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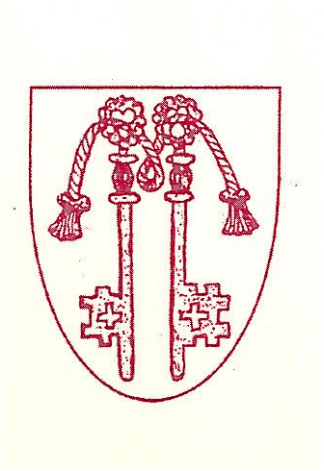

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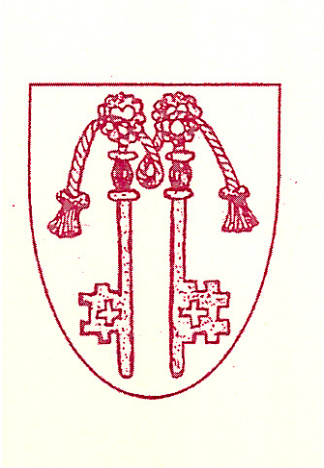

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Abbreviations

The following sigla are used without further explanation:

ACA	*Archivo de la Corona d'Aragon/Arxiu de la Corona d'Arago*
AHC	*Annuarium historiae conciliorum*
AHDE	*Anuario de Historia del Derecho español*
AHP	*Archivum historiae pontificiae*
AJLH	*American Journal of Legal History*
AKKR	*Archiv für katholisches Kirchenrecht*
ASD	*Annali di storia del diritto*
BAV	Biblioteca Apostolica Vaticana
BDHI	*Bibliothek des Deutschen Historischen Instituts in Rom*
BC	Bibliotheca/Archivio capitolare, capitular, chapter, kapitoly etc.
BEC	*Bibliothèque de l'Ecole des Chartes*
BIDR	*Bullettino dell'Istituto di Diritto Romano*
BISM	*Bullettino dell'Istituto Storico Italiano per il Medio Evo e Archivio Muratoriano*
BL	British Library
BM	Bibliothèque municipale, Stadtbibliothek, Biblioteca comune, Landesbibliothek, civica, etc.
BMCL	*Bulletin of Medieval Canon Law, New series*
BNF/BN	Bibliothèque nationale de France / Biblioteca nazionale
BSB	Bayerische Staatsbibliothek
BU	Bibliothèque universitaire, Universitätsbibliothek, Biblioteca di Università, etc.
Cat. gén.	*Catalogue général des manuscrits des bibliothèques publiques de France* (*Départements*, octavo series, unless otherwise indicated)
CC/CCL	*Corpus Christianorum/Corpus Christianorum, Series latina*
CCCM	*Corpus Christianorum, Continuatio mediaevalis*
CHR	*Catholic Historical Review*
Clavis	E. Dekkers, *Clavis patrum latinorum*, ed. 2
Clm	Codices latini monacenses-Bayerische Staatsbibliothek Munich
COD	*Conciliorum oecumenicorum decreta*, ed. Centro di Documentazione... (COD^3: ed. 3)
COGD	*Conciliorum oecumenicorum generalium-que decreta*, 2.1*: The Oecumenical Councils of the Roman Catholic Church*: *From Constantinople IV to Pavia-Siena (869-1424);* 2.2*: From Basel to Lateran V (1431-1517*, edd. Alberto Melloni et alii (Corpus Christianorum; Turnhout 2013)

CSEL	*Corpus scriptorum ecclesiasticorum latinorum*
DA	*Deutsches Archiv für Erforschung des Mittelalters*
DBI	*Dizionario biografico degli Italiani*
DDC	*Dictionnaire de droit canonique*
DGDC	*Diccionario general del derecho canónico*, edd. Javier Otaduy, Antonio Viana, Joaquín Sedano (7 Volumes; Pamplona 2012)
DGI	*Dizionario biografico dei giuristi italiani (XII-XX secolo)*, edd. Italo Birocchi, Ennio Cortese, Antonello Mattone, Marco Nicola Miletti (2 vols. Bologna: Mulino, 2013)
DHEE	*Diccionario de historia eclesiástica de España*
DHGE	*Dictionnaire d'histoire et de géographie ecclésiastiques*
DMA	*Dictionary of the Middle Ages*
Du Cange	Du Cange, Favre, Henschel, *Glossarium mediae et infimae latinitatis*
EHR	*English Historical Review*
GC	*Gallia christiana*
HLF	*Histoire littéraire de la France*
HMCL 2	*The History of Medieval Canon Law in the Classical Period, 1140-1234*: *From Gratian to the Decretals of Pope Greogry IX*, edd. Wilfried Hartmann and Kenneth Pennington (Washington DC 2008)
HMCL 3	*The History of Courts and Procedure in Medieval Canon Law*, edd. Wilfried Hartmann and Kenneth Pennington (Washington DC 2016)
HQLR 1-2	*Handbuch der Quellen und Literatur der Neueren Europäische Rechtsgeschichte*, 1: *Mittelalter (1100-1500)*: *Die Gelehrten Rechte und die Gesetzgebung*, ed. Helmut Coing (Veröffentlichungen des Max-Planck-Instituts für Europäische Rechtsgeschichte, München 1973-1977)
HRG	*Handwörterbuch zur deutschen Rechtsgeschichte*
HZ	*Historische Zeitschrift*
IRMAe	*Ius romanum medii aevi*
JEH	*Journal of Ecclesiastical History*
JH^1, JH^2, JH^3	Jaffé, *Regesta pontificum romanorum* ... ed. tertiam curaverunt Nicholas Herbers et al. (JH^1 A S. Petro–604), (JH^2 604-844), (JH^3 844-1024)
JK, JE, JL	Jaffé, *Regesta pontificum romanorum* ... ed. secundam curaverunt F. Kaltenbrunner (JK: an. ?-590), P. Ewald (JE: an. 590-882), S. Loewenfeld (JL: an. 882-1198)
JTS	*Journal of Theological Studies*

Kéry	Lotte Kéry, *Canonical Collections of the Early Middle Ages (ca. 400-1140): A Bibliographical Guide to the Manuscripts and Literature* (Washington DC 1999)
LMA	*Lexikon des Mittelalters*
Mansi	Mansi, *Sacrorum conciliorum nova et amplissima collectio*
MEFR	*Mélanges de l'École française de Rome: Moyen âge – Temps modernes*
MGH	Monumenta Germaniae historica
• Auct. ant.	Auctores antiquissimi
• Capit.	Capitularia
• Conc.	Concilia
• Const.	Constitutiones
• Epp.	Epistolae (in Quart)
• Epp. saec. XIII	Epistolae saeculi XIII
• Epp. sel.	Epistolae selectae
• Fontes iuris	Fontes iuris Germanici antiqui, Nova series
• Ldl	Libelli de lite imperatorum et pontificum
• LL	Leges (in Folio)
• LL nat. Germ.	Leges nationum Germanicarum
• SS	Scriptores
MIC	Monumenta iuris canonici
• Ser. A	Series A: Corpus Glossatorum
• Ser. B	Series B: Corpus Collectionum
• Ser. C	Series C: Subsidia
MIÖG	*Mitteilungen des Instituts für österreichische Geschichtsforschung*
ML	Monastic Library, Stiftsbibliothek, etc.
NA	*Neues Archiv der Gesellschaft für ältere deutsche Geschichtskunde*
NCE	*The New Catholic Encyclopedia*
ÖNB	Österreichische Nationalbibliothek
PG	Migne, *Patrologia graeca*
PL	Migne, *Patrologia latina*
Potth.	Potthast, *Regesta pontificum romanorum*
QF	*Quellen und Forschungen aus italienischen Archiven und Bibliotheken*
QL	Schulte, *Quellen und Literatur*
RB	*Revue bénédictine*
RDC	*Revue de droit canonique*
REDC	*Revista español de derecho canónico*
RHD	*Revue historique de droit français et étranger* (4^{e} série unless otherwise indicated)

RHE	*Revue d'histoire ecclésiastique*
RHM	*Römische historische Mitteilungen*
RIDC	*Rivista internazionale di diritto comune*
RIS^2	Muratori, *Rerum italicarum scriptores: Raccolta degli storici italiani*, nuova edizione…
RQ	*Römische Quartalschrift für christliche Altertumskunde und Kirchengeschichte*
RS	Rolls Series (Rerum Britannicarum medii aevi scriptores)
RSCI	*Rivista di storia della Chiesa in Italia*
RSDI	*Rivista di storia del diritto italiano*
SB	Staatsbibliothek/Stiftsbibliothek
SCH	*Studies in Church History*
SDHI	*Studia et documenta historiae et iuris*
Settimane	*Settimane di studio del Centro italiano di studi Spoleto sull'Alto Medioevo*
SG	*Studia Gratiana*
SMCL	*Studies in Medieval and Early Modern Canon Law*
TRG	*Tijdschrift voor Rechtsgeschiedenis*
TUI	*Tractatus universi iuris* (18 vols. Venice 1584-1586)
Vat.	Biblioteca Apostolica Vaticana
ZKG	*Zeitschrift für Kirchengeschichte*
ZRG Kan. Abt.	*Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, Kanonistische Abteilung
ZRG Rom. Abt.	*Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, Romanistische Abteilung

The Proceedings of the International Congresses of Medieval Canon Law will be referred to as (e.g.): *Proceedings Boston 1965*. Older standard works will be cited only as short titles, e.g. Maassen, *Quellen*, Schulte, *Quellen*, Savigny, *Geschichte*, Kuttner, *Repertorium*.

For the serial publications of the great academies:

Abh. Akad. … followed by name of city, e.g. *Berlin, München*, etc. = *Abhandlungen der … preussischen, bayerischen*, etc. *Akademie der Wissenschaften, philosophisch-historische Klasse*.

Similarly for *Mémoires, Memorie, Proceedings, Rendiconti, Sitzungsberichte*, etc. the abridged form is always understood as referring to the series covering philosophy and the humanities where several classes or sections exist in a single academy; e.g.

Mém. Acad. Inscr.	*Rendic. Istit. Lombardo*
Proceed. Brit. Acad.	*Sb. Akad. Wien*

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NOTE

REVIEWS

Peter Landau

Born 26 Febraury 1935 Berlin

Died 23 May 2019 München

Washington DC July 2004

Peter Landau was the co-editor of this journal from 1998 until the day he died. He was always enormously helpful to young and older scholars, scrupulous in his judgments, and fair to other scholars, even those who disagreed with him. His spirit and his scholarship have shaped and touched all of us who have read his many books and essays and who worked with him.

Peter Landau als Lehrer*

Thomas Duve

Liebe Familie von Peter Landau, vor allen: liebe Angelika, liebe Julia, lieber Georg, sehr geehrter Pastor Levin, verehrte Trauergemeinde:

Als ich Peter Landau zum ersten Mal erlebte, in einem Seminar im Wintersemester 1992, hatte ich das Gefühl, endlich etwas gefunden zu haben, das ich an der Universität bis dahin stets vergeblich gesucht hatte. Wahrscheinlich wusste ich gar nicht genau, was. Da aber saß, am Kopf der in der Form eines ʻU' gestellten Tische, jemand, der anscheinend alles wusste–und der zugleich voller Fragen war. Jemand, der neugierig war–und der dennoch offenbar jede Woche (und geradezu kontrafaktisch) die Hoffnung hatte, dass er an diesem Abend und von diesen Teilnehmern etwas lernen könnte.

Um ihn herum ein Kreis von Mitarbeitern und Studierenden. Sie blickten gebannt zu ihm, besser: sie blickten zu ihm auf. Selten habe ich eine solche natürliche Autorität erlebt. Und er nahm sie ernst. Einige von ihnen blieben, wurden zu Schülern im formellen oder auch im nicht formellen Sinn; davon gab es einige. Als ein solcher–und vielleicht auch für einige von ihnen–möchte ich mit ein paar Worten an Peter Landau erinnern. Nicht über den Rechtshistoriker Peter Landau spreche ich also, nicht über das Akademiemitglied, nicht über den verdienten Fachbeirat des Max-Planck-Instituts. Über den Lehrer.

Der Lehrer ist mehr als das Wissen, das er vermittelt. Schüler beobachten ihren Lehrer–das taten auch wir. Peter Landau war ohnehin nicht der Professor, der seinen Lehrstuhl zum Wandern einlud, oder der in der Bibliothek zwischen den Tischen

* Diese Worte wurden auf der Trauerfeier für Peter Landau in München gesprochen. Sie wurden auf Bitte der Hinterbliebenen sehr kurz und sehr persönlich aus der Perspektive eines Schülers formuliert. Nicht ohne Zögern stelle ich sie für die Publikation zur Verfügung, sind sie doch notwendigerweise sehr kurz und sehr subjektiv.

herumging und seinen Doktoranden die Hand auf die Schulter gelegt und gefragt hätte: ‘Na, wie geht’s denn heute?’; ‘Woran arbeiten Sie denn gerade?’ Viele hätten sich dies vielleicht gelegentlich gewünscht. Doch er war ein Gelehrter. Er erzählte von dem, was er tat, was ihn bewegte. Und wir beobachteten ihn–geradezu wie ein Naturereignis.

Warum? Da war zunächst natürlich sein bekanntermaßen enzyklopädisches Wissen. ‘Der weiß alles’ ist ein Satz, den man oft über ihn hörte. Wie machte er das?–Das fragten wir uns mehr als einmal. Ob wir auch so werden könnten?–Wahrscheinlich, so spürten wir, nicht.

Da war sein beeindruckendes Ethos. Peter Landau hatte, auch das spürten wir, eine wirkliche Berufung. Er fühlte sich verpflichtet: Verpflichtet, alles zu geben, um die Forschung möglichst weit voranzubringen–vielleicht auch, weil er spürte, dass er vieles so viel besser konnte als andere. Er verschwand dann, er tauchte ab. Er ging über den Gang, versunken. Man begegnete ihm, und erkannte einen nicht.

Wir wussten dann: bald würde er etwas bringen. Einen wirklichen Fortschritt. ‘Ich glaube, ich habe da etwas entdeckt’, fing er dann meistens die Gespräche an. Manchmal kam man nicht mehr zu dem Anliegen, das einen zu ihm geführt hatte. Im Vortrag oder in der Publikation hob er dann jedoch hervor, wie bereits ein anderer Autor schon vor 100 Jahren vielleicht etwas Ähnliches im Sinn gehabt haben könnte. Auch, dass er den Riesen, auf deren Schultern wir stehen, ihren Anteil zuwies, dass er sich als Teil einer diachronen Gemeinschaft verstand, die an einer größeren Aufgabe arbeitet, gehörte zu diesem Ethos.

Was beobachteten wir noch?–Wir sahen einen politischen Menschen. Jemanden, dem Gerechtigkeit ein wirkliches Anliegen war. Der sich einmischte. In die aktuelle Politik, aber auch gegen das Vergessen des Unrechts an den Deutschen jüdischer Herkunft. Der immer wieder darauf drang, dass historische Arbeit dazu dienen muss, die Gegenwart besser zu verstehen. Und der dann auch politisch denken konnte, wenn es darum ging, die institutionellen Voraussetzungen dafür zu schaffen. Weltfremd war er nicht.

Und wir sahen einen Menschen der alles, was er tat, mit großer Intensität tat. Wir sahen ihn leidenschaftlich diskutieren. Leidenschaftlich arbeiten. Wir sahen ihn auch nach Tagungen oder Rechtshistorikertagen durchaus leidenschaftlich essen und trinken. Wie passte alles das zusammen?–Auch das meinte ich mit dem ʻNaturphänomen'.

ʻSchüler', d. h. auch: eine eigentümliche Mischung aus Distanz und Nähe. Nie habe ich mit ihm über seinen Glauben gesprochen; erst spät hat er mir von seiner Kindheit erzählt. Doch ein Gefälle blieb. Es war groß, denn er war groß.

Doch das ließ er uns nicht spüren. Darin hattest sicher auch Du, liebe Angelika, großen Anteil. Als ich schon nicht mehr in München wohnte und mit Peter sprach, beendete er das Gespräch gelegentlich mit dem Satz: ʻAngelika hat gesagt, ich solle auch noch fragen, wie es denn den Kindern geht'. An solchen Sätzen merkte man, wie viel Du im Hintergrund gewirkt hast, und wie sehr er sich auf Dich verließ.

In den letzten Jahren signierte er seine Sonderdrucke mit dem Satz ʻIn Freundschaft'. In dieser akademischen Freundschaft verabschieden wir uns von dem Lehrer, dem Gelehrten Peter Landau.

Frankfurt am Main.

Lo Spirito del presbiterio: Alcuni precedenti disciplinari e dottrinali dell'idea di 'sinodalità'

Péter Erdő

Premesse

La nozione di sinodalità è relativamente nuova nel linguaggio ecclesiale. Anche il suo contenuto varia secondo il contesto dei documenti teologici orientali[1] ed occidentali, a volte persino a seconda dei singoli autori.[2] Essa non è da confondere con la *collegialità* che nella Chiesa non è un principio sociologico né una mera eredità del diritto romano, bensì si riferisce al collegio dei vescovi che insieme con il Papa, suo capo, costituisce l'autorità suprema della Chiesa secondo i documenti del Concilio

[1] Cf. per es. *Einheit in Synodalität: Die offiziellen Dokumente der Orthodoxen Synode auf Kreta 18. bis 26. Juni 2016*, ed. Barbara Hallensleben (Münster 2016); *Primacy and Sinodality. Deepening Insights. Proceedings of the 23rd Congress of the Society for the Law of the Eastern Churches*, ed: Péter Szabó (Kanon 25; Nyíregyháza 2019).

[2] Cf. Norbert Witsch, *Synodalität auf der Ebene der Diözese: Die Bestimmungen des universalkirchlichen Rechts der Lateinischen Kirche* (Kirchen- und Staatskirchenrecht 1; Paderborn 2004) 20-23. Egli distingue tre sensi principali della sinodalità. Il primo coinciderebbe con la collegialità episcopale, il secondo si riferirebbe alle forme istituzionali della cooperazione dei presbiteri e dei fedeli – ciascuno a suo modo proprio – nell'esercizio del ministero pastorale del vescovo, mentre il terzo sarebbe un principio organizzativo contrario al principio gerarchico. L'autore esclude l'applicazione di questo terzo senso alla Chiesa. Dei vari significati della parola vedi anche Idem, 'Synodalität', *Lexikon für Kirchen- und Staatskirchenrecht,* edd. Axel von Campenhausen, Ilona Riedel-Spangenberger, Reinhold Sebott (3 vols; Paderborn-München-Wien-Zürich 2001-2004) 3.642-644; Libero Gerosa, 'Rechtstheologische Grundlagen der Synodalität in der Kirche: Einleitende Erwägungen', *Iuri Canonico Promovendo. Festschrift für Heribert Schmitz zum 65. Geburtstag*, edd. Winfired Aymans, Karl-Theodor Geringer (Regensburg 1994) 35-55; *La synodalité:La participation au gouvernement dans l'Église: Actes du VII^e^ congrès international de droit canonique: Paris, Unesco, 21-28 septembre 1990* (L'Année Canonique, hors série; 2 vols; Paris 1992); Manoel Augusto Santos,'Sinodalidad', DGDC 7.341-345.

Vaticano II[3] e anche secondo il diritto canonico.[4] Recentemente si è ribadito autorevolmente che la sinodalità non si identifica con la 'democrazia', ma ha nella Chiesa un senso teologico speciale. Partendo da vari incoraggiamenti di Papa Francesco,[5] la Commissione Teologica Internazionale ha pubblicato un documento[6] sugli aspetti storici e teologici di questo nuovo concetto che esprime una realtà strutturale della Chiesa, presente sin dalle origini.[7] In questo saggio cerchiamo di identificare alcuni aspetti speciali della coscienza teologica e della vita istituzionale della Chiesa dei primi secoli che oggi possono essere considerati segni di sinodalità. Al centro della nostra attenzione sarà tuttavia il presbiterio delle singole Chiese locali e il suo funzionamento.

Sinodalità nella visione e nella vita dell'intera Chiesa: La partecipazione di tutti i fedeli al triplice ufficio di Cristo

Oltre al collegio degli Apostoli e all'aspetto collegiale dell'ufficio dei vescovi, si dedica molta attenzione al fatto che tutta la Chiesa, come popolo della Nuova Alleanza conclusa con

[3] Specialmente Cost. dogm. *Lumen Gentium* 22. Cf. Ugo Betti, *La dottrina sull'episcopato del Concilio Vaticano II. Il capitolo III della Costituzione Dommatica* Lumen Gentium (Spicilegium Pontificii Athenei Antoniani 25; Roma 1984) 388-389; Gérard Philips, *La Chiesa e il suo mistero nel Concilio Vaticano II: Storia, testo e commento alla Costituzione* Lumen Gentium (Milano 1975-1989) 197-269.

[4] *Codex Iuris Canonici* (1983 = CIC) cc. 330-341; *Codex Canonum Ecclesiarum Orientalium* (=CCEO) cc. 42-54.

[5] Per es. Francesco, Esort. Ap. *Evangelii gaudium*, 24 novembre 2013, n.119, *Acta Apostolicae Sedis* (=AAS) 105 (2013) 1069-1070; Idem, Discorso in occasione del cinquantesimo anniversario dell'istituzione del Sinodo dei Vescovi, 17 ottobre 2015, AAS 107 (2015) 1138-1144, specialmente 1141-1144.

[6] Commissione Teologica Internazionale, *La sinodalità nella vita e nella missione della Chiesa*, 2 marzo 2018 (Città del Vaticano 2018).

[7] Cf. per es. l'intervista di Karl-Heinz Menke del 26 maggio 2018 (Domradio-Vatican News). L'autore sottolinea che della verità non si può decidere con una semplice votazione maggioritaria. La Verità è Cristo stesso che ha dato un mandato speciale agli apostoli che l'hanno trasmesso ai loro successori.

Dio in Gesù Cristo, ha il dovere di continuare la missione di Cristo nella storia. Questa missione—in piena corrispondenza con le attese messianiche del popolo d'Israele che attendeva il Profeta (o il Maestro della Verità), il Gran Sacerdote e il re davidico—appare nella tradizione come triplice: di insegnare, di santificare e di governare. Tutta la Chiesa—ogni fedele secondo la propria condizione—partecipa a questa triplice missione.[8] La Chiesa, infatti, è colonna e fondamento della verità.[9] Essa deve annunciare la croce e la morte del Signore in attesa della sua venuta.[10] Cristo è l'unico Sommo Sacerdote,[11] che ha fatto del nuovo popolo un regno di sacerdoti.[12] Come il popolo ebraico era una stirpe sacerdotale tra le genti, così anche i cristiani sono sacerdoti di Dio.[13] Il discepolo di Cristo esercita la sua funzione sacerdotale presentando un sacrificio spirituale.[14] I cristiani offrono se stessi in sacrificio a Dio nella preghiera.[15]

La Chiesa intera partecipa anche alla missione profetica o magisteriale di Cristo. I fedeli hanno ricevuto, infatti, lo Spirito Santo,[16] il Verbo di Dio che agisce in essi,[17] e devono combattere per la fede che i santi hanno ricevuto una volta per sempre.[18]

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[8] Conc. Vat. II, Cost. dogm. *Lumen Gentium* 32; cf. CIC c. 204, § 1. La visione del Concilio sui *tria munera* ebbe già un influsso decisivo nella revisione del Codice di Diritto Canonico; cf. *Communicationes* 1 (1969) 102-104; Heribert Schmitz, *Reform des kirchlichen Gesetzbuches Codex Iuris Canonici 1963-1978* (Canonistica 1;Trier 1979) 37; Ludwig Schick, *Das dreifache Amt Christi und der Kirche: Zur Entstehung und Entwicklung der Trilogien* (Frankfurt am Main 1982); Aurelio Fernández, *Munera Christi et Munera Ecclesiae: Historia de una teoría* (Pamplona 1982); Idem, 'Munera Christi', DGDC 5.508-516.

[9] 1Tim 3:15; Conc. Vat. II, Cost. dogm. *Lumen Gentium* 8b.

[10] 1Cor 11:26.

[11] Eb 5:1-5.

[12] Apoc 1:6; 5:9-10; cf. Conc. Vat. II, Cost. dogm. *Lumen Gentium* 10a.

[13] 1Pt 2:9.

[14] 1Pt 2:4-10.

[15] Rm 12:1; cf. At 2:42-47; Eb 13:15; Conc. Vat. II, Cost. dogm. *Lumen Gentium* 10a.

[16] Cf. 1Gv 2:20.27.

[17] 1Tess 2,13.

[18] Giud 3; cf. Conc. Vat. II, Cost. dogm. *Lumen Gentium* 12a.

Tutta la Chiesa partecipa anche nell'esercizio della funzione pastorale o 'reale'. Al 'concilio apostolico' di Gerusalemme la decisione venne presa dagli Apostoli e dai presbiteri 'insieme con la Chiesa intera',[19] anche se non tutti vi parteciparono allo stesso modo.[20]

Già nel popolo d'Israele, alleato del Signore e popolo sacerdotale, vi era una netta differenza tra i sacerdoti, i leviti, e gli altri membri del popolo, come pure tra i re, i profeti e il resto della popolazione. I personaggi che in queste funzioni erano rappresentanti del popolo, non agivano in modo isolato. Da una parte dovevano mantenere vivo il contatto con la gente, dall'altra nei momenti più importanti del loro ministero agivano come personalità corporative: non solo rappresentavano il popolo, ma erano il popolo in persona.[21]

Per tutte e tre le funzioni vale l'osservazione che esse sono proprie di Cristo e di tutta la Chiesa, ma i singoli membri vi partecipano in modi molto diversi, la differenza dei quali risale alla loro diversa condizione sacramentalmente fondata.[22] È palese inoltre nei testi cristiani dei primi secoli che si occupa molto di più della missione degli apostoli e poi dei vescovi, come rappresentanti di Cristo e mandati in un certo modo direttamente da Lui, che della missione comune dei fedeli.[23] Nei primi tempi si è delineato un equilibrio tra carisma ed istituzione. I carismi senza la Chiesa sarebbero altrettanto assurdi e pericolosi quanto

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[19] At 15:22.

[20] At 15:23.

[21] Cf. Notker Füglister, ‚Strukturen der alttestamentlichen Ekklesiologie', *Mysterium Salutis: Grundriss heilsgeschichtlicher Dogmatik*, edd. Johannes Feiner et alii (5 vols. Einsiedeln-Zürich-Köln 1965-1981) 4.1: 87-90.

[22] Cf. Conc. Vat. II, Cost. dogm. *Lumen Gentium* 10b: 'Sacerdotium autem commune fidelium et sacerdotium ministeriale seu hierarchicum, licet essentia et non gradu tantum differant, ad invicem tamen ordinantur'.

[23]Vedi già S. Clemente, *1 Ep. ad Corint.* 44,3; S. Ignazio di Antiochia, *Ep. ad Magn.* 3,1-2; *Ep. ad Trall.* 3,1; *Ep. ad Ephes.* 5,3. Cf. per es. J. T. Forestell, *As Ministers of Christ. The Christological Dimension of Ministry in the New Testament. An exegetical and theological Study* (New York-Mahwah 1991); Péter Erdő, *Le sacré dans la logique interne d'un système juridique. Les fondements théologiques du droit canonique* (Paris 2009) 81-84, n.79.

le funzioni ufficiali senza lo Spirito.[24] Non c'era quindi una tensione insolubile tra il carisma e l'istituzione. La funzione di dirigere un'istituzione costituisce infatti un ministero essendo anch'essa un carisma. Per questo anche i profeti dovevano essere giudicati dalle comunità e dai loro responsabili.[25]

Il funzionamento del presbiterio nei primi tre secoli

Anche se il ruolo del vescovo, dei presbiteri e dei diaconi delle singole Chiese locali mostrava delle differenze non trascurabili, nella prima metà del secolo III si è verificata una uniformazione.[26] Ciononostante il presbiterio si presenta spesso come collegio sin dagli inizi del cristianesimo nelle comunità locali, le quali seguivano sotto questo aspetto certi modelli istituzionali presenti nelle sinagoghe.[27] Ad ogni modo, si può almeno affermare che il collegio dei presbiteri apparteneva alla struttura tipica delle comunità giudeo-cristiane.[28]

Lo Spirito comune del presbiterio: Il carisma, il dono spirituale o lo Spirito del collegio dei presbiteri

Il presbiterio appare per esempio nella *Traditio Apostolica* come collegio i cui membri ricevono uno Spirito comune, lo Spirito del presbiterio, mediante la loro ordinazione. La preghiera dell'ordinazione presbiterale riportata in questo documento pseudo-apostolico chiede, infatti, che il Padre e Dio di Gesù Cristo doni al candidato lo Spirito della grazia, come consigliere del presbiterio, affinchè il nuovo presbitero possa aiutare e

[24] Cf. James Tunstead Burtchaell, *From Synagogue to Church: Public Services and Offices in the earliest Christian Communities* (Cambridge 1992) 344.
[25] Cf. 1Cor 14:29-30.
[26] Cf. per es. Alexandre Faivre, *Ordonner la fraternité: Pouvoir d'innover et retour à l'ordre dans l'Église ancienne* (Paris 1992) 220-222.
[27] Burtchaell, *From Synagogue to Church* 201-227.
[28] Jean Daniélou, *Théologie du Judéo-Christianisme* (Histoire des doctrines chrétiennes avant Nicée 1; Paris 1958) 411-412.

governare il popolo con cuore puro.[29] Lo stesso testo fa riferimento esplicito al racconto biblico[30] in cui Mosè, dietro comando del Signore, sceglie gli anziani che ricevono poi lo Spirito di Dio che era stato già prima conferito a lui.[31] Che cosa comporta il dono di questo Spirito? Se rileggiamo il testo della *Traditio Apostolica* troviamo certe funzioni delle quali si sottolinea che sono proprie ai presbiteri e che i diaconi non possono compiere. Nella parte centrale della celebrazione eucaristica i presbiteri assieme al vescovo, celebrante principale, devono stendere le mani sopra i doni e recitare le parole della preghiera eucaristica.[32] Un'altra funzione importante è di partecipare al consiglio del presbiterio, cosa che i diaconi non possono fare, perché 'non hanno ricevuto lo Spirito del consiglio presbiterale che ricevono solo i presbiteri'.[33]

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[29] *Traditio Apostolica* 7,2. Cf. *La Tradition Apostolique de Saint Hippolyte: Essay de reconstitution*, ed. Bernard Botte (Liturgiewissenschaftliche Quellen und Forschungen 39; Münster 1963-1972) 21. Un'altra ricostruzione del testo con commenti Paul F. Bradshow, Maxwell E. Johnson, L. Edward Phillips, *The Apostolic Tradition: A Commentary*, ed. Harold W. Attridge (Hermeneia series; Minneapolis, MN 2002) 56-57; Alistair Stewart-Sykes, *Hippolytus: On the Apostolic Tradition* (Popular Patristics Series 54; 2nd ed. Crestwood NY 2015) 96 e 102.

[30] Num 11:16-17: 'Il Signore disse a Mosè: Radunami settanta uomini tra gli anziani d'Israele, conosciuti da te come anziani del popolo e come loro scribi; conducili alla tenda del convegno; vi si presentino con te. Io scenderò e parlerò in quel luogo con te; prenderò lo spirito che è su di te per metterlo su di loro, perché portino con te il carico del popolo e tu non lo porti più da solo'.

[31] *Traditio Apostolica* 7,3; una traduzione italiana diffusa dei versetti 7:2-3 dice: 'Dio e Padre di nostro Signore Gesù Cristo, volgi lo sguardo su questo servo qui presente ed infondigli *spirito di grazia e di saggezza sacerdotale*, affinché aiuti e governi il popolo con cuore puro, come volgesti lo sguardo sul popolo da Te eletto e ordinasti a Mosè di scegliere dei presbiteri che riempisti dello stesso spirito che avevi donato al tuo servo': (https://digilander.libero.it./domingo7/Ippolito.htm) (09-07-2019). Per la traduzione del riferimento allo Spirito faremo ancora delle osservazioni.

[32] *Traditio Apostolica* 4:2.

[33] Ibid. 8:3-5: 'Difatti egli [il diacono] non prende parte al consiglio dei presbiteri, ma amministra e segnala al vescovo ciò che è necessario, né riceve lo spirito comune di cui tutti i presbiteri partecipano, ma quello che gli è conferito per potere del vescovo. Per questo soltanto il vescovo ordini il diacono' (https://digilander.libero.it./domingo7/Ippolito.htm) (09-07-2019).

Lo stesso testo racconta che nell'ordinazione di un nuovo presbitero gli altri presbiteri devono imporgli le mani, perché lo Spirito del loro ufficio è comune: 'Sul presbitero devono imporre le mani anche i presbiteri perché godono anch'essi del comune e simile spirito sacerdotale. Infatti il presbitero ha il potere di ricevere, ma non di dare questo spirito, perciò non ordina il clero, ma, nell'ordinazione del presbitero, non fa che esprimere la sua approvazione'.[34] L'imposizione delle mani dei presbiteri che trasmette una grazia speciale è conosciuta già dal Nuovo Testamento. Nella prima lettera a Timoteo si legge infatti: 'Non trascurare il dono spirituale che è in te e che ti è stato conferito, per indicazioni di profeti, con l'imposizione delle mani da parte del collegio dei presbiteri'.[35] Questo dono spirituale viene chiamato altrove 'dono di Dio',[36] ma con riferimento specifico allo Spirito Santo.[37]

Grazia sacramentale, dono speciale di grazia, Spirito Santo: la terminologia e l'apparato concettuale teologico non risultano ancora del tutto stabili nei primi due-tre secoli cristiani riguardo gli effetti dell'ordinazione presbiterale. Ma tutto ciò sembra valere anche per altri contesti, dove si tratta di una protezione divina speciale, di un angelo, dello Spirito o persino dello Spirito Santo come persona divina che assiste una comunità eletta per un ruolo speciale nell'opera della salvezza. Senza soffermarci in questo luogo sui rapporti tra la dottrina sulla Santissima Trinità e l'angelologia,[38] basti far cenno alla figura angelica del 'Guardiano del Tempio'. Secondo la tradizione ebraica, l'angelo custode del Tempio di Gerusalemme ha abbandonato il Tempio

[34] *Traditio Apostolica* 8:6-8; testo italiano: (https://digilander.libero.it./domingo7/Ippolito.htm) (09-07-2019).
[35] 1Tim 4:14.
[36] 2Tim 1:6: 'Per questo motivo ti ricordo di ravvivare il dono di Dio che è in te per l'imposizione delle mie mani'.
[37] 2Tim 1:7: 'Dio infatti non ci ha dato uno Spirito di timidezza, ma di forza, di amore e di saggezza'. At 8:17-18: 'Allora imponevano loro le mani e quelli ricevevano lo Spirito Santo. Simone, vedendo che lo Spirito veniva conferito con l'imposizione delle mani degli apostoli, offrì loro del denaro'.
[38] Cf. per es. già Daniélou, *Théologie du Judéo-Christianisme* 167-196.

dopo la sua distruzione fatta dalle truppe di Tito.[39] I cristiani hanno accolto questa tradizione collegandola con il tema della morte di Cristo. In quel momento, infatti, secondo i vangeli sinottici 'il velo del tempio si squarciò in due da cima a fondo'.[40] Sarebbe stato allora che l'angelo o gli angeli hanno lasciato il Tempio.[41] In un brano, ritenuto interpolato da cristiani, del *Testamento dei XII patriarchi*[42] si legge come profezia che il velo del Tempio sarà strappato e lo Spirito Santo scenderà sulle nazioni come un fuoco che si diffonde. Nella *Didascalia* invece si parla di questo evento come di un fatto compiuto: Dio ha strappato il velo del Tempio, ha abbandonato il santuario, ne ha tolto lo Spirito Santo e l'ha mandato a quelli che sono diventati fedeli tra i pagani. Si è verificata così la profezia di Gioele[43] secondo la quale Dio effonderà il suo Spirito sopra ogni uomo.[44] Va osservato tuttavia che la *Didascalia* non coglie l'intero significato del brano profetico in essa citato, ma ne trasforma il senso. Parla dell'abbandono del popolo eletto e del trasferimento dello Spirito Santo alla Chiesa,[45] mentre il libro di Gioele offre una grandiosa visione del compimento della vocazione del popolo d'Israele dicendo che lo Spirito sarà esteso *anche* sugli altri.[46] È in questo senso originale che il brano profetico viene citato nel discorso di San Pietro il giorno di Pentecoste secondo gli Atti degli Apostoli,[47] dove si dice chiaramente: 'Per voi infatti è la promessa e per i vostri figli e per tutti quelli che sono lontani, quanti ne chiamerà il Signore Dio nostro'.[48] Tale senso originale dell'estensione dello Spirito Santo acquista un'attualità speciale nel discorso teologico dei nostri giorni. Per superare

[39] Iosephus, *Bell.* 6.5.3; Tacitus, *Hist.* 5.3; cf. Daniélou, *Théologie du Judéo-Christianisme* 196.
[40] Mt 27:51; cf. Mc 15:38; Lc 23:45.
[41] Daniélou, *Théologie du Judéo-Christianisme* 196.
[42] *Testamentum Beniamin* 9,3-5.
[43] Gl 3:1.
[44] *Didascalia* 6.5.7.
[45] Ibid.
[46] Gl 3:1-2.
[47] At 2:16-21; cf. Gl 3:1-5.
[48] At 2:39 (con Gl 3:5).

ogni tentazione di gnosticismo o mitologizzazione del cristianesimo, diventa di nuovo necessario ribadire il rapporto strettissimo tra la fede cristiana e la Chiesa di oggi da una parte, e la persona di Gesù di Nazaret di cui opera ed insegnamento possono essere conosciuti con una grande affidabilità dai libri del Nuovo Testamento e dalla tradizione viva della comunità della Chiesa. Il rapporto vitale, però, con la persona storica di Gesù Cristo comporta la necessità dell'approfondimento del valore teologico dell'ebraismo e del rapporto tra la Chiesa e il popolo d'Israele. Come ribadisce giustamente la Commissione per i Rapporti Religiosi con l'Ebraismo secondo la quale il Nuovo Testamento non sostituisce l'Antico Testamento, ma ne comporta la pienezza.[49]

La preghiera di ordinazione presbiterale della Traditio Apostolica *e lo Spirito del presbiterio*

Tornando alla *Traditio Apostolica*, documento dalla storia redazionale tutt'altro che semplice,[50] si ritiene che la preghiera di ordinazione presbiterale in essa riportata presenti notevoli problemi. Nell'introduzione della preghiera si dice infatti: 'Quando si ordina un presbitero, il vescovo gli imponga la mano sul capo, imitato dai presbiteri, e preghi nel modo che abbiamo detto a proposito dell'ordinazione del vescovo'.[51] In realtà il documento offre invece un altro testo per il presbiterato,[52]

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[49] Cf. Commissione per i Rapporti Religiosi con l'Ebraismo, *'Perché i doni e la chiamata di Dio sono irrevocabili'(Rm 11,29) – Riflessioni su questioni teologiche attinenti alle relazioni cattolico-ebraiche in occasione del 50 anniversario di Nostra aetate (n. 4), 10 dicembre 2015* (Città del Vaticano 2015) n. 30-32.

[50] Cf. per es. Bradshaw et alii, *The Apostolic Tradition: A Commentary* XI; Idem, 'Who Wrote the Apostolic Tradition? A Response to Alistair Stewart-Sykes', *St. Vladimir's Theological Quarterly* 48 (2004) 195-206; Alistair Stewart-Sykes, 'Apostolic Tradition', *Encyclopedia of Ancient Christianity*, edd. Angelo Di Berardino et alii (3vols. Downers Grove, IL 2014) 1.199-200; Idem, *Hippolytus: On the Apostolic Tradition* 28-47.

[51] *Traditio Apostolica* 7,1; traduzione italiana: https://digilander.libero.it./domingo7/Ippolito.htm (09-07-2019).

[52] Ibid. 7,2-5.

completamente diverso dalla preghiera prevista per l'episcopato.[53] In questa discrepanza alcuni vedono un segno del fatto che anticamente, cioè prima della redazione della *Traditio Apostolica,* esisteva una sola forma per l'ordinazione dei vescovi e dei presbiteri, la quale doveva essere sostituita per i presbiteri da un testo proprio.[54]

È altrettanto strano che la seconda parte della preghiera richieda lo Spirito non solo per la persona che viene ordinata, ma si esprime in prima persona plurale dicendo: 'E ora fa', o Signore, che non venga mai meno in noi lo spirito della tua grazia e concedici di servirti in semplicità di animo lodandoti per il tuo figlio Gesù Cristo, per il quale hai, Padre e Figlio con lo Spirito Santo nella santa Chiesa, gloria e potenza ora e nei secoli dei secoli. Amen'.[55] Alcuni autori hanno visto in questa formula un segno della convinzione che lo Spirito effuso sul vescovo e sull'intero presbiterio è comune ed ha carattere comunitario.[56] Altri hanno pensato che questo cambiamento a metà della preghiera risalga ad una rielaborazione di un testo antichissimo effettuata al più tardi nei primi decenni del secolo III.[57] Quest'ultima osservazione non esclude tuttavia che l'uso della prima persona del plurale sia un segno dell'idea del carattere comunitario di quel dono spirituale o di quello Spirito che viene conferito nell'ordinazione presbiterale.

Molti ricercatori vedono inoltre un carattere nettamente ebraico in questa preghiera ritenendo il riferimento vetero-testamentario ai settanta anziani un segno dello sfondo

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[53] Ibid. 3:1-5.

[54] Cf. Bradshaw et alii, *The Apostolic Tradition: A Commentary* 55.

[55] Testo italiano: https://digilander.libero.it./domingo7/Ippolito.htm (09-07-2019).

[56] Così per es. Roger Béraudy, 'Le sacrement de l'Ordre d'après la Tradition apostolique d'Hippolyte', *Bulletin du Comité des Études* 38-39 (1962) 350; Joseph Lécuyer, 'Episcopat et presbytérat dans les écrits d'Hippolyte de Rome', *Recherches de science religieuse* 41 (1953) 44; citati in Bradshaw et alii, *The Apostolic Tradition: A Commentary* 58.

[57] Eric Segelberg, 'The Ordination Prayers in Hippolytus', *Studia Patristica* 13 (1975) 403-404; Bradshaw et alii, *The Apostolic Tradition: A Commentary* 58.

rabbinico.[58] Altri, come Gregory Dix, sono andati oltre sospettando, con una certa audacia, dietro questa formula il fatto che le prime comunità giudeo-cristiane fossero governate da un collegio di presbiteri o che la relativa preghiera risalisse ad una prassi ebraica di ordinazione degli anziani della sinagoga.[59] Anche se quest'ultima ipotesi, in mancanza di fonti testuali, non è tuttora provata, sta di fatto che la preghiera è antichissima ed ha una visione legata all'Antico Testamento in relazione allo Spirito concesso da Dio stesso alla comunità dei presbiteri. Questa idea era comunque presente già nella Chiesa nascente, come risulta dal racconto del 'concilio apostolico' di Gerusalemme sopra menzionato. Negli Atti degli Apostoli si legge, infatti: 'Abbiamo deciso, lo Spirito Santo e noi, di non imporvi nessun altro obbligo al di fuori di queste cose necessarie'.[60] I mittenti della lettera sono gli apostoli e *i presbiteri* di Gerusalemme. Era viva quindi la convinzione che il collegio degli anziani agisce con l'assistenza dello Spirito Santo. Tale concezione originale si diversifica poi con lo sviluppo istituzionale. Da una parte con la diffusione dell'episcopato monarchico nasce, al più tardi nella seconda metà del secolo II,[61] l'istituto del concilio. Dall'altra parte si generalizza nelle Chiese locali il presbiterio e si diffonde la coscienza dell'assistenza dello Spirito Santo a questo collegio, specialmente quando esso esercita la sua funzione consultiva o decisionale.

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[58] Pierre-Marie Gy, 'Ancient Ordination Prayers', *Studia Liturgica* 13 (1979) 82 cit. in Bradshaw et alii, *The Apostolic Tradition: A Commentary* 58.

[59] Cf. Gregory Dix, 'The Ministry in the Early Church', *The Apostolic Ministry*, ed. Kenneth Escott Kirk (London 1946) 218; Bradshaw et alii, *The Apostolic Tradition: A Commentary* 58-59.

[60] At 15:28; cf. *Didascalia* 6.12.15.

[61] Eusebius, *Hist. Eccl.* 5.19. Cf. Josef Anton Fischer, 'Die antimontanistischen Synoden des 2./3. Jahrhunderts', AHC 6 (1974) 241–273; Idem, 'Angebliche Synoden des 2. Jahrhunderts', AHC 9 (1977) 241–252; Péter Erdő, *Az ókori egyházfegyelem emlékei. I-IV. század* (Budapest 2018) 26.

Una conseguenza: le azioni collettive del presbiterio nel campo giurisdizionale e consultivo

In base al loro carisma collettivo, i presbiteri esercitano le funzioni giudiziali come collegio, insieme al vescovo, come si legge nella *Didascalia*.[62] Anche un altro documento pseudo-apostolico, la *Constitutio ecclesiastica Apostolorum* (ossia *Canones ecclesiastici sanctorum Apostolorum*), redatto attorno all'anno 300 o persino all'inizio del III secolo e che conserva ricordi disciplinari ancor più antichi,[63] fa cenno a quest'attività giudiziale (o disciplinare) collettiva dei presbiteri.[64] Anche questo sembra del resto un segno di continuità o almeno di collegamento con le istituzioni ebraiche. Nell'ebraismo dell'epoca di Gesù, infatti, gli anziani delle comunità locali, o più precisamente un gruppo più ristretto di essi, almeno tre persone, poteva giudicare delle cause tra i membri della comunità.[65]

I presbiteri giocano un ruolo di consulenza o appaiono come assessori del vescovo anche nella *Didascalia*.[66] Essi sembrano avere collettivamente, non tanto come singoli, anche delle

[62] *Didascalia* 2.46.6; 2.47.1-2.

