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Sprachen der Wachsamkeit



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The Notion of Vigilance in Medieval Canon Law

§ 1. In current Canon law “vigilance” is a legal term, that often occurs indicating both a duty and a right. It concerns many spheres of the Church’s life, and it is the responsibility of all the baptised to remain vigilant, although the term is linked to the bishops’ tasks of governance in particular:

The Code of Canon Law of 1983 (1983 CIC) identifies vigilance as the duty of the bishop to defend and promote ecclesiastical discipline, and specifies particular cases of vigilance, such as monitoring ecclesiastical associations,¹ supervising the management of assets,² and overseeing the administration of justice.³ In a recent study, Patrick Valdrini listed as many as twenty canons that explicitly mention vigilance, and several more general expressions that also refer to the activity of supervision.⁴

Even after the Code, supervisory duties within the Church continued to be emphasised. As an example, the post-synodal apostolic exhortation *Pastores dabo vobis* of John Paul II (25th March 1992) highlighted the function of vigilance as part of the *munus regendi*, being an instrument of prevention and, at the same time, knowledge of ecclesiastical realities.⁵ In 2005, in its *Instructions on adminis-*

1 Can. 305: § 1. “All associations of the Christian faithful are subject to the vigilance of competent ecclesiastical authority which is to take care that the integrity of faith and morals is preserved in them and is to watch so that abuse does not creep into ecclesiastical discipline. This authority therefore has the duty and right to inspect them according to the norm of law and the statutes.” See López Segovia, *Instrumentos*, pp. 15–87; Delgado Galindo, *L’exercice*, pp. 257–270.

2 Can. 392: “§ 1. Since he must protect the unity of the universal Church, a bishop is bound to promote the common discipline of the whole Church and therefore to urge the observance of all ecclesiastical laws. § 2. He is to exercise vigilance so that abuses do not creep into ecclesiastical discipline, especially regarding the ministry of the word, the celebration of the sacraments and sacramentals, the worship of God and the veneration of the saints, and the administration of goods.”

3 Can. 1445 §3: “Furthermore it is for this supreme tribunal (i.e. Apostolic Signatura): 1/ to watch over the correct administration of justice and discipline advocates or procurators if necessary [...]”

4 Valdrini, *Doveri (general) di vigilanza*, pp. 133–135.

5 Text available at https://www.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_25031992_pastores-dabo-vobis.html [last access: 03.11.2022]. See on the topic Fabene, *La funzione di vigilanza*, pp. 207–232.

trative matters (“Istruzioni in materia amministrativa”), the Italian Episcopal Conference stressed the role of the bishop in the supervision of ecclesiastical assets.⁶

However, although vigilance is nowadays regarded as a legal institution even under Canon law, and especially in the area of canonical administrative law,⁷ this has not always been the case. It is, in fact, a last century acquisition. Just to give an idea of the novelty of the administrative meaning of the word, we may compare a great encyclopedic work on canonical matters of our time, such as the *Diccionario General de Derecho Canónico*,⁸ with similar and important works of previous centuries (e.g. Ferraris, DDC, etc.). It is noticeable that the term ‘vigilance’ is only found in the former and not in the latter.⁹ As a matter of fact, during the twentieth century, Canon law has inherited the concept of administrative law and administrative function from secular law, as well as the concept of vigilance as an administrative tool. It was due to the Second Vatican Council that the notion of “administrative function” entered the 1983 CIC.¹⁰

However, this does not mean that the notion of “vigilance” did not exist before, both in medieval and modern canon law.

§ 2. In medieval canon law, vigilance was a pastoral duty with relevant legal implications, but not a legal institution in itself, as I will try to explain.

From a lexical point of view, in the medieval sources *vigilantia* was first of all the activity of those who took part in vigils¹¹: men who stayed awake, as opposed to

6 Text downloadable from <https://www.chiesacattolica.it/documenti-segreteria/istruzione-in-materia-amministrativa-2005/> [last access: 03.11.2022].

7 Outside Canon law, the notion of vigilance is not precisely identified by administrative doctrine, beyond a generic “control function” that could also be a “control of legitimacy”. See Arcidiacono, *La vigilanza nel diritto pubblico*; Valentini, *Vigilanza* (dir. amm.), pp. 702–710; Stipo, *Vigilanza e tutela*, pp. 6–7.

8 Otaduy/Viana/Sedano (Eds.), *Diccionario General de Derecho Canónico*. Navarra 2012, 7 vols.

9 Ferraris, *Prompta Bibliotheca canonica*, vol. 7: there is a long entry on the *vigilia* (cols. 1183–1192), and an even longer one on *Visitare, visitatio, visitator* (cols. 1231–1276), but no entry exists on “vigilantia”.

The *Dictionnaire de Droit Canonique* edited by R. Naz, vol 7, Paris 1965, col. 1504 devoted only a nine-line editorial entry written by Naz himself to *vigilance*, to which he mainly attributed the meaning of criminal remedy (see also *ibid.*, col. 577). In the *Diccionario General de Derecho Canónico*, there is instead an entry dedicated to vigilance as a legal institution: Fabene, *Vigilancia (derecho y deber de)*, pp. 902–905.

10 Through the Principles for the Revision of the Code (*Principia quae Codicis Iuris Canonici recognitionem dirigant*) approved by the 1967 Synod of Bishops. See on the topic Zuanazzi, *Praesis ut prosis*, p. 441f. and, from a historical perspective, Fantappiè, *L'amministrazione nella Chiesa*, pp. 125–153.

