Alan of Lille, *Liber poenitentialis* (n. 66 above), 175: "Hoc enim subaudit praelatus: quicumque posuerit nummum vel obolum in fabrica hujus ecclesiae, absolutus sit a tertia parte poenitentiae sibi injunctae ad arbitrium sui sacerdotis, qui plenius novit sibi conscientias subditorum . . . Sed juxta solutionis illius sententiam illi videntur decipi, quibus poenitentiae relaxantur."

¹³⁶ R. N. Swanson, "Manning the Church: Priests and Bishops," in *The Routledge History of Medieval Christianity: 1050–1500*, ed. idem (New York, 2015), 31–44, at 33.

¹³⁷ R. N. Swanson, "Bishoprics and Parishes," in *The Routledge History of Medieval Christianity*, 19–30, at 24.

the warning that the priest who does so “burdens himself.”¹³⁸ Hostiensis states this several times, also with respect to prelates, writing,

Therefore, the greatness or smallness of remission does not apply in the way Raymond said . . . Nevertheless, I admit that the indiscrete prelate making remissions of this kind burdens himself, and that prayers of the holy are valid for the sinner to obtain grace, and also alms, and every kind of good work . . . for through the prayer of Daniel the people of Israel were released from captivity.¹³⁹

Hostiensis is rejecting Raymond’s confusing statement that no human can know the amount of remission granted in an indulgence because it relies on unknowable factors, such as the number of people doing suffrages for the penitent and the amount of their devotion. But he does not seem to reject the idea that indulgences work somehow through the mechanism of suffrages, because he admits right afterwards that prelates burden themselves by indiscrete indulgences and then elaborates by stating how prayers, alms, and other good works of holy people benefit sinners. He seems, then, to be rejecting the suffrage-based unknowability of remission but defending the general linkage between indulgences and suffrages in order to warn prelates not to issue too many indulgences. As noted above, many canonists, in discussing various theories of indulgences, preferred the theory that the granter of the indulgence obligates himself to do suffrages to make up for what is remitted.¹⁴⁰ This obligation can be seen as sharing the burdens or labor of the penitent, language that echoes both twelfth-century theologians like Alan of Lille and Gratian.¹⁴¹ The knowledge of the burden one acquires when granting indulgences, whether private or public, could have a moderating effect. Perhaps this is why canonists largely ignore the treasury of merit theory while supporting the suffrage theory. Oddly enough, Hostiensis was also the exception to this. He seemed to believe that the two theories could be valid at the same time, since he mentions both approvingly in different contexts. The treasury of merit seemed to be the best solution to the issue of God’s ultimate judgment, but the suffrage theory seemed to be the best warning for prelates and priests not to

¹³⁸ *Summa aurea*, 1872: “Presbyter oneret se.”

¹³⁹ *Summa aurea*, 1872: “Ergo maioritas et minoritas remissionis non attenditur secundum illa quae dixit Ray . . . Fateor tamen quod praelatus indiscrete faciens remissiones huiusmodi se onerat, et quod orationes sanctorum valent peccatori ad gratie impetrationem, nec non et elemosyna, et quodlibet de genere bonorum . . . Nam et per orationem Danielis solutus est populus Israel a captiuitate.” See n. 48 above for Raymond’s original statement. I translate *sanctorum* here as the holy, rather than saints, because the examples Hostiensis gives afterwards, such as Daniel, are of the living, rather than the dead, praying and interceding for others. This makes sense in context, since Hostiensis is talking about prelates interceding on behalf of their subjects.

¹⁴⁰ See n. 57, above.

¹⁴¹ See n. 68 above for Alan of Lille’s description of suffrages as bearing others’ burdens. For Gratian, see n. 18, above.

grant excessive indulgences in either forum. In conclusion, many canonists throughout the thirteenth century took up the issue of indulgences in their *summae* and commentaries on Gratian and the *Decretales*. Most of them discuss a number of competing theories about how indulgences work, seeking to find a balance between the ultimate justice of God and the power of the church to bind and loose on earth. However, unlike the theologians, who were already embracing the treasury of merit theory by the mid-thirteenth century, canonists mostly ignored the theory, instead favoring a combination of other theories, chief among them the idea that the granter of remission and his church were obligated to do suffrages to make up for any penance unjustly remitted. In addition to these theoretical treatments, canonists also tended to focus on more practical questions regarding indulgences, questions mainly centering on tensions between the various jurisdictions, forums, and members of the hierarchy involved. While the theoretical and practical aspects are often discussed separately, there are hints that the two are related, because the burden of suffrages is invoked by some, like Hostiensis, to warn against the main cause of indulgence-related tension within the hierarchy, the excessive and abusive granting of indulgences. The treasury of merit's conspicuous absence may then be due to its limited usefulness in the context of the canonists' jurisdictional concerns.

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