[63] Cf. Bruno Steimer, *Vertex traditionis: Die Gattung der altchristlichen Kirchenordnungen* (Beihefte zur Zeitschrift für die neutestamentliche Wissenschaft und die Kunde der älteren Kirche 63; Berlin-New York 1992) 60-71; Johannes Mühlsteiger, *Kirchenordnungen. Anfänge kirchlicher Rechtsbildung* (Kanonistische Studien und Texte 50; Berlin 2006) 109-117; Alistair Stewart-Sykes, *The Apostolic Church Order: The Greek Text with Introduction, Translation and Annotation* (Early Christian Studies 10; Strathfield, NSW [Australia] 2006) 75-78; Paul Bradshaw, 'The Apostolic Church Order: The Greek Text with Introduction, Translation and Annotation by Alistair Stewart-Sykes', JTS 60 (2009) 272-274; Hubert Kaufhold, 'Sources of Canon Law in the Eastern Churches', *The History of Byzantine and Eastern Canon Law to 1500*, edd. Wilfried Hartmann, Kenneth Pennington (Washington, D.C. 2012) 241-242.

[64] *Constitutio ecclesiastica Apostolorum* 18:4; cf. Stewart-Sykes, *The Apostolic Church Order* 110-111.

[65] Cf. Lc 7:3; Emil Schürer, *Storia del popolo giudaico al tempo di Gesù Cristo (175 aC-135 dC)*, ed. diretta e riveduta da Géza Vermes, Vergus Millar, Martin Goodman, edizione italiana a cura di Claudio Gianotto (1-3/2 vols.; Brescia 1997) 2.33-237.

[66] *Didascalia* 2.34.3.

funzioni amministrative. Le vedove, infatti, secondo la *Constitutio ecclesiastica Apostolorum* devono curare le donne malate e segnalare ai presbiteri se incontrano qualche necessità.[67]

Si pensa che presbiteri come comunità dovessero avere nel II o all'inizio del III secolo anche un determinato compito di insegnamento dei fedeli nei loro incontri quotidiani, come risulta da un brano della *Traditio Apostolica*.[68]

L'apprezzamento teologico ed istituzionale delle azioni collettive del presbiterio risale certamente ad un'epoca, in cui la distinzione tra l'episcopato e il presbiterato non era ancora ovunque chiara. Può essere un segno di questa mentalità antichissima un testo della *Didascalia* che secondo la traduzione siriaca, effettuata secondo Arthur Vööbus già tra il 300 e il 330,[69] afferma che il vescovo è il capo del collegio dei presbiteri,[70] mentre la traduzione latina antica parla del pastore che sorveglia il presbiterio.[71] Molto più enigmatico, ma forse collegato con il ruolo del presbiterio, è quel brano della *Constitutio ecclesistica Apostolorum*, che conserva memorie—secondo Stewart-Sykes—di molto precedenti alla metà del III secolo.[72] Esso prevede che il vescovo venga eletto 'nel cerchio di dodici uomini', e se nella Chiesa locale il numero non è sufficiente, siano invitati tre uomini dalle Chiese vicine.[73] Si discute tuttavia se il numero di dodici si riferisca al numero degli elettori o a quello dei candidati.[74] Secondo Franz Xaver Funk i dodici uomini richiesti,

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[67] *Constitutio ecclesiastica Apostolorum* 21.2.
[68] *Traditio Apostolica* 39.1-2.
[69] Arthur Vööbus, *The Didascalia Apostolorum in Syriac* (2vols. Corpus Scriptorum Christorum Orientalium 401-402, 407-408; Louvain 1979) 1.27*-28*.
[70] *Didascalia* 2.1.1.
[71] Ibid. cf. Erik Tidner, *Didascaliae apostolorum, Canonum ecclesiasticorum, Traditionis apostolicae versiones latinae* (Texte und Untersuchungen 75; Berlin 1963) 15: 'constituitor in uisitatione presbyterii'. Vedi anche Alistair Stewart-Sykes, *The Didascalia apostolorum: An English version with Introduction and Annotation* (Turnhout 2009) 117-118.
[72] Stewart-Sykes, *The Apostolic Church Order* 108-109.
[73] *Constitutio ecclesiastica Apostolorum* 16.1.
[74] Secondo Stewart-Sykes (*The Apostolic Church Order* 108-109) sia il numero 12 che quello di 3 si riferiscono al numero richiesto dei candidati.

che si suppone che siano presenti nella Chiesa locale, sono gli elettori.[75] Se consideriamo il fatto che la stessa *Constitutio ecclesiastica Apostolorum* fa allusione a ventiquattro (due volte dodici) presbiteri o anziani,[76] mentre la *Didascalia* ribadisce l'analogia tra il collegio dei presbiteri e quello degli apostoli,[77] non sembra escluso che il presbiterio figuri in questo testo come elettorato.

Conclusione

Riassumendo possiamo dire che la sinodalità, nel senso di una proprietà che caratterizza diverse forme istituzionali della cooperazione dei presbiteri e degli altri fedeli nell'esercizio del ministero del vescovo, si riscontra in vari documenti dei primi secoli cristiani. Era viva la convinzione che lo Spirito di Dio era effuso su tutti i fedeli e che si compiva così la profezia di Gioele che prometteva lo Spirito a tutti. Secondo il racconto degli Atti degli Apostoli, già San Pietro affermava ciò nel suo discorso di Pentecoste.[78] Alcuni testimoni della visione teologica e della disciplina dei primi secoli, come la *Didascalia*, esprimono la convinzione che lo Spirito, prima collegato con il Tempio di Gerusalemme è sceso sulla Chiesa, anche sui suoi membri provenienti dalle nazioni pagane. Tale fatto si presenta come base teologica della possibilità di tutta la comunità di partecipare all'esercizio di varie funzioni della Chiesa stessa. Le forme istituzionali di tale partecipazione non sono però chiare. A proposito del cosiddetto 'concilio apostolico di Gerusalemme' leggiamo di una certa partecipazione di tutta la Chiesa locale nella consultazione e forse anche nella decisione riguardo le

[75] Franz Xaver Funk, *Doctrina duodecim Apostolorum, Canones Apostolorum ecclesiastici ac reliquae doctrinae de duabus viis expositiones veteres* (Tübingen 1887) 60.
[76] *Constitutio ecclesiastica Apostolorum* 17.2 (o 18.1 – secondo l'edizione di Funk); cf. Apoc 4,4.10.
[77] *Didascalia* 2.26.7. Cf. Ignat., *Magn.* 6,1.
[78] At 2:17. Cf. At 11:15-18 (lo Spirito Santo era sceso sui pagani divenuti fedeli di Cristo).

condizioni di ammissione dei pagani nella Chiesa.[79] Le forme di questa partecipazione non vengono però chiarite.

Molto più concreto è il ruolo del presbiterio. I presbiteri ricevono con l'ordinazione un dono collettivo di Spirito ossia lo Spirito del presbiterio. In forza di questo Spirito possono concelebrare l'eucaristia con il vescovo, inizialmente in gruppo. Possono partecipare all'attività giudiziale del vescovo collettivamente e anche amministrare i beni della Chiesa. Sembra che abbiano avuto almeno in alcune Chiese locali il ruolo collettivo di spiegare le sacre scritture ai fedeli nelle loro assemblee quotidiane. In virtù di questa partecipazione allo Spirito del presbiterio, che hanno ottenuto nell'ordinazione, essi potevano stendere le mani sui presbiteri ordinati dal vescovo, ma secondo la visione tipica per il secolo III, loro non hanno 'concelebrato' l'ordinazione stessa. In base ad alcuni testi non del tutto chiari si può supporre che essi avessero un ruolo come collegio nell'elezione del nuovo vescovo. Tale funzione è stata stabilita con una certa probabilità dopo il sistema di nomina del capo della comunità locale fatta dagli apostoli, ma prima della diffusione del modello di elezione compiuto dai vescovi vicini o della stessa provincia.[80] Quando le fonti parlano di elezione del vescovo da parte di 'tutto il popolo', fanno spesso menzione speciale del presbiterio.[81]

Un'altra funzione comune o collegiale del presbiterio sembra che sia stata l'amministrazione dei beni[82] o una partecipazione in essa, con speciale riguardo alle opere di beneficenza. Anche se in

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[79] At 15:22.

[80] Cf. Conc. Nicaen. (325), c. 4. Il canone si riferisce, secondo Pierre-Periclès Joannou, *Les canons des Conciles Oecuméniques* (Idem, *Discipline générale antique, IV^e^–IX^e^ s.* vol. 1.1; Pontificia Commissione per la redazione del Codice di diritto canonico orientale, Fonti, Fasc. IX; Grottaferrata 1962) 26 sia all'elezione che alla consacrazione del nuovo vescovo. Vedi anche Conc. Nicaen. (325) c. 6.

[81] Per es. *Traditio Apostolica* 2.1-3.

[82] Per es. *Canones Apostolici* 4 (5). Nel secolo IV i presbiteri avevano già un ruolo speciale nella salvaguardia dei beni della Chiesa durante la vacanza della sede episcopale, ma anche *sede plena*, cf. Conc. Antioch. (ca. 330), cc. 24-25.

questo campo prevale il ruolo del vescovo e dei diaconi, si trovano dei riferimenti al dovere delle vedove o persino dei diaconi[83] di informare i presbiteri della loro attività.

Certe funzioni e persino la stessa configurazione istituzionale del collegio presbiterale sembrano risalire all'organizzazione delle comunità sinagogali. Il valore teologico del presbiterio proviene dal dono speciale dello Spirito che agisce nel collegio e che rappresenta una manifestazione del tutto particolare della presenza dello Spirito Santo nella Chiesa di Cristo.

Budapest.

[83] Cf. Conc. Arelat. (314), c.18; Jean Gaudemet, *Conciles Gaulois du IV^e^ siècle* (Sources Chrétiennes 241; Paris 1977) 55 nt.7 fa riferire questo canone alle questioni di precedenza.Vedi già Ignat., *Magn.* 2,1.

Continuing Carolingian Reform in the late Ninth Century: The *Paenitentiale Trecense*

Rob Meens, Lenneke van Raaij, Carine van Rhijn

In the Carolingian kingdoms penance was an important aspect of life.[1] Penitential principals and procedures were heavily debated in ecclesiastical councils and penitential rituals functioned as a focus for political discussions and actions on the highest level, as the two cases in which Louis the Pious did public penance clearly demonstrate. The importance of the theme of penance was such that historians refer to Louis's reign as 'the penitential state'.[2] The Carolingian era also saw a bustling activity in the composition of penitential handbooks that were meant to instruct confessors on how to deal with sinners in a new way. These new Carolingian creations were far from homogeneous, but they all display a clear interest in the authorities providing legitimization for the rulings they offer to the confessor on how to deal with his confessing subjects. In the year 813 the council of Chalon-sur-Saône ruled that: 'we should repudiate and eliminate totally those booklets they call penitentials, of which the errors are as certain as the authors are uncertain'.[3] This canon can be seen as a token that the authority of penitential rulings was a matter of great concern, although the council of Chalon-sur-Saône represented only one voice in a choir of polyphone singers, and other councils adopted different positions on this matter.[4] As a result of these concerns

[1] On penance in the Carolingian kingdoms, see: Rob Meens, *Penance in Medieval Europe* (Cambridge 2014) 101-139; Abigail Firey, *A Contrite Heart: Prosecution and Redemption in the Carolingian Empire* (Studies in Medieval and Reformation Traditions 145; Leiden-Boston 2009); Daniel Bachrach, 'Confession in the Regnum Francorum (742-900)', JEH 54 (2003) 3-22; for a minimalist view of the importance of penance, see Alexander Murray, *Conscience and Authority in the Medieval Church* (Oxford 2015) esp. 5-16 and 17-48.

[2] Mayke de Jong, *The Penitential State: Authority and Atonement in the Age of Louis the Pious, 814-840* (Cambridge 2009).

[3] Council of Chalon 813 c.38 MGH Conc. 1.281: 'Repudiatis ac penitus eliminatis libellis, quos paenitentiales vocant, quorum sunt certi errores, incerti auctores'.

[4] Meens, *Penance in Medieval Europe* 111-123.

influential scholars such as Halitgar of Cambrai and Hrabanus Maurus composed new penitential handbooks for the clergy, that should live up to the expectations as they were expressed in reforming circles. Canonical collections such as the *Collectio Dacheriana* (ca. 800) also provided a range of rulings that proved a valuable tool for judging penitents.[5]

At the council of Tours in 813 the bishops decided that to remedy the situation in which the great variety of penitential decisions hampered proper penitential judgments, an episcopal assembly should meet at the sacred palace to decide what would be the right penitential book to be used in the empire. This proposition did not come to fruition. No decision was ever pronounced on the proper penitential book to be prescribed throughout the empire. A number of penitentials were composed, however, that responded to the criticism of the Carolingian bishops. Yet, they all came up with different conclusions. Although grounded in a number of authoritative basic texts, variety was still the rule. One manuscript, now kept in Troyes, Médiathèque de Troyes Champagne Métropole 1979, contains no less than three penitential books that in their own way tried to respond to the episcopal criticism of penitential books. This codex contains book one of the penitential of Halitgar of Cambrai, which was composed at the behest of Archbishop Ebo of Reims. Ebo had invited the bishop of Cambrai to compose a text in order to remedy a situation 'in which the judgments of the penitents were confused, diverse and contradictory in the little works that our priests use and which are not founded on anyone's authority'.[6] Ebo clearly subscribed to the criticisms formulated in Chalon-sur-Saône regarding penitential books and regarded the sayings of the fathers and the judgments of the canons as the proper foundation for penitential judgments. Furthermore, the Troyes manuscript contains the so-called penitential of Pseudo-Theodore. This text, composed in the north-eastern regions of the Frankish empire, possibly

[5] Ibid. 119-120.

[6] Letter of Ebo to Hrabanus, MGH Epp. 5.617: 'et hoc est quod in hac re me valde sollicitat quod ita confusa sunt iudicia paenitentum in presbyterorum nostrorum opusculis atque ita diversa et inter se discrepantia ut nullius auctoritate suffulta ut vix propter dissonantiam possint discerni'.

somewhere in the area between Reims and Mainz in the second quarter of the ninth century, clearly dates from a region and a period in which the criticism of penitential books was well-known. It has therefore sometimes been included among the group penitential books inspired by new Carolingian thinking about penance, although this is not so evident from its text or the choices of source material.[7] A third penitential book included in the Troyes manuscript was already observed by Raymund Kottje when he studied the manuscript tradition of Halitgar's penitential, but it has hitherto never been edited or analysed.[8] In this contribution we will offer an analysis as well as an edition of this text, that in its own way tried to respond to the criticism of penitential books as it was expressed in the early ninth century.

The Manuscript

Manuscript Troyes, Médiathèque de Troyes Champagne Métropole 1979 is an intriguing one. It is hard to date palaeographically, but most scholars agree on dating it in the late tenth or the early eleventh century and localizing it in the region of the Western parts of Germany or the Eastern parts of France.[9] Susan Keefe suspects that we are dealing with 'a copy of a Carolingian codex in (its) entirety'.[10] The

[7] See the introduction to the edition by Carine van Rhijn, *Paenitentiale Pseudo-Theodori* (CCL 156B; Turnhout 2009) xvii-xx.

[8] Raymund Kottje, *Die Bussbücher Halitgars von Cambrai und des Hrabanus Maurus: Ihre Überlieferung und ihre Quellen* (Beiträge zur Geschichte und Quellenkunde des Mittelalters 8; Berlin-New York 1980) 64.

[9] For dating and localisation of the manuscript see Pokorny, MGH Capit. Ep. III 167: s. XI/1; Hubert Mordek, *Bibliotheca capitularium regum Francorum manuscripta. Überlieferung und Traditionszusammenhang der fränkischen Herrschererlasse* (MGH Hilfsmittel 15; München 1995) 739: s. XI/1; edd. Hubert Mordek, Klaus Zechiel-Eckes and Michael Glatthaar, *Die Admonitio Generalis Karls des Grossen* (MGH Fontes antiqui 16; Hannover 2012) 71: s.XI/1; Kottje, *Bussbücher* 63: s. X/XI;, 2 vols. (2 vols. Notre Dame 2002) 2.640: s.X/XI. Susan A. Keefe, *Water and the Word: Baptism and the Education of the Clergy in the Carolingian Empire* (2 vols. Notre Dame 2002) 2.640: s.X/XI.

[10] Susan A. Keefe, *A Catalogue of Works Pertaining to the Explanation of the Creed in Carolingian Manuscripts* (Instrumenta patristica et mediaevalia 63; Turnhout 2012) 15.

manuscript is rather small, measuring 14 by 10 centimetres, resembling a modern-day pocket book. Its contents are neatly summarized by a note on the second folio: 'In hoc volumine contigentur libri catholicae fidei et ecclesiasticorum docmatum (sic) ac officiorum canonum quoque atque poenitentialium'. It does indeed contain mainly texts concerning the creed, canon law material and penitential books.

Because of its miscellaneous nature, the contents of the manuscript have never been fully described or analysed. It contains among other texts, a commentary on the creed (fol. 2r-13r), the *Liber de ecclesiasticis disciplinis* by Gennadius of Marseille (fol. 13v-30r), the *De fide* of Bachiarius (fol. 30r-35r) and the *Liber de divinis officiis* of Pseudo-Alcuin (fol. 44-157v). It further contains a canon law collection that is known as the *Collection in 234 chapters* (fol. 158r-243v), a collection that still awaits an edition. This collection is dated to the tenth century and originated probably in Lotharingia.[11] It includes material taken from the *Collectio Dacheriana*, as well as from Carolingian episcopal statutes: chapter 226 of this collection includes the text of the *Admonitio Generalis*, the programmatic capitulary of 789 in which Charlemagne offered a blueprint for a Christian Frankish society. The *Admonitio* is here presented in a version that is, according to the editors of this text (Glatthaar, Zechiel-Eckes and Mordek), 'einer der besten Textzeugen der Admonitio', and must have been based on an exemplar, that was very close to the original.[12] After this collection the manuscript contains the three penitential books that we already introduced. In this penitential part some related material is included as well, such as a letter of Hrabanus Maurus discussing several topics related to penance, the Responsiones 7 and 8 of the *Libellus Responsionum* of Gregory the Great, a text often found in relation to penitential books, as well as liturgical and educational material related to penance.[13]

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[11] Kéry 186; Wilfried Hartmann, *Kirche und Kirchenrecht um 900: Die Bedeutung der spätkarolingischen Zeit für Tradition und Innovation im kirchlichen Recht* (MGH Schriften 58; Hannover 2008) 288.

[12] *Die Admonitio Generalis Karls des Grossen* 101-102.

[13] For the letter of Hrabanus (letter 41), see Bart van Hees and Rob Meens, 'Ein Brief 'über diejenigen, die sich an Tieren vergehen'. Zwei

The manuscript contains a kind of compendium of basic Christian knowledge concerning the major tenets of Christian belief, ecclesiastical discipline and the correction of sinners that would suit a well-educated cleric or a bishop. Its small size suggests a practical use.[14] The fact that the first and last folios of many quires show traces of wear, indicates that the manuscript may have remained unbound for quite a while. It is harder to establish for which practical use (or uses) the manuscript has been put together. Susan Keefe proposed that it was meant 'to prepare a cleric for ordination'.[15] According to Wilfrid Hartmann it might have served a bishop travelling through his diocese.[16]

The Paenitentiale Trecense

We propose to name the unnamed penitential in the Troyes manuscript the *Paenitentiale Trecense*, after the place where its only known manuscript survives. It is hard to establish the precise contents of the text, because it is unclear where it starts and where it ends.[17] Some of the material preceding the *Paenitentiale Trecense* may have originally belonged to the penitential. Van Rhijn has edited the corpus of texts that is found between the Pseudo-Theodore penitential and the *Paenitentiale Trecense*, suggesting that these texts were part of the penitential of Pseudo-Theodore.[18] Often, a penitential was transmitted with additional canonical material. In this

unbeachtete Textzeugen von Hrabanus Maurus, Epistola 41', DA 74 (2018) 687-696; the responsiones of Gregory the Great have been edited in Van Rhijn, *Paenitentiale Pseudo-Theodori*, 158-164. See also *Rescriptum Beati Gregorii Papae ad Augustinum episcopum quem Saxoniam in praedicatione direxerat seu Libellus responsionum*, ed. Valeria Mattaloni (Edizione nazionale dei testi mediolatini d'Italia 43; Florence 2017) 42-43 and 53; for a more detailed discussion of their connection to penitential books, see Rob Meens, 'Ritual Purity and the Influence of Gregory the Great in the early Middle Ages', *Unity and Diversity in the Church*, ed. R. Swanson (Studies in Church History 32; Oxford 1996) 31-43.

[14] Kottje, *Bussbücher* 64.

[15] Keefe, C*atalogue* 353.

[16] See the cautious arguments in Hartmann, *Kirche und Kirchenrecht* 309.

[17] See for this problem Van Rhijn, *Paenitentiale Pseudo-Theodori* XXVI-XXX.

[18] Ibid. Appendix II 155-171.

case, it concerns a text of unknown origin detailing the way in which a killer should fast for seven years, the letter of Hrabanus Maurus concerning killing and sexual intercourse with animals, and the *responsiones* of Gregory the Great dealing with ritual purity. Particularly Gregory's *responsiones* are often transmitted at the end of penitential books.[19] Yet on fol. 309v a heading entitled 'Qualiter episcopi vel presbiteri suscipere debeant penitentem', seems to announce a new text. With this heading a liturgical ordo starts instructing a confessor how to deal with a penitent sinner. It seems more plausible to regard this ordo as belonging to the subsequent text, as many penitential books start with such a liturgical instruction and it is much less normal to find them at the end of a text. Therefore, we will edit the ordo as belonging to the *Trecense* penitential.

After this liturgical instruction we find a *capitulatio* numbering the penitential canons that follow. This 'table of contents' seems to have ended at canon 49; the last part of which is written in a crammed way in the lower margin and part of the text has been lost because the manuscript at some point has been trimmed. The next folio (fol. 314) is inserted, as its smaller size indicates, and starts with chapter 50 reading 'Incipiunt questiones alcuini de sancta trinitate', thus apparently introducing a new text, although continuing the numbering of the penitential. It concerns a text written by Alcuin, but the Troyes version is substantially longer than the text as it is known.[20] Although Alcuin's text is numbered as if

[19] See *Rescriptum Beati Gregorii* 42-43; apparently the manuscripts Vienna, ÖNB lat 2195 and Prague, Archiv Pražkého hradu O.83 (the so-called Prague Sacramentary) with a combination of the *Libellus* and two versions of the penitential of Theodore, escaped the attention of the editor. See for a brief discussion, Rob Meens,'The authority of Gregory the Great: Marriage and Politics in Bavaria in the Eighth Century as Exemplified in the "Gregorian Part" of the Prague Sacramentary', *The Prague Sacramentary: Culture, Religion and Politics in Late Eighth-Century Bavaria*, edd. Maximilian Diesenberger, Rob Meens, H.G. Els Rose (Cultural Encounters in Late Antiquity and the Middle Ages 21; Turnhout 2016) 163-180, at 170-175.

[20] This is Alcuin, *Quaestiones de Sancta Trinitate*, edd. Eric Knibbs and E. Ann Mater, *Alcuini Eboracensis, De fide sanctae trinitatis et de incarnatione Christi; Quaestiones de sancta trinitate* (CCCM 249; Turnhout 2012), pp. 149-162. The Troyes manuscript lacks the preface and starts directly with interrogatio 1 and continues until fol. 327v with

it were part of the penitential, the fact that the numbering was added on an inserted leaf, indicates that it originally was not. For this reason we do not consider this text a part of the penitential. That it is not so surprising to encounter this work in this context, is indicated by the fact that in a Paris manuscript Alcuin's text is transmitted in close association with Halitgar's penitential and synodal legislation.[21]

After the liturgical ordo and the *capitulatio*, the penitential canons start on f. 315r with the penance assigned for several forms of manslaughter, which clearly formed one of the central points of interest of this work. It discusses killing a priest, the case of shared responsibility when a person was killed by a number of assailants, killing through magical means, the killing of unfree dependents, the case of someone who killed in a state of madness (insaniens), and several forms of abortion and infanticide (cc.1-9). Other important topics were clearly marriage and adultery, which are amply discussed (cc.10-17). From adultery a canon discussing the usage of magical means to obtain a man's love, leads into a discussion of magical arts (cc.18-20, and 28-29). Marriage was also of central concern in the judgments regarding the sexual purity of virgins, incestuous relations, breaking marital vows and marriage without parental consent (raptus) (cc.21-27 and 34). A number of rather isolated cases concerning eating with Jews, the treatment of people fleeing from their country or king, harassment of the clergy, obstinate feuding parties, perjury and theft, follow (cc.30-36), before the penitential ends with a long section discussing the intricacies of the imposition of penance (cc.37-49). The penitential therefore does not deal in any detail with sexual sins, except when these are related to adultery or marrying within forbidden degrees of kinship. In contrast to many other works of this kind there is no detailed discussion of the

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the text as edited (until interrogatio 28), but contains more questions and answers than the edition. It has not been used for the edition.

[21] Paris, BNF, lat. 8508 (s.IX ex., South East France); see Rudolf Pokorny ed. MGH Cap. Ep. 3 (Hannover 1995)50 and Wilfried Hartmann, 'Neue Texte zur bischöflichen Reformgesetzgebung aus den Jahren 829-31: Vier Diözesansynoden Halitgars von Cambrai', DA 35 (1979) 368-394, at 375.

proper forms or periods of sexual conduct within marriage.[22] Food regulations are also conspicuously absent, except for the regulation concerning eating together with Jews. The main topics of the text concern violence, marriage, forms of divination and the proper way of dealing with sinners. Since the penitential does not deal with a number of sins that are rather common in other texts of this sort, such as sexual sins or forms of improper religious behaviour, we should perhaps best regard it as being meant to serve as a complement to an existing penitential handbook.[23] It might be no coincidence, that it is found in the Troyes manuscript together with two other works of this kind.

Sources

Since the penitential is anonymous, the sources that were being employed in its composition provide the only clue to establish the circumstances in which it originated. Identifying the texts that the compiler used enables us to determine when, where and why this particular work might have been composed. Since all clauses of this penitential can be identified, except for a small part of c.36, it becomes clear that the author did not compose new sentences, but chose to stick to established authorities. This attitude is related to the Carolingian worries about divergent sentences and the lack of proper authority, as the citation of canon 38 of the council of Chalon-sur Saône of 813 in chapter 29 confirms. By citing this canon condemning unauthoritative penitential books, our author subscribed to the criticisms of penitential rulings that the bishops assembled in Chalon-sur Saône expressed. It is interesting that the compiler did not deem it necessary to make his identity known, at least it is not transmitted in the only manuscript preserving this text. It was the authority of the sources being used that counted, not the authority of a

[22] For which see James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago 1987) 152-169 and Pierre J. Payer, *Sex and the Penitentials: The Development of a Sexual Code, 550-1150* (Toronto 1984).

[23] For a similar text, see Rob Meens, '"Aliud Benitenciale": The ninth-century *Paenitentiale Vindobonense C*', *Mediaeval Studies* 66 (2004) 1-26.

compiler of a penitential handbook. Although the compiler took great care to employ texts of an impeccable authority, as we will see, he or she apparently felt no need to explicitly identify these sources, although at some point he refers to councils of Mainz, Toledo or the penitential rulings of Theodore of Canterbury.[24] This contrasts, for example, with the ninth-century *Paenitentiale Vallicellianum I*, that took great care to provide traditional clauses with a respectable canonical pedigree.[25]

The liturgical *ordo* with which the text starts, demonstrates many similarities to the ordo of a penitential belonging to the group of texts that were attributed to Bede the Venerable and Egbert of York. The attribution of these works to these famous Anglo-Saxon ecclesiastical authorities, is still a matter of some debate: at this point only the authorship of Egbert has some support.[26] In one member of this family of texts we encounter an ordo that closely resembles the liturgical instruction found in the *Trecense*. It concerns the *Paenitentiale mixtum* which embodies the last stage in which the penitentials attributed to Egbert and Bede were combined into a single handbook.[27] Within the manuscripts of the *Paenitentiale mixtum* there is some variation in the specific texts included in the *ordo*, that was carefully charted by Reinhold Haggenmüller. Hagenmüller distinguishes two groups, a northern and a southern one. In the northern group only two out of four manuscripts contain the liturgical ordo.[28]

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[24] See, for example, cc.18, 23, 30 and 34. It is certainly possible that the compiler of the Trecense was a woman. Yet we will henceforward refer to the compiler as 'he'.

[25] For which see Günter Hägele, *Das Paenitentiale Vallicellianum I: Ein oberitalienischer Zweig der frühmittelalterlichen kontinentalen Bußbücher: Überlieferung, Verbreitung und Quellen* (Quellen und Forschungen zum Recht im Mittelalter, 3 (Sigmaringen 1984) 76-81; see Meens, *Penance in Medieval Europe* 136-137.

[26] Meens, *Penance in Medieval Europe* 96-97.

[27] These texts have been investigated by Reinhold Haggenmüller, *Die Überlieferung der Beda und Egbert zugeschriebenen Bussbücher* (Europäische Hochschulschriften Reihe 3, Geschichte und ihre Hilfswissenschaften 461; Frankfurt 1991). For the *Paenitentiale mixtum* 246-273.

[28] The northern group consist of the following manuscripts: Düsseldorf, UB 113; Münster, Staatsarchiv, VII 5201; Cologne, Dombibliothek, 118; and Châlon en Champagne, BM 32; only the Düsseldorf and the Münster

The most striking feature of the southern group is the long list of questions to be put to the sinner.[29] The ordo of the *Trecense* contains the same preparatory prayers for the priest confessor and the same general interrogation of the penitent sinner focussing on his understanding of the main principles of Christian belief that we find in representatives of both groups. It also incorporates a long set of questions to be presented to the confessing person, that is unique to the southern group. In the last section of the ordo, containing a number of prayers, the manuscripts of the *Paenitentiale mixtum* demonstrate more variety. The *Trecense* includes four prayers that are found in the context of the *mixtum* manuscripts, and adds four others, three of which are found in Gregorian and Gelasian sacramentaries.[30] It is remarkable that the *Trecense* here includes four prayers that are only found in the northern group, and exactly in the same order. Its source, therefore, seems to have been a manuscript containing the ordo of the *Paenitentiale mixtum* which included not only the long interrogatory section that is exclusively found in the southern group, but also four prayers that are now only transmitted through two members of the northern group.

That the compiler of the *Trecense* did adhere to the ideal according to which penitential canons of dubious authority should be discarded in favour of approved authoritative texts, is demonstrated by his choice of sources. The main sources that were used are all authoritative Carolingian works related to the reforms. One of these sources is the *Collectio Dacheriana*, perhaps the most important Carolingian canonical collection, possibly composed by Agobard of Lyon. From this authoritative collection our compiler drew most of his conciliar canons.[31] Moreover, our compiler employed the

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manuscript contain the penitential ordo, see Haggenmüller**,** *Überlieferung* 247 and 258.

[29] Haggenmüller, *Überlieferung* 253-258. The manuscripts of this southern group are: Munich, BSB 3851; Munich, BSB 3853; Heiligenkreuz, SB 217; and Paris, BNF lat. 3878, see ibidem 47.

[30] The first four prayers are found in the mixtum manuscripts: 'Exaudi Domine preces nostras; Presta Domine ut huic famulo tuo; Maiestatem tuam, quaesumus, Domine; Omnipotens sempiterne Deus'; see Haggenmüller, *Überlieferung* 256-257.

[31] Unfortunately we still have to rely on the edition published in the eighteenth century by Luc d'Achery and L.-F.-J. de la Barre, *Spicilegium*

influential reform penitential composed by Halitgar of Cambrai.[32] Since Halitgar also drew on the *Collectio Dacheriana* for many of his canons, it is sometimes difficult to distinguish whether the compiler of the *Trecense* used Halitgar or the *Collectio Dacheriana*.[33] Given the fact that neither of these works is available in a modern edition, this is at the moment impossible to establish with any certainty, but since we can show that the compiler had access to both works, it is perhaps less pressing to try to solve this problem. Since the *Trecense* cites conciliar canons that are not found in Halitgar's work, he must have had access to both texts.

The *Trecense* not only used the penitential that Halitgar of Cambrai had composed in response to the criticism aired at existing penitential works during Carolingian councils, he also drew on another penitential book composed to remedy this situation. Hrabanus Maurus, abbot of Fulda and archbishop of Mainz, composed two major reform penitentials, one for archbishop Otgar of Mainz written in or shortly after 841 and the second one for Heribald, bishop of Auxerre, written more than a decade later, between 853 and 856.[34] Only in one case there is a parallel between the *Trecense* text and the penitential for Otgar, but the same clause appears also in the work for Heribald. Since in at least five other instances the Paenitentiale ad Heribaldum is clearly used, it seems safe to conclude that the compiler of our

sive collectio veterum aliquot scriptorum qui in Galliae bibliothecis delituerant (Paris 1723) 509-564. A scholarly edition of this immensely important text, is still a desideratum.

[32] Halitgar's penitential is edited as *Paenitentiale Halitgarii Cameracensis*, PL 105.651-710. It has been analysed in great detail by Kottje, *Bussbücher*; for book VI we use the edition in Hermann J. Schmitz, *Die Bussbücher und das kanonische Bussverfahren nach handschriftlichen Quellen* (Düsseldorf 1898, reprinted Graz 1958) 290-300, because the numbering of the individual clauses makes it easier to consult.

[33] For Halitgar's use of the *Collectio Dacheriana* ibidem 181-183.

[34] Hrabanus Maurus, *Paenitentiale ad Otgarium* PL 112.1397-1424 and his *Paenitentiale ad Heribaldum* PL 110.467-494. Again these works are analysed by Kottje, *Bussbücher*.

Troyes penitential used only this penitential, which was also the most influential of Hrabanus's penitential texts.[35]

Our compiler only once cited a canon from a penitential book that might be suspicious for a Carolingian reformer. In c.9 where the text deals with women who had killed their child to hide their fornication, it cites a clause from the *mixtum* penitential associated with Bede and Egbert, that was, as we have seen, also the source for the penitential ordo at the beginning of our text.[36] Now these rulings are not based on authoritative conciliar decisions that our compiler favoured so much, but go back to traditional collections of penitential judgements. In the early tenth century, however, Regino of Prüm included Bede among the respected authorities he could rely on.[37] It seems, therefore, that our compiler would subscribe to Regino's judgment, although perhaps not completely, since this is the only instance where he fell back on this text.

Apart from these important collections of penitential rulings, our compiler also used a piece of secular legislation. In chapter 24 he included the two first clauses of a capitulary issued by the Carolingian king Pippin I shortly after he had become the first king of a new dynasty (751-755). These clauses deal with incestuous relations, a topic of major concern for the new Carolingian ruler.[38] The inclusion of this secular legislation in a penitential is remarkable, but not inexplicable. In two early manuscripts these clauses on incest are transmitted in a collection of canonical material.[39] Moreover, they are found in a number of manuscripts that contain a collection of texts that reflect similar concerns as those of the compiler of the *Trecense*, as will be discussed

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[35] The *P. ad Heribaldum* is used clearly as the source of cc.18, 19, 20, 23, 30. For the greater popularity of the work written for Heribald, see Kottje, *Bussbücher* 139 and 252.

[36] *P. mixtum Bedae-Egberti* c.39.1, ed. Wasserschleben, *Bussordnungen* 274.

[37] Meens, *Penance in Medieval Europe* 142.

[38] Karl Ubl, *Inzestverbot und Gesetzgebung: Die Konstruktion eines Verbrechens (300-1100)* (Millennium-Studien 20; Berlin-New York 2008) 261-264.

[39] Gotha, Forschungsbibliothek, Memb. I 85 (Upper Alsace s. X) and Vatican, BAV, Pal. lat. 574 (upper Rhine region, s. VIII/IX) , see Mordek, *Bibliotheca Capitularium* 150 and 772.

below. We encounter them in Munich, Bayerische Staatsbibliothek lat. 3853 (s. X 2/2, Augsburg?) and Heiligenkreuz, Stiftsbibliothek 217 (s. X ex., Southeast Germany), two manuscripts that demonstrate an interest in the same set of sources as those employed in the *Trecense*.[40] Pippin's regulations on incest, therefore, circulated in collections containing canonical material or a combination of such material with secular legislation, which would explain how they ended up in our penitential.

The *Trecense* also cited two councils convening early in the second half of the ninth century. In two instances it cited the council of Mainz of the year 852, a council convening under the authority of Hrabanus Maurus.[41] To a much greater extent our compiler made use of the council of Worms of the year 868. At this council the majority of the bishops of the East Frankish kingdom assembled under the authority of king Louis the German and under the presidency of three archbishops, Adalwin of Salzburg, Liutbert of Mainz and Rimbert of Bremen, they produced an influential corpus of legislation.[42] It is the source of no less than nine clauses of our penitential, and thus one of its main sources.[43]

The decisions of the council of Worms were widely distributed, as not only the many manuscripts containing this text demonstrate, but as is also clear from the wide reception that canons of this council received in later works, for example in the work of Regino of Prüm, Burchard of Worms, Ivo of Chartres and other canon law compilations.[44] It is striking that our penitential starts with a canon that was issued

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[40] For the connection between these manuscripts and the *Trecense*, see below 31. For the inclusion of these canons in the Heiligenkreuz (fol. 279r-279v) and Munich manuscript (fol. 259r-259v), see Mordek, *Bibliotheca Capitularium* 166 and 297

[41] *P. Trecense* 2 and 7. Interestingly c.9 of the Mainz council (=*Trecense* 7) was added to the mixtum penitential in Munich, BSB lat. 3853, on fol.28v and 29r, as well as to another text of the group of penitentials attributed to Bede and Egbert, the so-called *Paenitentiale additivum* in Prague, Statni Knihovna, Tepla 1, pp. 33-36; see Haggenmüller, *Überlieferung* 272-273.

[42] Ed. MGH Conc. IV, pp. 246-311. For this council see W. Hartmann, *Das Konzil von Worms 868. Überlieferung und Bedeutung* (Göttingen 1977).

[43] *P. Trecense*, c.1, 6, 8, 21, 27, 31-33 and 37.

[44] See Hartmann, *Das Konzil von Worms*.

at the Worms council, although in this particular case our compiler does not seem to have used canon 16 of the council, that he must have known, but instead resorted to the papal letter of Nicolas I, on which the decision in Worms was based, as the following comparison demonstrates:

Trecense	*Letter 155 of Pope Nicolas*	*Council of Worms*
Qui sacerdotem voluntarie occiderit vel morte tradiderit **vel parricidium** fecerit **perpetravit omnibus diebus vitae suae carnem non comedat**.	Qui sacerdotem morti voluntate tradiderit **vel parricidium perpetraverit, omnibus diebus vitae suae carnem non comedat.**[45]	Qui sacerdotem morti voluntate tradiderit, carnem non comedat, nec vinum bibere praesumat.[46]

The council of Worms is the most recent text quoted in the *Trecense* penitential thus providing a firm terminus post quem for our text. It has to be written after the year 868.

Context

The date of composition of the manuscript provides the *terminus ante quem* for our text. As mentioned above, it was possibly written in the tenth century, but an early eleventh century date of origin is also possible. Therefore, we can conclude that the *Paenitentiale Trecense* was certainly written sometime between 868 and the early eleventh century. Can we narrow this down further? If Keefe is right and we are dealing with a copy of a (late) Carolingian manuscript, the penitential could be late ninth century. Manuscripts with a similar character and containing some of the same content as our Troyes codex were copied in the eleventh century on the basis of a late Carolingian exemplar, so Keefe's intimation might be correct, although there is no way to prove her assumption.[47]

[45] Nicolas I, Letter 155, ed. MGH Ep. 6.670.
[46] Council of Worms, c.16, ed. MGH Conc. 4.270.
[47] See, e.g. Heiligenkreuz, 217 (s. X ex, Southern Germany); Munich, BSB lat. 3853 (s. X/2, Augsburg?); Paris, BNF lat. 3878 (s. X/XI, Southern Germany); for dates and description of the contents, see Mordek, *Bibliotheca Capitularium* 158-172, 287-305 and 444-451.

One could argue that the fact that the compiler made no use of the work op Regino of Prüm, might be significant. Hartmann observed that the same holds true for the canon law collection in our manuscript, the *Collection in 234 capituli*. This collection is usually dated to the tenth century, although there is no hard evidence to do so. Hartmann suggested two reasons why the compiler of the canon law collection did not use Regino's work: possibly he did not know it, or he compiled his collection to complement Regino's work.[48]

The *Paenitentiale Trecense* has affinities with a group of manuscripts that all demonstrate a clear interest in the same material stemming from councils of Mainz, combined with Hrabanus Maurus's penitential addressed to Heribald and the letters of Nicolas I. Wilfrid Hartmann, elaborating on the work of Rudolf Pokorny, calls this the 'Mainzer Konzilienexzerpte'. This collection has been preserved in two manuscripts: Münster, Staatsarchiv, Msc. VII 5201 (s. X med., Corvey) and Munich, Bayerische Staatsbibliothek, lat. 5541 (s. XI in., Diessen). We find a similar interest in canonical material related to Mainz in four other manuscripts, which are somehow related to the manuscripts containing the 'Mainzer Konzilien-exzerpte'. These manuscripts are Cologne, Dombibliothek, 118 (s. IX ex., near Reims) and 120 (s. X in., Eastern France), Munich, Bayerische Staatsbibliothek lat. 3851 (s. IX^2, Eastern France) and Salzburg, Siftsbibliothek a.IX.32 (s. XI^1, Cologne?). Another closely related group of manuscripts contained a similar collection of material from Mainz combined with the *Paenitentiale mixtum Ps.-Bedae-Egberti* and the council of Worms. Hartmann calls this the 'Lothringischer Material-sammlung'.[49] It is transmitted in the manuscripts Munich, Bayerische Staatsbibliothek lat. 3851 and Cologne, Dombib-liothek, 118, both of which also contain the 'Mainzer Paenitentialiensammlung'. This collection is also found in manuscript Munich, Bayerische Staatsbibliothek, clm 3853 (s. X^2, Augsburg?), Paris, Bibliothèque nationale de France, lat. 3878 (s. X ex., Northeastern France?) and Heiligenkreuz, Stiftsbibliothek 217 (s. X ex., Western parts of Germany).

[48] Hartmann, *Kirche und Kirchenrecht* 288.
[49] Ibid. 168-170.

Our penitential fits this group of material extremely well. They contain the same kind of material that we find in our Troyes compilation: the councils from Mainz, the penitential by Hrabanus, the letter of Nicolas I, the council of Worms and the *Paenitentiale mixtum* of the works attributed to Bede and Egbert. These peculiarities strongly suggest that the *Paenitentiale Trecense* was composed in the same circles in the same period. Mainly on the basis of the sources employed in these small collections, Hartmann dates them to the second half of the ninth century. They contain mostly material related to Mainz and Worms from the ninth century. The earliest of these manuscripts, Cologne, Dombibliothek 118, dates from the end of the ninth century, whereas the other ones all date from the tenth and eleventh centuries. It seems logical to conclude that our *Paenitentiale Trecense* fits the same chronological and geographical context. Consequently, it should be dated closer to the time when its latest source was produced than to the period in which the manuscript containing our text was written: thus most probably we are dealing with a late ninth century text written in the middle Rhine area at a place that was closely related to Mainz or Worms. The late tenth and eleventh century manuscripts containing these closely related canonical text ensembles, demonstrate that interest in these texts subsisted well into the first half of the eleventh century. The late date of our Troyes manuscript is therefore not surprising.

As far as we know the *Paenitentiale Trecense* only survives in the manuscript from Troyes. It was therefore not a very influential text, although it is of course possible that now it is known, traces of its use can be found in later texts. With only one manuscript, this is the least successful of the penitential books trying to implement Carolingian reform ideals. Perhaps this lack of success can be partly explained by the late date of its composition. Quickly after its completion, Regino of Prüm wrote his well-known and widely disseminated handbook for synodal inquisitions, which drew partly on the same sources that we find in the *Trecense*.[50]

[50] Regino of Prüm, *Libri duo de synodalibus causis et disciplinis ecclesiasticis*, ed. H. Wasserschleben, *Reginonis libri duo de synodalibus causis et disciplinis ecclesiasticis* (Leipzig 1840). See on this text, Meens, *Penance in Medieval Europe* 141-148; now see the partial edition and

Perhaps Regino's work made the *Paenitentiale Trecense* superfluous, although, fortunately, one scribe thought it useful to copy this work at the end of the tenth century or the early eleventh century, at a moment when bishop Burchard employed Regino's work while compiling his impressive *Decretum* in the town of Worms.[51]

Conclusion

As such, the *Paenitentiale Trecense* is a witness to the enduring strength of the Carolingian penitential ideals. This text falls in the group of texts that try to to respond to the worries expressed at early ninth-century Carolingian councils about the use of texts of uncertain authority, although it is a really late representative of this group. Halitgar was the first author to undertake such a task, Hrabanus Maurus followed suit. Other penitential handbooks of this kind are, however, anonymous. We refer to their authors as Pseudo-Gregory and Pseudo-Theodore. Like most of the reforming handbooks the compiler of the *Paenitentiale Trecense* did his best to ground his penitential on well-established authorities, in accordance with the canon of the council of Chalon-sur Saône that he cited in his work. He probably worked in the Rhineland in the years between ca. 870 and the early tenth century. The precise identity of the author still eludes us, we do not even have a possibility to give him a pseudo-name. However, our analysis of his sources demonstrates that he must have been closely related to a group of compilers of canonical collections combining conciliar legislation, papal letters and penitential material that was active in the late ninth and early tenth century in the Rhineland, thus laying a foundation for the later work in that region culminating in the impressive

translation by Wilfried Hartmann, Regino von Prüm, *Das Sendhandbuch des Regino von Prüm (Regionis Prumiensis Libri duo De synodalibus causis et disciplinis ecclesiasticis)* (Ausgewählte Quellen zur deutschen Geschichte des Mittelalters 42; Darmstadt 2004).