11 On the vigils, see Blaise, *Le vocabulaire latin*, p. 128.

people who slept. In this sense, the word had a liturgical meaning, which has moved into the pastoral sphere.

In Gratian's *Decretum*, the most important canonical collection of the 12th century,¹² which gathered the so called *ius vetus* of the Church, we still encounter the pair of opposites “wake – sleep”¹³. It is apparently a simple literary contrast, not strictly related to legal issues, but it is heavily grounded in biblical sources, the most famous of which comes from Psalm 121 (120),¹⁴ “Truly, the guardian of Israel never slumbers nor sleeps.”¹⁵

Yet, being vigilant is something much more important than just staying awake. *Vigilare* is what the Church does, at every level: God watches over his creatures,¹⁶ the pope watches over the Church,¹⁷ the bishops watch over their flock,¹⁸ the priests watch over their parishioners and the clergy as a whole must watch over the faithful.¹⁹

Such a duty must be stronger when responsibility is greater. In 1059, under the pontificate of Nicholas II, the Synod of Rome held in Lateran reformed the papal election and employed severe measures against simony. The concluding text of such an important synod, addressed by Nicholas to Christianity, began with the words *Vigilantia universalis* and in the very first lines it spoke about “the vigilance

12 *Decretum magistri Gratiani*, in *Corpus Iuris Canonici*, Pars prima, Leipzig 1879.

13 D. 6 c. 1 § 4: “Sin uero ex turpi cogitatione uigilantis oritur illusio in mente dormientis, patet animo reatus suus. Videt enim, a qua radice inquinatio illa processerit, quia quod cogitauit sciens, hoc pertulit nesciens”. The fragment is taken from Bede, *Ecclesiastical History*, p. 150 f.

C. 26 q.3–4 c.2: “Suadent miris et invisibilibus modis, per illam subtilitatem corpora hominum non sentientium penetrando, et se cogitationibus eorum per quedam imaginaria visa miscendo, sive uigilantium sive dormientium”. It is a quote from Augustin, *De diuinatione daemonum*, V,9, col. 586.

C.26 q.5 c.12: “Quis enim in somnis et nocturnis uisionibus se non extra ipsum educitur; et multa uidet dormiendo, que uigilando numquam uiderat?” The text is taken from the famous canon *Episcopi*, which condemned witchcraft.

14 “Ecce non dormitabit neque dormiet qui custodit Israëel”.

15 The English translation used here has been taken from the *New American Bible* (2002), https://www.vatican.va/archive/ENG0839/_PJ5.HTM [last access: 03.11.2022].

16 Gregory the Great, *Regula pastoralis*, p. III cap. 26, see below nt. 31.

17 Gregory VII, Reg. VI.3 e IX.6, see below nt. 34.

18 Hincmar of Reims, *De ordine palatii*, see below nt. 33.

19 C.1 q.2 c.10: “Clerici omnes, qui ecclesiae fideliter uigilanterque deseruiunt, stipendia sanctis laboribus debita secundum seruitii sui meritum per ordinationem canonum a sacerdotibus consequantur”

that belongs to our universal government, since we are obliged to tirelessly concern everyone”²⁰.

Maintaining a lexical perspective, other important pairs are “vigilantia / sollicitudo” and “vigilantia / cura”: because vigilance also entails taking care.

Medieval ecclesiastical literature is full of this kind of expression.

An example of this is the pair *vigilantia / sollicitudo* as the core of the episcopal office in the *incipit* of the bishops’ statement on public penance (Soissons, 833) of Louis the Pious. “It is proper to know – they said – that everyone in the Church agreed on what the episcopal ministry was and *qualis vigilantia atque sollicitudo adhibenda sit* for everyone’s salvation”²¹.

More importantly, in Thomas Aquinas’ *Summa Theologiae*, a cornerstone of Christian history, it is stated that “*vigilantia* is the same of *sollicitudo*”²².

Many examples also exist of the second pair (“*vigilantia / cura*”).²³ Behaviors such as being watchful, attentive, caring (for souls) are even related to the notion of *diligentia*, and its opposite *negligentia*.²⁴

20 Nicolai II. *Synodica generalis*, p. 547: “Vigilantia universalis regiminis adsiduam sollicitudinem omnibus debentes, salutis quoque vestrae providentes, quae in Romana synodo nuper celebrata, coram centum tredecim episcopis, nobis licet inmeritis presidentibus, sunt canonice constituta, vobis notificare curamus, quia ad salutem vestram executores eorum vos esse optamus et apostolica auctoritate iubendo mandamus”.

We will find the same words in the reissue of the decree by Alexander II in 1063, see Schieffer, *Die Entstehung des päpstlichen Investiturverbots*, p. 213, and Jaffé/Herbers, *Regesta Pontificum Romanorum*, IV, p. 265, n. 10617 (JL 4501).

21 *Episcoporum de poenitentia, quam Hludowicus imperator professus est, relatio compediensis*. 833. Oct., in *Monumenta Germaniae Historica, Capitularia regum Francorum* 2. Ed. by Alfred Bor-etius/Victor Krause, Hannover 1897, n. 197, p. 51: “Omnibus in christiana religione constitutis scire convenit, quale sit ministerium episcoporum, qualis vigilantia atque sollicitudo eis circa salutem cunctorum adhibenda sit, quos constat esse vicarios Christi et clavigeros regni caelorum [...]”. A new edition is also available in Booker, *The Public Penance of Louis the Pious*, p. 11. About the *Relatio* see de Jong, *The Penitential State*, p. 235 ff. and Booker, *Past Convictions*, p. 140 ff. and *passim*.

22 S. Thomas Aquinatis, *Secunda Secundae Summe theologiae*, q. 47 art. 9, p. 357: “Sed contra est quod dicitur (I Pet. IV): *Estote prudentes, et vigilate in orationibus*. Sed vigilantia est idem sollicitudini. Ergo sollicitudo pertinet ad prudentiam.”

23 Here a short list of canonical sources relating to the pair “*vigilantia / cura*”.

Gratian’s *Decretum*. Di. 84 c.2: “Nunciatum est nobis, Campaniae episcopus ita negligentes existere, et inmemores honoris sui, ut neque erga ecclesias, neque erga filios paternae vigilantiae curam exhibeant [...]”, from Gregory the Great, Reg. XIII.31, MGH Ep. 2, p. 395. C.16 q.1 c.49: “[...] queque tibi de eius patrimonio, vel cleri ordinatione seu promotione vigilantia ac canonica visa fuerint cura disponere”, from Gregory the Great, Reg. III.20, MGH Ep. 1, p. 178. C.18 q.2 c.27: “[...] Hec itaque omnia vigilantia cura emendare iam secundo conmonita sanctitas vestra non differat; ne, si post hec negligentes uos esse (quod non credimus) senserimus, aliter monasteriorum quieti prospicere conpellamur [...]”, from Gregory the Great, Reg. VII.40, MGH Ep. 1, p. 488.

Actually, *sollicitudo*, *diligentia*, and *cura* were closely connected as terms. In ancient Roman culture, they expressed the quintessential administrative virtues, that is the virtues required of those in charge of public powers.²⁵

We all know that the Western Church originated and developed within the Roman Empire, it is therefore not surprising that the main canonical sources on ecclesiastical vigilance date back to the fifth and sixth centuries and use the same Roman expressions. The letters of Leo the Great, Gregory the Great's *Regula pastoralis* and his Register²⁶ are very present in the medieval canonical collections. In the above-mentioned Gratian's *Decretum*, most of the mentions of vigilance originate in the writings of these two pontiffs²⁷, and they clearly show that the notion

Liber Extra (in *Corpus Iuris Canonici*, pars secunda, see above nt. 36). X 1.17.11 (Alexander III. Cantuariensi Archiepiscopo): "Ad extirpandas successiones a sanctis ecclesiis studio totius sollicitudinis debemus intendere; te etiam ad hoc decet vigilem curam exhibere, ne circa ministerium suscepti regiminis videamur minus diligentes existere, si id vitium in ecclesiis vel in negotiis ecclesiasticis et viris permittimus pullulare". X 2.20.23 (Alexander III.): "Licet universis Dei fidelibus ex commissi nobis officii debito debeamus provisione adesse, attentius tamen ecclesiasticos viros a pravorum molestiis malignantium vigili cura defendere debemus, ad quorum regimen specialius sumus, licet insufficientibus meritis, Dei providentia deputati". X 3.35.6 (Innocentius III. Abbati et Conventui Sublacensibus): "Abbas vero, cui omnes in omnibus reverenter obediant, quanto frequentius poterit, sit cum fratribus in conventu, vigilem curam et diligentem sollicitudinem gerens de omnibus, ut de officio sibi commisso dignam Deo possit reddere rationem".

Clementinae (in *Corpus Iuris Canonici*, pars secunda). Clem. 2.11.2: "Pastorali cura sollicitudinis, nobis divinitus super cunctas Christiani populi nationes inuncta, nos invigilare remediis subiectorum, eorundem periculis obviare et scandala removere compellit".

24 Gratian's *Decretum*. C.12 q.2 c.25 (Gelasius I.), "ut diligentia (qua uos pro utilitatibus ecclesiae estimamus esse vigilantes)"; C.24 q.3 c.34 (Leo I.), "debet diligentia tua vigilantanter insistere".

Liber Extra. X. 3.23.1 (Alexander III.), "Quia vero decet vos pro utilitate ecclesiae et incremento diligentes et vigiles existere"; X 5.7.13 (Innocentius III. in conc. Lateran.), "ut ad haec efficaciter exsequenda episcopi per dioeceses suas diligenter invigilent, si canonicam velint effugere ultionem".

Liber Sextus (in *Corpus Iuris Canonici*, pars secunda). VI 5.4.1 (Innocentius IV. in concilio. Lugdunensi), "Excusso a nobis negligentiae somno, nostrique cordis oculis diligentia sedula vigilantibus"

Clementinae. Clem. 5.1.1, "studiosa diligentia vigilamus".

25 Forbis, *Municipal Virtues*, pp. 74–76. The author has especially identified these terms in the Italian inscriptions dating from the second and third centuries.

26 On Gregory the Great's knowledge and use of Roman law, see Damizia, *Il Registrum epistolarum*, pp. 196–226; Giordano, *Giustizia e potere giudiziario ecclesiastico*; Gauthier, *L'utilisation du droit romain*, pp. 417–428; Arnaldi, *Gregorio Magno e la giustizia*, pp. 57–102; Picasso, *Diritto romano*, p. 96 f.; Padoa Schioppa, *Il rispetto della legalità*, pp. 25–32.

27 See above notes 23 and 24 and, on the topic, Gaudemet, *Patristique et Pastorale*, pp. 129–139, and Wasselynck, *Présence de Saint Grégoire le Grand*, pp. 205–219; Picasso, *Diritto canonico*, pp. 94–96.

of vigilance, from the first centuries of the Church onward, basically had a pastoral meaning.