[51] Burchard of Worms, *Decretum*, edd. Gérard Fransen, Theo Kölzer, *Burchard von Worms: Decretorum libri XX* (Aalen 1992); for this text, see Greta Austin, *Shaping Church Law Around the Year 1000: The Decretum of Burchard of Worms* (Farnham 2009) and the dissertation by Birgit Kynast to be published soon.

canonical compilations prepared by Regino of Prüm and Burchard of Worms.

Edition *Paenitentiale Trecense*

Editorial principles

This edition is based on the sole manuscript containing this text: manuscript Troyes, Médiathèque du Grand Troyes, 1979, folia 309v-324r. To assure the legibility of the text, punctuation and capitalisation have been adjusted to aid modern readers. Spelling follows the manuscript unless indicated otherwise in the notes, but 'u' has been replaced with a 'v' following modern rules. Abbreviations have been silently resolved, biblical quotations have been italicised. The *capitula* are given Arabic numerals, replacing the Roman numerals in the original texts to facilitate referencing. Roman numerals within the text are preserved. The first part of the text, the *ordo*, is based on the edition by Van Rhijn and emended where appropriate.

Editions used

Collectio Dacheriana: Luc d'Achery and Louis-François-Joseph de la Barre, *Spicilegium sive collectio veterum aliquot scriptorum qui in Galliae bibliothecis delituerant* (Paris 1723) 509-564.
Gelasianum: *Sacramentarium Gelasianum*, ed. L. Mohlberg OSB, *Liber Sacramentorum Romanae Ecclesiae Ordinis Anni Circuli (Sacramentarium Gelasianum)* (Rome 1960).
Gregorianum: *Sacramentarium Gregorianum*, ed. Jean Deshusses, *Le Sacramentaire Grégorien: Ses principales formes d'après les plus anciens manuscrits* (3 vols. Fribourg 1971-1982).
Halitgar: Halitgar of Cambrai, *Paenitentiale*, PL105.651-710; for book 6 we use the edition in Hermann J. Schmitz, *Die Bussbücher und das kanonische Bussverfahren* (Düsseldorf 1898, repr. Graz 1958) 290-300
Hrabanus ad Heribaldum: Hrabanus Maurus, *Paenitentiale ad Heribaldum* PL 110.467-494
Wasserschleben: *Die Bussordnungen der abendländischen Kirche nebst einer rechtsgeschichtlichen Einleitung herausgegeben von F.W.H. Wasserschleben* (Halle, 1851)

Troyes, Médiathèque du Grand Troyes, 1979, fol. 309v-324r

Qualiter episcopi vel presbyteri suscipere debeant penitentem[52]

Cum ergo venerit[53] aliquis ad sacerdotem confiteri peccata sua, mandet ei sacerdos, ut expectet modicum donec intret in cubiculum suum ad orationem. Si autem non habuerit cubiculum, tamen tunc sacerdos in corde dicat hanc orationem.

Cum ergo—hanc orationem, *Paenitentiale mixtum*, Wasserschleben 251.

Oremus

Domine Deus omnipotens, propitius esto michi peccatori, ut condigne tibi possim gratias agere, qui me indignum propter tuam magnam misericordiam ministrum fecisti officii sacerdotalis et me exiguum humilemque mediatorem constituisti, ad adorandum et intercedendum ad dominum nostrum Ihesum Christum pro peccantibus et ad poenitentiam revertentibus. Ideoque dominator domine qui omnes homines vis salvos fieri, et ad agnitionem veritatis venire, qui non vis mortem peccatorem[54], sed ut convertantur et vivant. Suscipe orationem meam quam fundo ante conspectum clementiae tuae pro famulis ac famulabus tuis qui ad poenitentiam venerunt. Per Dominum.

Domine Deus—Per Dominum, *Paenitentiale mixtum,* Wasserschleben 251-252.

Videns autem ille qui ad poenitentiam venit sacerdotem tristem et lacrimantem pro suis facinoribus magis ipse timore Dei perculsus, amplius tristatur et exhorrescet peccata sua, et unumquemque accedentem ad poenitentiam funderis acriter et assidue.

Videns autem—et assidue, *Paenitentiale mixtum*, Wasserschleben 252.

Ordo ad dandam poenitentiam. Interrogat sacerdos dicens:

Credis in Deum Patrem et Filium en Spiritum Sanctum?[55] R. Credo. Credis quod iste tres personae quasmodo diximus Pater et Filius et Spiritus Sanctus tres personae sunt et unus Deus? R. Credo. Credis quod ista carne in qua nunc es in ipsa habes resurgere in
die iudicii et recipere sive bonum sive malum quod gessisti? R. Credo.Vis dimittere peccata illis quicumque in te peccaverunt Domino dicente. *Si non remiseritis hominibus peccata eorum, nec pater vester caelestis dimittet vobis peccata vestra.*[56]

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[52] The beginning of this text is marked with a chapter number in the left margin: *XLVIIII*.
[53] venit *ante corr.*
[54] peccatorum *ante corr.*
[55] This text is marked with a chapter number in the left margin: *L*, f. 310r
[56] Mt. 6:14.

Et require eum diligenter si est incestuosus. Et si non vult incesta ipsa dimittere, non potes ei dare paenitentiam. Nam si vult incesta[57] ipsa dimittere, tunc dic psalmum xxxvii *Domine ne in furore tuo*[58] ii et dic orationem hanc

Ordo ad—orationem hanc, *Paenitentiale mixtum*, Wasserschleben 252.

Oremus

Deus cuius indulgentia cuncti indigent memento famuli tui N, et qui lubrica terreni corporis fragilitate nudatus est, quaesumus ut des veniam confitenti, parce supplici, ut qui nostris meritis accusamur, tua miseratione salvemur. Per.

Deinde psalmum: *Benedic anima mea domino* usque *renovabitur ut aquilae iuventus tua*.[59] Et dic orationem hanc:

Deus sub cuius oculis omne cor trepidat omnesque conscientiae constremescunt, propitiare omnium gemitibus, et cunctorum medere vulneribus, et sicut nemo nostrum liber est a culpa, ita nemo sit alienus a venia. Per Dominum.

Et dic psalmum L *Miserere mei Deus* usque *et omnes iniquitates meas dele*,[60] et dic orationem hanc:

Oremus. Deus—meas dele, *Paenitentiale mixtum*, Wasserschleben 252-253.

Alia

Precor domine clementiae et misericordiae tuae maiestatem, ut famule tuo N peccata et facinora sua confitenti veniam relaxare digneris, et preteritorum criminum culpas indulgeas, qui humeris tuis ovem perditam reduxisti, qui publicani preces confessione placatus exaudisti, tu etiam huic famulo tuo N placare. Domine tu huius precibus benignus aspira, ut in confessione placabilis[61] permaneat, fletus eius et petitio, perpetuam clementiam tuam celeriter exoret, sanctisque altaribus et sacrariis restitutus, aeternae ac celestis gloriae mancipetur. Per.

Precor Domine—mancipetur. Per, *Paenitentiale mixtum*, Wasserschleben 253.

Tunc fac eum confiteri omnia peccata sua ita dicendo.

Fecisti homicidium aut casu, aut nolens, aut per vindicta parentum, aut per iussionem domini tui, aut in publico bello vel facere voluisti et non potuisti ? vii[62] vel v annos, aut iii vel xl dies. Similiter si servum occiderit, ii annos.

Fecisti periurium per cupiditatem saeculi aut coactus, vel pro necessitate, vel pro vita parentum, aut nesciens, aut si alios in periurium induxisti scienter ? vii annos vel iii annos vel xl dies.

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[57] incesta *add.sup.lin.*

[58] Ps. 37:1.

[59] Ps. 102:1-5.

[60] Ps. 50:3-11.

[61] flebili *ante corr.*; placabilis *add.sup.lin.*

[62] vel vii *add.sup.lin.*

Fecisti furtum, id est effracturam quadrupedia vel fortiorem causam valentem? solidos c, annos vii vel v vel dies xl.[63] Et de minoribus furtis, annum i vel iii quadragesimas seu et xl dies.
Fecisti adulterium cum uxore aliena, aut cum sponsata, vel virgine corrupisti, aut cum sanctaemoniale vel Deo dicata? v vel iii annos vel xl dies[64].
Nupsisti cum ancilla tua vel uxore tua retro? xl dies.
Concubuisti legitimam uxorem et cum ea simul concubinam, vel cum uxore tua retro, adulterasti? annos vii vel v aut iii peniteas.[65]
Fecisti fornicationem sicut sodomitae fecerunt, vel cum matre aut fratre[66] vel cum peccoribus vel ullo ingenio? xv aut xii vel vii[67] aut annum i.
Dixisti falsum testimonium pro cupiditate sciens aut nesciens ? iii vel ii aut annum i.
Percussisti hominem ut sanguis exiret ab homine vel ossa fregisti ? annum i vel xl dies.
Truncasti ei ullum membrum propter iram? annos iii.
Odisti fratrem tuum? Quamdiu in ipso odio fuisti, tamdiu poeniteas in pane et aqua.
Detraxisti ullum hominem ad seniorem vel pares propter invidiam? annum i vel xl dies.
Nupsisti cum uxore tua quadragesimo ante partum? xl dies paeniteas.
Nupsisti die dominico? i diem vel iii dies.
Contigit tibi aliqua[68] negligentia de sacrificio, c dies vel xl.
Violasti sepulchra propter furtum? annos tres aut ii.
Fecisti usuras? v aut iii annos.
Tulisti res alienas malo ordine per malum ingenium? iii annos.
Fecisti sacrilegium, id est quos auruspices vocant et augurias faciunt et sortilogos, vel vota quae arbores, vel ad fontes seu et cancellos, aut per ullum ingenium vovisti, aut sortitus fuisti, aut auorsum fecisti? v annos vel tres.
Fecisti raptum de virgine vel vidua? tres annos paeniteas.
Tulisti aliquid pecuniae in aecclesia contra directum? iii annos paeniteas aut in quadruplum restituas.
Prodidisti aliquam rem per iniustam dilaturam? iii annos paeniteas.
Duxisti aut transmisisti per ullum ingenium servum tuum aut alium hominem christianum in captivitatem? v annos aut tres peniteas.
Cremasti domum aut aream alterius? iii annos.
Fecisti vomitum propter aebrietatem? xx dies. Si per contentionem, xl dies. Si nesciens, vii dies.
Coegisti ullum hominem bibere ut inebriaretur aut per odium hoc fecisti? c dies.
Bibisti sanguinem aut manducasti de ullo pecude vel homine ? iii annos.

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[63] vel dies xl *add.sup.lin.*
[64] vel xl dies *add.sup.lin.*
[65] concubuisti legitimam—iii peniteas *add.sup.lin.*
[66] fatre *ante corr.*
[67] vi *ante corr.*
[68] alia *ante corr.*

Manducasti morticina aut dilacerata a bestiis? xl dies.
Bibisti de liquore in quo mus vel mustela mortuae invente fuerunt? xl dies et si in quadragesima, i annum.
Contempsisti indictum ieiunium contra decretum seniorum in ecclesia? dies xl.[69]
Oppressisti infantem tuum vel alium ut moreretur? vii annos aut v vel iii.
Bibisti ullum maleficium, id est herbas vel alias causas ut non potuisses infantem habere, aut alio donasti, aut hominem per potionem occidere voluisti, aut de sanguine vel de semine mariti tui ut maiorem de te haberet amorem, aut gustasti aut crisma bibisti? vii annos vel v aut tres.
Necasti partus tuos? x annos peniteas. Et si filium aut filiam occidisti, xii annos. Et si in utero ante conceptum, annum i. Si post conceptum, annos iii. Si infans per negligentiam mortuus fuerit sine baptismo, annum i.
Fecisti aliquid paganias quae in Kalendas Ianuarii faciunt in cervulo aut in vegula? iii annos paeniteas.
Misisti filium tuum supra tectum aut in foramen pro aliqua sanitate? v annos.
Arsisti grana ubi mortuus homo erat? v annos.
Et ad ultimum dicendum est confitenti:
Multa sunt peccata mea, Domine, in factis in verbis in cogitationibus. Habes fidem confessam et peccata confessa Deo et sacerdoti ut remiscantur tibi peccata tua? Credis hoc? Credo. Habes voluntatem quod egisti contra mandata Dei ut hoc emendes? Sic habeo. Unde confessus fuisti vis iuditium recipere et illud bene custodire et omnibus adinventionibus diaboli renuntiare et trinitatem custodire? Volo.
Dices ei: Dominus sit tibi adiutor et protector et prestet indulgentiam de peccatis tuis preteritis, presentibus atque futuris.
Tunc da illi paenitentiam et iudica secundum modulum criminum eius. Data vero paenitentia, dic psalmum *Deus in nomine tuo*[70] et dices has orationes super eum.
Tunc fac – super eum, *Paenitentiale mixtum*, Wasserschleben 253-255.

Oratio

Exaudi domine preces nostras et confitentium tibi parce peccatis, ut quos conscientiae reatus accusat, indulgentia tuae miserationis absolvat. Per Dominum
Exaudi domine—miserationis absolvat - *cf. Gregorianum* no. 3951, vol. III 113; *Gelasianum* no. 7817.

Alia
Presta domine, ut huic[71] famulo tuo dignum paenitentiae fructum, ut aecclesiae tuae sanctae a cuius integritate deviaverat peccando, admissorum veniam consequendo reddatur innocuus. Per Dominum.
Presta—reddatur innocuus - *cf. Gregorianum* no. 357, 57.

[69] Contempsisti indictum—dies xl *add.sup.lin.*
[70] Ps. 53:3.
[71] huhic

Alia
Maiestatem tuam, quaesumus, domine sanctae pater omnipotens aeterne deus, qui non mortem peccatorum sed vitam semper inquiris, respice flentem famulum tuum N ad te prostratum, eiusque planctum in gaudium tua miseratione converte. Scinde delictorum saccum et indue eum letitia salutari, ut post longam peregrinationis famem de sanctis altaribus sacietur, ingressus in cubiculum regis, in ipsa aula benedicat nomen gloriae tuae semper. Per Dominum.
Maiestatem tuam—tuae semper - *cf. Gelasianum* no. 366, 59; *Gregorianum* no. 3979, vol. 3.119.

Alia
Omnipotens sempiterne deus qui es verus sanctus et sanctorum omnium protector, te pium dominum devotis mentibus pro famulo tuo N deprecor, ut ei indulgentiam tribuas omnium delictorum suorum et ne iterum ad voluntatem peccandi redeat, propitius eum custodire digneris. Per.
Sempiterne deus—custodire digneris – *cf. Gregorianum* no. 2378, vol. 2.136.

Alia
Precamur domine, intercedentibus omnibus sanctis tuis pro famulo tuo, ut indulgentiam ei tribuas omnium peccatorum, opus eius in bono perficias et gratiam tuam ei concedas, fide, spe et caritate eum repleas, mentem eius ad caelestia desideria erigas, et ab omni adversitate eum defendas, et ad bonam perseverantiam perducas. Per Dominum.
Precamur, domine—perseverantiam perducas - *cf. Gregorianum* no. 2380, vol. 2.137.

Alia
Adesto supplicationibus nostris, nec sit ab hoc famulo tuo N, clementiae tuae longinqua miseratio, sana vulnera, eiusque remitte peccata, ut nullis a te iniquitatibus separatus, tibi domine semper valeat adherere. Per Dominum.
Adesto supplicationibus—valeat adherere - *cf. Gelasianum* no. 80, 17; *Gregorianum* no. 3954, vol. 3.113.

Alia
Da nobis domine, quaesumus, ut sicut publicani praecibus ad confessionem placatus es. Ita et huic famulo tuo N placare, domine et precibus eius benignus aspira, ut in confessione flebili permanenti, et petitione perpetua clementiam tuam celeriter exoret, sanctisque altaribus et sacramentis restitutus, rursum celestis gloriae mancipetur. Per Dominum.
Da nobis domine—celestis gloriae mancipetur - *cf. Gregorianum* no. 3956, vol. 3.114.

Alia
Domine deus noster qui offensione nostram non vinceris sed satisfactione placaris, respice quaesumus ad hunc famulum tuum N, qui se peccasse[72] tibi graviter confitetur. Tuum est ablutionem criminum dare et veniam prestare peccantibus, qui dixisti paenitentiam te malle peccatorum quam mortem. Concede ergo domine hoc, ut tibi paenitentie excubias celebret et

[72] passe *ante corr.*; pecasse *add.sup.lin.*

correptis actibus suis conferre sibi a te sempiterna gaudia gratuletur. Per Dominum.[73]

Domine deus—gaudia gratuletur - *cf. Gelasianum* no. 81, 17; *Gregorianum* no. 3954, vol. 3.113-114.

1 Qui sacerdotem voluntarie occiderit, vel paricidium fecerit.
2 Si quattuor vel quinque homines per rixum unum occidunt.
3 De his qui sibi quidcumque[74] neglegentia mortem inferunt.
4 Quicumque per maleficium interfecerit[75] hominem.
5 De his qui servos suos extra iudicem necant.
6 De eo qui insaniens hominem occiderit.
7 De oppressione infantum a matre.
8 De mulieribus quae ante temporis plenitudinem partus excutiunt.
9 De mulieribus quae fornicantur et infantes occidunt.
10 De viris ac feminis adulterium perpetrantibus.
11 De his qui fornicantur inrationabiliter id est qui miscentur pecoribus[76] vel cum masculis polluuntur.
12 Ut si mulieres ad priores maritos redire noluerint, velud impie ecclesiastica communione privandae sint.
13 De his qui uxores aut quae viros dimittunt ut sic maneant.
14 De feminis quae relictis viris suis aliis nubunt.
15 De feminis quae consciis maritis adulterantur.
16 De viris coniugatis postea in adulterium lapsis.
17 Item de eadem[77] re.
18 De his qui menstruum sanguinem inmiscent cibo vel potu, et aliis dant ad comedandum et bibendum, et de magica arte.
19 De auguriis vel sortilogis.
20 De magica arte et divinatione.
21 De feminis sacro velamine consecratis.
22 De virginibus[78] secularibus si mecaverint.
23 De incestis ex Moguntiacensi concilio.
24 Item de incestis.
25 De parentibus qui fidem sponsaliorum frangunt.
26 De puellis raptis.
27 In quota generatione sibi fideles iungantur.
28 Quod non liceat christianis observationes diversas adtendere.
29 De collectionibus herbarum.
30 De his qui cum Iudeis vescuntur.
31 De refugis ac perfidis laicis.
32 Ut nullus saecularium ecclesiam aut clericum fatigare praesumat.
33 De his qui per odium ad pacem reverti noluerint.
34 Item de incestis coniugiis ex concilio Agatense.
35 De periurio.

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[73] Capita poenitentialis sequentis *add. manu rec.*
[74] qudcumque
[75] interficerit *ante corr.*
[76] peccoribus *ante corr.*
[77] aeadem
[78] urginibus

1. <Qui sacerdotem voluntarie occiderit vel parici>dium fecerit[80]

Qui sacerdotem voluntarie occiderit, vel morte tradiderit vel parricidium perpetraverit ;[81] omnibus diebus vitae suae carnem non comedat, nec vinum bibere presumat. Ieiunet autem usque ad vesperum, exceptis festis diebus atque dominicis, arma non sumat et ubicumque ire voluerit, nullo vehiculo deducatur, sed propriis pedibus proficiscatur. Ecclesiam per quinquennii tempus non ingrediatur, sed cum sacrarum orationum officia vel missarum sollempnia celebrantur,[82] ante fores basilicae perseveret, orans ac deprecans dominum ut tanto cimine abluatur. Post expleto numero quinquennii temporis ingrediatur in ecclesiam, necdum vero communicet, sed inter audientes tantummodo stet, vel dum facultas conceditur sedeat. Cum autem duodecimi anni fuerit cursus finitus, communicandi ei licentia concedatur et equitandi ei tribuatur medella. Maneat in reliquis observationibus tres dies per ebdomadam,[83] ut perfectius purgationis[84] pervenire mereatur ad culmen.

Qui sacerdotem voluntarie—mereatur ad culmen –Pope Nicolas I, *Epistola* 155, MGH Epp. 6.670; cf. council of Worms c.16, MGH Conc. 4.270-271

2. Si quatuor vel quinque homines per rixam unum occidunt

Si quattuor vel quinque homines unum occidunt, seu etiam plures contra unum rixati fuerint, et ab his vulneratus[85] mortuus fuerit, quicumque

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[79] Here, the page is cut off. Chapter headings 47 to 49 have been cut away. fol. 314r contains the chapter titles for c.50-58 which are, however, not part of the edited text. fol. 314v is empty.

[80] This title is reconstructed on the basis of the table of contents; Poenitentiale aliud *add, manu rec.*

[81] fecerit perpetrauit *ante corr.*

[82] celebratur *ante corr.*

[83] edomadam *ante corr.*

[84] pgationis, *Ms.*

[85] vulneratis *ante corr.*

eorum plagam inposuit, secundum statuta canonum ut homicida iudicetur. Septem annos paenitentiam subeat, hoc est: proximos dies xl. peniteat in pane et aqua leguminibus et holeribus abstineat se ab uxore et ab ingressu ecclesiae. Deinde tres annos abstineat se a carne et vino et medone et cervisa mellita, exceptis festis diebus et gravi infirmitate. Reliquos autem quatuor tres legitimas ferias in singulis ebdomadibus et tres quadragesimas annis singulis a carne tantum abstineant.

Si quattuor vel quinque—carne tantum abstineant –*Council of Mainz* (852) c.11, MGH Conc. 3.248.

3. De his qui sibi quacumque neglegentia mortem inferunt

Qui sibi quacumque neglegentia mortem inferunt, eorum commemoratio in oblatione non fiat. Similiter et de his qui pro suis sceleribus puniuntur. Placuit ut qui sibi ipsis aut per ferrum, aut per venenum, aut praecipitium, aut suspendium vel quolibet modo violentia inferunt mortem : nulla illis in oblatione commemoratio[86] fiat, neque cum psalmis ad sepulturam eorum cadavera deducantur. Multi enim sibi hoc per ignorantiam usurparunt. Similiter et de his qui pro suis sceleribus puniuntur.

Qui sibi quacumque—suis sceleribus puniuntur –Halitgar, *Paenitentiale* IV c.6, col. 681; Placuit ut qui—suis sceleribus puniuntur - *Collectio Dacheriana* c.1, 105, 530.

4. Quicumque per maleficium interficerit hominem

Si quis vero per maleficium interfecerit alterum eo quod sine idolatria perficere scelus non potuit, nec in finem pertinendam illi communionem.

Si quis vero—pertinendam illi communionem - *Collectio Dacheriana* c.1, 104, 530.

5. Qui servos suos extra iudicem necant

De his qui servos suos extra iudicem necant. Si quis servum suum proprium sine conscientia iudicis occiderit, excommunicationem, vel poenitentiam biennii reatum sanguinis emundabit.

De his qui—reatum sanguinis emundabit –Halitgar, *Paenitentiale* IV c.4, col.681; *Collectio Dacheriana* c.1, 107, 530*; Hrabanus ad Heribaldum* 3, col.471.

6. De eo qui insaniens hominem occiderit

Si quis insaniens aliquem occiderit, si ad sanam mentem pervenerit, levior ei poenitentia inponenda est quam ei qui sana mente tale quid commiserit. Cui quamvis sit poenitentia inponenda, quia ipsa infirmitas causa peccati licet fortassis occulta contigisse creditur. Tantum tamen levior quam ei qui sanus aliquem occiderit, quantum inter insanum et sanum inrationabile a rationabile constat esse discriminis.

Si quis insaniens—constat esse discriminis - *Council of Worms (*868) c.4, MGH Conc. 4.265*;* Pope Nicolas I, *Epistola* 169, MGH Epp. 6.689

7. De oppressione[87] infantum a matre

Si quis infantem suum incaute oppresserit, aut vestimentorum pondere suffocaverit post baptismum, proximos quadraginta dies peniteat in pane et aqua et holeribus atque legumine, et a coniuge se abstineat. Postea tres annos paeniteat per legitimas ferias et tres quadragesimas. Et si ante

[86] commemoratio *add.sup.lin.*

[87] opressione *ante corr.*

baptismum oppresserit, proximos dies quadraginta ut supra, postea quinquennium expleat.
Si quis infantem—postea quinquennium expleat - *Council of Mainz* (852) c.9, MGH Conc. 3.247

8. De mulieribus quae ante temporis plenitudinem partus excutiunt
Mulieres autem quae ante temporis plenitudinem conceptos in utero infantes voluntate excuciunt, ut homicidae procul dubio iudicande sunt. Illae vero quae dormiendo filios suos suffocare videntur, leviter de his iudicare oportet, quia nolentes et non sentiendo ad hunc devolutae sunt causum.
Mulieres autem quae—devolutae sunt causum – Pope Nicolas I, *Epistola* 155, MGH Epp. 6.671; *cf. Council of Worms (868)* c.18, MGH Conc. 4.271.

9. De mulieribus quae fornicantur et infantes occidunt
Si qua mulier per fornicationem interfecerit quae nascuntur primum constitutum usque ad exitum vitae paenitendi, ut humanius aliquid consequantur, constituimus eos decennii tempora, secundum gradus quae sunt constituta paeniteat.[88]
Si qua mulier—sunt constituta paeniteat - *Paenitentiale mixtum*, c.39, Wasserschleben 274

10. De viris ac feminis adulterium perpetrantibus
Si cuius uxor adulterata fuerit, vel si ipse adulterium commiserit, septem annorum paenitendi oportet eum perfectionem secundum pristinos gradus.
Si cuius uxor—secundum pristinos gradus - Halitgar, *Paenitentiale* IV c.9, col.682; *Collectio Dacheriana* c.1, 55, 525.

11. De his qui fornicantur inrationabiliter id est qui miscentur pecoribus vel cum masculis polluuntur
De his qui inrationabiliter versati sunt, sive versantur, quotquot ante vicesimum annum tale crimen commiserint, quindecim annis exactis in poenitentia communionem mereantur orationum.[89] De hinc quinquennio in hac communione durantes, tunc demum orationis sacramenta contingant. Discuciatur autem et vita eorum quales tempore paenitudinis extiterunt, et ita misericordiam consequantur. Quod si inexplebiliter his hesere crminibus ad agendam paenitentiam prolixius tempus insumant. Quotquot autem peracta viginti[90] annorum aetate et uxores habentes hoc peccato prolapsi sunt, viginti quinque annis paenitudinem gerentes, in communionem suscipiantur orationum. In qua quinquennio perdurantes, tunc demum oblationis sacramenta percipiant. Quod si qui et uxores habentes et transcendentes quinquagesimum annum aetatis ita delinquerint, ad exitum vitae communionis gratiam consequantur.
De his qui—communionis gratiam consequantur - Halitgar, *Paenitentiale* IV c.7, col.682 ; *Collectio Dacheriana* c.1, 53, 525.

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[88] After c.9, c.8 is repeated; this apparent scribal mistake has been corrected by underlining
[89] orationem *ante corr.*
[90] Ms. vinginti

12. Ut si mulieres ad priores maritos redire noluerint, velud impiae ecclesiastica communione privande sint

Si autem aliquae mulieres ita posteriorum virorum amore sunt captae, ut malint his coherere quam ad legitimum[91] redire consortium, merito sunt notandae, ita ut ecclesiastica communione privantur, quae de excusabili contaminatione[92] criminis elegerunt, ostendentes sibimet pro sua incontinentia placuisse quod iusta remissio poterat expiare. Redeant ergo in suum statuum voluntaria redintegratione coniugia, neque ullo modo ad obprobrium male voluntatis trahatur, quod conditio necessitatis extorsit. Quia sicut he mulieres quae reverti ad viros suos noluerint impiae sunt habendae, ita illae quae in affectum ex deo initium redeunt [93]merito sunt laudendae.

Si autem aliquae—merito sunt laudendae - *Collectio Dacheriana* c.1, 67, 526.

13. De his qui uxores aut quae viros dimitunt ut sic maneant

Placuit ut secundum evangelicam et apostolicam disciplinam neque dimissus ab uxore, neque dimissa a marito alteri coniungantur sed ita maneant, aut sibimet reconcilientur. Quod si contempserint, ad penitentiam redigantur, in qua causa legem imperialem petendam promulgare.

Placuit ut secundum—imperialem petendam promulgare - Halitgar, *Paenitentiale* IV c.10, col.682; *Collectio Dacheriana* c.1, 74, 527.

14. De feminis quae relictis viris suis aliis nubunt

Item feminae quae nulla precedente causa relinquerint viros suos et alteri se copulaverint, nec in finem accipiant communionem.

Item feminae quae—finem accipiant communionem - *Collectio Dacheriana* c.1, 75, 527.

15. De feminis quae consciis maritis adulterantur

Si conscio marito uxor fuerit moecatha, placuit nec in finem dandam ei communionem. Si vero eam reliquerit, post decem annos accipiat communionem. [94]

Si conscio marito—annos accipit communionem - *Collectio Dacheriana* c.1, 86, 528.

16. De viris coniugatis postea in adulterium lapsis

Si quis forte habens uxorem semel fuerit lapsus,[95] placuit eum quinquennium agere de hac re paenitentiam et sic reconciliare nisi necessitas infirmitatis[96] coegerit, ante tempus dare communionem, hoc et circa feminas observandum.

Si quis forte—circa feminas observandum - *Collectio Dacheriana* c.1, 83, 528.

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[91] legimum *ante corr.*. legitimum *add.sup.lin.*

[92] contamitione *ante corr.*; contaminatione *add.sup.lin.*

[93] redeant *ante corr.?*

[94] Chapters 15 and 16 were copied in reversed order, which has been corrected via insertion signs.

[95] lapsus in adulterium *ante corr.*

[96] infirmitatis *add.sup.lin.*

17. Item de eadem re

Si cuius uxor adulterium fecerit, aut vir in alienam uxorem inruerit, septem annos penitentiam agat.

Si cuius uxor—anno penitentiam agat - Halitgar, *Paenitentiale* IV c.13, col.683; *Collectio Dacheriana* c.1, 88, 528

18. De his qui menstruum sanguinem inmiscent cibo vel potu et aliis dant ad comedandum et bibendum et de magica arte

De his etiam feminis quae menstruum sanguinem suum inmiscuit cibo uel potu et dedit viro suo ut comederet et biberet, et de illa quae semen in viri sui in potu bibit et de ea quae testam hominis combusit igni et viro suo dedit pro infirmitate vitanda ut nobis videtur sententia feriendi sunt sicut magi et arioli, quia magicam artem exercuisse noscuntur. Nam de his qui magicam artem exercent et qui auguria adtendunt, et divinationes observant, Theodori archiepiscopi gentis Anglorum constitutiones habemus in quibus scriptum est: Qui immolant demoniis in minimis, unum annum paeniteant. Qui vero in magnis, decem annos paeniteant. Mulier si qua ponit filium suum supra tectum vel in fornacem pro sanitate febris, septem annos paeniteat. Qui ardere facit grana ubi homo mortuus est pro sanitate domus et viventium, quinque annos paeniteat. Si mulier incantationes vel divinationes fecerit, unum annum vel tres quadragesimas, vel quadraginta dies iuxta qualitatem culpae paeniteat.

De his etiam—qualitatem culpae paeniteat - *Hrabanus ad Heribaldum* c.30, col.491.

19. De auguriis vel sortilogis

Ne de eo fortasse videatur omissum quod maxime fidem catholicae religionis quas sanctorum sortes divinationis scientiam profitetur, aut quarumcumque scripturarum inspectione futura promittunt. Hoc quicumque clericus vel laicus detectus fuerit, vel consulere, vel docere, ab ecclesia habeatur extraneus.

Ne de eo—ecclesia habeatur extraneus - *Hrabanus ad Heribaldum* c.31, col.491-492.

20. De magica arte et divinatione

Qui auguria aruspicia sive somnia vel divinationes quaslibet sicut mores gentium observant[97], aut in domos suas huiuscemodi homines introducunt inquirendis aliquam maleficiorum morti sequentes, isti si in clero sunt abiciantur, si vero saeculares sunt quinquennio paeniteant.

Qui auguria aruspicia—sunt quinquonnio paeniteant - *Hrabanus ad Heribaldum* c.30, col.491.

21. De feminis sacro velamine consecratis

Feminae scilicet quae sacro sunt consecratae velamine, si fuerint, quod nolumus, fornicate velamen deponere non presumant, sed paenitentiae[98] iugo summis se sumopere decertare festinent, ut ad indulgentiae et remissionis gratiam valeant pervenire.

Feminae scilicet quae—gratiam valeant pervenire - *Council of Worms* (868) c.11, MGH Conc. 4.267*;* Pope Nicolas I, *Epistola* 156, MGH Epp. 6.673

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[97] faciunt obseruant *ante corr.*

[98] sed paenitentiae sed penitentiae *ante corr.*

22. De virginibus saecularibus si mecaverint

Virgines quae virginitatem suam non custodierint, si eosdem qui eas violaverint maritos acceperint, eo quod solas nuptias violaverint. Post annum sine paenitentia reconciliari debebunt. Vel si alios cognoverint viros, eo quod maechate sunt, placuit per quinquennii tempora acta laegitima poenitentia admitti eas ad communionem oportere.

Virgines quae virginitatem—ad communionem oportere - *Collectio Dacheriana* c.1, 79, 528.

23. De incestis ex Moguntiacensi concilio

Si quis fornicatus fuerit cum duabus sororibus[99] seu cum noverca sua vel cum sorore[100] sua seu cum amita sua, seu cum matertera sua, vel cum filia patrui sui, seu avunculi sui, vel cum nepte sua, vel si qua mulier simili modo fornicata fuerit, abstineat se ab ingressione domus dei anno uno et eodem anno nisi festis diebus praecipuis solummodo pane sale et aqua utatur; Vir arma pugnatoria non ferat osculum nulli prebeat, sacrificium nisi pro viatico minime sumat. Sex inde annis ingrediatur quidem domum dei sed carnibus ac vino et sicera minime utatur nisi festis diebus praecipuisue[101]. De armis vero vel osculo sive sacrificio sicut supradictum est faciat. Postea duobus annis quando carne vescitur a potu omni qui potest inebriari se contineat. Quam potum si biberit non carne vescatur absque precipuis festis diebus. De armis vel osculo sive sacrificio modum iam dictum teneat. Inde usque ad obitum suum nisi predictis festis diebus a carne se abstineat. Tres legitimas ferias in omni ebdomada et tres quadragesimas in anno legitimas custodiat.[102] De armis vel osculo. sive sacrificio sicut iam dictum est faciat et numquam aliquando coniugio copuletur. Haec eadem paenitentia inponenda est patricidis, vel matricidis, vel fratricidis, vel consanguineis, necnon et his qui spontem per fraudem et avariciam hominem innoxium occidunt quem theudisca lingua morditum vocant.

Si quis fornicatus—lingua morditum vocant - *Hrabanus ad Heribaldum* c.20, col.487; According to the title of this chapter, it derives from a council held in Mainz. This title was adopted from Hrabanus. There is no extant text of a council of Mainz that corresponds to this text. For Hrabanus reference to this council of Mainz, see Kottje, *Bussbücher* 202-203.

24. Item de incestis

Si homo incestum commiserit in istis causis, in deo sacrata, aut cum matre sua aut cum matre et filia, seu cum duabus sororibus[103], vel cum fratris filia aut sororis filia, vel cum amita, aut matertera, aut cum sobrina, sue cum matrina sua de fonte sive filiola, aut de confirmatione de istis capitalibus pecuniam si habuerit perdat. Et si emendare noluerit, nullus eum recipiat nec cibum ei porrigat usque dum se correxerit, et si pecuniam non habet et liber est mutatur in carcerem usque ad satisfactionem. Si servus aut liber[104] est, plagis vapuletur multis. Si vero

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[99] *Ms.* cum duabus sororibus aut cum duabus sororibus
[100] *Ms.* sore
[101] praecipuisque, *Hrabanus.*
[102] a carne abstineat— legitimas custodiat *add.in marg.*
[103] soribus
[104] libertus: *fons*

dominus suus permiserit ei amplius in talem cadere lapsum, ipse sexaginta solidos domno regi persolvat; De ecclesiasticis vero si bona persona fuerit, perdat suum honorem. Minores vero vapulentur et in carcerem mittantur.

Si homo incestum—et in carcerem mittantur - *Pippini rege capitulare* (754-755) c.1-2 (MGH, Capit. 1 31).

25. De parentibus qui fidem sponsaliorum frangunt

Si qui parentes fidem fregerint sponsaliorum triennii tempora abstineantur, si tamen idem sponsus vel sponsa in gravi crimine fuerint deprehensi, excusati erunt parentes.

Si qui parentes— excusati erunt parentes - *Collectio Dacheriana* c.1, 60, 525.

26. De puellis raptis

Eos qui rapiunt puellas sub nomine simul habitandi, cooperantes et conibentes raptoribus decrevit sancta synodus, ut si quidem clerici sunt decidant gradu proprio, si autem laici anathematitentur.

Eos qui rapiunt—autem laici anathematitentur - Halitgar, *Paenitentiale* IV c.17, col.684; *Collectio Dacheriana* c.1, 70, 527.

27. In quota generatione sibi fideles iugantur

In copulatione fidelium generationum numerum non diffinimus sed id statuimus ut nulli liceat christiano de propria consanguinitatem sive cognatione uxorem accipere usque dum generatio recordatur, cognoscitur ac memoria retinetur.

In copulatione fidelium—ac memoria retinetur - *Council of Worms* (868) c.8, MGH Conc. IV 266-267*;* statuimus ut nulli—ac memoria retinetur - pope Nicolaus I, *Epistola* 156 MGH Epp. 6.672.

28. Quod non liceat Christianis observationes diversas adtendere

Non liceat christianis traditiones gentilium observare, vel colere elementa, aut lunae, aut stellarum cursum, aut inanem signorum fallaciam pro domo facienda, vel segetes, vel arbores plantandas, vel coniugia socianda. Scriptum est enim: *Omnia quae facitis in verbo aut in opere, omnia in nomine domini nostri Ihesu Christi facite, gratias agentes deo*.[105]

Non liceat christianis—gratias agentes deo - *Halitgar, Paenitentiale* IV c.26, col. 685; *Collectio Dacheriana* c.1, 96, 530.

29. De collectionibus herbarum

Non liceat in collectionibus herbarum quae medicinales sunt, aliquas observationes, aut incantationes adtendere, nisi tantum cum symbolo divino et oratione dominica, ut deus et dominus honoretur. Et mulieres christianas vanitates in suis lanificiis observare, sed deum in vocem adiutorem, qui eis sapientiam texendi donavit.

Non liceat in—sapientiam texendi donavit - Halitgar, *Paenitentiale* IV c.26, col.686; *Collectio Dacheriana* c.1, 97-98, 530.

[105] Col. 3 :17

30. De his qui cum Iudeis vescuntur

Si vero quis clericus vel fidelis laicus cum Iudeis cibum sumpserit, placuit eum a communione abstineri, ut debeat emundari. In concilio Teletano[106] scriptum est: 'Suggerente id dominus noster canonibus inserendum praecepit ut Iudeis non liceat Christianis habere uxores vel concubinas, neque mancipium christianum in usus proprios comparare. Sed filii qui ex tali coniugio nati sunt, assumendos esse ad baptismum. Nulla officia publica eos opus est agere per quae eis occasio tribuatur poenam christianis inferre'. Si qui vero Christiani ab illis Iudeis inuenti sunt maculati vel etiam circumcisi, non reddito precio ad libertatem vel religionem redeant Christianam. Similiter comedere vel bibere omni modis intersit interdictum.

Si vero quis—redeant christianam – *Hrabanus ad Heribaldum* c.27, 490; Hrabanus cites here the Third Council of Toledo (589) c.14.

31. De refugis ac perfidis laicis

Nobis igitur ratio persuadit sinodalis decernere, ut quicumque laicorum in adversitate propriae gentis, aut propriae, vel regiae potestatis ad externas partes se conferendo noxius fuerit ultra repertus. Non solum omni rerum suarum proprietate privetur, sed et perpetua excummunicatione damnatus numquam illi, praeter in ultimo mortis suae communio tribuatur.

Nobis igitur ratio—suae, communion tribuatur - *Council of Worms* (868) c.3, MGH Conc. 4.278.

32. Ut nullus saecularium ecclesiam aut clericum fatigare presumat

Si quis vero saecularium per calumniam aecclesiam aut clericum fatigare temptaverit, et victus fuerit, ab ecclesiae liminibus et a catholicorum communione, nisi dignae paenituerit, arceatur.

Si quis vero—dignae paenituerit arceatur - *Council of Worms (868)* c.24, MGH Conc. 4. 274.

33. De his qui per odium ad pacem non revertuntur

Placuit etiam uti quicumque odio aut longua inter se lite[107] discesserint, et ad pacem revocari diutina intentione nequiverint a civitatis primitus sacerdotibus arguantur. Quod si inimicicias deponere perniciosa intentione noluerint, de ecclesiae caetui iustissima excommunicatione pellantur.

Placuit etiam uti—iustissima excommunication pellantur - Halitgar, *Paenitentiale* IV c.32, col 686; *Collectio Dacheriana* c.1, 110, 531; *Council of Worms* (868) c.25, MGH Conc. IV 274.

34. Item de incestis coniugiis ex concilio Agatense

De his qui se in pollutione commaculant, placuit, ut quousque in ipso detestando et inlicito carnis contubernio perseverant[108], usque ad missam tantum catecumenorum in ecclesia admittantur; cum quibus etiam nec cibum sumere ulli christianorum sic apostolus iussit oportere.

De his qui—apostolus iussit oportere - *Collectio Dacheriana* c.1, 90, 528-529.

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[106] Toletano

[107] lita *ante corr.*

[108] perseverant *post corr.*

35. De periurio

Quicumque vero sciens periurium perpetraverit, annos septem se paenitentie subdat et ita deinceps ad communionem revertatur. Item Egbertus episcopus gentis Anglorum ita definivit, dicens: Qui iuramentum in ecclesia fecerit, aut in sancto evangelio, seu in sanctorum reliquiis, septem annos peniteat, alii undecim iudicant. Si vero in manu eposcopi aut presbiteri, vel diaconi seu in cruce conscrata, annum unum paeniteat, vel septem menses. Similiter in cruce non consecrata. Qui autem seductus ignorans et postea cognoscit, annum unum vel tres quadragesimas paeniteat. Si quis coactus per quamlibet causam necessitatis, tres quadragesimas, alii tres annis, unum ex eis in pane et aqua. Item periuri, tres annos paeniteat. Qui suspicatur quod a periuris in iuramentum ducitur, et tamen iurat per consensum, tres annos paeniteat. Sed quia in multis locis ab his qui per avariciam terrenae possessionis et ecclesiastici ordinis dignitatem precia dabuntur terrenarum rerum habundantiam sibi inde adquirunt, saepe periurium fit illis qui hoc scandalo decipiuntur.[109] Iustum est ut illis qui hoc faciunt, condigna vindicta retribuatur. Si quis laicus periuraverit annos iiii[a], clericus v, subdiaconus vi, diaconus vii, presbiter x, episcopus xii. Si quis periuraverit per cupiditatem, totas res suas vendat et pauperibus donet, tondatur et in monasterium intret et ibidem serviat usque ad exitum vitae.

Quicumque vero sciens—ad communionem revertatur – Halitgar, *Paenitentiale* IV, c.28, col.686 and *Hrabanus ad Heribaldum*, c.18, col.484; Item Egbertus episcopus—digna vindicta retribuatur - *Hrabanus ad Heribaldum* c.18, col. 484-485*;* Si quis laicus—ad exitum vitae – Halitgar, *Paenitentiale*, VI c.23 and 25, ed. Schmitz 295.

36. De furtu

Qui vero cupiditate ductus et captus furtum fecerit, quod abstulit reddat, et annos quinque paenitentiam agat. Si quis laicus capitale furtum fecerit id est quadrupedem, vel casam fregerit, aut quamlibet meliorem rem furaverit, laicus quinque annos, clericus v, subdiaconus vi, diaconus vii, presbiter x, episcopus xii. Si quis sepulchrum violaverit, vii annos paeniteat. Si quis laicus furtum fecerit, reddat proximo suo quod furavit et tres quadragesimas in pane et aqua paeniteat. Si vero reddere non potuerit annum unum et tres quadragesimas et det elemosinas de suo labore pauperibus et sacerdotis iudicio iungatur altari.

Qui vero cupiditate—paenitentiam agat, *fons non invenitur;* Si quis laicus—iungatur altari, Halitgar, *Paenitentiale* VI c.26-30 (ed. Schmitz 295-296)

37. Sub qua cauta consideratione erga paenitentes sacerdos exsistere debet[110].

Paenitentibus secundum differentiam peccatorum sacerdotis arbitrio paenitentiae decernuntur. Debet itaque sacerdos in paenitentia[111] danda singulorum causas singillatim considerare, originem quoque modumque culparum, et affectus gemitusque delinquentium examinare manifesteque cognoscere, temporum etiam et personarum locorumque et aetatum

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[109] decipiantur *ante corr*.

[110] debent *ante corr.*

[111] peniten

qualitates inspicere, ut etiam pro consideratione locorum aetatum vel temporum, seu pro qualitate delictorum atque gemituum uniuscuiusque delinquentis a sacris regulis oculos non reflectat.
Sub qua cauta – oculos non reflectat - *Council of Worms* (868) c.2, MGH Conc. 4.264.

38. Item unde supra
Sacerdos considerare debet in qua aetate vel quomodo edoctus aut qualiter contigerit et ita auctoritas sacerdotalis circa infirmum moderetur, et hoc in omni paenitentia et confessione omnino in quantum deus adiuvare dignetur cum[112] omni diligentia conservetur.
Sacerdos considerare debet—omni diligentia conservetur - *Hrabanus ad Heribaldum*, c.30 (in fine), col.491.