This meaning was based upon the Holy Scriptures. As early on as in the Old Testament, God was described as a shepherd, in particular in Ezekiel 34 (where he provides for his people of Israel a human shepherd, who is David).²⁸ But it was the Good Pastor of the New Testament which evocated more, in the Middle Ages, the image of Jesus and his ministers as attentive shepherds. “Tu vero vigila”; “ego sum pastor bonus”; “Pasce oves meas”.²⁹

28 Shepherd and flock in the Old Testament. Genesis 48,15, “Benedixitque Iacob Ioseph et ait: ‘Deus, in cuius conspectu ambulaverunt patres mei Abraham et Isaac, Deus, qui pascit me ab adolescentia mea usque in praesentem diem [...]’. Psalm 23, “Dominus pascit me, et nihil mihi deerit: in pascuis virentibus me collocavit [...]”. Isaiah 40,11 “Ecce Deus vester, ecce Dominus Deus in virtute venit, et brachium eius dominatur [...]. Sicut pastor gregem suum pascit, in brachio suo congregat agnos et in sinu suo levat; fetus ipse portat”. Jeremiah 23,4–5: “Et suscitabo super eos pastores, et pascent eos; non formidabunt ultra et non pavebunt, et nullus quaeretur ex numero, dicit Dominus. Ecce dies veniunt, dicit Dominus, et suscitabo David germen iustum; et regnabit rex et sapiens erit et faciet iudicium et iustitiam in terra”. Ezekiel 34,11–16, “Quia haec dicit Dominus Deus: Ecce ego ipse requiram oves meas et visitabo eas. Sicut visitat pastor gregem suum in die, quando fuerit in medio ovium suarum dissipatarum, sic visitabo oves meas et liberabo eas de omnibus locis, in quibus dispersae fuerant in die nubis et caliginis. Et educam eas de populis et congregabo eas de terris et inducam eas in terram suam et pascam eas in montibus Israel, in rivis et in cunctis sedibus terrae. In pascuis uberrimis pascam eas, et in montibus excelsis Israel erunt pascua earum; ibi requiescent in herbis virentibus et in pascuis pinguibus pascentur super montes Israel. Ego pascam oves meas et ego eas accubare faciam, dicit Dominus Deus. Quod perierat, requiram et, quod eiectum erat, reducam et, quod confractum fuerat, alligabo et, quod infirmum erat, consolidabo et, quod pingue et forte, custodiam et pascam illas in iudicio.”

29 Shepherd and flock in the New Testament. Matthew 18,10–14, “Videte, ne contemnatis unum ex his pusillis; dico enim vobis quia angeli eorum in caelis semper vident faciem Patris mei, qui in caelis est. Quid vobis videtur? Si fuerint alicui centum oves, et erraverit una ex eis, nonne relinquet nonaginta novem in montibus et vadit quaerere eam, quae erravit? Et si contigerit ut inveniat eam, amen dico vobis quia gaudebit super eam magis quam super nonaginta novem, quae non erraverunt. Sic non est voluntas ante Patrem vestrum, qui in caelis est, ut pereat unus de pusillis istis”. Luke 15,4–7, “Quis ex vobis homo, qui habet centum oves et si perdiderit unam ex illis, nonne dimittit nonaginta novem in deserto et vadit ad illam, quae perierat, donec inveniat illam? Et cum invenerit eam, imponit in umeros suos gaudens et veniens domum convocat amicos et vicinos dicens illis: ‘Congratulamini mihi, quia inveni ovem meam, quae perierat’. Dico vobis: Ita gaudium erit in caelo super uno peccatore paenitentiam agente quam super nonaginta novem iustis, qui non indigent paenitentia”. John 10,1–16, “Amen, amen dico vobis: qui non intrat per ostium in ovile ovium, sed ascendit aliunde, ille fur est et latro. Qui autem intrat per ostium, pastor est ovium. Huic ostiarum aperit, et oves vocem ejus audiunt, et proprias oves vocat nominatim, et educit eas. Et cum proprias oves emiseric, ante eas vadit: et oves illum sequuntur, quia sciunt vocem ejus. Alienum autem non sequuntur, sed fugiunt ab eo: quia non noverunt vocem alienorum. Hoc proverbium dixit eis Jesus: illi autem non cognoverunt quid loqueretur eis. Dixit ergo

Gregory the Great's *Regula pastoralis* (*Pastoral Rule*) was actually a treatise on the "shepherds": a book of pastoral rules.³⁰ It was written for all those who have been invested with the care of souls (the *cura animarum*), called *rectors*. It was not the first work of this kind (one recalls similar texts by Gregory Nazianzus [the s.c. *Apologeticus de fuga*] and John Chrysostom [*De sacerdotio*]), but it was a constant point of reference in the Middle Ages.

The image of the bishop *pervigilis*³¹ as a shepherd represented the synthesis of the rights and duties of the bishop. The etymology itself of the Greek word *episko-*

eis iterum Jesus: Amen, amen dico vobis, quia ego sum ostium ovium. Omnes quotquot venerunt, fures sunt, et latrones, et non audierunt eos oves. Ego sum ostium. Per me si quis introierit, salvabitur: et ingredietur, et egredietur, et pascua inveniet. Fur non venit nisi ut furetur, et mactet, et perdat. Ego veni ut vitam habeant, et abundantius habeant. Ego sum pastor bonus. Bonus pastor animam suam dat pro ovibus suis. Mercenarius autem, et qui non est pastor, cuius non sunt oves propriae, videt lupum venientem, et dimittit oves, et fugit: et lupus rapit, et dispergit oves; mercenarius autem fugit, quia mercenarius est, et non pertinet ad eum de ovibus. Ego sum pastor bonus: et cognosco meas, et cognoscunt me meae. Sicut novit me Pater, et ego agnosco Patrem: et animam meam pono pro ovibus meis. Et alias oves habeo, quae non sunt ex hoc ovili: et illas oportet me adducere, et vocem meam audient, et fiet unum ovile et unus pastor". Heb. 13,20: "Deus autem pacis, qui eduxit de mortuis pastorem magnum ovium, in sanguine testamenti aeterni, Dominum nostrum Jesum Christum".

30 See Paronetto, Connotazione del "pastor", pp. 325–343, Gessel, Reform am Haupt, pp. 17–36; Heinz, Der Bischofsspiegel des Mittelalters, pp. 113–35; Speigl, Die Pastoralregel Gregors des Großen, pp. 59–76; Judic, Introduction, pp. 1–72; Id., Il vescovo secondo Gregorio Magno, pp. 269–290; Pellegrini, L'ordo clericorum, pp. 505–557; Floryszczak, *Die Regula Pastoralis*. Among the many editions of the work, also translated into different languages, the edition by Giuseppe Cremascoli, is used here; the latin text is based on the edition of the *Sources chrétiennes* (Gregoire le Grand: *Règle pastorale*, texte critique de F. Rommel).

31 *Regula pastoralis*, p. III caput IV: an important part of the manuscript tradition, witnessed by the *Patrologia latina* edition, contains a significant and well-known sentence, which is lacking in the edition cited here (pp. 92–96): "qui praesunt, ut per circumspectionis studium oculos pervigiles intus et in circuitu habeant" (PL 77, col. 55).

Here is a small selection of texts on vigilance in the *Pastoral Rule*.

Pars II: *De uita pastoris*. C. VIII, p. 68: "Inter quae haec necesse est, ut rector sollerter inuigilet, ne hunc cupido placendi hominibus pulset"; c. IX, p. 70–72: "Unde necesse est, ut rector animarum uirtutes ac uitia uigilanti cura discernat."

Pars III: *Qualiter rector bene uiuens debeat docere et admonere subditos*. C. IV, p. 94: "Admonendi sunt itaque qui praesunt, ut per circumspectionis studium caeli animalia fieri contendant. Ostensa quippe caeli animalia in circuitu et intus oculis plena describuntur, dignumque est, ut cuncti qui praesunt intus atque in circuitu oculos habeant, quatinus et interno iudici in semetipsis placere studeant, et exempla uitae exterius praebentes, ea etiam quae in aliis sunt corrigenda deprehendant"; c. XXVI, p. 186: "Creator dispositorque cunctorum quanta super eos gratia uigilat, quos in sua desideria non relaxat"; c. XXXII, p. 214–216: "Vnde et per Salomonem uox percussi et dormientis exprimitur, qua ait: *Verberauerunt me, sed non dolui; traxerunt me, et ego non sensi. Quan-*

pos, moreover, refers back to a supervisor, an inspector, to someone who is charged with the vigilance.³² At the end of the ninth century, Hincmar of Reims still recognized the task of the bishop in the activity of “vigilare supra gregem suum”: “Quia episcopi continuas vigilias supra gregem suum debent assidue exemplo et verbo vigilare”.³³

Two centuries later, Pope Gregory VII insisted on vigilance as a characteristic of the episcopal and pontifical ministry.³⁴ The reform named after him focuses on the Bishop’s office in a very different way from the Carolingian one, with particular regard to the relationship between the authority of bishops and papal power: Bernard of Clairvaux and other scholars wrote treatises to help define the customs and duties inherent to the episcopal office.³⁵

Yet, even when the figure of the bishop was so well-defined, and the Reformation seemed focused on his responsibilities and his behaviour, vigilance has always seemed an inherent characteristic of the pastoral task, the duty that brings together all duties, a way of being and doing of the bishop.

In the path that leads to an ever more juridical definition of all ecclesiastical offices, a very important stage of reform is marked by the IV Lateran Council in 1215. Many of its deliberations pertain to the duties and discipline of the clergy, and the relationship between the clergy and the faithful.

But vigilance itself was still not regulated as a legal institution. Not only after the General Council, but also after the promulgation in 1234 of the Church’s first official compilation, the *Liber Extra*,³⁶ canonical doctrine continued to ignore

do euigilabo, et rursum uina reperiam? Mens quippe a cura suae sollicitudinis dormiens uerberatur et non dolet, quia sicut imminetia mala non prospicit, sic nec quae perpetraverit agnoscit. Trahitur et nequaquam sentit, quia per illecebras uitiorum ducitur; nec tamen ad sui custodiam suscitatur. Quae quidem euigilare optat, ut rursum uina reperiat, quia quamuis somno torporis a sui custodia prematur; uigilare tamen ad curas saeculi nititur; ut semper uoluptatibus debrietur. Et cum ad illud dormiat in quo sollerter uigilare debuerat, ad aliud uigilare appetit, ad quod laudabiliter dormire potuisset. Hinc superius scriptum est: *Et eris quasi dormiens in medio mari, et quasi sopitus gubernator amisso clauo.*”

32 Gherri, Episkopé e vigilanza, p. 76.

33 Hincmar of Reims, *De ordine palatii*, p. 58.

34 Gregory VII., Reg. II.50, p. 191, “Ipse in loco suo super Dominicum gregem vigilans consistat”; Reg. V.18, p. 381, “In administratione suscepti officii vigilans et studiosus appareas”; Reg. VI.3, p. 394, “Ecclesiae regimine sollicite nos vigilare oportet”; Reg. IX.6, p. 581, “Licet apostolici nos apicis cura pro cunctis generaliter ecclesiis vigilare ac pro omnium statu vel reparatione sollicitos esse admoneat”.