39. De modis paenitentiae peccata confitentibus
Modus autem paenitentiae peccata confitentibus, aut per antiquorum canonum institutionem, aut per sanctarum scripturarum auctoritatem, aut per ecclesiasticam consuetudinem sicut superius dictum est inponi debet, repudiatis ac penitus eliminatis libellis quos paenitentiales vocant, quorum sunt certi errores, incerti auctores. De quibus recte dici potest: *Mortificabant animas, quae non moriuntur et vivificabant anim*as, *quae non vivibant*.[113] Qui dum pro peccatis gravioribus leves quosdam et inusitatos inponunt paenitentiae modus, *consuunt pulvillos sub omni cubito manus et faciunt cervicalia sub ea capitae universae aetatis ad capiendas animas*.[114]
Modus autem paenitentiae—ad capiendas animas - *Council of Chalon* (813) c.38, MGH Conc. 2.281.

40. Ut a presbitero canones sint assidue legendae
Cum igitur omnia concilia canonum qui recipiuntur sint a sacerdotibus legenda et intellegenda, et per ea sit vivendum et predicandum, necessarium duximus, ut ea, quae ad fidem pertinent, et ubi de exstirpandis viciis et plantandis virtutibus scribitur. Hoc ab eis crebro legatur et bene intellegatur et in populo praedicetur.
Cum igitur omnia—in populo praedicetur - *Council of Chalon-sur-Saône* (813) c.37, MGH Conc. II 1, 281; *or Council of Mainz* (847) c.2, MGH Conc. III 164.

41. Quod nullis[115] sit ultima paenitentia deneganda
Vera ergo conversio ad deum in ultimis positorum mente pocius est aestimandum quam tempore. propheta hoc taliter asserente: Cum conversus ingemueris salvus eris.[116] Cum ergo dominus sit cordis

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[112] com *ante corr.*
[113] Ezech. 13:19.
[114] Ezech. 13:18.
[115] nullus *ante corr.*
[116] This citation is associated with Ezechiel and Iesaiah, but it is not directly taken from the Bible. It appears in the works of Cyprian, Alcuin, Haimo of Auxerre and others. See Marbury B. Ogle, 'Bible Text or Liturgy?'*The Harvard Theological Review* 33 (1940) 191-224, at 218-220.

inspector, quovis tempore non est deneganda paenitentia postulanti, cum ille se obligat iudici cui occulta omnia noverit revelari.[117]
Vera ergo conversatio—omnia noverit revelari – Halitgar, III c.2 col.677*; Collectio Dacheriana* c.1, 1, 518.

42. De his qui necessitatae mortis urguente paenitentiam simul et viaticum petunt et qui obmutescunt antequam sacerdos ad eos veniat.
Ita ergo talium necessitati auxiliandum est, ut nec actio illis paenitentiae, nec communionis gratia denegetur, si eam etiam amisso vocis per indicia integri sensus querere conprobetur. Quod si ita aliqua aegritudine fuerint adgravati, ut quod paulo ante poscebant, sub presentia significare non valeant, testimonia eius fidelium circumstantium prodesse debebunt. Simul tamen et paenitentiae et reconciliationis beneficium consequantur.
Ita ergo talium—reconciliationis beneficium consequantur – Halitgar, III c.3, col.677*;* Ita ergo talium—circumstantium prodesse debebunt - *Collectio Dacheriana* c.1, 2, 518.

43. De remedio penitentiae et quod absolutio paeni[118] per manus episcoporum supplicationibus fiat
His autem qui tempore necessitatibus et periculis urguentibus[119] instantia presidium paenitentiae et mox reconciliationis implorant, nec satisfactio interdicenda est, nec reconciliatio deneganda. Quia misericordiae dei nec mensuras possumus ponere, nec tempora diffinire, apud quem nulla patitur venire moras conversio dicente spiritu dei per prophetam. *Cum conversus ingemueris, tunc salvus eris*;[120] et alibi: *Dic iniquitates tuas prior ut iustificeris*;[121] Item. *Quia apud dominum misericordia et copiosa apud eum redemptio*.[122] In dispensandis itaque dei donis non debemus esse difficiles,[123] nec se accusantium gemitus lacrimasque neglegere, cum ipsam paenitendi affectionem, ex dei credimus inspiratione contemptam dicente apostolo: *Ne forte det illis deus paenitentiam ut resipiscant a diaboli laqueis, a quo captivi tenentur ad ipsius voluntatem*.[124]
His autem qui—ad ipsius voluntatem - Halitgar, *Paenitentiale* III c.9, col. 679; *Collectio Dacheriana* c.1, 14, 520.

44. De communione privatis et ita defunctis
Horum causa dei iudicio reservanda est, in cuius manu fuit, ut talium obitus ad communionis remedium differatur. Nos autem quibus viventibus non communicavimus, mortuis communicare non possumus.
Horum causa dei—communicare non possumus - Halitgar, *Paenitentiale* III c.14, 680; *Collectio Dacheriana* c.2, 64, 539.

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[117] revelare *ante corr.*
[118] *lege:* poenae?
[119] *lege:* urgentibus
[120] See above note 116.
[121] Iesaiah 43:25-26.
[122] Ps. 129:7
[123] difficilis *ante corr.*
[124] Cf. II Tim. 2:24-25

45. De tempore remissionis paenitentiae

De paenitentibus autem qui sive ex gravioribus commissis sive ex levioribus paenitentiam gerunt, si nulla interveniat aegritudo, quinta feria ante pascha eis remittendum Romanae aecclesiae consuetudo demonstrat. Ceterum de pondere delictorum aestimanda sacerdotis est iudicare, ut adtendat ad confessionem paenitentis et ad fletus et lacrimas corrigentis, actum vero dimitti cum viderit congruam satisfactionem. Sane si quis aegritudinem inciderit, atque usque ad desperationem devenerit ei est ante tempus pasche relaxandum

De paenitentibus autem—tempus pasche relaxandum - Halitgar, *Paenitentiale* III c.13, col. 680*; Collectio Dacheriana* c.1, 21, 521.

46. De his qui communionem tempore mortis exposcunt et si disperatus et consecutus communionem iterum convaluerit

De his qui ad exitum veniunt etiam nunc lex antiqua regularisque servabitur ita ut si quis egreditur e corpore, ultimo et necessario viatico minime privetur. Quod si disperatus et consecutus communionem, oblationisque particeps factus iterum convaluerit, sit inter eos qui communionem orationis tantummodo consequantur. Generaliter autem omni cuilibet in exitu posito et poscenti sibi communionis gratiam tribui, episcopus probabiliter ex oblatione dare debebit.

De his qui—oblatione dare debebit - Halitgar, *Paenitentiale* III c.10, col. 679*; Collectio Dacheriana* c.1, 18, 520.

47. Ut paenitentes non reconcilientur a presbytero nisi iuvente episcopo

Ut paenitentibus secundum differentiam peccatorum episcopi arbitrio paenitentie tempora decernantur, et ut presbiter inconsulto episcopo non reconciliet paenitentem, nisi absentia episcopi necessitate cogente. Cuiuscumque autem paenitentis publicum et vulgatissimum crimen est quod universam aecclesiam commoverit, ante absidem manus ei inponatur.

Ut paenitentibus secundum—manus ei inponatur - Halitgar, *Paenitentiale* III c.11, col. 679; *Collectio Dacheriana* c.1, 19, 520.

48. Item de eadem re

Aurelius episcopus dixit: Si quisquam in periculo fuerit constitutus et se reconciliari divinis altaribus petierit. Si episcopus absens fuerit, debet presbiter consulere episcopum, et sic periclitantem eius precepto reconciliare, quam rem debemus salubri consilio roborare.

Aurelius episcopus dixit—salubri consilio roborare - Halitgar, *Paenitentiale* III c.12, col. 679-680; *Collectio Dacheriana* c.1, 20, 521-522.

49. De his qui pro diversis peccatis penitentiam ferventius exegerunt

De his qui diversis facinoribus peccaverunt et perseverantes in oratione confessionis et paenitentiae conversionem a malis[125] omnibus habuere perfectam pro qualitate delicti talibus paenitentiae tempus inpensum, propter clementiam et bonitatem dei communio concedatur.

De his qui— dei communio concedatur - Halitgar, *Paenitentiale* III c.15, col.680; *Collectio Dacheriana* c.1, 15, 520.

[125] a malis a malis *ante corr.*

Bonizo von Sutri, die ‘Sammlung in zwei Büchern/acht Teilen’ und das Gespenst der gregorianischen Zwischensammlung

Christof Rolker

Ein Gespenst geht um in der mittelalterlichen Kirchenrechtsgeschichte, das Gespenst der gregorianischen Zwischensammlung. Wer auch immer sich mit vorgratianischen Kirchenrechtssammlungen und ihren wechselseitigen Abhängigkeitsverhältnissen beschäftigt, muss damit rechnen, dass jedes noch so wohlbegründete Modell durch eine gregorianische Zwischensammlung weiter verkompliziert, wenn nicht sogar über den Haufen geworfen werden könnte. Wie es sich für ein Gespenst gehört, ist keineswegs klar, wie es genau aussieht—aber immer wieder hört man davon, dass jemand es gesehen habe oder jedenfalls nicht ausschließen wolle, dass es für bestimmte unerklärliche Phänomene verantwortlich sei.

Das Gespenst der ‘gregorianischen Zwischensammlungen’: Begrifflichkeiten

Worum geht es? Als ‘Zwischensammlung’ (*collection intermédiaire*, *intermediary collection*) wird in der Kirchenrechtsgeschichte eine Sammlung verstanden, die als Zwischenstufe zwischen dem jeweiligen Original einer Rechtsquelle (der *fons materialis*) und wenigstens einer kanonischen Sammlung nachzuweisen oder zu vermuten ist.[1] Da die unmittelbare Verwendung

[1] Der Begriff selbst ist spätestens seit Wasserschleben eingeführt, siehe z.B. Friedrich Wilhelm Hermann Wasserschleben, *Beiträge zur Geschichte der vorgratianischen Kirchenrechtsquellen* (Leipzig 1839) 13. Zur Sache siehe neben den im folgenden zitierten Arbeiten grundsätzlich Othmar Hageneder, ‘Papstregister und Dekretalenrecht’, *Recht und Schrift im Mittelalter*, ed. Peter Classen (Vorträge und Forschungen 23; Sigmaringen 1977) 319-347, 322-326; Robert Somerville (in collaboration with Stephan Kuttner), *Pope Urban II, the Collectio Britannica, and the Council of Melfi (1089)* (Oxford 1996) 5-6; Detlev Jasper, ‘The Beginning of the Decretal Tradition: Papal Letters from the Origin of the Genre through the Pontificate of Stephen V’, *Papal Letters in*

von Originalen bei der Erstellung kanonischer Sammlungen eine Ausnahme ist, sind Zwischensammlungen beinahe immer zu vermuten, und jede Sammlung kann zur Zwischensammlung werden, wenn sie nur ihrerseits als Vorlage (*fons formalis*) zur Kompilation einer weiteren Sammlung herangezogen wird. Von besonderem Interesse sind Zwischensammlungen vor allem dann, wenn es möglich ist, nicht nur die Existenz einer heute verlorenen Sammlung zu postulieren, sondern auch nähere Angaben über Inhalt, Struktur und Verbreitung machen zu können. Solche Aussagen über Inhalt und Struktur sind z.B. dann möglich, wenn die Kapitelzählung einer verlorenen Sammlung in die Inskriptionen einer jüngeren, von ihr abhängigen Sammlung übernommen wurde.[2] Häufiger aber gelingt die Rekonstruktion von Zwischensammlungen in der Praxis dann, wenn sich zwei oder mehr erhaltene Sammlungen hinsichtlich einer gewissen Zahl Kanones einerseits so stark ähneln, dass eine enge Beziehung zwischen ihnen anzunehmen ist, diese Sammlungen aber andererseits weder in die eine noch die andere Richtung voneinander abhängig sein können, und auch keine bekannte (ältere) Sammlung als gemeinsame Quelle in Frage kommt. Damit ist eine 'Zwischensammlung' in der Analyse von Kirchenrechtssammlungen oft das, was in der Editionsphilologie der Hyparchetypus ist. Ähnlich, wie die Kollationierung erhaltener Handschriften die Rekonstruktion des Hyparchetypus erlaubt, kann der Vergleich von durch gemeinsamen Vorlagen erklärbaren Passagen mehrerer Samm-

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the Early Middle Ages (History of Medieval Canon Law; Washington 2001) 3-133, 78-79 und 121-122; Lotte Kéry, 'Kanonessammlungen als Fundorte für päpstliche Schreiben', *Das Papsttum und das vielgestaltige Italien: Hundert Jahre Italia Pontificia*, edd. Klaus Herbers und Jochen Johrendt (Neue Abh. Göttingen 5; Berlin 2009) 275-298, hier 291-293.

[2] Auf diesem Weg gelang zum Beispiel Seckel der Nachweis einer verlorenen Benedictus Levita-Kurzfassung anhand von Ivos *Decretum*, siehe Emil Seckel, 'Benedictus Levita decurtatus et excerptus: Eine Studie zu den Handschriften der falschen Kapitularien', *Festschrift für Heinrich Brunner, zum 50-jährigen Doktorjubiläum am 8. April 1914 überreicht von der Juristenfakultät der Universität Berlin* (München-Leipzig 1914) 377-464 mit den Ergänzungen bei Christof Rolker, *Canon Law and the Letters of Ivo of Chartres* (Cambridge Studies in Medieval Life and Thought, Fourth Series 76; Cambridge 2010) hier 114 Anm. 156.

lungen Rückschlüsse darauf erlauben, welche Kanones in welcher Qualität und eventuell sogar in welcher Reihenfolge in der verlorenen Zwischensammlung gestanden haben müssen.

Im Fall der sogenannten gregorianischen Kirchenrechtssammlungen spielen die Zwischensammlungen sogar eine besonders wichtige Rolle in der Historiographie. Der Sammelbegriff der ‘gregorianischen Sammlungen’ wird bekanntlich für zahlreiche Kirchenrechtssammlungen, die in den Jahrzehnten um 1100 im Umkreis des Reformpapsttums entstanden sind, verwendet. Welche Sammlungen genau darunter fallen, ist umstritten. So gut wie immer sind damit die Anselm II. von Lucca zugeschriebene Sammlung und die von Kardinal Deusdedit kompilierte Sammlung gemeint, dazu (in unterschiedlichen Kombinationen) die Sammlungen von Atto von San Marco, Bonizo von Sutri, Gregor von San Grisogono und in der älteren Literatur zumeist auch die *Sammlung in 74 Titeln*.[3] Als ‘gregorianisch’ werden sie bezeichnet, weil sie von bekannten Parteigängern Gregors VII. kompiliert wurden (dies gilt v.a. für Anselm, Deusdedit und Atto) und/oder ausweislich der enthaltenen Kanones als besonders geeignet gelten, die mit Gregors Namen verbundenen Reformen in der Kirche voranzutreiben. Eine starke Betonung der Vorrangstellung des Papsttums sowie die umfangreiche Behandlung von ‘Reformthemen’ wie Priesterehe und Simonie gelten als wichtigste Merkmale dieser Sammlungen, ob oder ob nicht man davon ausgeht, dass es ein einheitliches Reformprogramm gegeben habe.

Die Frage speziell nach den ‘gregorianischen’ Zwischensammlungen, die als gemeinsame Quellen dieser Sammlungen postuliert wurden, spielt in der Forschung aus zwei Gründen eine hervorgehobene Rolle. Zum einen haben die gregorianischen Sammlungen selbst traditionell große Aufmerksamkeit sowohl in der Kirchenrechtsgeschichte als auch der allgemeinen Kirchengeschichte erhalten, und damit auch die Frage nach ihren unmittelbaren Vorlagen. Zum anderen ist von den gregorianischen

[3] Zu allen diesen Sammlungen siehe Kéry und Linda Fowler-Magerl, *Clavis canonum: Selected Canon Law Collections before 1140: Access with Data Processing* (MGH. Hilfsmittel 21; München 2005).

Sammlungen immer wieder angenommen worden, dass ihre Kompilatoren eng zusammenarbeiteten und sie ein gemeinsames Ziel (eben die Kirchenreform im Sinne Gregors VII.) verfolgten. Die Benutzung gemeinsamer Vorlagen wäre ein geeigneter Beleg für die enge Zusammenarbeit der jeweiligen Kompilatoren, und wenn nachgewiesen werden könnte, dass bereits die verwendeten Zwischensammlungen selbst einen ‘gregorianischen’ Charakter hatten, wäre dies ein deutliches Indiz dafür, dass die Kompilation der Sammlungen auf eine zentrale Initiative zurückgehen könnte. Denn obwohl es mehrere Quellen gibt, die die wechselseitige Vertrautheit von Anselm, Deusdedit und anderen ‘Gregorianern’ belegen, ist eine tatsächliche Zusammenarbeit dieser Kompilatoren, eine gemeinsame Zielsetzung der gregorianischen Sammlungen und erst recht eine zentrale Initiative zu dieser Sammeltätigkeit keineswegs sicher. Aus den erzählenden Quellen lassen sich diese Vorstellungen jedenfalls nicht belegen, und die Vielfalt der Sammlungen selbst spricht zunächst einmal dagegen, dass ihre Erstellung Teil einer konzertierten Aktion gewesen wäre. Ob es gemeinsame Vorlagen der gregorianischen Sammlungen gab, wie diese aussahen und ob sie selbst einen ‘gregorianischen’ Charakter hatten, ist daher für die Interpretation der kanonischen Sammlungen aus dem Umfeld des Reformpapsttum von entscheidender Bedeutung.

Genau diese Fragen—ob und welche gregorianischen Sammlungen auf gemeinsame Zwischensammlungen zurückgriffen und wie diese aussahen—sind nun in der Forschung bis heute umstritten. Im Folgenden soll diese Frage einer Klärung nähergebracht werden, indem zunächst die Forschungsgeschichte für eine nähere Begriffsbestimmung herangezogen wird und in einem zweiten Schritt die dabei postulierten Beziehungen der Sammlungen untereinander überprüft werden. Untersucht werden dabei die Sammlungen von Anselm von Lucca, Deusdedit, Atto von San Marco und Bonizo von Sutri; sie sind in der Forschung besonders häufig gemeinsam untersucht worden, und schon aufgrund der zeitlichen und räumlichen Nähe ihrer Entstehung ist die Verwendung gemeinsamer Vorlagen für sie weit plausibler als für andere Sammlungen. Außen vor bleibt die Frage, ob das

traditionelle Label ‘gregorianisch’ für diese Sammlungen angemessen ist oder nicht. Entscheiden für die Fragestellung der vorliegenden Arbeit ist vielmehr nur die Frage, ob es hinreichende Hinweise auf Zwischensammlungen gibt, dass dem Austausch solcher Arbeitsmaterialien eine wichtige Rolle bei der Entstehung der genannten Sammlungen zugesprochen werden kann. Dabei werde ich argumentieren, dass es zwar durchaus gemeinsame Zwischensammlungen gegeben haben muss, die Gestalt und Verwendung dieser Sammlungen aber insgesamt keinen Beleg für eine enge Zusammenarbeit der sogenannten gregorianischen Kompilatoren, und erst recht nicht für gemeinsame ideologische Zielsetzungen darstellt.

Forschungsgeschichte

Das Konzept der ‘gregorianischen Zwischensammlung’ beruht zunächst einmal auf der Beobachtung, dass eine Reihe von kanonischen Sammlungen aus dem unmittelbaren Umfeld Gregors VII. stammen und teilweise die gleichen oder ähnliche Kanones beinhalten, was durch die Nutzung gemeinsamer Vorlagen erklärt werden könnte. In der modernen Forschung ist dies erstmals von Wilhelm von Giesebrecht hervorgehoben worden.[4] Er betonte, dass Anselm, Deusdedit, Bonizo, Ivo von Chartres und Bernold von Konstanz alle in engen Beziehungen zu Gregor VII. und teilweise auch zueinander standen und dass ihre Sammlungen Teil der Kirchenreform ihrer Zeit waren. Von Giesebrecht erklärte die inhaltlichen Parallelen vor allem durch die Benutzung von Anselms Sammlung durch, wie er annahm, die meisten jüngeren Arbeiten (namentlich die Sammlungen Deusdedits, Bonizos und Ivos) sowie teilweise durch die Verwendung von Quellen aus den gleichen Archiven, nämlich den römischen (im Falle von Anselm und Deusdedit). Dass einige oder gar alle dieser Prälaten auch Arbeitsmaterialien teilten, erschien in diesem Modell plausibel. Von Giesebrecht selbst ließ sich

[4] Wilhelm von Giesebrecht, ‘Die Gesetzgebung der römischen Kirche zur Zeit Gregors VII’., *Münchner historisches Jahrbuch* (1866) 91-194.

allerdings nicht über mögliche verlorene Zwischensammlungen aus; angesichts der damaligen Forschungs- und Editionslage wären solche Überlegungen auch notwendig spekulativ und damit recht müßig gewesen.

Erst gegen Ende des 19. Jahrhunderts fanden die vorgratianischen Sammlungen als Quellen der Kirchengeschichte, und besonders auch die 'gregorianischen' Sammlungen als Quellen aus der Zeit des 'Investiturstreit' größere Aufmerksamkeit und wurden zunehmend analysiert, Anfang des 20. Jahrhundert teilweise auch ediert: Nach Friedbergs Gratian-Edition im Jahr 1879 folgten Editionen von Deusdedit (1905), Anselm (1915), Bonizo (1930); Attos Sammlung lag und liegt bis heute nur in einem unkritischen Druck von 1836 vor.[5] Die Analyse der Sammlungen, die Vorbereitung von Editionen (auch der mit den Sammlungen verwandten Streitschriften) und die Papsturkundenforschung der Zeit brachten immer neue Hinweise auf die wechselseitigen Beziehungen zwischen verschiedenen vorgratianischen Sammlungen. Einen ersten klaren Beleg für eine von mehreren gregorianischen Sammlungen gemeinsam genutzte Vorlage erbrachte dabei Scheffer-Boichorst 1879 in seinen Forschungen zum Papstwahldekret von 1059.[6] Das Dekret selbst wurde bis ins 12. Jahrhundert in keine der großen Sammlungen aufgenommen; stattdessen finden sich unter anderem bei Anselm, Deusdedit, Bonizo und Gregor von San Grisogono tendenziös verkürzte Darstellungen seines Inhaltes. Anstatt der Beschlüsse

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[5] *Decretum magistri Gratiani*, ed. Emil Friedberg (Corpus Iuris Canonici 1; Leipzig 1879); *Anselmi episcopi Lucensis collectio canonum una cum collectione minore*, ed. Friedrich Thaner (Innsbruck 1915); *Die Kanonessammlung des Kardinals Deusdedit, I: Die Kanonessammlung selbst*, ed. Victor Wolf von Glanvell (Paderborn 1905); Bonizo von Sutri, *Liber de vita christiana*, ed. Ernst Perels (Texte zur Geschichte des römischen und kanonischen Rechts im Mittelalter 1; Berlin 1930); 'Attonis cardinalis presbyteri Capitulare seu Brevarium canonum', *Scriptorum veterum nova collectio e Vaticanis codicibus edita*, ed. Angelo Mai (Rom 1825-1838) 6.2: 60-110. Alle genannten Ausgaben sind auch als Digitalisate auf www.archive.org verfügbar.

[6] Paul Scheffer-Boichorst, *Die Neuordnung der Papstwahl durch Nikolaus II.: Texte und Forschungen zur Geschichte des Papstthums im 11. Jahrhundert* (Straßburg 1879).

der Synode von 1059 enthalten diese Sammlungen verfälschte Auszüge aus den Rundschreiben Nikolaus II., in denen dieser über die Synode berichtet.[7] Diese verfälschten Kanones unterscheiden sich von der echten Fassung des Papstwahldekrets vor allem dadurch, dass sie nicht die Kardinalbischöfe, sondern *alle* Kardinäle als Papstwähler hervorheben. Scheffer-Boichorst war der erste, der darauf hinwies, dass die Übereinstimmungen in den genannten vier Sammlungen so groß seien, dass nur wechselseitige Abhängigkeit oder eine gemeinsame Quelle den Befund erklären könne. Letzteres schien ihm angesichts für die Sammlungen Anselms und Deusdedits schon aufgrund ihrer nahezu gleichzeitigen Entstehung plausibel.[8] Diese Zwischenquelle (als 'Zwischensammlung' wird man die Kanones, die im Druck auch zusammen keine 20 Zeilen umfassen, kaum bezeichnen wollen) hatte durchaus einen spezifischen ideologischen Charakter, allerdings keinen 'gregorianischen'; zu Recht wies bereits Scheffer-Boichorst darauf hin, dass die verfälschte Fassung, die Anselm, Deusdedit, Bonizo und Gregor von San Grisogono überliefern, als Ausdruck des Widerstands vor allem der Kardinaldiakone und -presbyter gegen die Neuordnung der Papstwahl von 1059 verstanden werden könne.

Entscheidende Impulse für die Forschung zu den Papsturkunden, aber auch für ihre kanonistische Überlieferung, gingen zu dieser Zeit vor allem von der Analyse der *Collectio Britannica* aus. In der deutschsprachigen Forschung war es vor allem Ewalds Analyse auf Basis der Abschrift Edmund Bishops, die die Diskussion lange Zeit bestimmte.[9] Die *Britannica* selbst ist eindeutig eine Zwischensammlung, die aber anders als die allermeisten Zwischensammlungen erhalten ist (in einer, wie wir

[7] JL 4405 und 4431a, ed. Detlev Jasper (MGH Concilia 8.402-404 und 382-383), überliefert bei Deusdedit 1.168-169 (137-138) (ed. Wolf von Glanvell 107), Anselm 6.12-13 (ed. Thaner 272-273), Bonizo 4.87 (ed. Perels 156), *Caesaraugustana I* 3.9, *Polycarpus* 1.4.4 sowie Gratian 1, D.9 cc.1 und 9 (ed. Friedberg-276 und 278-279).

[8] Scheffer-Boichorst, *Neuordnung* 55-61.

[9] Paul Ewald, 'Die Papstbriefe der Brittischen Sammlung', NA 5 (1880) 275-414 und 505-596.

heute wissen,[10] Abschrift des frühen 12. Jahrhunderts). Ewald selbst ging davon aus, dass die erhaltene Fassung der *Britannica* die Rekonstruktion verlorener Zwischensammlungen, wie sie insbesondere die *Tripartita*, Ivos *Decretum* und Deusdedit benutzt hätten, erlaubten. Für die *Tripartita* und Ivos *Decretum* konnten Ewald und kurz darauf Conrat nachweisen, dass diese Sammlungen in der Tat eine der erhaltenen *Britannica* sehr ähnliche Sammlung verwendet haben mussten.[11] Im Falle von Deusdedit und der *Britannica* legten es schon die Seltenheit der hier gebotenen Papstbriefe und der in den Inskriptionen (*ex registro*) mindestens behauptete Rückgriff auf die teilweise gleichen Papstregister nahe, nach einer gemeinsamen Quelle beider zu fragen. Ein konkreter Nachweis erwies sich allerdings als erstaunlich schwierig; die Parallelen zwischen beiden Sammlungen sind insgesamt wenig umfangreich, sieht man von den 'Varia' ab, in denen die *Britannica* von Deusdedit abhängig ist. Ewald selbst nahm die geringe Zahl der Überlappungen namentlich zwischen dem Gelasius-Abschnitt der *Britannica* und den verstreuten Gelasius-Fragmenten in Deusdedits Sammlung als Beleg dafür, dass die angenommene Quelle beider so groß gewesen sei, dass eine Auswahl der gleichen Texte durch zwei unabhängige Bearbeiter deshalb unwahrscheinlich gewesen sei.[12] Damit ist auch klar, dass der Inhalt dieser umfänglichen Zwischensammlung weitgehend unbekannt bleiben musste (während die Zwischensammlung 'hinter' der *Tripartita*, Ivos *Decretum* und der erhaltenen *Britannica* sehr präzise rekonstruiert werden kann). Angesichts von Ewalds umfangreichen quellenkritischen

[10] Zur Datierung der Handschrift siehe Christof Rolker, 'History and Canon Law in the *Collectio Britannica*: A New Date for London, BL Add. 8873', *Bishops, Texts and the Use of Canon Law around 1100: Essays in the Honour of Martin Brett*, edd. Bruce C. Brasington und Katherine G. Cushing (Church, Faith and Culture in the Middle Ages; Aldershot 2008) 141-152.

[11] Max Conrat (Cohn), *Der Pandekten- und Institutionenauszug der brittischen Dekretalensammlung, Quelle des Ivo* (Berlin 1887).

[12] Ewald, 'Britische Sammlung' 632: 'Diese Liste mag uns veranschaulichen, wie gross die Registerpublikation gewesen sein muss, aus der zwei verschiedene Excerptoren so lange Reihen nehmen konnten, ohne sich öfter als bei 7 Briefen zu berühren'.

Ausführungen fällt auf, dass in seinen Fußnoten keine klaren Beispiele für die gemeinsame Benutzung von Zwischensammlungen durch gregorianische Sammlungen findet; allerdings lag 1880 auch weiterhin keine dieser Sammlungen in einer auch nur annähernd kritischen Edition vor.[13]

Sehr folgenreich war kurz darauf eine Untersuchung Sickels zu den als *Ludovicianum*, *Ottonianum* und *Henricianum* bekannten Herrscherurkunden. Aus den übereinstimmenden Auszügen unter anderem bei Anselm und Deusdedit meinte er eine Zwischensammlung ableiten zu können, die er als 'Privilegiensammlung' oder kurz 'PS' bezeichnete.[14] Sickel hielt Deusdedit als Kompilator dieser Sammlung für wahrscheinlicher als Anselm, betonte aber mehrfach, dass PS unabhängig von Anselm und Deusdedit zirkuliert habe; insbesondere Albinus und Cencius hätten sich auf PS und nicht auf Deusdedit gestützt. Für diese Thesen lieferte Sickel aber keine stichhalten Belege. Trotz lebhafter Rezeption der These Sickels muss die Existenz der 'Privilegiensammlung' als bestenfalls fraglich gelten.[15] Insbesondere lieferte Sickel kaum Argumente gegen die alternative Erklärung, dass Anselm seine Texte von Deusdedit anstatt aus PS übernommen haben könnte.[16]

Anfang des 20. Jahrhundert häuften sich dann die Hinweise auf Vorlagen, die von zwei oder mehr Kirchenrechtssammlungen aus dem Umfeld des Reformpapstums genutzt wurden. Bereits Peitz vermutete, dass Deusdedit die meisten Kanones, für die er die päpstlichen Register als Quelle angab (*ex registro*), nicht aus den verlorenen Registern selbst, sondern vermittelnden Sammlungen schöpfte. Diese seien sehr kurze Sammlungen von Ex-

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[13] Siehe die Klage bei Ewald, 'Britische Sammlung' 290.

[14] Theodor Sickel, *Das Privilegium Otto I. für die römische Kirche vom Jahre 962* (Innsbruck 1883) 76-81.

[15] Nach freundlicher Auskunft von Dr. Przemysław Nowak (Warschau) kann Sickels These einer Privilegiensammlung nicht nur nicht belegt, sondern im Gegenteil ausgeschlossen werden.

[16] Eines der stärkeren (!) Argumente Sickels für die größere Ursprünglichkeit Anselms war, dass dieser (jedenfalls in einigen Handschriften) im *Ludovcianum* den Herrschernamen als 'Hludouuicus' und nicht 'Ludouicus' liest; bei Deusdedit kommen beide Formen vor: Sickel, *Privilegium* 66.

zerpten aus verschiedenen Registern gewesen, ähnlich den entsprechenden Abschnitten der *Britannica*. Vor allem aber argumentierte er, dass auch Anselm und andere Kompilatoren Zugriff auf eine oder mehrere dieser Zwischensammlungen hatten.[17] Zumindest für die Briefe Nikolaus I. erbrachte Perels den bis heute unangefochtenen Beweis, dass Anselm und Deusdedit einen Großteil ihrer entsprechenden Kanones in der Tat aus einer solchen Zwischensammlung schöpften und für diese Nikolaus-Fragmente auch nicht voneinander abhängen können.[18] Für zwei Nikolaus-Kapitel in Bonizos *Liber de vita christiana* hielt Perels es für plausibel, dass auch Bonizo auf die von Anselm und Deusdedit genutzte Quelle zurückgegriffen habe.[19] Mit Blick auf die Forschungen von Sickel, Peitz und anderen stellte Perels darüber hinaus die Vermutung auf, dass Anselm und Deusdedit Zugang zu einer größeren Zwischensammlung hatten, die nicht nur von ihm analysierten Nikolaus-Fragmente enthalten habe, sondern auch Sickels Privilegiensammlung und möglicherweise weitere Auszüge aus päpstlichen Registern.[20] Seine Annahme, dass die postulierte Zwischensammlung Materialien ganz unterschiedlicher Herkunft verbunden habe, stützte sich dabei ausschließlich auf die angenommene Benutzung sowohl der Privilegiensammlung PS als auch der Nikolaus-Briefe durch Anselm und Deusdedit; dabei dürfte er die neuentdeckte *Britannica* als Beispiel ei-

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[17] Wilhelm M. Peitz, *Das Originalregister Gregors VII. im vatikanischen Archiv (Reg. Vat. 2) nebst Beiträgen zur Kenntnis der Originalregister Innozenz' III. und Honorius' III. (Reg. Vat. 4-11)* (Sb. Akad. Wien 165.5; Wien 1911) 133-146 und 246-265.

[18] Ernst Perels, 'Die Briefe Papst Nikolaus' I.: Die kanonistische Überlieferung', NA 39 (1914) 43-153, hier 92.

[19] Ibid. 92 Anm. 4 und 94. Es handelt sich um Bonizo 3.89 (ed. Perels 101) und 4.86a (ed. Perels 148-156). Für letzteren Kanon nahm Perels allerdings an, dass er ursprünglich nicht Teil des *Liber de vita christiana* gewesen sei, sondern erst später eingefügt worden sei.

[20] Ibid. 78-86, v.a. 85 mit Anm. 3: Die gemeinsame Vorlage sei nicht nur eine 'erweiterte Privilegiensammlung' im Sinne Sickels, sondern '[v]ielmehr wird man sich darunter eine auf breiter Basis—wahrscheinlich vornehmlich auf Grund der päpstlichen Register—gefertigte grosse kanonistische Sammlung vorzustellen haben, bei deren Anlage das chronologische Prinzip vorgeherrscht haben dürfte'.

ner solchen Zwischensammlung im Kopf gehabt haben.

Diese sich herausbildende Vorstellung einer umfangreichen, von mehreren Kompilatoren genutzten Zwischensammlung wurde dann insbesondere von Paul Fournier aufgegriffen und weiterentwickelt. In seinen zahlreichen Einzelstudien zu vorgratianischen Sammlungen, die er seit den 1880er Jahren vorlegte, spielte das Konzept der gregorianischen Zwischensammlung zunächst keine Rolle. Ab 1917 aber verwendete Fournier es regelmäßig, insbesondere in seinen beiden Aufsätzen zu Bonizo von Sutri einerseits und zu den gregorianischen Sammlungen als 'Wendepunkt' der kirchlichen Rechtsgeschichte andererseits, die beide in diesem Jahr erschienen. In seinem Bonizo-Aufsatz sprach er von Zwischensammlungen (*collections intermédiaires*) aus der Zeit Gregors VII., deren Benutzung unter anderem die Parallelen zwischen den Sammlungen Anselms, Deusdedits und Bonizos erklärten.[21] Auch in seinem berühmten *Tournant*-Aufsatz diskutierte Fournier, ohne Belege zu nennen, Zwischensammlungen (wieder im Plural), deren Benutzung die Einheitlichkeit der gregorianischen Rechtssammlungen erklärten.[22] Einen entscheidenden Schritt weiter ging Fournier schon kurz darauf, in einem 1918 publizierten Überblick zu den römischen (d.h. gregorianischen) Kanonessammlungen.[23] Zunächst argumentierte er hier, dass Atto von San Marco für die Briefe Gelasius' I. auf eine Zwischensammlung zurückgegriffen habe, die auch Anselm und Deusdedit zur Verfügung gestanden habe.[24] Gestützt auf diese neuen Befunde, postulierte Fournier im gleichen Aufsatz weiter, dass es nicht viele, sondern eigentlich nur *eine* Zwischensammlung gegeben habe, auf die Anselm, Deusdedit, Bonizo, Atto und andere zurückgegriffen hätten.[25] Fournier zog explizit die Parallele zur

[21] Paul Fournier, 'Les sources canonique du *Liber de vita christiana* de Bonizo', BEC 78 (1917) 117-134, v.a. 130-131.

[22] Paul Fournier, 'Un tournant de l'histoire du droit 1060-1140', Nouvelle RHD 40 (1917) 129-180, hier 146-151.

[23] Paul Fournier, 'Les collections canoniques romaines de l'époque de Grégoire VII', *Mémoires de l'Institut National de France, Académie des Inscriptions et Belles-Lettres* 41 (1918) 271-397.

[24] Ibid. 292 und 389.

[25] Ibid. 391-392: 'Grâce à ces recueils, nous pouvons nous représenter ces

Britannica, um die Struktur dieser hypothetischen Sammlung zu beschreiben:

> Dank dieser Sammlungen [*Britannica* und *Tripartita* A, CR] können wir uns diese unbekannten Kompilationen als Einzelteile einer gewaltigen Sammlung vorstellen, die im allgemeinen chronologisch geordnet war und in der die Kanones entsprechend ihrer Art und Herkunft zusammengestellt waren; dies waren, außer Auszügen aus den alten Sammlungen (Dionysiana und Pseudoisidor), zahlreiche Fragmente von Papstbriefen und -urkunden von Gregor dem Großen bis Gregor VII., von denen viele aus den Registern geschöpft wurden, die in den Archiven des Heiligen Stuhl aufbewahrt wurden, Kanones und Fragmente der Konzilsakten von Nicäa, Ephesos, Chalkedon sowie der sechsten, siebten und achten ökumenischen Konzilien, unzählige Exzerpte aus patristischen Schriften von Cyprian bis Beda Venerabilis, zahlreiche Texte aus den kirchengeschichtlichen Schriftstellern und aus den Justinianischen Sammlungen einschließlich des *Authenticum* sowie einige Privilegien mittelalterlicher Kaiser zugunsten der römischen Kirche.

Mit anderen Worten, Fournier postulierte eine gigantische Sammlung, die bereits mehr oder minder das gesamte Material enthalten habe, das in den Sammlungen von Anselm, Deusdedit, Atto und anderen erstmals bzw. erstmals seit langer Zeit wieder aufgenommen wurde. Nach Fourniers Vorstellungen war diese

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compilations inconnues comme les diverses parties d'une vaste collection, établie en général d'après l'ordre chronologique, où étaient groupés, suivant la nature et l'auteur des documents, outre des textes extraits des anciens recueils de Denys et du faux Isidore, des fragments nombreux de lettres et actes pontificaux depuis saint Grégoire jusques à Grégoire VII, dont beaucoup furent tirés des registres conservés aux archives du Saint-Siège; des canons et des fragments des actes des conciles de Nicée, d'Ephèse, de Chalcédoine, et des VI^{e}, VII^{e} et VIII^{e} conciles généraux; d'innombrables passages découpés dans les écrits patristiques, depuis saint Cyprien jusques à Bède le Vénérable; des textes nombreux provenant des écrits des historiens ecclésiastiques et des compilations de Justinien, y compris l'Authentique, avec quelques textes représentant les privilégiées accordés à l'Église romaine par les empereurs du moyen âge'. Diese Beschreibung ähnelt der in Fourniers *Tournant*-Aufsatz, wo aber im Plural von Zwischensammlungen die Rede ist und nicht davon, dass diese nur Teile einer weit größeren Sammlung seien ('parties d'une vaste collection'), vgl. Fournier, 'Tournant' 146-151.

Materialsammlung unter päpstlicher Anleitung entstanden und dann, offenbar gezielt, den unterschiedlichen Kompilatoren im Umkreis der Kurie zur Verfügung gestellt worden. Ausdrücklich zitierte Fournier die Zwischensammlung als Beleg der gemeinsamen Ziele und Methoden der gregorianischen Kanonistik sowie die päpstliche Initiative, insbesondere durch Gregor VII. selbst.[26] Mit dieser Annahme, die Zwischensammlung sei Ausdruck eines spezifischen Reformprogramms, ging Fournier deutlich über die deutschsprachigen Arbeiten, auf die er sich stützte hinaus; während diese überwiegend quellenkritisch argumentierten, wertete Fournier die intertextuellen Bezüge zwischen den Sammlungen als Quellen der Kirchengeschichte aus, oder wie es später ausdrückte: Nicht die trockene Geschichte der Handschriften, sondern Ideengeschichte wolle er bieten.[27]

Aber auch hinsichtlich der wechselseitigen Abhängigkeiten der Sammlungen ging Fournier deutlich über die damals gesicherten Befunde zu diesen Sammlungen hinaus; auch Fournier selbst war vor 1917 noch sehr viel vorsichtiger gewesen, als er es in seinen späteren Aufsätzen sowie der *Histoire* sein sollte. Dennoch gewann sein Modell Verbreitung und wurde in den folgenden Jahrzehnten positiv aufgenommen. Perels stützte sich auf Fournier, als er im Rahmen seiner Edition des *Liber de vita christiana* argumentierte, auch Bonizo habe für eine kleine Zahl von Kanones die von Anselm und Deusdedit gemeinsam genutzten Zwischensammlungen verwendet.[28] Auch Andrieu

[26] Fournier, 'Tournant' 143: 'C'est par ce moyen que Grégoire VII et ses auxiliaires entendaient renouveler et réformer la législation de l'Église chrétienne'.
[27] Paul Fournier und Gabriel Le Bras, *Histoire des collections canoniques en Occident, dépuis les Fausses Décrétales jusqu'au Décret de Gratien* (Paris 1931-1932) 2.18: 'Non pas l'histoire sèche des manuscrits, mais celle des idées qu'ils transportent'. Vgl. dazu Christof Rolker, 'Fournier's Model and Its Merits', *New Discourses in Medieval Canon Law Research: Challenging the Master Narrative*, ed. idem (Medieval Law and Its Practice 28; Leiden-Boston 2019) 4-32, v.a. 13-19.
[28] Ernst Perels, ed. 'Einleitung', *Bonizo von Sutri, Liber de vita christiana*, (Texte zur Geschichte des römischen und kanonischen Rechts im Mittelalter 1; Berlin 1930) IX-LXXIX, hier XXX (zu Pseudo-Isidor-Stellen bei Bonizo, Anselm und Deusdedit) sowie ibid. Anm. 6 (Augustinus-Stellen bei Bonizo und Anselm).

berief sich positiv auf Fournier, als er seinerseits das Corpus der von Anselm und Deusdedit gemeinsam genutzten Quellen noch einmal erweiterte, dieses Mal um eine Zwischenquelle mit liturgischen Materialien.[29] Fournier sah sich insbesondere durch Perels in seinen Vermutungen bestätigt,[30] und nahm das Konzept der gregorianischen Zwischensammlung(en) in die rasch weit verbreitete *Histoire* auf, die er gemeinsam mit seinem Schüler Le Bras 1931/32 veröffentlichte.[31] Namentlich versicherte Fournier, dass Anselm, Deusdedit, Atto und Bonizo 'charakteristische' (d.h. gregorianische) Texte aus gemeinsamen Zwischensammlungen entnommen hätten, Sammlungen, die auch den Verfassern von Streitschriften zur Verfügung gestanden hätten.[32] Ähnlich wie in seinen Aufsätzen von 1917-1918 beschrieb Fournier diese Sammlung(en) als sehr reich an Exzerpten aus damals noch erhaltenen Papstregistern, aber auch vielen anderen Materien.[33] Fournier ließ keinen Zweifel daran, dass diese Zwischensammlungen auf Anweisung von Gregor VII. in Rom zusammengestellt worden seien und dabei gezielt solche Materialien aufnahmen, die eine Kirchenreform im Sinne Gregors befördern soll-

[29] Michel Andrieu, *Les ordines romani du haut moyen âge, 1: Les manuscrits* (Études et documents 11; Löwen 1931) 519-522.

[30] Siehe seine Rezension in BEC 91 (1930) 326-329, v.a. 328.

[31] Fournier-Le Bras, *Histoire* 2.9-14.

[32] Unter Berufung auf Fournier, 'Collections canoniques romaines' schrieb Fournier in der Einleitung (Fournier-Le Bras, *Histoire* 2.10): 'Enfin nous espérons avoir démontré par l'examen des textes de quatre collections contemporaines de Grégoire VII, celles d'Anselme de Lucques, du cardinal Atton, du cardinal Deusdedit et de Bonizo de Sutri, la présence, dans ces recueils, de textes caractéristiques se ressemblant assez pour qu'on puisse sans hésiter leur attribuer une origine commune, mais présentant des différences assez marquées pour qu'il soit impossible de croire qu'en les transcrivant les auteurs de ces diverses collections se soient mutuellement copiés. Nous avons été ainsi amenés à penser qu'ils les ont empruntés à ces recueils intermédiaires, qui d'ailleurs ont fourni des textes aux écrits polémiques du même temps, où était défendue la cause de Grégoire VII'.

[33] Die Beschreibung Fournier-Le Bras, *Histoire* 2.11-13 entspricht im wesentlichen der in Fournier, 'Collections canoniques romaines', ergänzt um die *Ordines Romani*, den *Liber Diurnus*, den *Liber Pontificalis* und (etwas überraschend) Cassiodors Kirchengeschichte.

ten.[34]

Nach Erscheinen der *Histoire* war die Vorstellung von gregorianischen Zwischensammlungen als Verbindungsglied zwischen Gregor VII. und 'seinen' Kanonisten einerseits und zwischen den gregorianischen Sammlungen andererseits fest etabliert, unabhängig von der Frage, welche dieser Sammlungen nun als 'gregorianisch' galten. Nähere textkritische Belege blieben aber vorerst aus; auch Bernhard meinte zwar, die von ihm teiledierte Sammlung sei mindestens von Anselm und Deusdedit genutzt wurde,[35] ohne dies aber überzeugend beweisen zu können. Neue Erkenntnisse brachten dann vor allem die Arbeiten von Fuhrmann und seinen Schülern. Fuhrmann erforschte bekanntlich die Überlieferung der pseudoisidorischen Fälschungen und der Konstantinischen Schenkung, wobei er gleichsam als Nebeneffekt auch die Forschung zu den meisten vorgratianischen Sammlungen einer gründlichen Revision unterzog.[36] Unter anderem wies er nach, dass Anselm und Deusdedit die gleiche, sehr spezielle Fassung der Konstantinischen Schenkung in ihre Sammlungen aufnahm; Fuhrmann und Petersmann nahmen dabei an, dass diese gemeinsam mit Sickels Privilegiensammlung überliefert worden sei, nannten aber keine Belege dafür.[37] Hin-

[34] Z.B. Fournier-Le Bras, *Histoire* 2.12 ('Pour répondre au désir de Grégoire VII, qui tenait à appuyer ses réformes sur les précédents, ses auxiliaires portèrent leurs investigations') oder 14 ('recherches provoquées par Grégoire VII', 'recherches entreprises pour servir la cause de la Réforme').

[35] Jean Bernhard, 'La collection en deux livres (Cod. Vat. lat. 3832): La forme primitive de la Collection en deux livres: Source de la Collection en 74 titres et de la Collection d'Anselme de Lucques', RDC 12 (1962) 9-601, v.a. 59, 95 und 599. Diese 'Sammlung in zwei Büchern' ist heute als 'Sammlung in zwei Büchern / acht Teilen' (kurz *2L/8P*) bekannt, siehe dazu unten.

[36] Horst Fuhrmann, 'Einleitung', ed., *Das Constitutum Constantini (Konstantinische Schenkung): Text* (MGH. Fontes iuris Germanici antiqui in usum scholarum separatim editi 10; Hannover 1968) 7-54; idem, *Einfluß und Verbreitung der pseudoisidorischen Fälschungen: Von ihrem Auftauchen bis in die neuere Zeit* (MGH. Schriften 24; Stuttgart 1972-74) v.a. 2.517-519, 529-533 und 538-539.

[37] Fuhrmann, 'Constitutum' 16-18; idem, *Einfluß und Verbreitung* 2.519; Johanna Petersmann, 'Die kanonistische Überlieferung des Constitutum Constantini bis zum Dekret Gratians: Untersuchung und Edition', DA 30 (1974)

sichtlich der Falschen Dekretalen wies Fuhrmann nach, dass Anselm und Deusdedit insgesamt siebzehn Kanones gemeinsam hatten, die letztlich aus dieser Quelle stammten; mehrere dieser Auszüge sind dabei in charakteristischer Weise verkürzt oder sogar aus mehreren pseudoisidorischen Briefen kompiliert. Auch wenn es sich um vergleichsweise wenige Texte handelt, legt der Befund eine enge Beziehung zwischen den Sammlungen, in denen diese Kanones auftauchen, nahe. Fuhrmann stimmte Fourniers Modell der gregorianischen Zwischensammlungen daher vorsichtig zu und postulierte eine solche Sammlung als gemeinsame Vorlage von Anselm und Deusdedit, ohne allerdings genauer anzugeben, wie viele Kanones aus dieser Zwischensammlung stammten oder wie diese beschaffen gewesen sei.[38] Genauer gesagt äußerte sich Fuhrmann zu drei solchen Zwischensammlungen. Für Anselm und Deusdedit ging er vorsichtig, aber insgesamt doch deutlich von einer gemeinsam genutzten Zwischenquelle für ihre Pseudoisidor-Teile aus.[39] Zweitens erklärte er einige Parallelen zwischen den Pseudoisidor-Auszügen bei Deusdedit und Atto ebenfalls mit der Benutzung einer gemeinsamen Vorlage, die möglicherweise auch mit Anselms Sammlung in einem nicht näher angegeben Verhältnis gestanden habe.[40] Drittens sprach Fuhrmann knapp, aber mit großer

356-449, hier 376-377.

[38] Fuhrmann, *Einfluß und Verbreitung* 2.518-519: ‘Einer ganzen Reihe von Parallelkapitel ist eigentümlich, daß sie aus kurzen pseudo-isidorischen Texten mosaikartig zusammengesetzt sind; außer den Kapiteln, bei denen Anselm und Deusdedit zusammengehen, gibt es seine ganze Reihe weiterer nur bei Anselm oder nur bei Deusdedit, wo nach dem selben Prinzip verfahren worden ist. Es ist nicht ausgeschlossen, daß auch sie irgendeiner Zwischenquelle entstammen’. Siehe auch Fuhrmanns Kommentar zu Anselm 7.84 = Deusdedit 2.35 (ibid. 519) und Anselm 5.10 = Deusdedit 3.47.

[39] Fuhrmann formulierte teils recht zurückhaltend (Fuhrmann, *Einfluß und Verbreitung* 2.519: ‘nicht ausgeschlossen’; ähnlich ibid., 526 Anm. 268, 518 Anm. 252 und 527 Anm. 271), an anderen Stellen aber deutlich positiver (ibid. 2.528: ‘wahrscheinlich’; ähnlich ibid. 532 und 539 Anm. 309).

[40] Fuhrmann, *Einfluß und Verbreitung* 2.532: ‘Beide [Deusdedit und Atto, CR] gehen auf eine aus kurzen pseudoisidorischen Reihenexzerpten bestehende Sammlung zurück, die von ihrem Charakter her auch Beziehungen zur *Collectio canonum* Anselms von Lucca gehabt haben könnte’.

Sicherheit von einer Zwischensammlung, die von Anselm, Deusdedit und Bonizo gemeinsam verwendet worden sei.[41] Selbst wenn man als Maximalposition annähme, dass alle Kanones, die Fuhrmann in diesem Kontext auch nur als möglicherweise als Belege gemeinsamer Vorlagen bezeichnet, zusammenzählt, kommt man allenfalls auf eine sehr niedrige dreistellige Zahl von zumeist kurzen Kanones,[42] die eher einige Lagen Pergament denn einen ganzen Codex gefüllt haben würden.

Ungefähr zur gleichen Zeit, als Fuhrmann sein dreibändiges Werk für den Druck vorbereitete, untersuchte Berschin im Rahmen seiner von Fuhrmann betreuten Dissertation die Werke Bonizos von Sutri mit mustergültiger Gründlichkeit.[43] Dabei prüfte er selbstverständlich auch die Möglichkeit der Verwendung gregorianischer Zwischensammlungen, von denen Fuhrmann selbst lapidar festgestellt hatte, dass mit dieser Möglichkeit 'ohnehin' zu rechnen sei.[44] Berschin identifizierte drei Passagen in den Werken Bonizos, in denen ihm die Verwendung einer solchen Zwischensammlung möglich erschien. Es handelt sich um die Überlieferung des verfälschten Rundschreiben Nikolaus' II. (JL 4405) bei Anselm, Deusdedit, Gregor von San Grisogono und eben Bonizo, zwei Zitate aus den Briefen Gregors des Großen in Bonizos *Liber ad amicum*, die eine Parallele bei Anselm haben, und schließlich eine Reihe von elf Kanones in Bonizos *Liber de vita christiana*, die Berschin zufolge aus einer auch von Anselm verwendete Zwischensammlung zurückgehen könnten. (Zur Diskussion siehe unten.)

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[41] Ibid. 2.539 Anm. 309: 'Mit einer vermittelnden Sammlung zumindest zwischen Deusdedit, Anselm und Bonizo ist ohnehin zu rechnen'. Im Vergleich zu den Argumenten, die Fuhrmann für eine von Anselm und Deusdedit benutzte Zwischensammlung beibrachte, sind seine Belege für eine zusätzlich auch von Bonizo genutzte Vorlage relativ dünn.

[42] Die erste Sammlung enthielt nach Fuhrmann siebzehn einzeln angeführte Kanones sowie 'eine ganze Reihe' (Fuhrmann, *Einfluß und Verbreitung* 2.519) weiterer Texte; die zweite und dritte Sammlung soll nach Fuhrmann jeweils mindestens 30 Kanones umfasst haben (ibid. 531-532 bzw. 538).

[43] Walter Berschin, *Bonizo von Sutri: Leben und Werk* (Beiträge zur Geschichte und Quellenkunde des Mittelalters 2; Berlin und New York 1972).

[44] Fuhrmann, *Einfluß und Verbreitung* 2.539 Anm. 309.

Einige Jahre nach Berschin hat Horst in seiner ebenfalls von Fuhrmann betreuten Dissertation zum *Polycarpus* des Gregor von San Grisogono in mehreren Fällen festgestellt, dass eine gemeinsam genutzte Zwischensammlung die Parallelen zwischen Anselm, Deusdedit und dem *Polycarpus* erklären könne, aber zugleich nicht ausschließen können, dass Gregor nicht doch direkt auf Anselms Sammlung zurückgriff.[45] Busch wiederum hat die von Placidus von Nonantola verwendeten Vorlagen mit großer Präzision herausgearbeitet.[46] Dabei konnte er unter anderem zeigen, dass Placidus für römischrechtliche Texte und für Kanones, die letztlich aus der *Dionysiana* stammen, eindeutig auf vermittelnde Sammlungen zurückgriff, in vielen Fällen allerdings das Dekret Burchards vorzog. Busch argumentierte desweiteren überzeugend, dass die sogenannte Error-Serie—eine Kleinstsammlung bestehend aus etwa zehn kurzen Kanones, die oft gemeinsam zitiert wurden—eine selbständige Verbreitung gehabt habe; aus den relativ häufigen Zitaten in Streitschriften und kanonischen Sammlungen konnte Busch mehrere Fassungen rekonstruieren, die um 1100 offenbar recht weite Verbreitung hatten. In diesem Sinne ist auch die Error-Reihe als Zwischensammlung anzusehen, allerdings als ausgesprochen kleine und instabile, die zu den großen Kirchenrechtssammlungen allenfalls einen kleinen Beitrag leistete, ohne sie quantitativ oder qualitativ entscheidend zu prägen. Schließlich hat Cushing in ihren Arbeiten zu Anselms Sammlung auch die Frage nach gemeinsamen Vorlagen untersucht. Ursprünglich war sie dabei sehr zurückhaltend, auch nur für Anselm und Deusdedit die Benutzung gemeinsamer Vorlagen als gesichert anzunehmen, abgesehen von einer Fassung der *Barberiana*.[47] In mehreren jüngeren Aufsätzen

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[45] Uwe Horst, *Die Kanonessammlung Polycarpus des Gregor von S. Grisogono: Quellen und Tendenzen* (MGH. Hilfsmittel 5; München 1980) v.a. 46-51.

[46] Jörg W. Busch, *Der Liber de honore ecclesiae des Placidus von Nonantola: Eine kanonistische Problemerörterung aus dem Jahre 1111: Die Arbeitsweise ihres Autors und seine Vorlagen* (Quellen und Forschungen zum Recht im Mittelalter 5; Sigmaringen 1990).

[47] Kathleen G. Cushing, *Papacy and Law in the Gregorian Revolution: The Canonistic Work of Anselm of Lucca* (Oxford Historical Monographs; Oxford

hat sie sich immer wieder mit Anselm Vorlagen beschäftigt. Die frühmittelalterlichen *Capitula iudicorum* zum Beispiel seien von Anselm, aber gerade nicht anderen gregorianischen Sammlungen verwendet worden.[48] Auch die sogenannte Kynzvart-Sammlung könnte eine der *fontes formales* Anselms bewahren.[49] Vor allem aber bestehe zwischen *2L/8P* und Anselm eine 'unzweifelhafte Verbindung',[50] so dass auch hier gemeinsame Vorlagen anzunehmen seien. Außer stabilen Zwischensammlungen, wie sie Fournier und Fuhrmann annahmen, hat Cushing auch eher ephemere, kleine Sammlungen oder Arbeitshefte (copybooks) als Bindeglieder zwischen Anselms und anderen italienischen Sammlungen ins Spiel gebracht.[51] Insgesamt betont sie die Rolle der Nutzer einzelner Sammlungen und die Vielfalt sowohl der verwendeten Materialien als auch der Verwendungsweisen; Fourniers Modell einer großen, zentral zur Verfügung gestellten und in einheitlicher Weise genutzten Sammlung bestätigt sie damit gerade nicht.

Während fast alle diese Forschungen von einzelnen Sammlungen und deren Vorlagen bzw. im Falle Fuhrmanns ihrer weiteren Rezeption ausgingen, hat parallel dazu Fowler-Magerl die Grundlagenarbeit geleistet, dank derer die wechselseitigen Beziehungen sehr zahlreicher, nicht unbedingt in unmittelbarer Beziehung zueinander stehender Sammlungen untersucht werden können.[52] Unter anderem hob sie die Bedeutung der *Barberi-*

1998) 95-102.

[48] Kathleen G. Cushing, 'Anselm of Lucca and Burchard of Worms: Rethinking the Sources of Anselm 11, De penitentia', *Ritual, Text and Law: Studies in Medieval Canon Law and Liturgy Presented to Roger E. Reynolds*, edd. Richard F. Gyug und Kathleen G. Cushing (Church, Faith, and Culture in the Medieval West; Aldershot 2004) 225-239, hier 229.

[49] Ibid. 231-232.

[50] Ibid. 232. Zu *2L/8P* siehe ausführlich unten.

[51] Kathleen G. Cushing, 'Looking behind Recension Bb of the 'Collectio canonum" of Anselm of Lucca', ZRG Kan. Abt. 95 (2009) 29-47, hier 37-38.

[52] Linda Fowler-Magerl, 'Vier französische und spanische vorgratianische Kanonessammlungen', *Aspekte europäischer Rechtsgeschichte: Festgabe für H. Coing zum 70. Geburtstag*, ed. Christoph Bergfeld (Ius commune. Sonderhefte 17; Frankfurt 1982) 123-146; eadem, 'Fine Distinctions and the Transmission of Texts', ZRG Kan. Abt. 83 (1997) 146-186; eadem, 'The Restauration of the

niana hervor, deren erhaltene Abschrift sehr enge Beziehungen zu den Sammlungen Anselms und Deusdedits aufweist und auf eine gemeinsam von beiden verwendete Zwischensammlung zu bewahren scheint. Auch für die *Sinemuriensis*, *2L/8P*, *Ambrosiana I* und andere anonyme Sammlungen betonte sie, dass diese komplexen Beziehungen zu den italienischen Sammlungen des späten 11. Jahrhunderts aufwiesen, einschließlich abermals der Sammlungen von Anselm und Deusdedit. Für Anselm kam sie zu dem Schluss, er habe Zwischensammlungen verwendet, die ihrerseits auch für die Sammlung von Santa Maria Novella (auch bekannt als *183-Titel-Sammlung*), für *2L/8P* und für die *Britannica* verwendet wurden; neben einer gemeinsamen Verwendung römischer Archive durch Anselm und Deusdedit nahm sie auch die Verwendung der Materialien Attos von San Marco durch Anselm und Deusdedit an.[53] Immer wieder haben Fowler-Magerls Forschungen gezeigt, dass Ähnlichkeiten zwischen den ‘großen’, bekannteren Kirchenrechtssammlungen oft am besten durch eine gemeinsame Verwendung kleiner, anonymer Sammlungen erklärt werden können. Diese Sammlungen (wie etwa die *Barberiniana*, *2L/8P* oder *Ambrosiana I*) sind, mindestens in den erhaltenen Abschriften, zumeist nicht nach erkennbaren Kriterien

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Canon Law Collection in the mss Vat. lat. 3832 and Assisi BC 227’, *Grundlagen des Rechts: Festschrift für Peter Landau*, edd. Richard H. Helmholz et alii (Rechts- und Staatswissenschaftliche Veröffentlichungen der Görres-Gesellschaft N. F. 91; Paderborn 2000) 179-203; eadem, ‘The Use of the Letters of Pope Gregory I in Northeastern France and Lorraine before 1100’, *‘Ins Wasser geworfen und Ozeane durchquert’: Festschrift für Knut Wolfgang Nörr*, edd. M. Ascheri et alii (Cologne 2003) 237-260; eadem, ‘The Relationship between Seemingly Unspectacular pre-Gratian Collections in the Manuscripts Paris, Bibliothèque Nationale, lat. 2858C and Florence, Biblioteca Medicea Laurenziana, Ashburnham 1554’, *Scientia veritatis: Festschrift für Hubert Mordek zum 65. Geburtstag*, edd. Oliver Münsch und Thomas L. Zotz (Ostfildern 2004) 241-260; eadem, ‘The Collection and Transmission of Canon Law along the Northern Section of the Via Francigena in the Eleventh and Twelfth Centuries’, *Bishops, Texts and the Use of Canon Law around 1100: Essays in the Honour of Martin Brett*, edd. Bruce C. Brasington und Kathleen G. Cushing (Church, Faith and Culture in the Middle Ages; Aldershot 2008) 129-139; eadem, *Clavis canonum*.

[53] Fowler-Magerl, *Clavis canonum* 141-142.

geordnet; in vielen Fällen ist deutlich, dass diese Sammlungen selbst ihrerseits aus noch kleineren Sammlungen bestehen, die in einen Codex gebunden oder gemeinsam abgeschrieben wurden.[54] Das gilt auch für die Zwischensammlungen hinter den gregorianischen Sammlungen, die nach Fowler-Magerls Erkenntnissen ebenfalls zwar teilweise gemeinsame Vorlagen benutzten, aber keine Anzeichen für die Verwendung einer großen, 'gregorianisch' inspirierten Sammlung aufweisen.

Diskussion

Mehr als anderthalb Jahrhunderte sind vergangen, seit von Giesebrecht die kanonistischen Aktivitäten von Anselm, Deusdedit, Bonizo und anderen als Teil der Kirchenreform im Sinne Gregors VII. beschrieben hat und damit auch den Austausch von Arbeitsmaterialien zwischen diesen Kirchenmännern mindestens plausibel gemacht hat, und fast genau 100 Jahre, seit Paul Fournier seine Vorstellung von einer gewaltigen Sammlung von Materialien, die Gregor VII. 'seinen' Kanonisten zur Verfügung gestellt habe, erstmals pointiert formuliert hat. Seither haben mehrere Generationen von Gelehrten das Konzept der gregorianischen Zwischensammlungen immer wieder aufgegriffen und empirisch überprüft. Ohne jeden einzelnen dieser Befunde zu diskutieren, dürfen folgende Ergebnisse als weitgehend gesichert angenommen werden:

Zum einen haben Anselm und Deusdedit bei der Kompilation ihrer Sammlung in den 1080er Jahren offenbar eng kooperiert und dabei eine ganze Reihe sehr unterschiedlicher Texte aus den gleichen Vorlagen geschöpft: zwei verfälschte Briefe Nikolaus' II., Exzerpte aus einigen zahlreichen Briefen Gelasius' I. und Nikolaus' I., Auszüge aus den *Ordines Romani*, eine Sonderfassung der Konstantinischen Schenkung und wohl auch Auszüge aus Pseudoisidor. Da es sich teilweise um sehr seltene Materialien handelt, und Anselm und Deusdedit einander kannten, darf davon ausgegangen werden, dass beide Prälaten

[54] Siehe z.B. Fowler-Magerl, *Clavis canonum* 95-97 (*Barberiniana*) und 124 (*Ambrosiana*).

miteinander im Austausch standen. Eine Abhängigkeit in die eine oder andere Richtung ist teilweise nicht nachweisbar, teilweise sogar ausgeschlossen. Für bestimmte Materien mag Deusdedit einerseits besser in der Lage gewesen sein, sie zu finden (anders als Anselm hatte er nachweislich Zugriff auf die lateranensischen Archive) und andererseits auch stärker motiviert gewesen sein, für ihre Verbreitung zu sorgen (als Kardinalpresbyter hatte er eine klarere Motivation als Anselm, verfälschte Kanones als Gegenargumente zum Papstwahldekret von 1059 in Umlauf zu bringen). Dennoch wiegt der Befund schwer, dass die Sammlungen trotz zahlreicher Überlappungen nicht als Quelle der jeweils anderen nachgewiesen werden können. Für die erhaltenen bzw. rekonstruierbaren Fassungen der beiden Sammlungen ist daher die Nutzung gemeinsamer Vorlagen die beste verfügbare Erklärung. Allerdings hat die Forschung zu allen anderen gregorianischen Sammlung vor allem ergeben, dass diese die von Anselm und Deusdedit gemeinsam verwendeten Materialien entweder nicht kannten oder aus anderen Gründen nicht in ihre Sammlungen aufnahmen. Trotz zahlreicher Befunde, die gemeinsame Quellen ‘nicht ausgeschlossen erscheinen’ lassen, sind diese doch zumeist auf wenige Kanones beschränkt und haben in keinem Fall zwingende Gründe für die Nutzung einer gemeinsamen Zwischensammlung erbracht—insbesondere die Benutzung von Anselms Sammlung selbst, nicht seiner Vorlagen, ist in vielen Fällen eine mindestens ebenso plausible Erklärung.

Bereits daraus folgt, dass die von Fournier vermutete päpstliche Initiative zur Kompilation von Kirchenrechtssammlungen durch Bereitstellung einer großen Materialsammlung so nicht stattgefunden haben kann. Entweder gab es die von Fournier postulierte umfangreiche Sammlung gar nicht, und die Nutzung gemeinsamer Zwischenquellen beschränkte sich auf kleine und sehr kleine Sammlungen—was nicht zu Fourniers Behauptung einer päpstlichen Initiative durch Bereitstellung einheitlicher Materialien passt. Oder aber die entsprechenden Parallelstellen bei Anselm, Deusdedit, Atto und Gregor von San Grisogono sind doch durch die Nutzung einer einzigen, sehr großen Sammlung erklärbar; dann müsste die geringe Überlappung zwischen den

genannten Sammlungen durch eine sehr uneinheitliche und immer nur punktuelle Nutzung der gleichen Quelle erklärt werden—und damit Fourniers Idee einer päpstlichen Initiative allenfalls der Status eines aufwändigen, aber in der Praxis völlig erfolglosen Versuchs zugebilligt werden.

Trotz intensiver Forschung, die Fourniers Thesen insgesamt wohlwollend aufnahm, sind aber ohnehin keine Hinweise auf eine große und/oder weit verbreitete Zwischensammlung gefunden worden. Vielmehr scheinen es kleine bis sehr kleine, nicht spezifisch gregorianische Sammlungen zu sein, die in unterschiedlichen Kombinationen von zwei, allenfalls einmal drei Kompilatoren größerer Sammlungen parallel benutzt wurden. Bereits damit sollte klar sein, dass ‘gregorianische Zwischensammlungen’, wie Fournier sie in der *Histoire* skizziert hatte, von der Forschung bisher nicht nachgewiesen wurden und auch keinen Mehrwert zur Erklärung der Entstehung der Sammlungen aus den Jahrzehnten um 1100 haben. Fourniers Konzept der ‘gregorianischen Zwischensammlung’ kann und sollte daher aufgegeben werden.

Was also bleibt vom Gespenst der gregorianischen Zwischensammlung übrig? Im Lichte der Forschung ist es weit weniger bedrohlich geworden. Zwar ist der Nachweis, dass es eine solche Sammlung nicht gegeben habe, wie bei allen Gespenstern ausgesprochen schwierig. Aber für viele früher als geisterhaft erscheinende Phänomene haben sich inzwischen bessere Erklärungen gefunden, und insgesamt hat das Gespenst an Schrecken verloren. Wer die komplexen Beziehungen zwischen den vorgratianischen Kirchenrechtssammlungen untersucht, muss sich immer wieder auf Überraschungen gefasst machen; vor gregorianischen Zwischensammlungen im Sinne Fourniers aber muss er oder sie sich nicht mehr fürchten.

Statt also weiterhin immer wieder zu betonen, dass mit der Nutzung gregorianischer Sammlungen zu rechnen sei oder sich damit abzumühen, ihre Existenz als 'nicht ausgeschlossen' zu untersuchen, sollte sich die Forschung auf jene Parallelen zwischen den Sammlungen konzentrieren, bei denen die Materialien so selten, die Textgestalt so eigentümlich oder die Anordnung so auffällig sind, dass Aussagen über gemeinsame Zwischenquellen möglich erscheinen. Insbesondere gilt dies für die Gelasius-Fragmente im Breviar Attos und für die Vorlagen, die Bonizo von Sutri wahrscheinlich mit Anselm von Lucca teilte. Auf erstere hatte Fournier hingewiesen, ohne dass spätere Forschungen den interessanten Befund näher untersucht hätte.[55] Attos Kenntnis von seltenen, teilweise auch bei Anselm und/oder Deusdedit verwendeten Gelasius-Briefen ist auch und gerade dann untersuchenswert, wenn man nicht annimmt, dadurch den Einfluss von Gregor VII. auf das Kirchenrecht seiner Zeit beweisen zu können. Ähnliches gilt für Bonizo von Sutri: Die v.a. von Berschin untersuchten Parallelen des *Liber de vita christiana* zu den Sammlungen von Anselm und/oder Deusdedit sind insgesamt so begrenzt, dass sie sicher nicht als Beleg für die Existenz einer gregorianischen Zwischensammlung im Sinne Fourniers taugen. Dennoch ist der Hinweis auf gemeinsam genutzte Quellen wichtig, und zwar umso mehr, als dank der Forschungen von Fowler-Magerl mit *2L/8P* eine Sammlung bekannt ist, die der vermuteten gemeinsamen Vorlage von Anselm und Bonizo nahekommt.

Bonizo von Sutri

Wie Anselm und Deusdedit auch war Bonizo zu Lebzeiten Gregors VII. eindeutig ein Parteigänger dieses Papstes, wenngleich der *Liber de vita christiana* erst später entstand, als Bonizo sich von seiner früheren Unterstützerin Mathilde von Tuszien abgewandt hatte und auch gegenüber Papst Urban II. eine deutlich distanzierte Position einnahm. Anselm von Lucca hingegen war und blieb für Bonizo ein wichtiges Vorbild. Es war

[55] Fournier, 'Collections canoniques romaines' 389. Siehe jetzt Rebecca Gotter, 'Das Breviar Attos von San Marco' (Master-Arbeit, Rheinische Friedrich-Wilhelms-Universität Bonn 2018) 23.

Bonizo, der für ein Begräbnis Anselms in dessen Kathedralstadt gesorgt hatte, und in seiner Kanonessammlung erwähnt Bonizo den verstorbenen Anselm gleich mehrfach namentlich und preist ihn dabei in höchsten Tönen. Gut möglich, dass diese enge Beziehung zu Lebzeiten Anselm auch im Austausch von Materialien bestanden hat.

Diskussion Berschin

Jede Untersuchung von Bonizos Quellen muss, neben der Edition Perels, die mustergültige Arbeit von Berschin zum Ausgangspunkt nehmen. Speziell zur Frage nach der Verwendung gemeinsamer Vorlagen durch Anselm, Bonizo und Deusdedit kam Berschin jedoch zu keinem ganz klaren Ergebnis, wie er selbst mit leichtem Bedauern feststellte.[56] Insgesamt ging er davon aus, dass Bonizo sowohl für seine Streitschrift *Liber ad amicum* als auch für den *Liber de vita christiana* Material verwendete, das jeweils mit dem von Anselm und Deusdedit verwendeten Vorlagen 'verwandt', aber nicht identisch gewesen sei.[57] Berschin vermutete ferner, dass Bonizo bei Abfassung seiner Sammlung weder den *Liber ad amicum* noch die für diesen verwendeten Vorlagen zur Verfügung hatte, sondern eine ähnliche Sammlung nutzte und dabei teilweise aus dem Gedächnitnis zitierte.[58]

Diese Überlegungen basierten auf einer sehr gründlichen Untersuchung von Bonizos gesamten Œuvre. Dem pseudoisidorischen Material allerdings hat Berschin eine eher geringe Aufmerksamkeit gewidmet: Für die Reihe Bonizo 4.48-71 wiederholte er Perels Beobachtung, dass diese Kanones in der Reihenfolge Pseudoisidors belassen seien, ohne aber Perels These einer gemeinsamen Quelle von Anselm, Bonizo und Deusdedit zu diskutieren.[59] Die anderen von Perels und/oder Fuhrmann als

[56] Berschin, *Bonizo von Sutri* 24 mit Anm. 93: 'Deutlich erkennbar ist leider auch nicht die Materialsammlung oder Kanoneszusammenstellung, die Anselm, Bonizo und Deusdedit gemeinsam hatten'.
[57] Ibid. 71.
[58] Ibid.
[59] Perels, 'Einleitung' XXX; Berschin, *Bonizo von Sutri* 49-50.

Belege der Verwendung einer pseudoisidorischen Zwischensammlung interpretierten Reihen erwähnt Berschin nicht. Wohl aber erwog Berschin in insgesamt drei anderen Fällen, dass Bonizo von Sutri Vorlagen verwendet haben könnte, die auch Anselm und/oder Deusdedit zur Verfügung standen.

Der erste Fall ist die bereits von Scheffer-Boichorst bemerkte Parallele in der Darstellung der Regelung der Papstwahl von 1059 (JL 4405).[60] Bonizo zitiert diese auch bei Anselm, Deusdedit und Gregor von San Grisogono zu findende verfälschte Darstellung unter dem Namen Nikolaus II. sowohl in seiner Sammlung (dem *Liber de vita christiana*) als auch in seiner Streitschrift namens *Liber ad amicum*.[61] Berschin hielt es für möglich, dass Bonizo hier eine auch von anderen Kanonisten verwendete Zwischenquelle benutzt habe, räumte aber auch ein, dass Bonizo in beiden Fällen auf die Sammlungen Anselms oder Deusdedits zurückgegriffen haben könnte.[62] Da eine Verwendung der relativ weit verbreiteten Sammlung Anselms für den *Liber de vita christiana* auch sonst plausibel erscheint, ist die zusätzliche Annahme einer gemeinsamen Zwischenquelle zunächst nicht erforderlich.

Berschins zweites Beispiel betrifft nur den *Liber ad amicum* (nicht Bonizos Sammlung). In einer Fußnote gab Berschin an, dass zwei Zitate Gregors des Großen im *Liber ad amicum* auf Kenntnis einer Zwischensammlung hinwiesen, die auch von Anselm verwendet worden sei;[63] allerdings verweist er als Beleg auf eine Passage, in der er selbst zum Ergebnis kommt, dass Bonizo hier Anselms Schrift *Contra Wibertum* verwendet habe.[64] In der

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[60] Scheffer-Boichorst, *Neuordnung* 55-61.

[61] Berschin, *Bonizo von Sutri* 70 zu JL 4405 bei Bonizo 4.87 (ed. Perels 156) und in dessen *Liber ad amicum*, ed. Ernst Dümmler (MGH Libelli de lite 1.594).

[62] Ibid. 49-50: ‘Sofern Bonizo nicht direkt auf Anselm Kanones-Sammlung zurückgegriffen hat (Deusdedits Kanones-Sammlung dürfte etwas jünger als der Liber ad amicum sein), wird hier die “gemeinsame Vorlage” der gregorianischen Kanonisten greifbar’.

[63] Ibid. 74 Anm. 310: ‘Vgl. mit diesem Ergebnis auch o. S.56 mit Anm. 240’.

[64] Es handelt sich um *Liber ad amicum*, ed. Ernst Dümmler (MGH Libelli de lite 1.619, Zeile 16-20 und 22-25). Berschin, *Bonizo von Sutri* 49-50: ‘Für die

Tat führt Berschin mehrere Fälle an, in denen Bonizos *Liber ad amicum* Parallelen sowohl zu Anselms Kanonessammlung als auch zu *Contra Wibertum* hat; soweit zwischen beiden Werken Anselms Unterschiede bestehen, ist Bonizos *Liber ad amicum* jeweils enger mit *Contra Wibertum* als mit Anselms Kanonessammlung verwandt.[65] Während eine Benutzung von Anselms Streitschrift durch Bonizo daher sehr plausibel ist, entfällt damit die Notwendigkeit, für die in dieser Weise erklärbaren Stellen die Verwendung einer gregorianischen Zwischensammlung anzunehmen.

Aussagekräftiger ist Berschins drittes und letztes Beispiel für eine Benutzung gemeinsamer Zwischenquellen. Es handelt sich um eine Reihe von elf Kanones im siebten Buch des *Liber de vita christiana* (Bonizo 7.17-27), für die Berschin eine auch von Anselm verwendete Zwischensammlung als Quelle annahm.[66] Inhaltlich geht es um die Rechtfertigung der Anwendung von Zwang durch die Kirche.[67] Die *fontes materiales* dieser Reihe sind recht gemischt—mehrere Auszüge aus Augustinus' *De baptismo contra Donatistas* (= ep. 189), Fragmente von vier Pelagius-Briefen sowie Exzerpte aus weiteren Augustinus-Briefen. Die Kanones finden sich alle auch in Anselms Sammlung, dort allerdings verteilt auf vier Bücher; hingegen konnte Berschin seinerzeit keine relevanten Parallelen in anderen Sammlungen ausmachen. Der Umfang der Exzerpte ist sehr ähnlich, aber in Einzelfällen haben beide Sammlungen gegenüber der jeweils anderen bessere Lesarten, die eine direkte Abhängigkeit voneinander sehr unwahrscheinlich machen. Ähnlichen Argumenten

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Texte 30 und 31 [= die Gregor-Zitate in Bonizos *Liber ad amicum*, CR] ist also nicht Anselms Kanonessammlung oder eine ihr entsprechende Vorlage, sondern Anselms Streitschrift oder eine dieser entsprechende Vorlage die nächste Quelle'.

[65] Berschin, *Bonizo von Sutri* 54.

[66] Ibid. 73-74.

[67] Siehe dazu Carl Erdmann, *Die Entstehung des Kreuzzugsgedankens* (Stuttgart 1935) 234 mit Anm. 107, der die Reihe damit wohl als erster diskutierte. Erdmann ging von einer Benutzung von Anselms Sammlung durch Bonizo aus.

Fourniers, Perels' und Fuhrmanns folgend,[68] schloss Berschin daher, dass Bonizo eine auch von Anselm verwendete Quelle verwendet haben müsse. Dabei stützte er sich vor allem auch darauf, dass die ersten Kanones der erwähnten Reihe bei Bonizo vollständiger als bei Anselm erhalten sind, der *Liber de vita christiana* also nicht von der älteren Sammlung Anselms abhängig sein könne.[69] In der Tat ist bei Anselm ein halber Satz aus Augustinus' Brief ausgefallen,[70] wenngleich diese Lücke zumindest in einer Handschrift später wieder ergänzt wurde.[71] Dennoch ist eine gemeinsame Vorlage die wahrscheinlichste Erklärung für die Parallelen zwischen den elf Kanones bei Bonizo und Anselms Sammlung. Dank der Forschungen von Linda Fowler-Magerl und ihrer unschätzbaren Datenbank ist heute eine Sammlung bekannt, die diese Vermutung erhärten kann. Es handelt sich um die weitgehend unbekannte italienische Sammlung mit dem umständlichen Titel 'Sammlung in zwei Büchern / acht Teilen' (= *2L/8P*), die auch aus anderen Zusammenhängen dafür bekannt ist, sonst unbekannte Vorlagen Anselms zu bewahren.[72] Alle elf von Berschin hervorgehobenen

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[68] Fournier, 'Sources canonique de Bonizo' 124-126; vorsichtiger Perels, 'Einleitung' XXXI und Fuhrmann, *Einfluß und Vrebreitung* 2.539 Anm. 309. Keiner der drei geht auf die Reihe Bonizo 7.17-27 ein.

[69] Bonizo 7.17 (ed. Perels 243): 'Ista namque beata est, que persecutionem patuuntur pro iniustitam, illi vero miseri, qui persecutionem patiuntur propter iniustitam'. Die *fons materialis* ist Augustinus, ep. 185, ed. Alois Goldbacher (CSEL 57.1-44, hier 9-10).

[70] Anders als Bernhard in seiner Edition behauptete (*2L/8P*, ed. Bernhard 433 Anm. 3), lag Friedberg richtig mit seiner Beobachtung, dass bei Anselm 13.14 ein Halbsatz (ab 'illi') fehlte. Siehe Gratian, C.23 q.4 c.42 (ed. Friedberg 992 Anm. 900) und Berschin, *Bonizo von Sutri* 74. Auch andere Handschriften haben den Kanon in der von Friedberg erwähnten Form: Cambridge, Corpus Christi College, 269, fol. 150v; Paris, BNF, lat. 12519, fol. 217v; Vat. lat. 1363, fol. 234v.

[71] Berschin, *Bonizo von Sutri* 73 Anm. 309 selbst entdeckte die Ergänzung in der Perels unbekannten Handschrift Mantua, BC, 318, fol. 312r. Der Zusatz ist eindeutig von einer jüngeren Hand. Zur Handschrift (aus Polirone) siehe auch Fowler-Magerl, *Clavis canonum* 145-146.

[72] Die (problematische) Teiledition ist Jean Bernhard, *La collection en deux livres (Cod. Vat. lat. 3832): La forme primitive de la Collection en deux livres: Source de la Collection en 74 titres et de la Collection d'Anselme de Lucques*

Kanones Bonizos finden sich im zweiten Buch von *2L/8P*, teilweise in der gleichen Reihenfolge wie bei Bonizo.[73] Vor allem aber ist der Text der Kanones in *2L/8P* vollständiger nicht nur als der Anselms, sondern auch vollständiger als der Bonizos. Der erste Kanon der Reihe, der bei Anselm unvollständig ist, ist in *2L/8P* vollständig wie bei Bonizo,[74] aber in allen Fällen, in denen Anselm vollständiger ist als Bonizo, stimmt *2L/8P* mit Anselm überein.[75] Die Passagen in *2L/8P* können also nicht von Bonizo oder Anselm abhängen, wohl aber kann es sich bei *2L/8P* um die von Berschin postulierte gemeinsame Quelle Anselms und Bonizos handeln. Da die erhaltenen Handschriften der Sammlung jünger als Anselms und Bonizos Sammlung sind, muss es sich bei der gesuchten Zwischensammlung entweder eine frühere Fassung von *2L/8P* gehandelt haben, oder eine andere, noch zu rekonstruierende Sammlung.

Augustinus und Pelagius

Augustinus

Die Augustin-Exzerpte in Bonizo 7.17-27 sind, wie oben ausgeführt, alle auch bei Anselm zu finden, und auch in *2L/8P*; keine kann in ihrer erhaltenen Form Vorlage einer der anderen gewesen sein. In *2L/8P* sind alle diese Kanones Teil einer größeren Augustinus-Reihe. *2L/8P* bietet auch den insgesamt umfangreichsten Auszug aus ep. 185 und hat als einzige der drei Sammlungen mehrere Auszüge aus diesem Brief in einem Block

(RDC 12; Straßburg 1962) 9-601. Bernhard noch unbekannt war die zweite Handschrift der Sammlung, die das gleiche Material in acht *partes* teilt: Assisi, Biblioteca del Sacro Convento, 227. Zu dieser Handschrift siehe Fowler-Magerl, ‘Restauration’. Zur Sammlung und ihrer komplizierten Beziehung zu Anselm siehe Fowler-Magerl, *Clavis canonum* 150-155 mit weiteren Nachweisen.

[73] Bonizo 7.17-27 (ed. Perels 243-248) = *2L/8P* 2.220, 222-223, 130, 134-136, 218, 295, 316, and 198.

[74] *2L/8P* 2.220 (Assisi, Biblioteca del Sacro Convento, 227, fol. 144va-144vb; Vat. lat. 3832, fol. 79r).

[75] Bonizo 7.17-27 (ed. Perels 243-248) = Anselm 13.14, 16-17; 12.45-46; 6.181-182; 12.57; 9.46-47; 12.62 und 58.

zusammengestellt (*2L/8P* 2.218-223), wenngleich die Reihung der Kanones nicht ganz der Vorlage entspricht. Das spricht zunächst dafür, dass die gesuchte Zwischensammlung von allen Sammlungen am ehesten *2L/8P* ähnelte, da diese Sammlung nach Ausführlichkeit und Anordnung den *fontes materiales* am nächsten ist. Allerdings ist auch Bonizo, wenngleich er weniger Exzerpte aus ep. 185 aufnimmt als *2L/8P*, ein wichtiger Zeuge, denn nur er bringt seine Auszüge in der ursprünglichen Reihenfolge von Augustinus' Brief. Insgesamt ist das Bild unklar und erst detaillierte Forschungen können klären, welche Augustinus-Texte in *2L/8P*, Anselm und Bonizo auf eine gemeinsame Zwischenquelle zurückgeführt werden können und welche Aussagen über deren Inhalt und Struktur getroffen werden können. Ausgehend von Bonizo 7.17-27 wird man vermuten dürfen, dass die Zwischenquelle (wie *2L/8P*) mehr Auszüge aus Augustinus enthielt, als Bonizo nutzte, aber vielleicht (wie Bonizo für ep. 185) in mehreren Fällen den *fontes materiales* näher war, als es die erhaltenen Handschriften von *2L/8P* sind.

Pelagius

Festeren Grund betreten wir mit den Pelagius-Briefen. Bereits ein Blick in die Edition von Gassó und Battle macht sofort deutlich, dass Anselm und *2L/8P* sehr ähnliche Auszüge aus den Pelagius-Briefen enthalten, die teilweise auch bei Bonizo auftauchen, während Deusdedit ganz eindeutig eine andere Vorlage für seine Pelagiusbriefe nutzte.[76] In der Zählung von Gassó und Battle hat *2L/8P* eine Reihe von Exzerpten aus 18 Pelagiusbriefen, von denen 12 auch bei Anselm zu finden sind. Anselm verteilt diese zwar über vier Bücher, aber zumindest vereinzelt stehen sie noch so zusammen wie in *2L/8P*. In den meisten Fällen, so Gassó und Battle, haben diese 12 Exzerpte in beiden Sammlungen genau den gleichen Umfang (einschließlich Auslassungen innerhalb der Kanones), zweimal habe *2L/8P* ein Kapitel mehr, einmal hingegen Anselm, und ein Brief sei in

[76] Pius M. Gassó and Columba M. Batlle, edd. 'Prolegomena', *Pelagii I papae: epistolae quae supersunt (556-651)* (Scripta et documenta 8; Montserrat 1956) XXI-CXIV.

2L/8P gar nicht enthalten.[77] Bonizo hat von diesen 18 Exzerpten acht, wobei er einmal einen längeren Auszug als *2L/8P* hat, ansonsten gleich lange oder kürzere.[78] Die Lesarten aller drei Sammlungen stimmen ebenfalls in hohem Maße überein. Eine gemeinsame Quelle aller drei wird dadurch schon sehr wahrscheinlich, und so stellen es Gassó und Battle in ihrem *stemma* auch dar.[79] Vor allem aber ist es die Anordnung der Kanones in *2L/8P*, die die Parallelen so interessant macht: Während Anselm seine Pelagiusstellen je nach sachlichem Gehalt in Buch 6, 7, 11 und 12 einfügt, enthält *2L/8P* die erwähnten Exzerpte in einer geschlossenen Reihe, deren erster Teil (immerhin zehn Kanones) in chronologischer Reihenfolge angeordnet ist.[80] Gegenüber Anselm und Bonizo hat *2L/8P* in einem Fall den besseren Text (*2L/8P* 2.134) und schreibt alle Kanones Pelagius zu, während die anderen je einen Kanon als 'Gelasius' inskribieren.[81]

Damit machten legten Edition und Analyse der Pelagiusbriefe es nahe, eine gemeinsame Quelle beider Sammlungen anzunehmen, die mindestens die 12 gemeinsamen Stücke in chronologisch richtiger Reihenfolge enthielt—eine Anordnung, die eigentlich nur dann erreicht werden konnte, wenn die Vorlage ihrerseits noch wie das verlorene Register Pelagius' I. angeordnet gewesen war. Damit wäre, zumal angesichts der hohen Textqualität, *2L/8P* als Überlieferung eines Registerauszugs ein ausgesprochen wertvoller Textzeuge. Andererseits scheint *2L/8P* gegenüber seiner vermuteten Vorlage unvollständig zu sein: Anselm 12.43 gehe etwas über den Auszug bei *2L/8P* hinaus (Brief 35, Kap. 2-3 und 5-14 statt Kap. 2-3 und 5-13) hinaus, und Brief 58 sei in *2L/8P* gar nicht enthalten (wohl aber Anselm

[77] Ibid. XLIX-L und LVI.
[78] Ibid. LVI-LVII.
[79] Ibid. [LXIX].
[80] *2L/8P* 2.121-136 (Vat. lat. 3832, fol. 67r-70r); in Assisi, Biblioteca del Sacro Convento, 227, fol. 135ra-138ra als 4.120-134. Nur in Vat. lat. 3832 enthält die Reihe auch einen nicht Pelagius zugeschriebenen Kanon, siehe dazu unten.
[81] Siehe Anselm 7.96 (ed. Thaner 403) und Bonizo 4.48 (ed. Perels 147) im Gegensatz zu *2L/8P* 2.126 und 133 (ed. Bernhard 360 bzw. 367).

6.51).[82]

Tatsächlich kann diese Analyse in mehreren Punkten verbessert werden. Zum einen finden sich noch weitere Pelagius-exzerpte aus *2L/8P* bei Anselm wieder. Die erste von Gassó/Battle nicht erwähnte Parallele zwischen Anselm und *2L/8P* betrifft einen gefälschten Brief (Ps.-Pelagius II., JK †1065. Der Kanon fehlt in einer der drei Handschriften der Fassung A von Anselms Sammlung und ist auch von Perels nicht in seine Edition aufgenommen worden; allerdings spricht vieles dafür, dass der Kanon bereits sehr früh zum Bestand der Sammlung gehört hat.[83] Eine weitere, von Gassó/Battle nicht erwähnte Parallele Anselms zu *2L/8P* ergibt sich durch Berück-sichtigung der zweiten Handschrift von *2L/8P*. Nur in dieser findet sich ein Pelagius zugeschriebener Kanon, der eine exakte Übereinstimmung bei Anselm hat.[84] Er findet sich dort allerdings nicht in der Reihe der Exzerpte aus echten Pelagius-Briefen, sondern ist Teil einer Reihe von Bußbestimmungen, die offenbar dem Dekret Burchards von Worms entnommen sind.[85] Auch dieser Brief, der von Thiel und Kaltenbrunner für echt gehalten wurde (JK 967 = JH³ 1987), ist von Gassó und Battle mit guten Gründen als Spurium von ihrer Edition ausgeschlossen worden.[86]

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[82] Gassó-Batlle, ‘Prolegomena’ XLIX-L.