35 Bernard of Clairvaux, ep. 42, p. 100–131, *De moribus et officio Episcoporum*.

36 *Decretales Gregorii P. IX. (Liber extravagantium decretalium)*, in *Corpus iuris canonici*, pars secunda.

any reference to vigilance as a canonical institute. This is not a sign of the disappearance of the concept of vigilance, which, on the contrary, always seemed to be presupposed. It remained a very broad and indeterminate duty that did not need juridical definition. Probably because everyone knew that being a good shepherd meant being vigilant, in every respect.

A different matter, however, is the attempt to establish through which legal instruments the duty of vigilance was put in place.

Just to give an example, in the field of non-contractual liability, the Church as a whole was considered responsible for crimes of omission of its members. The Church was responsible because omission represented a failure to exercise the institutional duties of the cleric: and therefore, it was responsible, in general, for having attributed certain functions to the wrong subject. We call this type of responsibility *culpa in vigilando*, even if in fact the abstract concept of vigilance was never recalled by canonists.³⁷

Introducing some texts of Gregory the Great, Gratian wrote that

Sollicitum quoque ac vigilantem oportet esse episcopum circa defensionem pauperum, revelationem obpressorum, tuicionem monasteriorum. Quod si facere neglexerint, aspere sunt corripiendi.³⁸

Sollicitus has been interpreted by canon lawyers as synonymous with vigilant, or prudent.³⁹ It represents the bishop's duty to protect the poor, the oppressed, the monasteries, but most of the time the terms involved are *protectio*, *tuitio*, *defensio*.⁴⁰ The word "vigilantia" itself has no technical use, to the point that the gloss to the word "vigilantes" does not contain any canonical reference, but a sort of brocard stating that civil law was written for those who are vigilant (*vigilantibus ius civile scriptum est*, a Brocard from the Digest).⁴¹

37 See Fiori, *La decretale 'Si culpa tua'*, pp. 53f.

38 *Dictum ante Di.* 84.

39 See also Forcellini, *Lexicon totius latinitatis*, vol. 4, p. 410.

40 Rufinus, *Summa Decretorum*, p. 174, ad Di. 84 v. *sollicitum* etc.: "[...] non autem videtur esse astutus qui in his, que debet, non est pervigil atque sollicitus, evidentissime constat esse sollicitum ad 'prudentem esse' referri. Dicitur ergo his, quomodo episcopus esse debeat sollicitus in defensione pauperum, in revelatione obpressorum, in tuitione monasteriorum et cura omnium clericorum [...]."

41 Iohannes Theutonicus – Bartholomaeus Brixiensis, *Glossa ordinaria*, col. 535, gl. *vigilantes* ad Di. 84 c.2: "nam vigilantibus ius civile scriptum est, ut ff. de iis quae in fraudem creditorum l. Pupillus in fi. (D. 42.8.24)".

For all these reasons, *vigilantia* is a term lacking in almost every repertoire of legal works, basically ignored by decretists and decretalists (although not absent from official collections, such as the *Liber Extra*, *Sextus*, *Clementinae*).

§ 3. Given the premises it hasn't been easy to find in the legal literature the s.c. *sedes materiae* of our subject. I finally found a brief treatise on the meanings of vigilance in Hostiensis' *Summa aurea*, which the great canonist addressed while commenting on the title on penance of the *Liber Extra*. He starts by interpreting being vigilant as merely meaning to be awake, as opposed to sleeping, and concludes by stating the duties of vigilance of the prelates: "We, the prelates, must be vigilant because we are shepherds, and we are guardians of the sick, that is, of sinners."

Vigiliis similiter maceratur caro, quae vobis indicuntur omnibus et maxime praelatis. Psal. Non dormitabit, neque dormitet qui custodit Israel (Psal. 120,4–6) [...]. Est autem vigilare somnum corporis a se excutere [...]. Vigilare est super seipsum vigiliis noctis custodire [...] Vigilare etiam est ad Deum mentis oculos operire [...]. Nos autem praelati vigilare debemus spiritualiter, quia pastores sumus, et talibus indicitur vigilare, ut statim no. supra eo. ver. iterum [...]. Vigilare etiam debemus, quia doctores sumus, sed quomodo docebimus, nisi sciamus, quomodo sciemus, nisi studeamus [...]. Item vigilare debemus, quia custodes infirmorum, scilicet peccatorum sumus.⁴²

For the prominent canon lawyer, *vigilare* was a pastoral activity, belonging to prelates as pastors, as doctors and teachers, as guardians of sinners. The biblical connection between shepherding and vigilance allows the identification of the latter with pastoral care, and, in addition, Hostiensis provided a definition of pastoral care that has become very commonly⁴³ used among canon lawyers⁴⁴: "Cura est vigil et onerosa ac sollicita custodia animarum."⁴⁵

⁴² Hostiensis, *Summa Aurea* ad X 5.38 De poenitentia et remissionibus, n. 51 [Effectus verae poenitentiae quis sit] § vigiliis, col. 1816.

⁴³ Hostiensis' definition of *cura animarum* was more successful than that outlined by his *magister* Innocent IV (from whose definition, however, he was partly inspired), *Apparatus* ad X 1.234, n. 2, fol. 115ra: "[...] cura animarum dicitur stricte potestas ligandi et solvendi, scilicet, in foro poenitentiali, et hoc in nullo praelato est, nisi sacerdos. [...] large dicitur cura potestas eijciendi et recipiendi in ecclesiam corrigendi, et puniendi excessus, 21 di. § i sub hac cura est excommunicare, interdicere, visitare, et caetera alia, quae sunt ad correctionem morum [...]."