[83] Anselm 6.190 (nicht bei Thaner; Vat. lat. 1363, fol. 134v) = *2L/8P* 2.132 (ed. Bernhard 366). Dieser letzte Kanon von Buch 6 findet sich auch in Paris, BNF, lat. 12519, fol. 141va, aber nicht Cambridge, Corpus Christi College, 269. Sowohl in der Vatikanischen als auch der Pariser Handschrift ist der Kanon numeriert, aber nicht rubriziert und wird in der *capitulatio* jeweils nicht erwähnt; letzteres dürfte für Perels der Hauptgrund gewesen sein, ihn nicht in seine Edition aufzunehmen. In Vat. lat. 1363 verstärkt der etwas gedrängte Duktus zudem den Eindruck eines Nachtrags. Laut *Clavis canonum* ist der Kanon auch in anderen Anselm-Fassungen vorhanden.

[84] *2L/8P* 1.119-123 = Burchard 12.4-8.

[85] Anselm 11.54 (nicht bei Thaner; Vat. lat. 1363, fol. 193v) = *2L/8P* 1.122 (nicht bei Bernhard und nur in Assisi, Biblioteca del Sacro Convento, 227, fol. 106ra; dort als 2.11 gezählt).

[86] *Pelagii I papae epistolae* 239-240 mit Anm. *. Die Bearbeiter der dritten Auflage von Jaffés Regesten haben den Brief neuerdings wieder für echt erklärt (JH³ 1987), siehe dazu Christof Rolker, ‘Die Briefe Papst Pelagius’ I.: Handschriften, Editionen und Regesten. Kritische Notiz zur dritten Auflage

Im Fall von Brief 58 (JK 1017) haben Gassó und Battle übersehen, dass *2L/8P* zwar fast alle Auszüge aus echten Pelagius-Briefen in einer Reihe enthält, Brief 58 hingegen kurz vorher inmitten einer Reihe Gelasiusbriefe zu finden ist. Wie Anselm hat auch *2L/8P* den vollständige Brief.[87] Schließlich sind die Angaben Gassós und Battles zu Brief 35 (JK 944) dahingehend zu korrigieren, dass Anselm 12.43 genau den gleichen Auszug aus Pelagius' Brief 35 wie *2L/8P* bietet und nicht mehr. Die Angabe, Anselms Exzerpt erstrecke sich auch auf Kap. 14 dieses Briefes,[88] ist vermutlich ein Druckfehler.[89]

Für die Edition mögen diese parallelen Überlieferungen (teilweise unechter) Briefe nicht relevant gewesen sein, für das Verhältnis von Anselm und *2L/8P* sind sie wichtig, da sich damit *alle* in *2L/8P* Pelagius zugeschriebenen Kanones auch bei Anselm wiederfinden. Zwar hat Anselm auch noch Pelagius-Kanones aus anderen Quellen, aber es kann kein Zweifel bestehen, dass er einen Großteil seiner echten Pelagius-Kapitel einer Zwischensammlung entnahm, die *2L/8P* sehr ähnlich war. Alle in *2L/8P* Pelagius zugeschriebenen Briefe tauchen bei Anselm wieder auf, im Falle von Exzerpten meist in gleicher Länge wie dort. Die Lesarten stimmen häufig sehr genau überein, auch bei Varianten und kleineren Auslassungen.[90] Die Inskriptionen in *2L/8P* sind regelmäßig vollständiger als bei Anselm, der sich oft auf 'Pelagius papa' beschränkt (z.B. Anselm 7.63, 12.42-44). Die Reihe *2L/8P* 2.121-130 ist beinahe perfekt (mit einer Ausnahme) in der chronologischen Reihenfolge

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der Regesta pontificum', DA 75 (2019) 415-447, hier 439-442.

[87] Anselm 6.51 (ed. Thaner 294) =*2L/8P* 2.109 (ed. Bernhard 344-345). Auch in der zweiten, Bernhard unbekannten Handschrift ist JK 1017 unter den gleichen Gelasius-Briefen zu finden, aber als 'Pelagius' inskribiert: Assisi, Biblioteca del Sacro Convento, fol. 134r.

[88] Gassó-Batlle, 'Prolegomena' XLIX.

[89] Ein weiterer Druckfehler betrifft die Stellenangabe 'Anselm 6.48' (ibid.; *recte* 6.148).

[90] Z.B. Pelagius I., JK 1011 und 1038 (ed. Gassó-Battle 134): *2L/8P* 2.127 (ed. Bernhard 361-362) und Anselm 12.44 (nicht bei Thaner; Vat. lat. 1363, fol. 215r-215v) haben beide 'Non vos hominem' statt 'nec in hac parte vos hominum'; beiden fehlt 'secundum istam beati Augustini sententiam'.

angeordnet und bietet einen sehr guten Text der Briefe. Nach dieser Reihe folgt in der Vatikanischen Handschrift von *2L/8P* ein fremder Text (Ps.-Anaklet) und in beiden Handschriften ein Spurium,[91] dann wieder Auszüge aus vier echten Pelagiusbriefen (*2L/8P* 2.133-136). Die Qualität dieser seltenen Pelagius-Fragmente ist unverändert hoch, aber die chronologische Ordnung ist nicht mehr gewahrt. Alle diese Kanones tauchen bei Anselm wieder auf, allerdings verteilt auf verschiedene Bücher. Einmal ist Anselm deutlich kürzer, indem er den Anfang des Briefes paraphrasiert (Anselm 6.38); dafür fehlt *2L/8P* ein Abschnitt des gleichen Briefes.[92] Jedenfalls in der erhaltenen Form kann daher Anselms Sammlung (genauer gesagt: Fassung A derselben) nicht von *2L/8P* abhängen oder umgekehrt. Auch die kleineren Varianten zwischen den Lesarten legen nahe, dass *2L/8P* und Anselm zwar eng verwandt sind, aber nicht unmittelbar voneinander abhängig sind. Die chronologische Ordnung in *2L/8P* schließt ferner aus, dass irgendeine Fassung von Anselms Sammlung als Vorlage diente. Vielmehr darf eine Sammlung sehr ähnlich *2L/8P* als Vorlage Anselm mit großer Sicherheit als eine seiner Quellen für Pelagius-Briefe postuliert werden.

Somit erlaubt es der Vergleich mit *2L/8P*, Berschins Hypothese einer Zwischensammlung zu erhärten und nähere Aussagen über deren Inhalt und Struktur zu treffen: Diese verlorene Sammlung enthielt vermutlich nicht viel mehr Pelagius-Material als die erhaltene Fassung von *2L/8P* und zwar wahrscheinlich in der gleichen Reihenfolge wie die erhaltene Fassung von *2L/8P*. Auch für die Frage nach Bonizos Arbeitsweise ist dies ein Fortschritt; zum einen sind auch seine Vorlagen nun besser bekannt, zum anderen bestätigt sich Berschins Befund, dass Bonizo für seine Pelagius- und Augustinusexzerpte eben nicht

[91] *2L/8P* 2.131 (Vat. lat. 3832, fol. 69r) ist ein Auszug aus Ps.-Anaklet, JK †2. Auch dieser Kanon hat eine Parallele bei Anselm, dort allerdings etwas länger: Anselm 6.126 (ed. Thaner 286). *2L/8P* 2.132 = Ps.-Pelagius, JK †1065.

[92] Die Lücke in *2L/8P* 2.121 (ed. Bernhard 355) gegenüber Anselm 6.38 (ed. Thaner 286-287), die bereits dem Herausgeber auffiel, findet sich auch Assisi, Biblioteca del Sacro Convento, 227, fol. 135ra.

von Anselm abhängig sei. Der von Gassó und Battle übersehene Auszug aus JK 1017 findet sich nämlich ebenfalls bei Bonizo, und zwar mit einem besseren Text als das entsprechende Kapitel bei Anselm. Andererseits schreibt Bonizo auch diesen Kanon Gelasius zu, was aber gerade bei einer Benutzung einer Quelle ähnlich *2L/8P* nicht verwunderlich ist, steht der Text dort doch inmitten von Gelasius-Fragmenten.[93] Außerdem läßt sich ein anderer Befund von Gassó und Battle erhärten: Während die Parallelen zwischen *2L/8P* und Anselm bei näherer Untersuchung umso größer sind, wird die Distanz zu Deusdedit immer deutlicher. In seiner Sammlung findet sich keine Spur der von Anselm und Bonizo benutzten Zwischensammlung, die am besten in den entsprechenden Teilen von *2L/8P* erhalten ist. Wie noch zu diskutieren sein wird, ist dies ein Hinweis darauf, dass die Zwischensammlungen meist klein waren und unabhängig voneinander zirkulierten.

Pseudoisidor

Zu einer möglichen gemeinsamen Vorlage von Bonizo und Anselm (sowie eventuell Deusdedit) für ihre Pseudoisidor-Exzerpte gibt es in der Forschung seit langem entsprechende Vermutungen, aber weniger konkrete Belege, als es zunächst den Anschein hat.[94] Überwiegend ist die Forschung noch nicht über die Beobachtungen Perels hinausgekommen, die dieser sehr knapp in der Einleitung seiner Edition zusammengestellt hat und dabei vor allem zwei Abschnitte des *Liber de vita christiana* hervorhob.

Zum einen nannte Perels die Kanonesreihe Bonizo 3.32-41 als Beispiel einer Reihe von Pseudoisidor-Kanones, die Bonizo einer verlorenen Zwischensammlung entnommen habe. Es handelt sich um die acht Auszüge aus den ersten beiden Clemens-Briefen,

[93] Bonizo 5.3 (ed. Perels 175-176); Anselm 6.51 (ed. Perels 294); *2L/8P* 2.109 (ed. Bernhard 344-345). Zur besseren Textqualität Bonizos siehe bereits Bernhard.

[94] Zum folgenden siehe v.a. Perels, ‘Einleitung’ XXX und Fuhrmann, *Einfluß und Verbreitung* 2.538; Berschin diskutiert die hier untersuchten Kanones nicht näher.

zwei aus dem ersten Alexander-Brief und einem aus dem Telesphoros-Brief; die Stücke sind in der ‘historischen’, d.h. bei Pseudoisidor zu findenden Reihenfolge belassen. Der zweite Clemens-Brief ist bei Bonizo einmal als ‘Alexander’ inskribiert, der Auszug aus dem Telesphoros-Brief als ‘Calixt’.[95] Perels erwähnte in diesem Zusammenhang, dass bei Anselm und Deusdedit ‘teilweise die gleichen Pseudoisidorstücke, teilweise auch in derselben Exzerptform und Abgrenzung’ zu finden seien und nahm eine gemeinsame Quelle als Erklärung an.[96] Fuhrmann folgte ihm darin, wenn er die Reihe Bonizo 3.32-41 im Kontext möglicher gemeinsamer Quellen von Anselm, Deusdedit und Bonzio erwähnte und dabei kommentierte, dass ‘nur Bonizo die Abfolge bewahrt’.[97] Die Ausführungen Perels und vor allem Fuhrmanns können daher den Eindruck erwecken, die Reihe Bonizo 3.32-41 hätte Parallelen bei Anselm und Deusdedit. Tatsächlich aber ist keiner dieser Kanones in allen drei Sammlungen zu finden; genau einer hat eine Parallele bei Deusdedit, ein anderer bei Anselm.[98] Zudem haben beide jeweils andere, längere Auszüge, und Anselm teilt auch nicht Bonizos Falschzuschreibung des Telesphoros-Briefes. Die Reihe der zehn Kanones (Bonizo 3.32-41) kann die These einer gemeinsamen Quelle von Bonizo, Anselm und Deusdedit daher nicht stützen. Auch Fuhrmanns Hinweis auf eine weitere Reihe von vier

[95] Bonizo 3.36 und 41 (ed. Perels 83 bzw. 84).

[96] Perels, ‘Einleitung’ XXX: ‘Im dritten Buche sind es die zehn Kapitel 32-41, im vierten Buche gar die mehr als zwanzig Kapitel 49-71 [*sic*], in denen der Exzerptor, naturgemäß unter vielen Auslassungen, die originale Reihenfolge bewahrte. In den Sammlungen des Anselm von Lucca und des Deusdedit finden wir teilweise die gleichen Pseudoisidorstücke, teilweise auch in derselben Exzerptform und Abgrenzung’.

[97] Fuhrmann, *Einfluß und Verbreitung* 2.538: ‘Bonizo führt allerdings auch mehrere Pseudoisidorreihen auf, und bei einer von ihnen - IV, 48-71 - ist deutlich, daß streckenweise nur Bonizo die Abfolge bewahrt hat; Deusdedit und Anselm bieten teilweise die Auszüge in gleichem Umfang und mit den gleichen Auslassungen an, doch bei ihnen ist die Reihenfolge gestört’. In einer Fußnote (ibid. Anm. 308) führt Fuhrmann dann Bonizo 3.32-41 sowie 3.68-71 als ‘[a]ndere Reihen’ dieser Art auf.

[98] Bonizo 3.40 (ed. Perels 84) = Deusdedit 3.30 (31) (ed. Wolf von Glanvell 282); Bonizo 3.41 (ed. Perels 84-85) = Anselm 3.13 (ed. Thaner 124-125).

weiteren Kanones im dritten Buch, die in der Reihenfolge Pseudoisidors belassen seien (Bonizo 3.68-71),[99] ist für die Frage einer gregorianischen Zwischensammlung irrelevant, da auch diese Kanones bei Anselm und Deusdedit nicht auftauchen.

Vielmehr sind nur in der *zweiten* von Perels genannten Reihe (Bonizo 4.49-71) Parallelen zu Anselm und Deusdedit zu finden. Da diese relativ lange Reihe vollständig aus Pseudoisidor geschöpft ist und dabei die historische Anordnung der Vorlage bewahrt, nahm Perels eine gemeinsame Vorlage für die entsprechenden Kanones bei Bonizo, Anselm und Deusdedit an. Auch hier folgte Fuhrmann Perels; er erweiterte die Reihe lediglich um einen Kanon am Anfang (Bonizo 4.48).[100]

In der Tat erstrecken sich die Parallelen zwischen den drei Sammlungen auf einen größeren Abschnitt und innerhalb dessen auf mehr Kanones, als Perels und Fuhrmann angaben, und die vermutete Zwischensammlung wurde noch von einer vierten Sammlung verwendet, namentlich der bereits erwähnten *Sammlung in zwei Büchern* bzw. *acht Teilen* (*2L/8P*). Diese zusätzliche Quelle erlaubt auch in diesem Fall, die Gestalt der verlorenen Zwischensammlung näher zu bestimmen. Da weder Perels noch Fuhrmann im Detail auf diese Kanones eingingen, soll zunächst Bonizos Sammlung in den Blick genommen werden: Die Reihe bei Bonizo 4.48-71 besteht vollständig aus Pseudoisidor-Exzerpten, die beinahe ohne Ausnahmen in der Reihenfolge der Vorlage belassen sind und alle entweder in allen drei anderen Sammlungen (Anselm, Deusdedit, *2L/8P*) oder aber in zweien von ihnen eine mindestens teilweise Entsprechung haben. Die Parallelen erstrecken sich dabei auch auf gemeinsame Auslassungen (die teilweise durch ‘et post pauca’ o.ä. markiert sind) und vereinzelt auch Umstellungen kürzerer Passagen.[101] Kleinere Umstellungen kommen aber auch bei Bonizo vor: Pseudo-

[99] Fuhrmann, *Einfluß und Verbreitung* 2.538 Anm. 308.

[100] Ibid. 2.538. Warum Perels das Kapitel (Pseudo-Clemens!) nicht als Teil der pseudoisidorischen Reihe betrachtete, ist unklar; möglicherweise handelt es sich nur um einen Druckfehler.

[101] Vgl. Bonizo 4.53 (ed. Perels 135) mit 1.65 (54) (ed. Wolf von Glanvell 65) und der gemeinsamen Vorlage Ps.-Sixtus I., JK †32 (ed. Hinschius 42).

Eleutherius und Pseudo-Viktor sind vertauscht;[102] da die beiden Kanones aber bei Deusdedit in der Reihenfolge Pseudoisidors stehen, wird man annehmen dürfen, dass dies auch in der gemeinsamen Vorlage der Fall war.[103] Weitere Abweichungen von der Vorlage sind beschränken sich auf kleinere Vertauschungen: Auszüge aus JK †144 stehen vor Auszügen aus JK †142,[104] und auch innerhalb eines Briefes bringt der *Liber de vita christiana* gelegentlich Exzerpte in falscher Reihenfolge.[105] Bereits diese Befunde (abgesehen von den ihnen unbekannten *2L/8P*-Parallelen) hatten Perels und Fuhrmann davon überzeugt, hier eine aus Pseudoisidor kompilierte, chronologisch geordnete Vorlage für Bonizo 4.48/49-71 zu postulieren. Tatsächlich ist die Reihe sogar länger, denn Bonizo setzt nahtlos mit echten Papstbriefen aus dem zweiten Dekretalenteil fort (Bonizo 4.72-75) und bringt im Anschluss weitere Papstbriefe aus anderen Quellen, die mit wenigen Ausnahmen die chronologische Ordnung fortsetzen und Parallelen bei Anselm und Deusdedit haben. Die Überprüfung wird dadurch erleichtert, dass die chronologische Ordnung bei Deusdedit keineswegs (wie Fuhrmann behauptet hatte) ‘gestört’ ist,[106] sondern die erheblich längere Reihe Deusdedits nur an einer Stelle ernsthaft von der Reihenfolge der Vorlage abweicht.[107] Für die Rekonstruktion der vermuteten Zwischensammlung sollen zunächst die aus Pseudoisidor stammenden Kanones (Bonizo 4.48-75) auf ihr Vorkommen in anderen drei Sammlungen untersucht werden.

Die meisten Kanones der Reihe Bonizo 4.48-75 finden sich auch in Anselms Sammlung, allerdings oft gekürzt und nur selten in der Reihenfolge der Vorlage. Immerhin aber zeichnen sich deutliche Konzentrationen am Beginn der ersten beiden Bücher

[102] Bonizo 4.55-56 (ed. Perels 136-137).
[103] Deusdedit 1.68-69 (57-58) (ed. Wolf von Glanvell 66-67).
[104] Bonizo, 4.61-62 (ed. Perels 139).
[105] Bonizo 4.53 und 69 (ed. Perels 136 bzw. 142).
[106] Fuhrmann, *Einfluß und Verbreitung* 2.538.
[107] Deusdedit 1.73-78 (63-66) (ed. Wolf von Glanvell 69-71) bringt zwar Pseudoisidor-Stücke in der Reihenfolge Fabian-Anterus-Anicetus-Pius-Soter-Lucius (statt Anicetus-Soter-Anterus-Fabianus-Lucius), vertauscht dafür aber nicht wie Bonizo Pseudo-Eleutherius und Pseudo-Viktor.

ab (Anselm 1.1-3, 11, 13-17 und 2.4, 6, 8-15) sowie einer lockereren Folge im Mittelteil des zweiten Buchs (Anselm 2.25 bis 62, mit Unterbrechungen; siehe die Tabelle im Anhang). Im Fall von Anselm 1.12 und 18 sprechen die Parallelen bei Deusdedit bzw. *2L/8P* dafür, dass auch diese Kanones Teil der gemeinsamen Vorlage waren, zumal die Stücke bei Anselm in der Reihenfolge Pseudoisidors belassen sind; es ergibt sich also eine geschlossene Reihe von immerhin neun Kanones (Anselm 1.11-18). Für die anderen 'Lücken' ist nicht klar, ob Anselm sie ebenfalls der gleichen Quelle entnommen hat. Mehrfach hat Anselm Exzerpte aus einem Brief, die bei Bonizo und anderen als ein Kanon aufgenommen sind, auf mehrere Kanones, teils sogar in verschiedenen Büchern, verteilt. Beides spricht für die starke Bearbeitung des Materials durch Anselm, der nicht die historische Ordnung, sondern die sachliche Zusammengehörigkeit als Organisationsprinzip seiner Sammlung verfolgte. Daher ist es allerdings auch nicht möglich, weitere Pseudoisidor-Kanones bei Anselm der hier interessierenden Zwischensammlung zuzurechnen; zu unsicher ist, woher Anselm seine Kanones im Einzelnen nahm.

Die Parallelen zwischen Bonizo 4.48-75 und Deusdedits Sammlung sind noch größer als im Fall von Anselm; mit einer Ausnahme (Bonizo 4.59) hat Deusdedit Parallelen zu allen Kanones, oft in der gleichen oder einer ausführlicheren Form als Bonizo. Da er sein Material im Vergleich zu Anselm weniger stark nach sachlichen Kriterien umgearbeitet hat, sind diese Parallelen zudem oft in der pseudoisidorischen Reihenfolge der Vorlage belassen. So haben die elf Kapitel 66-76 des ersten Buchs (in der Einteilung der Handschrift, nicht der Edition!) alle eine mindestens teilweise Entsprechung bei Bonizo sowie meist auch bei Anselm und/oder *2L/8P*;[108] weitgehend sind sie in der Reihenfolge Pseudoisidors. Eine der wenigen Abweichungen ist sicher absichtlich; Deusdedit ordnet den Pseudo-Damasus-Brief, den Pseudoisidor an den Anfang seiner Sammlung stellt, unter die anderen Damasus-Texte ein. Es ist stark zu vermuten, dass

[108] Zu Deusdedit 1.78 (66) bis 1.91 (76) und Bonizo 4.58-69 siehe die Tabelle im Anhang.

die vollständigen Kanones (und nicht nur die Teile, die eine Parallele bei Bonizo haben) aus der gesuchten Zwischensammlung stammen.[109]

Vor und nach diesen Kanones stehen zehn weitere Kapitel (Deusdedit 1.48-50, 54-55, 57-60, 78 in der Zählung der Handschrift), die ebenfalls alle eine mindestens teilweise Parallele zu Bonizo 4.48-71 haben. Außerdem bewahren alle 22 Kapitel (also Deusdedit 1.48-50, 54-55, 57-60, 66-76 und 78) die chronologische Anordnung Pseudoisidors. Könnten auch die dazwischenstehenden Kanones (Deusdedit 1.51-53, 56, 61-65 und 77) aus der gleichen Quelle stammen? Dafür spricht, dass die Reihe von 31 Kanones (Deusdedit 1.48-78) ausschließlich aus Pseudoisidor geschöpft ist, dass die Texte mit wenigen Ausnahme in der Reihenfolge der Vorlage belassen sind,[110] und dass die meisten Kanones eine Parallele in *2L/8P* und/oder Anselm haben. Im Fall von Deusdedit 1.52 (Ps.-Evarist, JK †21) kommt hinzu, dass die Präsenz eines Evarist zugeschriebenen Kanons in Bonizos Vorlage auch dessen falsche Inskription eines Anaklet-Kanons als ‘Evaristus’ erklären könnte.[111] Drei von Deusdedits Kapiteln, die nicht in Bonizos Reihe 4.48-75 zu finden sind, stehen nicht nur in seiner Sammlung, sondern auch bei Anselm und in *2L/8P* inmitten von pseudoisidorischen Kanones, die eine Parallele bei Bonizo haben.[112] Zwar sind die Parallelen zu den anderen Sammlungen hier geringer und die historische Ordnung ist zumindest teilweise gestört; dennoch nehme ich an, dass alle genannten Kanones (Kapitel 1.47-78 in der Zählung der Handschrift) auch in Bonizos Vorlage zu finden waren, allerdings in pseudoisidorischer Reihenfolge. Hingegen

[109] Da der Herausgeber die Kapitel stärker unterteilt und als Kapitel 78 bis 91 neu gezählt hat, kann der Eindruck entstehen, ganze Kanones hätten keine Entsprechung bei Bonizo.

[110] Deusdedit 1.73 (61) bis 77 (65) sind nicht in der historischen Reihenfolge. In Deusdedit 1.61-62 (51-52) und 1.71-72 (60) sind Passagen aus den gleichen Briefen nicht in der ~~der~~ Reihenfolge der Vorlage.

[111] Bonizo 4.51 (ed. Perels 134-135) = Deusdedit 1.61 (50) (ed. Wolf von Glanvell 63-64).

[112] Deusdedit 1.66 (55), 72 (60) und 73 (61) = Anselm 2.15, 1.12 und 2.10 bzw. *2L/8P* 1.21, 9 und 10.

haben die bei Deusdedit folgenden Kanones (Kapitel 79-93) deutlich geringere Parallelen zu den anderen Sammlungen und greifen teilweise auf andere Quellen zurück;[113] bei dieser Reihe dürfte es sich um Sondergut Deusdedits handeln, auch wenn dieser die Kanones an der chronologisch passenden Stelle eingeordnet hat.

In der Sammlung *2L/8P* schließlich konzentrieren sich die Parallelen zu Bonizo 4.48-75 ebenfalls stark, vor allem zu Beginn des ersten Buches (*2L/8P* 1.2-19 und 23-25). Diese Kanones haben alle eine Parallele in den anderen Sammlungen und sind mit Ausnahme eines Kanons (*2L/8P* 1.11) auch in der pseudoisidorischen Reihenfolge belassen. Da auch die Kanones zwischen und kurz nach diesen beiden Reihen aus Pseudoisidor stammen, weitgehend in chronologischer Ordnung sind und überwiegend eine Parallele bei Anselm und/oder Deusdedit haben, ist es durchaus plausibel, auch für diese Kanones (*2L/8P* 1.20-22 und 26-27) anzunehmen, dass sie aus der gesuchten Zwischenquelle stammen. Allerdings sind die ersten drei dieser zusätzlichen fünf Kapitel nicht in der pseudoisidorischen Reihenfolge, so dass auch hier Zweifel bleiben können. Kapitel 21 hat aber sowohl bei Anselm als auch bei Deusdedit eine Parallele inmitten von Kanones, die auch bei Bonizo 4.48-71 zu finden sind,[114] und Kanon 27 hat zumindest bei Anselm eine Parallele am Ende einer solchen Reihe.[115] Mindestens diese beiden Texte dürfen daher als Teil der gemeinsamen Vorlage vermutet werden. Die anderen Parallelen zu Bonizo, Anselm und Deusdedit sind (trotz einer gewissen Konzentration zwischen *2L/8P* 1.224 und 333) so stark über die Sammlung verteilt, dass auf dieser Basis keine Aussagen über weitere (über Bonizo 4.48-75 hinaus-gehend) getroffen werden können.

Die verlorene Zwischensammlung, die als Vorlage aller vier Sammlungen zu vermuten ist, war also eine Reihe von historisch

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[113] Nicht aus Pseudoisidor stammen innerhalb dieser Reihe z.B. Ps.-Damasus I., JK †250, Ps.-Innozenz I., JK †320 und Coelestin I., JK 369.

[114] *2L/8P* 1.21 (ed. Bernhard 64) = Anselm 2.15 (ed. Thaner 82) = 1.66(55) (ed. Wolf von Glanvell 66).

[115] *2L/8P* 1.27 (ed. Bernhard 71) = Anselm 1.18 (ed. Thaner 14-15).

geordneten Exzerpten aus Pseudoisidor. Angesichts der Parallelen zwischen den vier Sammlungen können sicher 28 (nämlich Bonizo 4.48-75) und mit unterschiedlicher Sicherheit weitere 18 Kanones (nämlich Bonizo 4.76-78 plus weitere Kapitel; siehe Tabelle) als Inhalt der Zwischensammlung identifiziert werden. Überwiegend stammen die Exzerpte aus dem ersten, teilweise aber auch dem zweiten Dekretalenteil Pseudoisidors. Der Schwerpunkt lag eindeutig auf den Briefen der frühen Päpste—über die Hälfte der Exzerpte ist den Päpsten bis Fabian I. zugeschrieben. Die (scheinbar) jüngsten Stücke stammen von Ps.-Damasus, Leo I. und Hilarius. Viele der Exzerpte kreisen um den päpstlichen Primat und seine Begründung durch Petrus selbst.

Wenn diese Exzerpte Teil einer eher kleinen Zwischensammlung waren (wie noch zu diskutieren sein wird), ist diese von allen vier Sammlungen intensiv benutzt worden: Die meisten Kanones wurden von mindestens drei der vier Sammlungen aufgegriffen. Hinsichtlich der Länge der Auszüge gibt es aber teils deutliche Unterschiede. In Einzelfällen kann die Überlappung sich auch bei längeren Kanones auf einzelne Sätze beschränken.[116] Aus diesen Unterschieden ergibt sich auch, dass keine der vier Sammlungen unmittelbar von einer der anderen drei abhängen kann, da jede gegenüber den jeweils anderen mindestens in einigen Fällen die vermutete Vorlage vollständiger bewahrt. So enthält *2L/8P* den umfangreichsten Auszug aus JK †24,[117] Bonizo hat die vollständigste Fassung von JK †144,[118] Anselm für JK †171;[119] bei den anderen Pseudoisidor-Stücken hat meist Deusdedit die längsten Exzerpte. Anselms Sammlung scheidet angesichts der zahlreichen Umstellungen als Vorlage der anderen drei Sammlungen ohnehin aus; umgekehrt könnte Anselm aber

[116] Z.B. bei Ps.-Marcellus, JK †160: Anselm 1.15 (ed. Thaner 13-14) fehlt der erste, Deusdedit 1.83 (70) (ed. Wolf von Glanvell 72-73) der zweite Teil, nur ein Satz ist beiden gemeinsam; Bonizo 4.64 (ed. Perels 139-140) und *2L/8P* 1.18 hingegen überlappen mit beiden.

[117] *2L/8P* 1.3 (Vat. lat. 3832, fol. 27r; Assisi, Biblioteca del Sacro Convento, 227, fol. 92ra-92rb).

[118] Bonizo 4.61 (ed. Perels 139).

[119] Anselm 2.41 (ed. Thaner 93).

von einer nur wenig vollständigeren Version von *2L/8P* abhängig sein: Die Stücke, die Anselm über *2L/8P* hinaus aufweist, gehören alle zu den Kanones, die bei Bonizo nicht in der Reihe 4.48-71 zu finden sind und deren Zugehörigkeit zur hier interessierenden Zwischensammlung damit etwas unsicher ist.

Weitere Papstbriefe

Wie sieht es mit den nicht-pseudoisidorschen Teil von Bonizos chronologisch geordneten Kapiteln aus? Es ist offensichtlich, dass die an die Pseudoisidor-Reihe anschließenden Kapitel (ab Bonizo 4.76) die chronologische Ordnung fortsetzen, allerdings ist nicht ganz so deutlich, bis wohin diese Reihe reicht. Der letzte aus Pseudoisidor stammende Kanon der Reihe ist Papst Symmachus entnommen (aus dem *Libellus Ennodii*) und findet sich in allen vier hier untersuchten Sammlungen (Bonizo 4.75). Es folgen bei Bonizo insgesamt vier Auszüge aus einem Brief Nikolaus I. und zwei Briefen Stephans V., so dass die chronologische Ordnung zunächst gewahrt bleibt (Bonizo 4.76-79). Für Nikolaus I. hatte schon Perels darauf hingewiesen, dass Bonizo hier eine auch von Anselm und Deusdedit genutzte Zwischensammlung verwendet haben könnte.[120] Auch die beiden Stephan-Kanones tauchen in gleicher Form (allerdings nur als je ein Kapitel gezählt) bei Anselm und Deusdedit wieder auf; da es sich um vergleichsweise seltene, überhaupt erst Ende des 11. Jahrhunderts in kanonischen Sammlungen nachweisbare Texte handelt, ist auch hier eine gemeinsame Quelle durchaus plausibel.[121] Als nächstes allerdings bringt Bonizo zwei Kapitel—Auszüge aus Leo I. (JK 411) und den *Capitula Angilramni*—die nicht der chronologischen Ordnung entsprechen

[120] Perels, 'Briefe' 94.

[121] Zur Überlieferung von JL 3450 und 3342 bei Anselm, Deusdedit und Bonizo siehe Jasper, 'Beginning' 131. Die Ähnlichkeiten zwischen den drei Sammlungen sind größer, als Jasper angibt: Nicht nur Anselm, sondern auch Deusdedit hat beide Fragmente in einem Kapitel (die scheinbare Trennung ist ein Artefakt der Edition), und alle drei Sammlungen machen durch die gleiche Überleitung ('Idem Walberto') deutlich, dass das zweite Fragment aus einem anderen Brief stammt.

(Bonizo 4.80-81). Während ersterer in keiner der hier untersuchten Sammlungen zu finden ist, ist letzterer in *allen* zu finden, allerdings mit einem wichtigen Unterschied: Während er bei Bonizo und Deusdedit als Einzelkanon überliefert ist, haben Anselm und *2L/8P* ihn als Teil einer umfangreicheren geschlossenen Reihe aus den *Capitula Angilramni*. Schon hat daher zu Recht darauf hingewiesen, dass zwar Bonizo und Deusdedit auf die gleiche Quelle zugreifen, nicht aber auch Anselm.[122] Schließlich bringt Bonizo einen eindeutig Nikolaus II. (*Nicolaus secundus*) zugeschriebenen Kanon (JL 4424), der ebenfalls bei Anselm und Deusdedit zu finden ist (Bonizo 4.82). Es handelt sich um eine Fälschung, basierend auf einem Auszug aus einem bekannten Brief Petrus Damianis. Dieser hatte darin von der besonderen Stellung der römischen Kirche, die im Gegensatz zu anderen Kirchen nicht von 'Königen, Kaisern oder Menschen irgendeines Standes', sondern vom Herrn selbst gegründet sei, geschrieben.[123] Bei Pseudo-Nikolaus (JL 4424; JH[4] 10340[124]) hingegen wird daraus die Aussage, dass alle Kirchen von Rom gegründet seien. In dieser Form ist der Kanon in keiner vor ca. 1080 entstandenen Sammlung nachweisbar und verbreitet sich vor allem auch über die Sammlungen Anselms

[122] Karl-Georg Schon, *Die Capitula Angilramni: Eine prozessrechtliche Fälschung Pseudoisidors* (MGH. Studien und Texte 39; Hannover 2006). Schon berücksichtigt *2L/8P* in seiner Studie nicht. Die *Capitula Angilramni* (wie bei Anselm ohne das zweite Kapitel!) finden sich nur in der Handschrift aus Assisi (Assisi, Biblioteca del Sacro Convento, 227, fol. 110vb-112rb), dort als 2.63 gezählt; die entsprechende Stelle in Vat. lat. 3832 wäre 1.176 (siehe *Clavis canonum*). Die entsprechenden Blätter (ein Quaternio?) zwischen den heutigen Blättern 32 und 33 sind aber ausgefallen; deshalb auch fehlen die Kanones in Bernhards Edition von *2L/8P*.

[123] Petrus Damiani, ep. 65, ed. Kurt Reindel (MGH Briefe der dt. Kaiserzeit 4.2.228-247, hier 232, Zeile 14 bis 325, Zeile 17. Siehe außer der bei Reindel genannten Literatur auch Cushing, *Papacy and Law* 25-26 und 37, die allerdings nicht auf die kanonischen Sammlungen eingeht, sowie Stephan Freund, *Studien zur literarischen Wirksamkeit des Petrus Damiani* (MGH. Studien und Texte 13; Hannover 1995) v.a. 90-95. Anders als Freund (ibid. 91 und 102) es nahelegt, haben Anselm und Deusdedit die gleiche Fassung des Briefes.

[124] JH[4] 10340 scheint den Brief für echt zu erklären; die Weglassung des Kreuzzeichens ist aber wahrscheinlich nur ein Druckfehler.

und Deusdedits. Spätestens hier endet bei Bonizo die chronologische Reihe; die folgenden Kanones sind ausgesprochen divers und weisen weder auffällige Parallelen zu Anselm, Deusdeit und/oder *2L/8P* auf, noch sind sie auch nur annähernd historisch geordnet.

Man kann die chronologische Reihe Bonizos, die mit Ps.-Clemens beginnt (Bonizo 4.48), also an verschiedenen Stellen enden lassen: Mit Ps.-Damasus in Kapitel 71 (d.h. dem Ende der Übernahmen aus dem ersten Dekretalenteil Pseudoisidors), mit Symmachus in Kapitel 75 (d.h. dem Ende der pseudoisidorischen Reihe), mit Nikolaus I. in Kapitel 77 (d.h. mit den gleichen Kanones, mit denen auch Deusdedit seine chronologische Reihe beendet), mit Stephan V. in Kapitel 79 (den letzten Kanones, bevor die chronologische Ordnung bei Bonizo erstmals eindeutig gestört ist), oder mit Pseudo-Nikolaus II. in Kapitel 82. Bis einschließlich zu diesem letzten Kapitel hat Bonizo auffällige Parallelen zu Anselm und Deusdedit (nur nicht für sein Kapitel 80); die Parallelen zu *2L/8P* hingegen enden mit dem Ende der Pseudoisidor-Auszüge und die Ordnung der folgenden Kapitel entspricht weder ganz der Chronologie, noch der Anordnung bei Deusdedit.

Eine Übernahme der Texte aus der Sammlung Anselms durch Bonizo erscheint schon aufgrund der chronologischen Ordnung kaum denkbar. Von Deusdedit hätte Bonizo die Kanones zwar weitgehend in chronologischer Ordnung übernehmen können, aber selbst wenn er (wofür es sonst keine Hinweise gibt) Deusdedits Sammlung benutzt hätte, bliebe zu erklären, warum er sich dabei auf die auch bei Anselm und/oder *2L/8P* vorkommenden Kapitel beschränkt haben sollte; so fügt Deusdedit in seiner Sammlung an der chronologisch richtigen Stelle zahlreiche Damasus zugeschriebene Kanones ein, die so aber nur bei ihm zu finden sind. Eine Übernahme aus *2L/8P* hingegen ist weitaus plausibler, da hier kaum mehr Kanones als bei Bonizo 4.48-75 zu finden sind und die Reihenfolge jedenfalls weitgehend der historischen Ordnung entspricht. Die relativ vielen in *2L/8P* fehlenden, bei Bonizo aber vorhandenen Stücke machen eine direkte Abhängigkeit aber ebenfalls unmöglich.

Die in drei der Sammlungen mindestens teilweise gewahrte chronologische Anordnung und die großen Übereinstimmungen aller vier Sammlungen lassen angesichts der Unmöglichkeit direkter Abhängigkeiten nur den Schluss zu, dass alle vier Sammlungen für die bei Bonizo in Buch 4 mit Kapitel 48 beginnende Reihe von einer Zwischensammlung abhängen. Das gleichsam ausfransende Ende dieser Parallelen ist möglicherweise so zu erklären, dass die pseudoisidorischen Auszüge (Bonizo 4.48-75) eine eigene Sammlung darstellten, die nicht aus Pseudoisidor stammenden und auch nicht erkennbar von *2L/8P* genutzten Kanones (Bonizo 4.76-82) hingegen aus einer anderen Sammlung, die unabhängig von der erstgenannten entstanden ist und zirkulierte. Die beiden Auszüge chronologisch richtig zu kombinierten, war für Bonizo keine Schwierigkeit.

Fazit

Während das Konzept der ‘gregorianischen Zwischensammlung’ in der Forschung seit über 100 Jahren immer wieder, meist zustimmend, zitiert wird, fehlte es bislang und fehlt es auch weiterhin an quellenkritischen Studien, die präzise Aussagen darüber erlauben, welche Rolle konkrete Zwischensammlungen für die Genese der sogenannten gregorianischen Sammlungen gespielt haben. Dank Berschins Analysen sind die Vorlagen für Bonizos *Liber de vita christiana* dabei der beste Ausgangspunkt für solche Arbeiten; viele seiner Hypothesen lassen sich im Licht neuer Forschungen bestätigen, andere erweitern. Wie gezeigt wurde, sind drei geschlossene Kanonesreihen im *Liber* (Bonizo 3.32-41, 4.48-75, 4.76-82) sowie die Augustinus- und Pelagiusexzerpte in Bonizo 7.17-27 (und wahrscheinlich weitere Kanones) mit unterschiedlicher Sicherheit auf Zwischensammlungen zurückzuführen. Zugleich ist es sehr unwahrscheinlich, dass Bonizo alle diese Kanones in Form einer einzigen Sammlung vorlagen. Dagegen spricht vor allem, dass die Parallelen zu anderen Sammlungen für alle vier Serien unterschiedlich sind. Für die erste Reihe (Bonizo 3.32-41) gibt es keine signifikanten Parallelen bei Anselm, Deusdedit oder in *2L/8P*; für diese Reihe muss keine Zwischensammlung postuliert

werden, und wenn es sie gab, wurde sie wohl nicht mit den übrigen gemeinsam überliefert. Für die zweite Reihe (Bonizo 4.48-75) bestehen hingegen Parallelen zu allen dreien der anderen Sammlungen, die teilweise die gleiche Anordnung wie Bonizo bewahren. Hingegen hat die dritte Reihe (Bonizo 4.76-82) nur zu Anselm und Deusdedit Berührungspunkte. Die Augustinus- und Pelagius-Auszüge (Bonizo 7.17-27) schließlich sind wieder sowohl bei Anselm als auch in *2L/8P* zu finden, aber gerade nicht bei Deusdedit.

Unterschiedliche Interessen allein können diese deutlichen Varianten nicht erklären. Die erste Serie (Bonizo 3.32-41) behandelt Anklagen gegen Bischöfe, ein Thema, dass mit anderen Auszügen im wesentlich aus den gleichen (pseudoisidorischen) Quellen auch bei Anselm und Deusdedit abgehandelt wird. Erst recht wäre es unwahrscheinlich, dass die verlorene Zwischensammlung eine geschlossene Reihe 4.48-82 enthielt, der Kompilator von *2L/8P* aber genau an der Stelle die Übernahme beendete, wo die Parallelen zu Pseudoisidor endeten. Von den Pelagius-Briefen Bonizos schließlich darf man mit großer Sicherheit annehmen, dass Deusdedit sie genutzt hätte, hätte er sie nur zur Verfügung gehabt: In mehreren Fällen wählte Deusdedit aus *seinen* Quellen Passagen aus, die auch Anselm und/oder Bonizo aus einer Quelle ähnlich *2L/8P* auswählten.

Insgesamt erscheint es daher plausibler, von mehreren Kleinstsammlungen auszugehen, die den einzelnen Kompilatoren in unterschiedlicher Kombinationen vorlagen. Dabei ist auch zu vermuten, dass die einzelnen Kleinstsammlungen nicht viel größer waren, als es die Parallelen zwischen den erhaltenen Sammlungen sicher belegen. Diese Überlegung ergibt sich vor allem aus der Arbeitsweise der Kompilatoren der erhaltenen Sammlungen: Da vor allem Bonizo und Deusdedit die hier untersuchten Zwischensammlungen immer wieder *serienweise* ausschrieben, wären bei weiteren Übernahmen auch mehr parallele Serien in diesen Sammlungen zu erwarten. Man darf daher davon ausgehend, dass die verlorenen Sammlungen nicht sehr viel größer waren, als es sich aus den erhaltenen Sammlungen ergibt. Die einzelnen Texte der verlorenen Kleinstsammlungen dürften

jedoch in einigen Fällen relativ umfangreich gewesen sein. Dies wird vor allem durch Deusdedits Sammlung nahegelegt, der regelmäßig längere Fassungen bewahrt als die anderen Nutzer dieser Zwischensammlungen. Gut möglich, dass auch die von Deusdedit nur punktuell oder gar nicht verwendeten Kanones ähnlich lang waren wie die von ihm vollständig ausgeschriebenen.

Diesem Modell mehrerer unabhängig entstandener Kleinstsammlungen widerspricht nicht der in der Tat auffällige Befund, dass viele dieser Materialien in *2L/8P* vereint sind. In ihrer heute erhaltenen Fassung enthält die Sammlung Bonizo 4.48-75 (teilweise in chronologischer Reihung), Bonizo 7.17-27 (als geschlossene Reihe) sowie eine fast geschlossene Reihe Pelagius-Briefe, die auch Anselm nutzte. Darüber hinaus enthält sie einen längeren Auszug aus den *Capitula Angilramni*, die ebenfalls eine auffällige Nähe zu Anselms Sammlung (aber keiner früheren) aufweist.[125] Dazu kommen möglicherweise Exzerpte aus den Briefen Gelasius' I., die Anselm einer Sammlung ähnlich *2L/8P* entnommen haben soll.[126] Da ich aus den genannten Gründen davon ausgehe, dass alle diese Materien eine separate Zirkulation hatten—insbesondere Bonizo und Deusdedit kannten nur jeweils einen Teil dieser Kleinstsammlungen—interpretiere ich die gemeinsame Überlieferung in Form von *2L/8P* so, dass diese Sammlung um 1100 als Abschrift von damals noch einzeln vorliegenden Kleinstsammlungen entstand. Die großen Übereinstimmungen mit Anselms Sammlungen bei gleichzeitig 'primitiverer' (nämlich den jeweiligen Vorlagen folgender) Anordnung lässt es durchaus denkbar erscheinen, dass es sozusagen Anselms Handbibliothek war, die als eine der Grundlagen für die Kompilation von *2L/8P* diente. Ähnliches ist mit erheblichen Teilen der Arbeitsmaterialien von Ivo von Chartres geschehen,

[125] Siehe oben Anm. 122.

[126] Dies berichtet Fowler-Magerl, 'Collection' 153 unter Berufung auf Detlev Jasper. In seinem Beitrag zur *History of Medieval Canon Law* hat dieser allerdings keinen Hinweis auf die Rolle von *2L/8P* gegeben, siehe Jasper, 'Beginning' v.a. 61-65.

die in Form der (ersten) Arsenal-Sammlung erhalten sind.[127]

Damit aber ist die Grenze dessen erreicht, was sich beim momentanen Stand der Forschung über die Zwischensammlungen ‘hinter’ Bonizos *Liber de vita christiana* sagen lässt. Erst weitere Forschungen sowohl zu den einzelnen Sammlungen (vor allem zur noch recht unbekannten *2L/8P*) als auch zur Überlieferung bestimmter Texte—etwa der Briefe Augustinus’, aber auch derer Gelasius’ I.—werden es erlauben, diese Probleme näher zu beleuchten und die Arbeitsweise der Kompilatoren besser zu verstehen. Das Gespenst der gregorianischen Zwischensammlungen muss uns dabei jedenfalls nicht mehr schrecken.

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[127] Vgl. grundlegend Martin Brett, ‘The Sources and Influence of Paris, Bibliothèque de l’Arsenal 713’, *Proceedings Munich* 149-167. Zur Unterscheidung der beiden Arsenal-Sammlungen siehe auch Greta Austin, ‘Were There Two Arsenal Collections? Arsenal 713B and the Ivonian *Panormia*’, *Canon Law, Religion and Politics: Liber amicorum Robert Somerville*, edd. Uta-Renate Blumenthal et alii (Washington 2012) 3-14.

Anhang: Tabellarische Übersicht über Parallelen zwischen Bonizo 4.48-82, Anselm von Lucca, Deusdedit und *2L/8P*

Ein nachgestelltes ‘x’ weist auf Abweichungen, oft in der Länge, hin. Für Deusdedit sind die Kapitelzählung Wolf von Glanvells und, in Klammern, die der Handschrift angegeben. Für die anderen Sammlungen sind die Kapitelzählung der oben genannten Editionen verwendet worden.

Nr.	Bonizo	Anselm	Deusdedit	*2L/8P*	*Fons materialis*
1	4.48	1.03x	1.57 (47)	*deest*	Ps.-Clemens, JK †10
2	4.49	2.04	1.59 (48)x	1.039	Ps.-Anaklet, JK †2
3	4.50	1.01	1.60 (49)	2.106-107x	Ps.-Anaklet, JK †3
4	*deest*	6.102	1.62 (51)	*deest*	Ps.-Anaklet, JK †4
5	4.51	1.02x und 2.05	1.61 (50)	1.2x und 1.7x	Ps.-Anaklet, JK †4
6	*deest*	6.98	1.63 (52)x	1.333	Ps.-Evarist, JK †21
7	4.52	2.35	1.64 (53)x	1.3x	Ps.-Alexander, JK †24
8	4.53	2.08x	1.65 (54)	1.4x	Ps.-Sixtus I., JK †32
9	*deest*	2.15	1.66 (55)	1.21	Ps.-Viginius, JK †36
10	4.54	1.11	1.76 (64)x	1.5	Ps.-Pius, JK †43
11	*deest*	1.32	1.77 (65)	*deest*	Ps.-Soter, JK †60.
12	4.56	2.36xx	1.68 (57)	*deest*	Ps.-Eleutherius, JK †68
13	4.55	2.09	1.69 (58)x	1.6	Ps.-Victor, JK †74
14	4.57	2.06x, 3.66	1.70 (59)x	1.8x und 1.220	Ps.-Zepherinus, JK †80
15	*deest*	1.12	1.71 (60)x	1.9	Ps.-Calixt, JK †85
16	3.76x	6.99x	1.72 (60)	1.11	Ps.-Calixt, JK †86.
17	3.66x	*deest*	1.74 (62)	*deest*	Ps.-Anterus, JK †90
18	*deest*	2.10	1.73 (61)x und 4.73 (49)x	1.10	Ps.-Fabianus, JK †93/†94
19	4.58	1.13	1.78 (66)	1.12	Ps.-Lucius, JK †123.
20	4.59	2.11	*deest*	1.13	Ps.-Sixtus II., JK †133

Nr.	Bonizo	Anselm	Deusdedit	*2L/8P*	*Fons materialis*
21	4.60x	1.14 und 2.38x	1.79 (67)x	1.14	Ps.-Dionysus, JK †139
22	4.62	2.13	1.18 (16)	1.15	Ps.-Felix, JK †142
23	4.61	2.12	1.80 (68)	1.16	Ps.-Felix, JK †144
24	4.63x	2.14	1.82 (69)x	1.17	Ps.-Gaius, JK †157
25	4.64	1.15x und 2.07	1.83-84 (70-71)x	1.18	Ps.-Marcellus, JK †160
26	4.65	2.62	1.85 (72)x	*deest*	Ps.-Marcellus, JK †161
27	4.66	1.16	1.87 (73)x	1.19	Ps.-Eusebius, JK †165
28	4.67	2.41	1.88 (74)	1.23 und 1.219	Ps.-Miltiades, JK †171
29	4.68	3.89u	1.89 (75)	1.112.22	*Constitutum Silvestri*
30	4.69	1.17 2.26 2.42 2.63	1.90-91 (76)	1.24 1.76	Ps.-Julius I., JK †195
31	4.70	1.23 2.45	1.10 (8)	1.25	Ps.-Julius I., JK †196.
32	*deest*	2.47	*deest*	1.20	Ps.-Julius I., JK †196..
33	*deest*	2.51-52	1.23-23a (19)	1.26	3. Athanasiusbrief
34	*deest*	1.18	*deest*	1.27	Ps.-Damasus I., JK †243
35	4.71	2.39 und 2.260	1.95-96 (78)	*deest*	Ps.-Damasus I., JK †243
36	4.72	1.62x	1.114-115 (94)	1.327x	Leo I., JK 414
37	4.73	1.62x	*deest*	1.328x	Ps.-Hilarius, JK ante 560
38	4.74	2.16 und 1.48	1.126 (103)	1.30x	Gelasius I., JK 664
39	4.75x	6.2 und 1.24	1.132-133 (108)	1.48	*Libellus Ennodii*

Nr.	Bonizo	Anselm	Deusdedit	*2L/8P*	*Fons materialis*
40	4.76	2.65	1.162 (131)	*deest*	Nikolaus I., JE 2785
41	4.77	2.71	1.164 (133)	*deest*	Nikolaus I., JE 2785
42	4.78	6.30a	1.244 (196)	*deest*	Stephan V., JL 3450
43	4.79	6.30b	1.245 (196)	*deest*	Stephan V., JL 3342
44	4.80	*deest*	*deest*	*deest*	Leo I., JK 411
45	4.81	3.89	1.147 (121)	1.112.9	*Capitula Angilramni*
46	4.82	1.63	1.167 (136)	*deest*	Ps.-Nikolaus II., JL 4424

Irnerius

Ken Pennington

Peter Landau had a passion for connecting jurists to legal texts that circulated without authors' names attached to them. He concentrated on Northern European jurists who worked from the Seine to the Rhine, or a little North or South of those rivers. He also dealt with Irnerius in the recent past.[1] No medieval jurist's works and achievements are more cloaked in mystery or buffeted by speculation than Irnerius'. He has been credited as being the first significant teacher of Roman law. Other scholars have declared that he never taught. His fame was a myth. In spite of the lack of sources, or more accurately, the difficulty of the sources, many more scholars have been written about his life and works than they have about any other jurist, perhaps with the exception of Gratian who has received his share of ink during the last twenty years. As Jean Gaudemet wrote fifty years ago:[2]

> The extreme rarity of sources leaves the door open to a wealth of hypotheses with which one could describe the first forms of Bolognese teaching and the relationship of Irnerius to the Renaissance of law.

There has been a flurry of activity recently that has deepened our understanding of the problems surrounding Irnerius' life, writings, and teaching if not always providing us with certain answers.[3]

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[1] Peter Landau, 'Irnerius', HRG² 2 (2011) 1303-1306. My conclusions here differ on a number of points from Landau's.

[2] Review of Spagnesi, *Wernerius Bononiensis judex* in RHD 48 (1970) 653.

[3] Ennio Cortese, 'Irnerio' 1.1109-1113, gives an excellent summary of the scholarly discussion on 1110 with bibliographical references, reprinted in Giovanna Murano, *Autographa*, 1.1: *Giuristi, giudici e notai (sec. XII-XVI med.* (Centro interuniversitario per la storia delle università italiane, Studi 16; Bologna 2012) 2-8. For further bibliography see my 'Odofredus and Irnerius', RIDC 28 (2017) 11-27 and Andrea Padovani, 'Matilde e Irnerio: Note su un dibattito attuale', *Matilde di Canossa e il suo tempo: Atti del XXI Congresso internazionale sull'alto medioevo in occasione del IX centenario della morte (1115-2015): San Benedetto Po – Revere – Mantova – Quattro Castella, 20-24 ottobre 2015* (Spoleto 2016) 199-242, with an extensive bibliography. Luca Loschiavo, 'Verso la costruzione del canone medieval dei testi giustinianei: Il ms. Oxford, Oriel College 22 e la composizione del *Volumen parvum*', *Inter*

Modern scholarship has mirrored the theories of the medieval jurists who followed Irnerius. They told stories about Irnerius, they speculated about his life, and, in the end they marveled at his genius. I am convinced that the evidence is clear that he taught and that he was a major figure in the early years of the law school in Bologna.

Irnerius was, most likely, of German descent. The various names that are attached to him in the sources are certainly Germanic.[4] One may wonder, however, whether he was born in Germanic lands. Irnerius' earliest document dating to 1112 labels him a Bolognese citizen, Guarnerius bononiensis, and the last document dating to 1125 also calls him a judge from Bologna, Warnerius iudex bononiensis. The designation of place would indicate that Irnerius was not a transplant but was Bolognese. Appending a family or place name was the standard way in which later jurists who taught in Italy were identified. Irnerius' successor and student, Bulgarus, and the most important of the 'Four Doctors', also was, like Irnerius, referred to by only his name. However, Bulgarus' close connection to Irnerius and Bologna cannot be doubted.[5]

Recently doubts have arisen about the 1125 case of arbitration in Casale Barbato between two monasteries.[6] Rossella Rinaldi has

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cives necnon peregrinos: Essay in honour of Boudewijn Sirks, edd. Jan Hallebeek, Martin Schermaier et alii (Goettingen 2014) 443-458 at 444-445.

[4] Guarnerius, Wernerius, Gernerius, Warnerius, Irnerius, Yrnerius, see Enrico Spagnesi, *Wernerius bononiensis iudex: La figura storica d'Irnerio* (Accademia Toscana di Scienze e Lettere 'La Colombaria', Studi 16; Firenze 1970) 27-106.

[5] Luca Laschiavo, 'Bulgaro' DGI 1.357-359 for further information and Pennington, 'The Beginnings of Law Schools in the Twelfth Century', *Les écoles du XIIe siècle*, ed. Cédric Giraud (Leiden 2019) 226-249.

[6] Spagnesi, *Wernerius bononiensis iudex* 29-35 and 100-106 and in *Codice diplomatico polironiano* (961-1125), edd. Rossella Rinaldi, Carla Villani, and Paolo Golinelli (Storia di San Benedetto Polirone, 2.1; Bologna 1993) 331-335. In a letter of Pope Alexander II in 1067, PL 146.1326: 'secundum sanius consilium sapientum et seniorum fratum sibi abbatem eligat'. Another letter of Alexander II dated between 1061-1073, PL 146.1402: 'post multos dies quorumdam sapientum consilio'. The second letter is found in the *Panormia* 6.85 and in Gratian's *Decretum* C.33 q.5 c.2, which occurs in all three

made the argument that the document is 'suspect' because it contains the technical term *consilium sapientum*. She argues that since the term came into usage only much later, the authenticity of the document is questionable. However, the term can be found in many early medieval documents before 1125 that pre-date the emergence of the *consilium sapientis* in the late twelfth and early thirteenth centuries.[7] Consequently, her suspicions about the text cannot be supported.

Giuseppe Mazzanti accepted Rinaldi's argument and added his own doubts.[8] He noted that much later jurists thought that Irnerius stopped teaching because of 'nimia senectus', extreme old age, quoting an anonymous gloss from the late thirteenth or early fourteenth century found in the margins of a *Digest* manuscript and printed by Giacomo Pace that begins with a poem widely attributed in other sources to Irnerius at the end of his teaching career:[9]

Versus:

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recensions of the *Decretum*. The phrase also is found in a letter of Pope Calixtus II of 1122, PL 163.1233: 'Si nos audire, et religiosorum et sapientum consilio nostris volueris monitis obedire'. King Alfred's law ca. 872-900 declared, PL 138.451: 'Ne accipias unquam dona, quoniam caecant saepissime sapientum virorum consilium, et verba eorum pervertunt'. There are many more examples. To find the term in a document of 1125 is not anachronistic.

[7] In a letter of Pope Alexander II in 1067, PL 146.1326: 'secundum sanius consilium sapientum et seniorum fratum sibi abbatem eligat'. Another letter of Alexander II dated between 1061-1073, PL 146.1402: 'post multos dies quorumdam sapientum consilio'. The second letter is found in the *Panormia* 6.85 and in Gratian's *Decretum* C.33 q.5 c.2, which occurs in all three recensions of the *Decretum*. The phrase also is found in a letter of Pope Calixtus II of 1122, PL 163.1233: 'Si nos audire, et religiosorum et sapientum consilio nostris volueris monitis obedire'. King Alfred's law ca. 872-900 declared, PL 138.451: 'Ne accipias unquam dona, quoniam caecant saepissime sapientum virorum consilium, et verba eorum pervertunt'. There are many more examples. To find the term in a document of 1125 is not anachronistic.

[8] Giuseppe Mazzanti, 'Un falso irneriano? Riconsiderazioni sul document del 1125', *Il contributo del monastero di S. Benedetto Polirone alla cultura giuridica italiana (secc. XI-XVI): Atti del Convegno San Benedetto Po, ex refettorio monastico – Piazza Matilde 29 settembre 2007*, edd. Pierpaolo Bonacini and Andrea Padovani (San Benedetto Po (Mantova) 2009) 37-44.

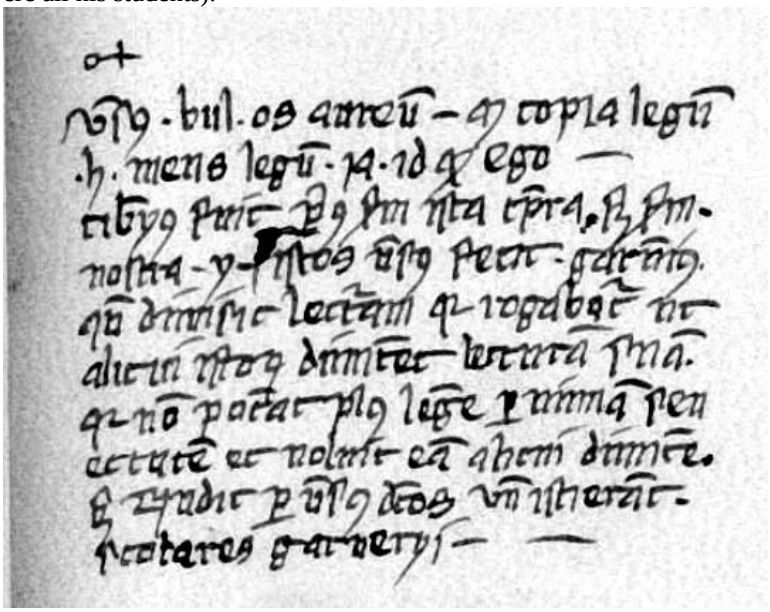
[9] Giacomo Pace, '"Garnerius Theutonicus": Nuove fonti su Irnerio e i "Quattro dottori",' RIDC 2 (1991) 123-133 at 131.

Bul<garus> os aureum,
M<artinus> copia legum,
H<ugo> mens legum,
Ja<cobus> id quod ego.

Tiberyus fuit primus secundum ista tempora, set secundum nostra, Y<rnerius>. Istos versus fecit Garnerius quando dimisit lecturam, quia rogabatur ut alicui istorum dimittet lecturam suam, quia non poterat plus legere per nimiam senectutem, et voluit eam alicui dimittere, set respondit per versus dictos. Unde isti erant scolares Garneryi.

(Bulgarus has the golden voice,
Martinus the knowledge of law,
Hugo a legal mind,
Jacobus is I.

Tiberius was the first great Roman jurist; in our times Irnerius. Garnerius composed these verses when he stopped teaching because he was asked to choose someone to follow him in the classroom because he was too old to teach any longer. He answered their request with this poem. The jurists were all his students).



Saint Omer, Bibliothèque muncipale lat. 451, fol. 9ra
Dig. 1.2.2.5 s.v. *Tiberium*

Mazzanti uses this text to make the point that there is no mention of Irnerius between his excommunication 1119 for supporting the

election of an anti-pope and 1125. Therefore, one could conclude that the 1125 arbitration case took place when Irnerius was too old to participate in it.[10] This argument 'ex silentio', based on a very late anonymous marginal text, can neither be confirmed or rejected — like all arguments from silence and those based on very late sources. What can confidently said is that there is no valid argument to reject the authenticity of the 1125 text. Irnerius was still alive in 1125.

The fourteen documents that give us information about Irnerius' work as a judge are also a good guide to the period in which his fame and reputation as a teacher and a jurist were at their peak.[11] Scholars have long assumed that Irnerius began teaching law around 1100.[12] Odofredus thought that Irnerius began as a teacher of logic. The cleverness of Irnerius' glosses support Odofredus' claim. Irnerius was a gifted glossator who raised difficult questions about opaque texts of Roman law.[13] Bulgarus sometimes began his lectures grappling with Irnerius' glosses.[14] Since he was last mentioned in a text dating 1125 Irnerius must have stopped teaching after that date and did not live much longer than the late 1120's. It is likely, however, that he and Gratian, the father of canon law, overlapped. Gratian likely began teaching ca. 1125-1130. In the middle of the 1130's when the papal chancellor wrote to Irnerius' student Bulgarus for guidance on procedure in the courts, Bulgarus was the reigning law teacher in Bologna. Irnerius was gone. Gratian had not yet established his preeminence in canon law.[15]

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[10] Mazzanti, "Un falso Irneriano" 43-44.

[11] They do not give, however, sure evidence of his autograph. The subscriptions on the charters differ in a number of details; see the photos in Enrico Spagnesi, *Wernerius bononiensis iudex* and Giovanna Murano, *Autographa*, 1.1: *Giuristi, giudici e notai (sec. XII-XVI med*. (Centro interuniversitario per la storia delle università italiane, Studi 16; Bologna 2012) 2.4.

[12] Andrea Padovani, 'Alle origini dell'università di Bologna: L'insegnamento di Irnerio', BMCL 33 (2016) 13-25.

[13] Pennington, 'Odofredus and Irnerius' 26.

[14] Loschiavo, 'Bulgaro' 357.

[15] 'The "Big Bang": Roman Law in the Early Twelfth-Century', RIDC 18 (2007) 43-70 at 48-52.

Aside from his glosses to Justinian's codification, one might argue that Irnerius' most creative contribution to the revival of Roman law was his adaptations of Justinian's legislation after 535 called the *Novellae* and collected into a work named the *Authenticum* in the Middle Ages.[16] Irnerius simplified the baroque Latin translations of the Greek *Novellae,* added some of his own words, and placed them in the margins of Justinian's *Codex* next to the imperial statutes that needed updating, clarification, or change. The jurists called Irnerius' reworked texts 'authenticae'. When the scribes placed 'authenticae' in the margins of *Codex* manuscripts, they usually, but not always, placed the letters CN at the beginning of the texts to identify them. Irnerius also composed 'authenticae' for Justinian's *Institutes*.[17] The manuscript tradition of the *Codex* is clear evidence that the jurists and the schools quickly accepted Irnerius' 'authenticae' as normative supplements to Justinian's legislation.[18] In the earliest manuscripts Irnerius' siglum y. or yr. was sometimes attached to them.[19] In any case,

[16] Pennington, 'The Beginning of Roman Law Jurisprudence and Teaching in the Twelfth Century: The Authenticae', RIDC 22 (2011) 35-53; see the essays by Loschiavo, Roumy, Viejo-Ximenez and Wallinga in *Novellae constitutiones: L'Ultima legislazione di Giustiniano tra oriente e occidente da Triboniano a Savigny: Atti del Convegno Internazionale Teramo, 30-31 ottobre 2009*, edd. Luca Loschiavo, Giovanna Mancini, Cristina Vano (Università degli Studi di Teramo: Collana della Facoltà di Giurisprudenza 20; Napoli 2011).

[17] Hermann Lange, *Römisches Recht im Mittelalter*, 1: *Die Glossatoren* (München1997)74-80, Enrico Spagnesi, *Libros legum renovavit: Irnerio lucerna a propagatore del diritto* (Pisa: 2013) 86-101.

[18] I would suggest that Burchard of Ursperg's famous passage in which he alleged that Irnerius renewed (renovavit) Justinian's books of laws when he 'paucis forte verbis alicubi interpositis eos distinxit'. That passage might be translated 'Irnerius brought clarity by inserting a few words at various places'. I do not think that we can know with certainty what Burchard meant, but I think that he would not have been thinking of Irnerius' glosses. His glosses could not be described as being a few words. Ennio Cortese also seems to be inclined to interpret Burchard's words as referring to the 'authenticae'; see his *Il rinascimento giuridico medievale* (Roma 1992) 19-24 at 23-24.

[19] E.g. Paris, BNF lat. 4528 (1150), fol. 5r. Giovanni Baptista Palmieri, 'Authenticarum collectio antiqua', *Scripta anecdota glossatorum*, ed. Augustus Gaudentius (Biblioteca iuridica medii aevi 3; Bologna 1901) lists 5

later jurists recognized them as Irnerius' work. Much more work has to be done on these texts to understand how he altered the texts in the *Authenticum* to produce 'authenticae' into the *Codex*.[20] We will never know how many of the 'authenticae' Irnerius composed. There are over 200 in the vulgate edition of the *Codex*. Three collections of 'authenticae' have been found that circulated outside the *Codex* and not in the margins of the *Codex* where they are normally found.[21]

Later jurists who commented on the 'authenticae' provide substantial evidence for Irnerius' role in composing and editing the 'authenticae'.[22] They evaluated his work. In an early Parisian *Codex* manuscript, an anonymous jurist commented that the last sentence in the 'authentica *Qui res iam dictas* to Cod. 1.2.14 (Auth. 9.3.11 = Nov. 120.11)' could not be found in the 'body of authenticae' but was added by Garnerius.[23] The glossator is right. Neither the sentence nor the idea in the sentence is in Justinian's original text. Another glossator simply stated that Irnerius was the author of the last sentence: 'Guarnerius dicit'.[24]

'authenticae' that have the y. signum, 72, 74, 81, 82 and one that has yr. 73, from Berlin, Staatsbibliothek lat. 275, fol. 4vb: 'Idem est de immobilibus ut possint pignori dari uel alienari, nisi ex conditione date sunt ne aliquot modo alienentur. yr.' which appears in very few manuscripts.

[20] Palmieri lists over 200 as does Paul Krueger in an appendix to his edition of the *Codex*. Palmieri's list is more useful because it is based on the manuscripts; Keuger's list is based on those 'authenticae' that became part of the medieval vulgate *Codex*.

[21] See Franck Roumy, 'Une collection inédite d'*authenticae* composée en normandie à la fin du xii^{e} siècle', *Novellae constitutiones: L'Ultima legislazione* 155-204 at 158-160.

[22] See Spagnesi, *Libros legum renovavit* 88.

[23] Paris, BNF lat. 4528, fol. 5rb, s.v. *Set melius dicatur*: 'Hoc non est in corpore autenticarum set additum a G<arnerio>. See Gero Dolezalek, *Repertorium manuscriptorum veterum Codicis Iustiniani* (2 vols. Ius Commune, Sonderhefte 23; Frankfurt am Main 1985) 1.362.

[24] Vienna, ÖNB lat. 2267, fol. 4vb: 'Guarn<erius> dicit'.

At another place in the same manuscript a gloss in a similar hand added to the 'authentica *In testamento* to Cod. 6.56.7 (Authen.8.12 = Nov. 115.4)':[25]

> This authentica was added here because of an over abundance of material. Why did Garnerius place it here? I believe there was no reason other than he had no other place to put it.

Both these comments must have been written before Y. or Yr. became the standard name with which the glossators cited Irnerius.

Luca Loschiavo has done yeoman work on Irnerius' glosses that provides a model for future research. Most importantly he has provided a list of early *Codex* manuscripts that contain extensive Irnerian material.[26] In an essay on Justinian's post-codification legislation, the *Novellae*, he analyzed two intriguing glosses in which Irnerius discussed the legal force of the collection. Irnerius wrote these two glosses to the last paragraph of Justinian's text, *Cordi nobis*, in which the emperor mandated that no one could cite his previous legislation but only this new, revised body of laws. Loschiavo concluded that Irnerius argued the medieval collection of Justinian's *Novellae* in its medieval format, the *Authenticum*, was not an official collection since it lacked a statute of promulgation.[27] Justinian did promise, however, new legislation when it was needed.

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[25] Ibid. fol. 74vb: 'Hoc authenticum ex abundanti uidetur hic apositum. Quare ergo aposuit Garn<erius>? Certe nullam credo rationem esse aliam, set quia non alicubi posuerat'.

[26] E.g. Arras, BM 265=A, Bamberg, SB Jur. 20= B; Berlin, SB 408=B1; Leipzig, BU 883= L; Montpellier, BU H.85= M; Munich, BSB lat. 22=M1; Paris, BNF lat. 4517 = P; Stuttgart, Württembergische Landesbibliothek jur. Fol. 71=S; Verona, BC CLXXII (180)= V; Vienna, ÖNB 2267=V1; Zeil, Fürstlich Waldburg-Zeil'sches Gesamtarchiv 123= Z. Loschiavo has identified these manuscripts in his published works and in public lectures.

[27] Luca Loschiavo, 'La riscoperta dell'*Authenticum* e la prima esegesi dei glossatori', *Novellae constitutiones: Novellae constitutiones: L'ultima legislazione di Giustiniano tra Oriente e Occidente, da Triboniano a Savigny: Atti del Convegno Internazionale, Teramo, 30-31 ottobre 2009*, ed. Luca Loschiavo, Giovanna Mancini, Cristina Vano (Università Degli Studi Di Teramo, Collana della Facoltà di Giurisprudenza 20; Napoli 2011) 111-139 at 128-136.

Irnerius wrote two glosses to explain the *Authenticum*'s relationship to Justinian's codification.[28] A short one that outlined the essence of his argument and a longer one that expanded his thought. I think we may assume that the shorter gloss preceded the longer one and that both reflect Irnerius' thought:[29]

> It can be assumed from Justinian's mandate that this book, that is the *Authenticum*, is to be repudiated. The style is different from Justinian's other constitutions and disagrees with them. There is not a promulgating decree, not an end, and not any order. These new constitutions, of which the text speaks, are not promised <by the legislator> except in the case of new cases that are not yet entangled in the snares of the laws. y.

Irnerius had further thoughts about the *Authenticum* and later expanded his gloss:[30]

> y. Here Justinian refers to the book that they call the *Novellae Constitutiones*, entitled the *Authenticum* of which a certain part was taken from a volume that was not Justinian's. Here Justinian speaks of new constitutions that are promised concerning new cases not yet entangled in the snares of the law. These laws [i.e. *Authenticum*], if they must be called laws, simply conflict with the *Codex* in many things. Justinian truly did

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[28] Both glosses are edited by Loschiavo, 'La riscoperta' 129.

[29] Ibid.: Hinc argumentum sumi potest quod liber iste, idest Autentica, sit repudiandus. Eius enim stylus cum ceteris Iustiniani constitutionibus nullo modo concordat, sed omnino inter se discrepant. Item eius libri principium nullum est, nec seriem, nec ordinem aliquem habet. Item novellae istae constitutiones, de quibus hic loquitur, non promittuntur nisi de novis negotiis et nondum legum laqueis innodatis. y. P fol 1v and Paris 4528, BNF lat. 4528, fol. 2rb both append y. to the gloss.

[30] B fol. 1r, S fol. 2vb, V1 fol. 2rb: y. (*add*. B) Hinc conicitur librum quem novellarum constitutionum appellant, 'autenticum' dictum, quod ex eo fuerit pars quedam excerpta Iustiniani non esse. Novellarum quippe constitutiones, de quibus loquitur, non nisi de novis negotiis et que nondum laqueis legum sunt innodatis, promittuntur. At leges ille, si modo 'leges' dicende sunt, de <h>is dumtaxat loquuntur de quibus et *Codex* et in pluribus adversantur. Non autem verisimile Iustinianum <h>uic operi ac tanto labore tantaque diligentia confecto mox adversa constituisse, ut scilicet contra suum propositum repperiatur aliquid contrarium in legum articulis. Set nec eius operis stilus indubitabilibus constitutionibus Iustiniani congruit, cuius etiam nullum certum principium extat, nullusque ordo fuit nec certus. y. (*add*. V1) Dolezalek, *Repertorium* 1.130 prints the Bamberg text. Loschiavo reported in a lecture he gave at the University of Bologna (November 2019) that the gloss in A and B1 had the siglum yr., a siglum for Irnerius which seems to have become more common in the second half of the twelfth century.

> not finish his *Codex* with so much labor and diligence to have composed so soon another work contrary to the first. The style of this work does not conform to the style of his undoubted constitutions. There is no certain letter of promulgation, and no order to the text and no certain order. y.

In the thirteenth century Hugolinus de Presbyteri and Accursius continued to reflect on and debate Irnerius' glosses.[31] To Justinian's statement in *Cordi nobis* that if the emperor would promulgate new constitutions that he would call them *Novellae*. Accursius copied a gloss of Hugolinus almost exactly and commented:[32]

> One may gather that Justinian made the *Authenticum*. Almost as if those constitutions entered his mind at this time during the production of the *Codex* according to Jacobus (or Johannes). Irnerius thought otherwise and thought that the *Authenticum* ought to be rejected.

Accursius then repeated Irnerius' longer gloss and concluded: 'I have made a contrary argument in the title dealing with laws and constitutions.[33] In a constitution of Theodosius and Valentinianus

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[31] See Giovanni Chiodi, 'Ugolino Presbiteri', DGI 2.1994-1997 and Giovanna Morelli, 'Accursio (Accorso)', DGI 1.6-9 and with the assumption that the h. glosses in Munich SB lat. 28178 are Hugolinus'.

[32] Berlin, SB lat. Fol 20, fol. 7rb, Karlsruhe, Badische Landesbibliothek Aug. perg. 7, fol. 3ra, Munich, SB lat. 28178, fol. 2vb, Paris, BNF lat. 4530, fol. 3rb, lat. 4531, fol. 2vb, 4532, fol. 4ra, 4533, fol. 3ra-3rb lat. 8940, fol. 2va, St. Gall, SB 746, fol. 7ra, s.v. *in alia congregatione*: 'Sic sume argumentum quod Iustinianus fecit librum autenticorum. Quasi tunc iam uenerat in mente sua eas quandoque componere secundum Jacobum (Jo. Paris 4530, 4532, 4533, St. Gall). Set y. contra et elicit hic argumentum in contrarium in quantum quare, scilicet ille liber autenticorum, sit repellendus, nam non nominatur sicut hic dicitur, set autenticorum. Item eius enim stilus cum ceteris Iustiniani constitutionibus nullo modo concordat, set omnino inter se discrepant. Item eius libri principium nullum est, nec stilus, nec ordo. Item nouelle iste constitutiones sunt de quibus hic loquitur, non promittuntur, nisi de nouis negotiis'. The text shows many small variations. I have noted only the important ones.

[33] Ibid. 'Item ad hoc est contra arg. infra de legibus et consti. l.Humanum, in fine ut ibi notaui (ut ibi notaui *om.* Berlin) (Cod. 1.14(17).8). ac.' (ac. Paris, 4531, 4533, 8940, St. Gall). In Munich lat. 28178, fol. 2vb at the top of the folio is Hugolinus'gloss that Accursius copied: 'Hic potest dare percipi autenticas leges per Justinianum confectas fuisse et etiam quod in mente sua iam uenerat eas quandoque componere secundum Ja. . . .'

in which the emperors declared that all laws must emerge from cases that are not covered by previous legislation and must be considered by and consented to in an assembly of nobles and judges. Finally the laws must be promulgated by the emperor.[34] Consent to legislation was a key element in medieval legal thought.[35] Hugolinus and Accursius point out that the *Authenticum* ignored these rules.[36] An anonymous glossator in a Vienna manuscript noted that the *Lombarda* also failed to follow these rules for promulgating laws.[37] As in his gloss to *Cordi nobis*, Accursius copied Hugolinus' gloss almost word for word.

At the end of the twelfth century, Johannes Bassianus (Azo?) gave an interesting interpretation of Irnerius' glosses, with a sarcastic comment on the scholarly skills of his fellow law teachers:[38]

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[34] Cod. 1.14(17).8.

[35] For the importance of consent in medieval thought see Pennington, 'Representation in Medieval Canon Law', *The Jurist* 64 (2004) 361-383 and *Repræsentatio: Mapping a Key Word for Churches and Governance: Proceedings of the Sam Miniato International Workshop, October 13-16, 2004*, ed. Alberto Melloni and Massimo Faggioli (Münster-Hamberg-Berlin-Wien-London: LIT, 2006) 21-40. Gratian thought that customary usage validated legislation, Gratian, D.4 d.a.c.3: 'Leges instituuntur, cum promulgantur, firmantur, cum moribus utentium approbantur. Sicut enim moribus utentium in contrarium nonnullae leges hodie abrogatae sunt, ita moribus utentium ipsae leges confirmantur'.

[36] Ibid. Munich, SB 28178, fol. 20ra: 'Arg. pro y. ad id quod scripsit supra de emend. Iustin. Cod. in fine . . . h.' Accursius' gloss follows directly after Hugolinus'.

[37] Vienna, ÖNB 2267, fol. 14va to Cod. 1.14.(17).8: 'Hac lege argumentantur quidam longobardam legem non esse'.

[38] Johannes Bassianus (Azo?), *Prohemium cum additionibus domini Accursii* (Venice 1496, Hain 2233) fol. 1r: 'Huius autem libri fuit auctor dominus Justinianus . . . Unde est argumentum ab opinione vel ab auctoritate, quia sic indicant plures sapientes . . . licet a quibusdam temere sibi blandientibus aliquando contrarium non solum dictum sed etiam scriptum fuerit quod scilicet a monacho vel ab alio scriptum fuerit, ut ait Irnerius quod apparet per suam notulam in Codex de emendatione Iustiniani Codicis circa finem positam, ut plenius circa litteram dici potest. Sed tamen quod Irnerius voluit dicere verum esse potest quo ad dicta, sed tamen auctoritas Iustiniano data fuit'. On the question of attribution see Ennio Cortese, 'Bassiano (Bosiano, Boxiano),

> Justinian was the author of this book . . . It is proven by the opinion and by the authority of many learned men . . . although some jurists rashly claim the contrary — in their lectures and even in their writings — that a monk or someone else wrote the text as Irnerius appears to say in his gloss to the *Cordi nobis* . . . Nevertheless, what Irnerius wanted to argue can be true as far as the language, but undoubtedly Justinian gave the work its authority.

Loschiavo has given these Irnerius' two glosses on the *Authenticum* a close reading. He notes that the first gloss makes linguistic objections to the laws in the *Authenticum* and demonstrated his philological talent, which is the main evidence for his having been a teacher of logic before he turned to law. The second gloss concentrates on the relationship between the *Codex* and the *Authenticum*. There he noted that the 'laws' in the *Authenticum* often contradict or correct the statutes in Justinian's *Codex*. How could Justinian have created a collection of laws lacking the clear organization that we find in the *Codex*?[39] The answer to these questions is difficult if impossible. Irnerius must have spent much time and labor in his quest to reconcile the laws in the *Authenticum* with those in the *Codex*. His conviction that the laws in the *Authenticum* rested on unstable foundations must have given him the freedom to alter, change, and reinterpret and modify them with his 'authenticae'. In the end Irnerius accepted the *Authenticum* as a malleable vehicle to up-date Justinian's *Codex*.[40]

Later jurists were inspired by Irnerius to compose their own 'authenticae'. The sigla of Bulgarus, Albertus, Jacobus are found in the manuscripts.[41] Although many of these later 'authenticae' were dropped out the manuscript tradition in the thirteenth century

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Giovanni', DGI 1.191-193 at 192a. I have not found evidence to doubt the original text's attribution to Bassianus, although Accursius did revise it. The manuscripts must be examined before we can come to certain conclusions.

[39] Loschiavo, 'La riscoperta' 130.

[40] For similar a conclusion see Spagnesi, *Libros legum renovavit* 87.

[41] As well as Pilius, Henricus de Baila, Johannes Bassianus; see Palmieri's list.

as the standard medieval text of the *Codex* developed, they demonstrate the power of Irnerius' example beyond the grave.[42]

Gratian acknowledged Irnerius' authority in the world of early twelfth-century law as he compiled the stages of his *Decretum*. Probably because of Irnerius' authority and fame, Gratian included 30 of his 'authenticae' in his *Decretum*. Significantly, he chose to include the 'authenticae' but not the texts of the Codex to which they were attached. Gratian must have taken his texts from an original corpus he considered to be the work of Irnerius or from the margins of *Codex* manuscripts. He added them to the last recension of his *Decretum* either as texts or by incorporating them into his *dicta*.[43] Irnerius took liberties with his texts, and Gratian followed his example.[44] In their comments on the 'authenticae' the jurists recognized Irnerius' editing. As Accursius noted in his Ordinary Gloss to one 'authenticae' that 'these are Irnerius' words not Justinian's'.[45] The jurists were aware that the 'authenticae' were abbreviated and created by Irnerius and many others. Gratian also edited or supplemented Irnerius' texts. He placed the 'authentica Presbiteri diaconi' to his dicta after C.5 q.6 c.3 that dealt with clerics who give false testimony. The 'authenticae' called for three years of punishment for a cleric giving false testimony. Gratian changed Justinian's and Irnerius' three years of punishment to twelve.[46] Twelfth- and

[42]Tammo Wallinga, 'The "authenticae" of Irnerius and their Tradition', *Novellae constitutiones: L'Ultima legislazione di Giustiniano tra oriente e occidente da Triboniano a Savigny: Atti del Convegno Internazionale Teramo, 30-31 ottobre 2009*, edd. Luca Loschiavo, Giovanna Mancini, Cristina Vano (Università degli Studi di Teramo: Collana della Facoltà di Giurisprudenza 20; Napoli 2011) 141-154 at 154: "it is clear that there was a wide variety of summaries of the same Novels, and this is difficult to reconcile with the idea of all *authenticae* having been written by Irnerius'.

[43] Viejo-Ximenez, 'Las Novellae de la tradicion canonica occidental y del Decreto de Graciano', *Novellae constitutions* 205-277.

[44] Viejo-Ximenez gives a nice example ibid. 251 of Gratian's editing the 'authenticae' *Presbiteri.*

[45] Accursius, to Cod. 1.5.20 (Venice: 1496) fol. 12v s.v. *Nunc autem*: ' vel dic hec verba esse Yr. non legis'.

[46] C.5 q.6 d.p.c.3; Viejo-Ximenez, 'Las Novellae' 251-252 prints the texts.

thirteenth-century jurists had no qualms about altering the legislative texts to suit their own times.[47]

Scholars have not expressed any doubts about Irnerius' role in composing the 'authenticae', but a few have questioned whether he ever glossed the texts of Roman law. They have concluded that if he did not write glosses, then he never taught.[48] The three most prominent historians who have questioned Irnerius' importance in one way or another, and whether or when he entered a classroom, are Johannes Fried, Richard Southern, and Anders Winroth.[49] Fried has made the most sustained argument beginning in 1974 and extending it into the twenty-first century.[50] Irnerius' fame in the early twelfth century, he claims, benefitted from the work of the later jurists who polished and enhanced the myth of a gifted figure who left his mark on Bolognese law school and jurisprudence. Fried summed up his argument with the phrase that Irnerius was 'ein Kunstprodukt und selbst ein Mythos' created by the jurists.[51]

Not many myths have had so many earthly foundations. Anyone who has more than a passing acquaintance with twelfth-century Roman law manuscripts finds many glosses attributed to

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[47] For a discussion of how the jurists altered and edited legislative and legal texts see K. Pennington, 'The Making of a Decretal Collection: The Genesis of Compilatio tertia', *Proceedings Salamanca 1976* (Vatican City 1980) 67-92.

[48] E.g. Anders Winroth, "Irnerius', *Medieval Italy: An Encyclopedia* (2 vols. New York-London 2004) 1.532: 'there is little evidence that Irnerius was a teacher of Roman law . . . his role in creating the Bologna law school is much exaggerated . . . the school was founded by a later generation, including Bulgarus de Bulgarinis and Martinus de Gosia'.

[49] Richard W. Southern, *Scholastic Humanism and the Unification of Europe,* 1: *Foundations* (Oxford 1995) 159, 223, 274-282, who reached his conclusions without any investigation of Roman law manuscripts; Anders Winroth, *The Making of Gratian's Decretum* (Cambridge Studies in Medieval Life and Thought 49; Cambridge 2000) 168-174, who relies on printed sources.

[50] Johannes Fried, '... 'auf Bitten der Gräfin Mathilde': Werner von Bologna und Irnerius', *Europa an der Wende vom 11. zum 12. Jahrhundert: Beiträge zu Ehren von Werner Goez*, ed. Klaus Herbers (Stuttgart 2001) 171-206

[51] Ibid. 201.

Irnerius and many references of jurists to Irnerius' opinions. Another myth that has taken root in the literature is that the siglum y. emerged only in the late twelfth or early thirteenth century. The y. siglum is found in early twelfth century manuscripts. To give just one example, Paris, Bibliothèque Nationale de France lat. 4517, a manuscript of the *Codex* that dates to the late eleventh or early twelfth century has numerous glosses with y.[52] It is a remarkable body of evidence if not yet thoroughly explored and documented. Even if his glosses have not yet been exploited fully, they are indisputable evidence that he taught for many years in Bologna. His glosses are scattered in the interstices between the lines of the texts and also adorn the margins of these manuscripts. They are not just simple explanatory glosses. As we have seen in his glosses treating the *Authenticum*, they raise important and interesting issues.[53] Later jurists recognized Irnerius' genius and grappled with his ideas in the twelfth and well into thirteenth century.

At the end nineteenth century, Gustav Pescatore and Enrico Besta published important studies of Irnerius' glosses, but modern historians have not followed in their footsteps.[54] Gero Dolezalek's examination of his glosses in the manuscripts of the *Codex* was the only significant contribution to the study of Irnerian glosses in the twentieth century.[55] The y. and yr. sigla that twelfth- and thirteenth-century jurists used to identify Irnerius's glosses have been misinterpreted or misunderstood because legal historians have not done the hard manuscript work of identifying a corpus of Irnerian glosses. In the earliest Roman law manuscripts the sigla of jurists

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[52] See note 20 above. P fol. 7va, 9vb, 10rb, 11vb, 14ra, 18rb, 21ra, 21va, 28vb from Cod. Book 1. All these glosses have y. at the beginning of the gloss, which is evidence of their age. Another indication that these glosses are early twelfth century is that the *Digest* is cited as dig.

[53] Cf. Winroth, *Making* 168-170.

[54] Gustav Pescatore, *Die Glossen des Irnerius* (Greifswald 1888), Enrico Besta, *L'Opera d'Irnerio (Contributo alla storia del diritto italiano)* (Torino 1896).

[55] Gero Dolezalek, *Repertorium* prints a number of Irnerius' glosses that he found in *Codex* manuscripts in volume one and also prints glosses from the two titles that he explored in volume two, Cod. 2.1 and 5.1.

were often placed in front of a gloss.[56] That fact convinced some that the y. in front of a gloss was a paragraph sign.[57] However, the jurists adopted no standard system for early glosses. To identify Irnerius' glosses, they sometimes placed the y. at the beginning of the gloss and at other times at the end,[58] and occasionally at the beginning and the end of a gloss.[59] Placing the sigla at the end of the glosses only emerged slowly as standard practice in legal manuscripts. In the future we may obtain a much better picture of Irnerius' body of work if we use the manuscripts that Loschiavo has pointed to for the *Codex* and as-yet-to-be-identified *Digest* manuscripts.[60]

With his love of manuscript work, I have no doubt that Peter Landau would have enjoyed participating in the quest for the *Corpus Irnerianum*.

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[56] Pennington, 'Odofredus and Irnerius' 13 n.8.

[57] See Dolezalek, *Repertorium* 1.461-485 and Winroth, *Making* 167: '[later jurists] began to read the paragraph marks preceding glosses in old manuscripts as a siglum 'y.' . . . which provided fertile ground for myths about Irnerius'.

[58] E.g. Paris, BNF lat. 4450, fol. 3v and the examples in Pennington, 'Odofredus and Irnerius' 13 n.8, 19 n.28, n.30

[59] E.g. Paris, BNF lat. 4536, fol. 48va and in Pennington, 'Odofredus and Irnerius' 20 n.34, 22 n.39.

[60] Besta, *L'Opera d'Irnerio* v, ix, xi used Padua, BU 941, Turin, BU F.II.14, Venice, Biblioteca di San Marco lat. DVIII, which are good manuscripts for Irnerian glosses.