⁴⁴ Among the leading canonists: Guido de Baysio (the Archdeacon), ad C.18 q.2 c. Cognovimus, *Rosarium seu in Decretorum volumen Commentaria*, fol. 284v; Johannes Andreae ad X 5.38.12 n. 8, *In quintum Decretalium librum Novella Commentaria*, fol. 126va; Albericus da Rosate, *Dictionarium iuris tam civilis quam canonici*, under the item 'Sacerdos proprius curatus'; Petrus de Ancharano, ad X 5.38.12 n. 19, *Super Quinto Decretalium facundissima Commentaria*, p. 198.

If the cure is an attentive, strenuous and solicitous guardianship of the souls, what kind of activities does pastoral care actually involve? Hostiensis is very clear: the ways in which pastoral care is actually carried out are visiting, correcting, punishing, and administering the Sacraments.⁴⁶ In this sense, the guardianship of souls is not the exclusive prerogative of prelates, but of all clergy, and concerns both the so-called internal sacramental forum and the external forum.

It is not a coincidence that Hostiensis wrote down these observations in his commentary on the famous canon twenty-one of the Fourth Lateran Council, *Omnis utriusque sexus*,⁴⁷ which required all Christians, lay or clerical, to confess their sins to one's *sacerdos proprius* at least once a year, and receive the sacrament of the Eucharist at least at Easter, on pain of excommunication.⁴⁸ The decree *Omnis utriusque sexus* is considered the heart of the Council's focus on pastoral care.

Now, even if vigilance is not in itself a canonical institution, but the essence of pastoral care, according to Hostiensis the duty of vigilance was conveyed and put into practice through three canonical institutes: correction, judicial punishment, and visitation.

The *correctio* as legal institute based on Matthew 18,15–17, which imposed the need for all Christians to correct their neighbour. This kind of correction could be

45 Hostiensis ad X 5.38.12, *In quintum librum Decretalium Commentari*, v. *Proprio* n. 13–16, 102ra: “Sed quid est cura? Et quidem potest magistraliter sic describi. *Cura est vigil et onerosa ac sollicita custodia animarum commissa alicui, ut curet, ne pereant, sed salventur, quae competit ex lege, vel commissione canonica, aut consuetudine, seu praescriptione per sedem apostolicam non improbata*, haec autem ex diversis iuribus colliguntur. Unde, cura est vigil et onerosa ac sollicita custodia animarum, ut colligitur in eo, quod legitur et no. supra de aetate et qualitate Intelleximus § fi. (X 1.14.12) [...]. *Commisssa alicui, ut curet, ne pereant etc. instruendo sibi commissos in fide, et moribus, necnon et vitiis fugiendis, ac virtutibus, et bonis operibus exercendis [...]. Ex quo sequitur quod si male, vel negligenter curet, obligatur Deo, arg. Insti. De inutilibus stipulationibus § si quis alium (Inst. 3.19.3), cui exinde tenetur rationem reddere [...]. Hoc autem debet curare praedictis modis, necnon visitando, corrigendo, puniendo, sacramenta ecclesiastica exhibendo [...]. Caveat igitur, quod semper obligationem hanc prae oculis habeat, ne reperiatur negligens dormiens, vel dormitans, psal. Non dormitabit, neque dormiet qui custodit Israel. Nec mirum: quia sicut dicit beatus Bern. Non dormitat, neque dormit, qui impugnat Israel [...]. Ne dederis somnum oculis tuis, nec dormitent palpebrae tuae. Quod si haec diligenter servaverit, esto quod propter duritiam plebis non proficias, tutus erit [...]. Sed non omittat seculare brachium invocare, esto quod peccatores sine effusione sanguinis nequeant coarctari [...]. Quae competit ex lege scripta, sive iure communi [...] et praelatis qui per electionem creantur, et etiam rectoribus ecclesiarum parochialium, ex quo sunt autoritate sui iudicis instituti, ut hic patet [...]. Et notandum quod haec cura extenditur ad omnes habitantes infra limites praedictorum, qua ratione et proventus spirituales exinde provenient percipiunt in usus necessarios convertendos [...].”*

46 See the previous note.

47 C. 21, *Constitutiones Concilii quarti Lateranensis*, p. 67f.

48 See Larson, Lateran IV's Decree, pp. 415–437.

seen as “a form of pastoral care accessible to all Christians – clerics, monks or laymen – within their community”⁴⁹, and it was closely related to one or more admonitions to the sinner. Over time, theologians and canon lawyers distinguished two types of correction. The first, the *correctio fraterna*, was open to all the faithful and was based on *caritas*. The second was only available to prelates, as a privilege of their office.⁵⁰ It began with a *denunciatio ad superiorem* by a faithful, required a triple admonition from the bishop and, if the sinner failed to correct his behaviour, a spiritual penalty – such as excommunication – could be imposed. It was an act of charity that made it possible to intervene before scandal spread⁵¹.

But when mortal sin manifested itself as an *actus exterior* and caused scandal – that is, in presence of a crime, according to canon law⁵² – then the *denunciatio* to the bishop became judicial.

Punire, the second legal activity linked to pastoral care and vigilance, is proper to the role of the bishop as a judge. For the occasion of the fourth Lateran council, Innocent III gave the ecclesiastical judge the particular power of *inquisitio* for the discovery of crimes, according to the public interest in sanctioning crime, *ne crimina remaneant impunita*.⁵³ During the inquisitorial process the ecclesiastical judge had powers of investigation that had never existed before, and it seems to me that the connection between vigilance and inquisition is self-evident, and I don't think it needs any further explanation.

The third and last canonical institute, the visitation,⁵⁴ is not only the oldest of the three, but also the one in which the duty of vigilance is most directly expressed. The episcopal practice of visiting local communities emerges as early on as in the

49 Lauwers, *Prêcher, corriger, juger*, p. 109. See also Pastore, *A proposito di Matteo 18,15*, pp. 323–368, and Craun, *Ethics and Power*, p. 12f.

50 S. Thomas Aquinatis, *Secunda Secundae Summe theologiae*, q. 33 art. 3, p. 265: “Respondeo dicendum quod, sicut dictum est, duplex est correctio. Una quidem quae est actus caritatis, qui specialiter tendit ad emendationem fratris delinquentis per simplicem admonitionem. Et talis correctio pertinet ad quemlibet caritatem habentem, sive sit subditus sive praelatus. Est autem alia correctio quae est actus iustitiae, per quam intenditur bonum commune, quod non solum procuratur per admonitionem fratris, sed interdum etiam per punitionem, ut alii a peccato timentes desistant. Et talis correctio pertinet ad solos praelatos, qui non solum habent admonere, sed etiam corrigere puniendo.”

51 Bellini, *Denunciatio evangelica*; Kolmer, *Die ‘denunciatio canonica’*, pp. 26–47; Prodi, *Una storia della giustizia*, p. 70; Lavenia, *L’infamia e il perdono*, pp. 108–110.

52 Kuttner, *Ecclesia de occultis*, p. 232; id. *Kanonistische Schuldhlehre*, p. 5.

53 Sbriccoli, *Vidi communiter observari*, pp. 231–268; Landau, *‘Ne crimina maneat impunita’*, pp. 25–35; Fiori, *‘Quasi denunciante fama’*, pp. 351–367.

54 Baccrabère, *Visite canonique*, cols. 1512–1619; Coulet, *Les visites pastorales*; Ferrante, *Modelli di controllo*, pp. 335–346.

patristic texts,⁵⁵ but it was during the sixth and seventh centuries that local councils specified visiting duties of bishops. Over time, visitation was intended not only as a means to eradicate immorality or pagan practices, but it also served as a means to physically inspect dioceses, and to, for example, check the conditions of ecclesiastical buildings. Visitations involved the inspection of places, goods, and people (both clerics and laity) who fell under the jurisdiction of a given bishop.

The Carolingian reform of the Church attached the utmost importance to visitations, which led to “a close connection between the visitation and the episcopal synod”⁵⁶ and meant that visitation wasn’t only needed for spiritual purposes, but also for carrying out justice. In the Frankish Church, the episcopal court of visitation was referred to as *Sendgericht*, and around 906 abbot Regino of Prüm devoted a renowned law book, the *Libri duo de synodalibus causis* to the synodical procedure.⁵⁷

The episcopal obligation of visiting his diocese annually was revived by the IV Lateran council (c. *Sicut olim*)⁵⁸ and also at later points in time, but it had fallen into disuse when, around the middle of the sixteenth century, the Council of Trent – following the fifteenth-century treatises more or less inspired by Jean Gerson – made visitation a milestone of its reform, and restored it to its original pastoral function.⁵⁹

The history of visitation has been extensively studied,⁶⁰ and it is neither the time nor the place to describe it in detail. On the contrary, it is now time to come to a conclusion, taking into account that the most recent legal historiography has paid specific attention to visitation (and its related procedures, based as they were on hierarchical inspection) as a model of administration, or a model of public

55 Smith, *The Canonical Visitation*, p. 21 ff.; Di Paolo, *Verso la modernità*, p. 108 ff.; ead., *La centralità della visita*, pp. 59–74.

56 Smith, *The Canonical Visitation*, p. 32.

57 Reginonis abbatis Prumiensis *Libri duo de synodalibus causis et disciplinis ecclesiasticis*. See on Regino’s canonical collection, among other publications, Hartmann, *Zu Effektivität und Aktualität*, pp. 33–49; id., *Neue Erkenntnisse*, pp. 33–59; Siems, *In ordine posuimus*, pp. 67–90; Dusil, *Zur Entstehung und Funktion von Sendgerichten*, pp. 369–409; Kéry, *Kanonessammlungen*, pp. 194–197; Grollmann, *Recht und Raum*, pp. 79–89.

58 C. 6, *Constitutiones Concilii quarti Lateranensis*, p. 53.

59 On the visitation after the Council of Trent, see Pérouas, *Les Visites pastorales*, pp. 62–65; Turchini, *La visita come strumento*, pp. 335–382; Napoli, *La visita pastorale*, pp. 225–250; id., *Ratio scripta et lex animata*, pp. 131–151; id., *La visita pastorale*, pp. 99–131.

60 For a non-exhaustive indication of works see above, nt. 54, 55 and 59.

management, to the point of defining the pastoral visit as a “laboratory of administrative normativity”.⁶¹

To conclude, examining the notion of vigilance has led us along a path that started in biblical sources and has ended in the field of law. As a matter of fact, over time the Church has applied the notion of vigilance to different spheres (spiritual, pastoral, legal-administrative), but only gradually has it been transformed from a pastoral commitment to a juridical duty, as it is today.

The different meanings that “vigilance” took on, on one side gave birth to long-term practices and institutes of canon law; on the other side they can be viewed as the models, and indeed archetypes, for the administrative law of modern states.

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⁶¹ Napoli, La visita pastorale, p. 225.

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