Immagini del primato romano nella scienza canonistica bizantina del secolo XII[*]

Orazio Condorelli

Introduzione

Nel contesto della riforma detta gregoriana e post-gregoriana ebbe avvio, nell'Occidente latino, l'edificazione del sistema di governo ecclesiastico che la storiografia suole qualificare come 'monarchia papale'. Il sistema ruotava attorno al primato di giurisdizione del Pontefice romano, i cui fondamenti erano individuati nel peculiare mandato affidato da Cristo a Pietro (*vicarius Christi*) e, attraverso la successione petrina, trasmessi da Pietro ai suoi successori sulla cattedra episcopale di Roma. Per i suoi fondamenti petrini la Chiesa Romana si poneva come *caput et mater omnium ecclesiarum*. Gli sviluppi ecclesiologici e canonistici di queste idee ebbero luogo, all'ingrosso, a partire dalla seconda metà del secolo XI e, passando attraverso il pontificato di Alessandro III, trovarono una consolidazione definitiva nell'ecclesiologia di Innocenzo III.[1]

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[*] Ho presentato alcuni risultati di questa ricerca nel corso della Trilaterale Forschungskonferenz sul tema *Kirche in der Krise und rechtliche Antworten vom Frühmittelalter bis zur Reformation*. II. *Hochmittelalter*, che si è svolta presso la Villa Vigoni, Centro Italo-Tedesco per l'Eccellenza Europea, 14-17 ottobre 2019. Ricerca condotta nell'ambito del Progetto di ricerca di rilevante interesse nazionale (PRIN 2017) dal titolo 'Precetto religioso e norma giuridica: storia e dinamica di una dialettica fondativa della civiltà giuridica occidentale (secoli IV-XVII)'.

[1] La letteratura sul tema è amplissima. Alcuni scritti di Michele Maccarrone costituiscono un sicuro punto di riferimento: '"Fundamentum apostolicarum sedium": Persistenze e sviluppi dell'ecclesiologia di Pelagio I nell'Occidente latino tra i secoli XI e XII', *La Chiesa Greca in Italia dall'VIII al XVI secolo*: *Atti del Convegno storico interecclesiale, Bari, 30 aprile – 4 maggio 1969*, (3 vol. Italia Sacra 20-23; Padova 1973) 2.591-662, ora in idem, *Romana Ecclesia -Cathedra Petri*, a cura di Pietro Zerbi, Raffaello Volpini, Alessandro Galuzzi (2 vol. Italia Sacra 47-48; Roma 1991) 1.357-431 (in particolare 416ss. per il periodo qui preso in considerazione); idem, 'La teologia del

Questi sviluppi non furono determinati da presupposti dottrinali meramente interni alla Chiesa latina, ma furono inevitabilmente condizionati anche dalle relazioni con l'Oriente bizantino. Sebbene gli eventi del 1054 non fossero dal principio percepiti come segno di un'insanabile frattura, essi rappresentarono un momento di quel processo di reciproco estraniamento che nei secoli successivi avrebbe scavato un solco sempre più profondo tra Roma e Bisanzio.[2] Le radici di questo

primato romano nel secolo XI', *Le istituzioni ecclesiastiche della 'Societas Christiana' dei secoli XI-XII: Papato, cardinalato ed episcopato*: *Atti della quinta Settimana internazionale di Studio, Mendola 26-31 agosto 1971* (Milano 1974) 21-122, ora in idem, *Romana Ecclesia - Cathedra Petri* 1.541-670. Per quanto riguarda il primo millennio, la posizione bizantina è illustrata da Daniel Stiernon, 'Interprétations, résistances et oppositions en Orient', *Il primato del vescovo di Roma nel primo millennio: Ricerche e testimonianze*: *Atti del Symposium storico-teologico, Roma, 9-13 ottobre 1989*, a cura di Michele Maccarrone (Pontificio Comitato di Scienze Storiche: Atti e Documenti 4; Città del Vaticano 1991) 661-705. Per l'elaborazione della scienza canonistica medievale si può fare riferimento ai lavori di John A. Watt, *The Theory of Papal Monarchy in the Thirteenth Century: The Contribution of the Canonists* (London 1965) e Kenneth Pennington, *Pope and Bishops: The Papal Monarchy in the Twelfth and Thirteenth Centuries* (The Middle Ages; Philadelphia 1984); idem, *The Prince and the Law, 1200-1600. Sovereignty and Rights in the Western Legal Tradition* (Berkeley-Los Angeles 1993) *passim*.

[2] Le ricerche di cui do conto in queste pagine si intrecciano coi temi da me trattati in altri lavori, concernenti le relazioni tra Roma e Bizanzio tra primo e secondo millennio, la concezione del primato papale e la distinzione tra potestà di ordine e di giurisdizione, il dialogo politico e teologico intercorso tra Oriente e Occidente nel secolo XII, gli sconvolgimenti avvenuti in seguito alla quarta crociata. Rinvio a questi lavori per specifici approfondimenti tematici e per una più ampio quadro bibliografico. Orazio Condorelli, 'Il primato del Vescovo di Roma tra principî dogmatici e forme storiche di esercizio: Elementi per una comprensione condivisa tra le Chiese d'Oriente e d'Occidente', *Eastern Canon Law* 8 (2019) 51-115 [versione inglese: 'The Primacy of the Bishop of Rome between dogmatic principles and historical forms of exercise. Elements for a common understanding between the Churches of East and West', *Primacy and Synodality: Deepening Insights. Proceedings of the 23rd Congress of Society for the Law of the Eastern Churches*, ed. Péter Szabó (Nyíregyháza [Ungheria] 2019) 503-553]; idem, 'La distinzione tra potestà di ordine e potestà di giurisdizione nella tradizione

processo possono individuarsi nelle differenti visioni ecclesiologiche, che nel primo Millennio avevano comunque trovato un punto di equilibrio che aveva consentito di mantenere viva la piena comunione ecclesiastica tra Oriente e Occidente. Nel corso del secolo XII si consolidarono le differenti prospettive ecclesiologiche e canoniche nelle quali le Chiese di Oriente e di Occidente appaiono ormai nettamente distanziate quanto alla concezione del primato nella Chiesa e sullo specifico punto del primato del vescovo di Roma.[3]

Le vicende della Quarta Crociata, con la conquista latina di Costantinopoli, e l'istituzione dell'Impero latino d'Oriente (1204-1261) non fecero che approfondire la spaccatura tra le due Chiese: tra le quali, non di meno, rimase vivo un costante desiderio di riavvicinamento, che si tradusse—con risultati la cui efficacia non è il caso di discutere in questa sede—prima nell'unione stipulata nel Concilio di Lione (1274) e poi in quella conclusa nel Concilio di Firenze (1439).

La stagione d'oro della scienza canonistica bizantina è segnata da una triade di canonisti che operò a Costantinopoli nel secolo XII. Come per i coevi canonisti latini, anche per quelli bizantini la scienza presuppone un testo di autorità. Se per i latini questo era rappresentato dal *Decretum* di Graziano, una collezione che raccoglieva una selezione ragionata della

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canonica bizantina', *Rigore e curiosità e rigore*: *Scritti in memoria di Maria Cristina Folliero*, a cura di Giuseppe D'Angelo, (2 vol. Torino 2018) 1.241-271; idem, 'Tra nostalgie di unità e tentazioni "cesaropapiste": Controversie teologiche a Bisanzio al tempo di Manuele Comneno (1143-1180)', *Questioni e riconsiderazioni in tematiche ecclesiologico-canonistiche*, in corso di stampa negli atti del Convegno organizzato dalla Chiesa Patriarcale Maronita e dal Pontificio Istituto Orientale, Beyrouth, 24-28 aprile 2019; idem, *Unum corpus, diversa capita: Modelli di organizzazione e cura pastorale per una 'varietas ecclesiarum' (secoli XI-XV)* (I Libri di Erice 29; Roma 2002).

[3] Per la fase storica che qui più interessa un fondamentale punto di riferimento è la ricerca di Jannis Spiteris, O.F.M. Cap., *La critica bizantina al primato romano nel secolo XII* (Orientalia Christiana Analecta 208; Roma 1979), che dedica le pp. 224-247 ai canonisti bizantini del secolo XII e specificamente a Balsamon, giurista nel quale vede formalizzarsi 'la canonizzazione della critica antipapale'.

tradizione canonica della Chiesa latina, la base della scienza dei canonisti bizantini stava nella serie dei sacri canoni del primo millennio (canoni apostolici, dei sinodi ecumenici e particolari, dei Santi Padri), raccolti nel *Syntagma canonum* o, in forma epitomata, nella *Synopsis*.

Nell'ordine cronologico, il primo della triade è Alessio Aristeno: ecclesiastico che ricoprì alti incarichi nella Chiesa di Costantinopoli, cominciò a comporre i suoi *scholia* ai canoni verso il 1130, e morì dopo il 1166.[4]

Il secondo è Giovanni Zonara, un alto funzionario imperiale a Costantiniopoli, che in una fase avanzata della vita entrò in un monastero e si dedicò all'attività intellettuale. Oltre che per gli *scholia* ai sacri canoni, lo ricordiamo per gli scritti teologici e per una celebre opera storiografica (*Epitome delle storie*). La sua opera canonistica era in via di completamento intorno al 1159.[5]

All'apice si colloca Teodoro Balsamon. Nato a Costantinopoli intorno al 1130-1140, nella Capitale svolse una brillante carriera nell'amministrazione ecclesiastica, fino a divenire *chartophýlax* della Grande Chiesa, cioè vicario patriarcale e custode dell'archivio del patriarcato.[6] In una data imprecisata,

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[4] Su Alessio Aristeno v. Spyros Troianos, 'Byzantine Canon Law from the Twelfth to the Fifteenth Centuries', *The History of Byzantine and Eastern Canon Law to 1500* (The History of Medieval Canon Law, edd. Wilfried Hartmann, Kenneth Pennington; Washington, D.C. 2012) 170-214 à 178-180. Il suo commentario alla *Synopsis canonum* è stato recentemente edito criticamente: Alexios Aristenos, *Kanonistischer Kommentar zur Synopsis Canonum*, edd. Eleftheria Papagianni, Spyros N. Troianos, Ludwig Burgmann, Kirill Maksimovič (Forschungen zur byzantinischen Rechtsgeschichte, Neue Folge 1; Berlin-Boston 2019).

[5] Troianos, 'Byzantine Canon Law from the Twelfth to the Fifteenth Centuries' 176-178.

[6] Sulla sua figura di canonista si veda la recente sintesi di Troianos, 'Byzantine Canon Law from the Twelfth to the Fifteenth Centuries' 180-183, 201, 205. Meritano di essere ricordati i lavori di Emil Herman, 'Balsamon, Théodore', DDC 2.76-83; Gerardus P. Stevens, *De Theodoro Balsamone. Analysis operum ac mentis iuridicae* (Corona Lateranensis 16; Roma, Libreria Editrice della Pontificia Università Lateranense, 1969); Clarence Gallagher S.J., 'Theodore Balsamon: The Orthodox Church in Twelfth-Century Constantinople', in idem, *Church Law and Church Order in Rome and*

intorno agli inizi degli anni Ottanta del secolo XII, fu elevato alla cattedra patriarcale della Chiesa di Antiochia, ma non poté mai prendere possesso della sede, che a quel tempo era occupata da un patriarca latino. Negli ultimi anni della vita si ritirò in un monastero. I suoi *responsa* indirizzati al patriarca Marco di Alessandria risalgono al 1195. Incerta è la data della sua morte. Per incarico dell'imperatore Manuele Comneno e del patriarca Michele III di Anchialos Balsamon attese prima alla revisione del *Nomocanon in XIV titoli*, volta ad accertare l'effettiva vigenza delle leggi civili in esso raccolte e a corredarle della sua interpretazione. L'opera fu completata nel 1177. Successivamente Balsamon si dedicò al commento dei sacri canoni, che completò nel 1180 ma arricchì di addizioni negli anni successivi. Balsamon ha lasciato anche una serie di responsi canonici e alcuni trattati su temi monografici.

Le basi canoniche della riflessione dei giuristi: concilio di Costantinopoli (381), can. 2; Calcedonia (451), can. 28; Trullano (681), can. 36

I tre menzionati canonisti operarono nel secolo XII, in un tempo di intensissime relazioni tra Roma e Bisanzio, nelle quali i problemi politici si intrecciavano inestricabilmente con le questioni di natura ecclesiastica, tra cui emergeva il tema dei poteri del Pontefice romano nella Chiesa universale. Il dialogo tra le due Chiese aveva avuto un'accelerazione durante il regno di Manuele Comneno (1143-1180), nel quadro delle trattative intercorrenti tra il *basileus* e Alessandro III, che allora era in conflitto con Federico Barbarossa. Nella prospettiva di una ipotetica riunificazione dell'impero universale in mano bizantina,

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Byzantium: A Comparative Study (Birmingham Byzantine and Ottoman Monographs 8; Aldershot-Burlington, 2002) 153-186; Carl G. Fürst, 'Balsamon, il Graziano del diritto canonico bizantino?', *La cultura giuridico canonica medievale: Premesse per un dialogo ecumenico*, curr. Enrique De León, Nicolás Álvarez de las Asturias (Pontificia Università della Santa Croce, Monografie Giuridiche 22; Milano 2003) 233-248; Peter Petkoff, 'Teodoro Balsamon' DGDC 7.550-553.

Manuele Comneno aveva offerto come contropartita la restaurazione della piena comunione ecclesiastica tra Roma e Costantino-poli. Questa premessa è necessaria per sottolineare che il tema del primato romano ricorre costantemente nel dialogo tra le due Chiese, e che quindi l'analisi degli scritti dei canonisti bizantini del secolo XII coglie sono un momento, certamente non secondario, di un dibattito ecclesiologico e canonico che si svolse su diversi livelli e con diverse finalità.

La serie dei sacri canoni del primo millennio contiene alcuni testi che, in modo diretto o indiretto, pongono all'interprete il problema di comprendere quali idee essi esprimano con riferimento al primato delle sedi episcopali della Cristianità, e in particolare circa la relazione tra le sedi di Roma e Costantinopoli. I canoni potrebbero essere esaminati sotto una duplice angola-zione, cioè da un lato per comprendere quali contenuti e quali idee essi intendessero trasmettere nel momento in cui furono deliberati, e dall'altro per considerare il modo in cui essi furono utilizzati dai canonisti bizantini del secolo XII. La seconda prospettiva sarà privilegiata nel contesto della presente indagine, ma previamente occorre fare una sommaria rassegna dei testi rilevanti per il tema in questione.

I Padri del Concilio di Nicea (325) diedero riconoscimento all'antica consuetudine che attribuiva al vescovo di Alessandria una peculiare potestà (*exousía*) in Egitto, Libia e Pentapoli, sul presupposto che una analoga potestà competeva al vescovo di Roma e al vescovo di Antiochia nelle rispettive aree geografiche non meglio definite.[7] Si trattava di prerogative che il canone qualifica come 'privilegi' (*presbeîa*), che hanno una indubbia valenza giurisdizionale, come si evince dalla seconda parte del

[7] Concilio di Nicea (325), can. 6: *Les canons des conciles oecuméniques* (d'ora in poi: CCO), ed. Périclès-P. Joannou (Pontificia Commissione per la redazione del codice di diritto canonico orientale. Fonti. Fasc. 9: *Discipline générale antique [IIe IXe s.]*, t.1 pars 1; Grottaferrata 1962) 28 s.; anche in *Conciliorum oecumenicorum decreta* (d'ora in poi: COD), edd. Giuseppe Alberigo, Giuseppe Dossetti, Périklès P. Joannou, Claudio Leonardi, Paolo Prodi, Hubert Jedin *consultante*, edizione bilingue (Bologna, Edizioni Dehoniane, 1996) 8s.

canone, che stabilisce il potere del metropolita di confermare le elezioni dei vescovi della propria provincia ecclesiastica. Il canone, insomma, delinea i tratti di una funzione di presidenza che i tre vescovi delle principali sedi di Alessandria, Roma e Antio-chia, esercitano sui metropoliti delle rispettive aree geografiche, così come ogni metropolita, quale 'primo' (*prôtos*) nella propria provincia, esercita una funzione di presidenza sui vescovi suffraganei.[8]

L'elevazione della città di Bisanzio a capitale della parte orientale dell'impero provocò effetti determinanti sulla concezione bizantina del primato ecclesiastico. Il secondo concilio ecumenico, tenuto a Costantinopoli nel 381, diede sanzione canonica al mutamento avvenuto nell'ordine civile.[9] Per la dichiarata ragione che Costantinopoli è la Nuova Roma, il concilio stabilisce che il vescovo di Costantinopoli stia dopo (*metà*) il vescovo dell'Antica Roma nella gerarchia dell' 'onore': dove la versione latina di Dionigi l'Esiguo parla di *primatus honoris*, il testo greco parla di *presbeîa tês timés*, cioè privilegi o primato di onore.

Il concilio di Calcedonia (451) ribadì i contenuti del terzo canone costantinopolitano, ma in modo molto significativo accentuò le ragioni politiche sottese alla precedente decisione.[10] I Padri di Costantinopoli avevano preso la loro decisione 'per il fatto che quella città regnava' (*dià tò basileúein tèn pólin ekeínen*). Ora, a Calcedonia, il concilio riconosce alla sede episcopale di Costantinopoli 'i medesimi privilegi' (*tà ísa*

[8] Sul tema è fondamentale il can. 34 dei *Canones Apostolorum*, a margine del quale la dottrina antica e moderna discute sulla funzione del *prôtos* nei raggruppamenti di Chiese locali e sul piano della Chiesa universale. Dell'argomento mi sono occupato in 'La distinzione tra potestà di ordine e potestà di giurisdizione' 255-271. Ioannis Zizioulas, 'Recent Discussions on Primacy in Orthodox Theology', *Il ministero petrino: cattolici e ortodossi in dialogo*, ed. Walter Kasper (Roma 2004) 249-264 (260s.) considera questo canone 'the golden rule of the theology of primacy'.

[9] Concilio di Costantinopoli (381), can. 3 (CCO 47s.; COD 32).

[10] Concilio di Calcedonia (451), can. 28 (CCO 90-93; COD 99s.). Si tratta propriamente del *Votum (Pséphos) de primatu sedis Constantinopolitanae*, che è annoverato come can. 28 del Concilio.

presbeîa) della Vecchia Roma, perché la Nuova Roma è città onorata dalla presenza dell'imperatore e del senato, ed essa occupa il secondo posto dopo (*metà*) la Vecchia Roma. Anche qui, come già a Nicea, il canone precisa almeno un aspetto significativo di siffatti privilegi: il santissimo trono di Costantinopoli ha il diritto di consacrare i metropolitani delle diocesi del Ponto, dell'Asia proconsolare e della Tracia, nonché i vescovi delle parti di queste diocesi occupate da popoli barbari. Il tenore del canone lascia intendere che obiettivo del concilio non fosse quello di mettere in discussione le prerogative primaziali di Roma (come che esse fossero intese a quel tempo in Oriente), ma piuttosto di esaltare la posizione della sede costantinopolitana facendo leva sul suo rango civile di capitale dell'impero d'Oriente e Nuova Roma. Siffatta prospettiva—come è noto—risultò inaccettabile a Leone Magno, che si rifiutò di approvare il *votum* contestando le ragioni meramente politiche poste dal concilio a fondamento della decisione. Così il Pontefice Romano scrisse all'imperatore Marciano nel 452: 'La città di Costantinopoli abbia, come desideriamo, la sua gloria e, con la protezione della destra di Dio, goda per lungo tempo dell'imperio della vostra clemenza. Tuttavia altri sono i criteri che governano le cose secolari, altri quelli delle cose divine; né alcuna costruzione sarà stabile senza quella pietra che il Signore pose come fondamento (cfr. Matteo 16.18)'. Costantinopoli—afferma Leone I—è *regia civitas*, ma non *apostolica sedes*.[11]

[11] 'Habeat, sicut optamus, Constantinopolitana civitas gloriam suam, ac protegente dextera Dei, diuturno clementie vestrae fruatur imperio. Alia tamen ratio est rerum saecularium, alia divinarum; nec praeter illam petram quam dominus in fundamento posuit (Matteo 16.18) stabilis erit ulla constructio'. Così Leone I scrisse nella lettera all'imperatore Marciano del 22 maggio 452 (PL 54.993-996; JK 481), nella quale lamentava anche la sovversione dell'ordine stabilito nel concilio di Nicea che, come è noto, aveva riconosciuto i privilegi di Roma, Alessandria e Antiochia. È stato contestualmente notato, peraltro, che il medesimo concilio, nella sessione del 10 ottobre 451, aveva aderito alla 'concezione di Pietro, che vive ed opera nella sede romana', allorché aveva esclamato, dopo avere recepito il Tomo di Leone I a Flaviano, che 'Pietro ha parlato per tramite di Leone'. Sull'argomento Michele Maccarrone, '*Sedes apostolica – Vicarius Petri*: La perpetuità del primato di

Due secoli dopo, il Concilio Trullano (691-692) riconfermò le decisioni prese nel 381 e nel 451, completandole con la menzione delle tre sedi patriarcali che seguivano le prime due: Alessandria, Antiochia e Gerusalemme (can. 36).[12]

Uno speciale privilegio del vescovo di Roma era stato enunciato nel Concilio di Sardica, svoltosi nel 343. Esso non era stato un sinodo ecumenico, bensì 'locale', ma il Concilio Trullano nel can. 2 confermò l'autorità canonica delle sue decisioni.[13] Si trattava di un privilegio non di mero onore, ma di vera giurisdizione, poiché il concilio riconosceva al vescovo, che fosse stato condannato da un sinodo, di appellarsi al vescovo di Roma. I canoni 3 e 5 di Sardica—di non limpida interpretazione, per la verità—configurano la possibilità di un duplice appello.[14]

Pietro nella sede e nel Vescovo di Roma (secoli III-VIII)', *Il primato del vescovo di Roma* 275-362 a 323s. ora in idem, *Romana Ecclesia – Cathedra Petri* 1.1-101 a 56s. con richiamo allo studio di Vincenzo Monachino, *Il canone 28 di Calcedonia. Genesi storica* (L'Aquila 1979) 91 e al precedente studio dello stesso Maccarrone, 'La concezione di Roma città di Pietro e di Paolo da Damaso a Leone I', *Roma Costantinopoli Mosca*: *Atti del I seminario internazionale di studi storici 'Da Roma alla terza Roma', Roma, 21-23 aprile 1981* (Napoli, 1983) 63-85, ora in idem, *Romana Ecclesia - Cathedra Petri* 1.175-206 a 205s. Cfr. anche il recente saggio di Georges H. Ruyssen S.J., 'Una rivisitazione del XXVIII canone del Concilio di Calcedonia (451)', *Iura Orientalia* 9 (2013) 146-179.

[12] Concilio Trullano, can. 36 (CCO 170).

[13] Concilio Trullano, can. 2 (CCO 122).

[14] Il testo dei canoni 3, 4, 5 del Concilio di Sardica si può leggere, nella duplice versione latina e greca, in *Les canons des synodes particuliers* (d'ora in poi: CSP), ed. Périclès-P. Joannou (Pontificia Commissione per la redazione del codice di diritto canonico orientale. Fonti. Fasc. IX: *Discipline générale antique [II^e-IX^e s.]* t. I pars II; Grottaferrata 1962) 162-165. Vi sono differenze sia nella numerazione dei canoni che nei testi, ciò che lascia pensare a una duplice redazione 'originale'. Sulle circostanze storiche che portarono all'emanazione dei canoni, e sul loro significato quanto allo sviluppo dell'idea del primato, v. Jean Gaudemet, *L'Eglise dans l'Empire Romain* (Histoire du Droit et des Institutions de l'Eglise en Occident 3; Paris 1958) 435-438; Heinz Ohme, 'Sources of the Greek Canon Law to the Quinisext Council (691/2): Councils and Church Fathers', *The History of Byzantine and Eastern Canon Law* 24-114 à 66-74. Sulla vicenda storica del ricorso a Roma, vista alla luce della tradizione orientale, v. Périclès-P.

Le norme non prevedono un personale coinvolgimento del vescovo di Roma come giudice della causa, perché il can. 3 dispone che il papa, qualora lo avesse ritenuto opportuno, avrebbe sottoposto il caso controverso al giudizio del sinodo

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Joannou, *Pape, Concile et Patriarches dans la tradition canonique de l'église orientale jusqu'au IX^e^ siècle*, pubblicato in appendice al citato volume *Les canons des synodes particuliers* 487-550 (in particolare le pp. 528-533). Le molteplici soluzioni interpretative suggerite dal non chiaro dettato dei testi (cioè sulla possibilità che si dia uno solo appello o due) sono esposte nei lavori di Périclès-P. Joannou, *Die Ostkirche und die Cathedra Petri im 4. Jahrhundert*, bearbeitet von Georg Denzler (Päpste und Papsttum 3; Stuttgart 1972) 105-116, a 42s. (quest'ultimo Autore tende a minimizzare, in modo a mio avviso non condivisibile, il significato dottrinale dei canoni); Hermann J. Sieben, 'Il rapporto tra concilio e papa fino alla metà del V secolo', *Concilium* 19 (1983) 38-47 à 41s. Dimitrios Salachas, *Il diritto canonico delle Chiese orientali nel primo millennio: Confronti con il diritto canonico attuale delle Chiese orientali cattoliche* (CCEO, Diaconia del Diritto; Roma- Bologna 1997) 408-410; Hamilton Hess, *The Early Development of Canon Law and the Council of Serdica* (Oxford 2002) 179-199. Sulle prime utilizzazioni dei canoni da parte della Chiesa Romana v. Hans C. Brennecke, 'Rom und der dritte Kanon von Serdika (342)', ZRG kan. Abt. 69 (1983) 15-45. Spyros N. Troianos, 'Der apostolische Stuhl im früh- und mittelbyzantinischen kanonischen Recht', *Il primato del vescovo di Roma nel primo millennnio: Ricerche e testimonianze*: *Atti del Symposium storico-teologico, Roma, 9-13 ottobre 1989*, a cura di Michele Maccarrone (Pontificio Comitato di Scienze Storiche, Atti e Documenti 4; Città del Vaticano 1991) 245-259 (in particolare 251s.), opportunamente rileva criticamente la persistente tendenza di certa storiografia canonistica ortodossa a sminuire il significato dei canoni sardicensi. Per un esempio di tale storiografia cfr. Vlassios I. Phidas, *Droit canon: Une perspective orthodoxe* (Analecta Chambesiana 1; Chambésy-Genève 1998) 72-74; idem, 'Le Primat papal et la pentarchie patriarcale dans la tradition orthodoxe', *Il ministero petrino: Cattolici e ortodossi in dialogo*, a cura di Walter Kasper (Roma 2004) 73-89 (78-80, dove fra l'altro l'Autore afferma che il concilio di Sardica avrebbe attribuito un diritto al vescovo di Roma, cioè non avrebbe riconosciuto un suo preesistente diritto, con la conseguenza che tale competenza sarebbe di mero diritto ecclesiastico). Troianos, invece, rileva (256) che l'idea emergente dal canone 3 di Sardica, del vescovo di Roma quale garante della giustizia ma anche della retta fede, corrisponde non solo a una considerazione comune dell'epoca, ma anche all'idea che alcuni decenni dopo sarà rispecchiata nell'Editto di Tessalonica (380: *Cunctos populos*, poi inserito nel *Codex* di Giustiniano, Cod.1.1.1, sotto il titolo *De Summa Trinitate ef fide catholica*).

della provincia vicina a quella il cui primo sinodo aveva giudicato il vescovo. Qualora il vescovo condannato avesse proposto appello anche contro la seconda sentenza di condanna, il vescovo di Roma avrebbe nominato dei legati a latere che avrebbero ritrattato la causa insieme ai giudici di seconda istanza. Nel can. 3 il ricorso all'autorità di Roma è motivato con l'intenzione di 'onorare la memoria dell'apostolo Pietro'.[15] Con evidenza, il concilio di Sardica riconosceva tali singolari prerogative giudiziali al vescovo di Roma quale successore del primo degli Apostoli.

I commenti dei canonisti bizantini mostrano l'intento di parificare le prerogative della sede di Costantinopoli a quelle della sede di Roma

Nella comune ricostruzione storiografica e nel comune sentire della dottrina ecclesiologica o canonistica di tradizione bizantina, il tema del primato e della presidenza nella Chiesa universale e nei raggruppamenti di Chiese particolari è generalmente ricondotto all'idea che tale primato e i diritti ad esso connessi si riducano a prerogative meramente onorifiche, che si collocano su un piano diverso da quello della giurisdizione. In particolare, la dottrina bizantina suole escludere che la tradizione canonica abbia riconosciuto al vescovo di Roma qualcosa di diverso che un mero 'primato nell'onore'. Quando, tuttavia, si guarda alle fonti canoniche, e alle loro intepretazioni da parte dei canonisti bizantini, la netta distinzione tra onore e giurisdizione sfuma,

[15] CSP 163: 'sanctissimi Petri apostoli memoriam honoremus' (*Pétrou toû apostólou tèn mnémen timésomen*). Peter Landau, al quale queste pagine sono dedicate, ha sottolineato la centralità dell'appello al papa e del principio della *libertas appellationis* nello sviluppo della dottrina del primato papale in Occidente: 'Die Anfänge der Appellation in Mitteleuropa im hohen Mittelalter', *Der Einfluss der Kanonistik auf die europäische Rechtskultur*, 4: *Prozessrecht*, herausgegeben von Yves Mausen, Orazio Condorelli, Franck Roumy, Mathias Schmoeckel (Norm und Struktur 37.4; Köln-Weimar-Wien 2014) 307-324 a 313.

perché l'onore appare inevitabilmente connesso a prerogative di ordine giurisdizionale.[16]

Per cominciare con il can. 6 del concilio di Nicea, abbiamo visto che l'antica consuetudine di cui il concilio impone l'osservanza riguarda una funzione che il canone definisce col termine di *exousía*, cioè 'potere'. Questo dato è ben chiaro ai canonisti del secolo XII. Alessio Aristeno, interpetando il canone alla luce dell'istituzione patriarcale (che a Nicea era ancora in fieri), afferma che 'ciascun patriarca deve essere contento dei propri privilegi (*idíois pronomíois*) e nessuno di loro deve usurpare un'altra provincia (*eparchía*) che prima e da principio

[16] Questo dato storico è rilevante non solo per la corretta interpretazione delle fonti conciliari antiche, ma anche per comprendere cosa si celi dietro l'espressione sintetica 'primato di onore' quando essa sia utilizzata dai canonisti del secolo XII. Il dato è opportunamente sottolineato da Gallagher, 'Theodore Balsamon' 166-169, il quale condivisibilmente sostiene che il riferimento alle prerogative di onore nel can. 3 di Costantinopoli e nel can. 28 di Calcedonia non si limiti a indicare prerogative meramente onorifiche, ma includa poteri giurisdizionali derivanti dall'ufficio. Queste sono le conclusioni, pienamente condivisibili, di Brian Daley, 'Position and Patronage in the Early Church: The Original Meaning of the Primacy of Honour', *Journal of Theological Studies* 44 (1993) 529-553, e di Joannou, *Die Ostkirche und die Cathedra Petri* 4-19. Dell'argomento mi sono occupato diffusamente in 'La distinzione tra potestà di ordine e potestà di giurisdizione' 255-271. Al riguardo ricordo che una parte della dottrina ortodossa contemporanea concepisce il primato come una necessità ecclesiologica, che si manifesta nel fatto che ogni sinodo esige la presidenza di un *prôtos*: ciò vale anche al livello del concilio ecumenico, e pertanto implica l'esistenza di un primato universale. Secondo la formula sintetica di Zizioulas, 'Recent Discussions on Primacy in Orthodox Theology' 260, 'the logic of synodality leads to primacy, and the logic of the ecumenical council to universal primacy'. A proposito dell'esperienza della pentarchia nel primo millennio, Phidas, 'Le Primat papal et la pentarchie patriarcale dans la tradition orthodoxe' 78s. parla del primato di onore delle sedi della pentarchia come di un primato che comporta giurisdizione sovrametropolitana, la cui manifestazione forse più significativa è il diritto di appello; anche il primato d'onore del vescovo di Roma comporta prerogative giurisdizionali, che però sono esercitate nel contesto della pentarchia (82-84).

non era sotto la sua potestà (letteramente 'sotto la sua mano')'.[17] Similmente, in ciascuna provincia vi è un 'primo' (*prótos*), il metropolita, senza il cui consenso i vescovi della circoscrizione non possono essere eletti.

Anche Giovanni Zonara qualifica la posizione dei patriarchi rispetto ai metropolitani e dei metropolitani rispetto ai vescovi comprovinciali con verbi che attengono alla giurisdizione: *proéchein*, *exousiázein*, *árchein* nel caso di Roma, della quale si dice che presiede nelle province occidentali (*proedreúonti*, al participio presente dativo). Siffatta presidenza, nell'ambito della provincia ecclesiastica, è visibilmente esercitata al momento delle elezioni episcopali, che devono essere sottoposte alla conferma e all'approvazione del metropolita.[18] Il linguaggio di Zonara è dunque particolarmente incisivo. Se accettiamo queste premesse, è evidente che quando i canonisti parlano di 'onore' non intendono limitarsi a prerogative meramente onorifiche, ma si riferiscono a diritti che si collocano nell'ambito della giurisdizione. È in questa prospettiva che possiamo allora leggere le parole di Balsamon: 'Il presente e il settimo canone stabiliscono che i quattro patriarchi, cioè Romano, Alessandrino, Antiocheno e Gerosolimitano (del Costantinopolitano infatti si tratterà in altri canoni) siano onorati secondo le antiche consuetudini'.[19] Dove il verbo 'essere onorato' (*timâsthai*) traduce con evidenza un contenuto di carattere giurisdizionale, dato che il canone riconosce al vescovo di Alessandria una potestà (*exousían*), e al vescovo alessandrino assimila il vescovo di Roma e quello di Antiochia. Anche la posizione di preminenza dei patriarchi sui metropolitani, e di questi sui vescovi della provincia, è definita da Balsamon con l'uso del verbo *proéchein* (essere superiore).

Quanto alle relazioni tra Roma e Costantinopoli in tema di primato ecclesiastico, il sistema canonico era stato definito nel

[17] Alessio Aristeno su concilio di Nicea (325), can. 6 (PG 137.255s. Aristenos, *Kanonistischer Kommentar* 23).
[18] Giovanni Zonara su concilio di Nicea (325), can. 6 (PG 137.253-256).
[19] Teodoro Balsamon su concilio di Nicea (325), can. 6 (PG 137.253s.).

primo concilio costantinopolitano. La questione fondamentale, che maggiormente attrasse l'attenzione dei canonisti del secolo XII, concerne il significato da attribuire alla preposizione 'dopo' (*metà*), che era stata usata per distinguere il 'primato di onore' del vescovo di Costantinopoli dal primato del vescovo della Vecchia Roma. Il più antico dei tre canonisti, Alessio Aristeno, aveva affermato che la preposizione *metà* aveva un significato cronologico: Costantinopoli gode dei medesimi privilegi e del medesimo onore della Vecchia Roma, ma li ha ricevuti successivamente ad essa.[20]

Zonara, senza citare Aristeno, parte da tale opinione per contestarla.[21] Secondo alcuni—afferma Zonara—la preposizione *metà* non significa 'inferiorità di onore' (*hypobibasmòs tês timès*), ma indicherebbe solo posteriorità nel tempo. A dire dei sostenitori di questa tesi, tale interpretazione sarebbe confermata dal can. 28 di Calcedonia: poiché esso afferma che Costantinopoli è degna di eguali onori rispetto alla vecchia Roma, l'uso della preposizione *metà* non potrebbe intendersi nel senso che il concilio di Costan-tinopoli abbia voluto stabilire una 'soggezione' (*hypóptosis*) della Nuova Roma alla Vecchia Roma. Zonara rifiuta questa interpretazione, e allega la Novella 131 di Giustiniano a sostegno della propria opinione.[22] Qui l'imperatore, qualificando il papa della Vecchia Roma come il 'primo dei sacerdoti' e collocando il vescovo di Costantinopoli come secondo dopo il papa, aveva così confermato quella relazione di 'sottoposizione e diminuzione' (Zonara adopera le parole *hypobibasmòs* ed *eláttosis*) che il canone constantinopolitano aveva voluto significare con la preposizione *metà*. È quindi impossibile—conclude Zonara—che a entrambi i troni spetti il medesimo onore. L'interpretazione cronologica, pertanto, è da rigettare, come peraltro appare confermato dal can.

[20] Alessio Aristeno su concilio di Costantinopoli (381), can. 3 (PG 137.325s; Aristenos, *Kanonistischer Kommentar* 79).

[21] Giovanni Zonara su concilio di Costantinopoli (381), can. 3 (PG 137.323-326).

[22] Zonara per la verità indica la Novella 130, ma si tratta in effetti della 131, *De ecclesiasticis titulis,* c.2

36 del concilio Trullano.[23] Ma allora, in che cosa si traduce la preminenza della Vecchia sulla Nuova Roma? In questo contesto Zonara porta solo tre esempi, che a prima vista sembrano ricollegarsi a prerogative puramente onorifiche. Se i nomi dei due vescovi devono essere menzionati in una liturgia, se i due vescovi devono sedere nel medesimo consesso o se il medesimo documento debba essere sottoscritto da entrambi, il vescovo di Roma deve essere preposto a quello di Costantinopoli.

Commentando il can. 3 di Costantinopoli, Teodoro Balsamon mostra di aderire all'interpretazione di Zonara.[24] La Chiesa di Bisanzio un tempo era sottoposta alla metropoli di Eraclea. Quando Costantino trasferì il governo a Bisanzio, che ribattezzò Costantinopoli, essa divenne la Nuova Roma e 'la regina di tutte le città': per questo la capitale fu onorata dai Padri del secondo concilio ecumenico. Per dimostrare che la preposizione *metà* significa 'subordinazione nell'onore' (*hypobibasmòs tês timès*), Balsamon segue il ragionamento di Zonara e allega le sue medesime fonti,[25] ma aggiunge una citazione la cui rilevanza sarebbe meglio emersa nel successivo commento al can. 28 di Calcedonia. Balsamon rimanda infatti al *Constitutum Constantini*, collocato nel tit. VIII cap. 1 del *Nomocanon in XIV titoli*.

Nel commento al can. 28 di Calcedonia Alessio Aristeno si mantiene coerente con la sua posizione.[26] Il vescovo di Costantinopoli ha i medesimi privilegi (*tà ísa presbeîa*) del vescovo della Vecchia Roma—come peraltro il canone afferma

[23] Negli *scholia* al can. 36 del concilio Trullano, Zonara e Balsamon rinviano a quanto scritto sul can. 3 di Costantinopoli e sul can. 28 di Calcedonia. Alessio Aristeno ribadisce la sua opinione che la proposizione *metà* ha un significato di posteriorità cronologica (PG 137.637s.).

[24] Teodoro Balsamon su concilio di Costantinopoli (381), can. 3 (PG 137.321-324).

[25] Compresa la Novella 131.2, qui indicata come 130, ma correttamente indicata con numero 131 nello scolio di Balsamon al *Nomocanon*, tit.1 c.5 (PG 104.987s.).

[26] Alessio Aristeno su concilio di Calcedonia, can. 28 (PG 137.489-492; Aristenos, *Kanonistischer Kommentar* 95s.).

ripetutamente—e il secondo posto dopo la Vecchia Roma non implica un diverso grado di onore: il vescovo di Costantinopoli ha il medesimo onore di quello di Roma, è *isótimos*.

Zonara rinvia a quanto già scritto a proposito del terzo canone del secondo concilio ecumenico.[27] Sebbene il can. 28 di Calcedonia parli di uguali privilegi, il canonista ribadisce l'idea che la preposizione *metà* volesse implicare un inferiore grado di onore (*hypobibasmòs*). Le due sedi episcopali, insomma, non possono essere ritenute uguali in tutto, a meno che si dica che i Padri di Calcedonia, illuminati dallo Spirito Santo, avessero previsto che la Chiesa di Roma, per i suoi errori, si sarebbe separata dal corpo dell'ortodossia. Questo è un punto sul quale tornerò più avanti.

Teodoro Balsamon non smentisce quanto aveva scritto, sulla scia di Zonaras, a commento del terzo canone costantinopolitano, ma a margine del can. 28 di Calcedonia mostra quale concetto gli stava a cuore esprimere.[28] Secondo Balsamon, il can. 28 di Calcedonia stabilisce che il vescovo di Costantinopoli abbia gli stessi privilegi del papa di Roma, e che sia onorato al pari di questo. Alcuni, però, notano che in effetti il vescovo di Costantinopoli non usa i medesimi privilegi del papa: non copre il suo capo col *lóros* imperiale (Balsamone indentifica erroneamente il *lóros*, una sciarpa, come un copricapo), non cammina con lo scettro e le altre insegne imperiali, non si abbiglia e non cavalca nel modo descritto nel decreto emanato dal santo e grande Costantino in favore del papa di Roma san Silvestro e dei suoi successori. Costoro—continua Balsamon—ritengono che tali privilegi siano caduti in desuetudine, anche perché non sono riportati nelle successive collezioni di leggi imperiali (e qui Balsamon rinvia a quanto scritto nel cap. 1 del titolo VIII del *Nomocanone*). La conclusione del discorso è questa: 'io però, essendo cittadino purissimo di Costantinopoli, ed essendo divenuto per grazia di Dio parte principalissima del

[27] Giovanni Zonara su concilio di Calcedonia, can. 28 (PG 137.487-490).

[28] Teodoro Balsamon su concilio di Calcedonia, can. 28, testo indicato come *altera expositio* (*etéra ermeneía*) (PG 137.485-488).

santissimo trono costantinopolitano, voglio e desidero che l'arcivescovo di Costantinopoli, senza alcuno scandalo, abbia tutti i privilegi che gli sono liberalmente elargiti dai divini canoni'. In questo commento al can. 28 di Calcedonia la sostanza della funzione primaziale sembra essere stata persa di vista. L'interesse di Balsamon è quello di parificare la Nuova Roma alla Vecchia quanto ai privilegi esteriori, che egli leggeva essere stati concessi da Costantino il Grande a Silvestro e ai suoi successori sul trono episcopale romano. Poiché i sacri canoni avevano riconosciuto a Roma e Costantinopoli uguali privilegi, le concessioni fatte da Costantino a Silvestro dovevano competere anche alla sede episcopale della capitale d'Oriente.

Il *Constitutum Constantini*,[29] probabilmente conosciuto a Costantinopoli già in occasione degli eventi degli anni 1053-1054, aveva avuto la sua epifania nelle fonti giuridiche bizantine proprio con Teodoro Balsamon, che ne aveva inserito un passo, tratto dalla sezione contenente la *Donatio*, nello scolio al

[29] Esso consta di due parti: la *Confessio*, che si basa sulla leggenda di San Silvestro, il quale avrebbe battezzato Costantino dopo averlo guarito dalla sua malattia, e consiste nella professione di fede di Costantino; la *Confessio* è seguita dalla *Donatio* di Costantino a papa Silvestro in segno di gratitudine. Origine e datazione (metà sec. VIII / metà secolo IX) sono ancora oggi discusse: Horst Fuhrmann, 'Konstantinische Schenkung', LMA 5.1385-1387; recentemente Johannes Fried, *Donation of Constantine and Constitutum Constantini: The Misinterpretation of a Fiction and its original Meaning* (Millennium-Studien 3; Berlin-New York 2007) ne ha collocato l'origine in Francia intorno all'840. Edizione: *Das Constitutum Constantini (Konstantinische Schenkung): Text*, ed. Horst Fuhrmann (MGH Fontes iuris Germanici antiqui 10, Hannover 1968). Sull'utilizzazione del *Constitutum* in ambiente latino, il libro di Domenico Maffei citato nella prossima nota rimane la ricerca fondamentale. In tempi più recenti cfr. Giovan Giuseppe Mellusi, 'Donación de Constantino', DGDC 3.486-490; Riccardo Saccenti, 'Costantino nel diritto canonico classico: Elementi costantiniani nella canonistica fra XI e XIV secolo'; Alberto Cadili, 'Il veleno di Costantino: La donazione di Costantino tra spunti riformatori ed ecclesiologia ereticale'; Diego Quaglioni, 'Costantino e il diritto canonico moderno: Da Marsilio in poi', tutti in *Constantino I: Enciclopedia Costantiniana sulla figura e l'immagine dell'imperatore del cosiddetto editto di Milano 313-2013* (3 vol. Roma 2013), consultabile in rete, www.treccani.it.

capitolo 1 del titolo VIII del *Nomocanon*.[30] L'intento del canonista è quello di mostrare come la città di Costantinopoli e la sua sede episcopale godano delle medesime prerogative (*pronómia*) dell'Antica Roma. Quali siano siffatte prerogative si evince, oltre che da alcune costituzioni poste nel *Codex* di Giustiniano e nei *Basilica*, anche dal decreto emesso dal santo imperatore Costantino il Grande, 'pari agli apostoli' (*isapóstolos*),[31] in favore di Silvestro papa di Roma. Come abbiamo visto, nel commento al can. 28 di Calcedonia Balsamon utilizza il *Constitutum* per rivendicare al patriarca di Costantinopoli alcuni privilegi meramente esteriori, che sono

[30] *Nomocanon*, tit.8 cap.1, scolio di Balsamon (PG 104.1077s.). Augusto Gaudenzi, 'Il Costituto di Costantino', BISM 39 (1919) 9-112, ritenne che il testo latino fosse posteriore al testo greco. La prospettiva è stata ribaltata da Enzo Petrucci, 'I rapporti tra le redazioni latine e greche del Costituto di Costantino', BISM 74 (1962) 45-160. Si ritiene che il *Constitutum Constantini* sia stato conosciuto a Costantinopoli intorno al 1054. Il *Constitutum* è infatti utilizzato in una lettera di Leone IX a Leone metropolita d'Ocrida, redatta da Umberto di Silva Candida, 1053 (JL 4302): Domenico Maffei, *La donazione di Costantino nei giuristi medievali* (Milano 1964) 16s. Horst Fuhrmann, *Einfluss und Verbreitung der pseudoisidorischen Fälschungen: Von ihren Auftauchen bis in die neuere Zeit* (3 vol. Schriften der MGH 24; Stuttgart 1972-1974) 2.383-385. Secondo Hans-Georg Krause, 'Das Constitutum Constantini im Schisma von 1054', *Aus Kirche und Reich: Studien zu Theologie, Politik und Recht im Mittelalter*. *Festschrift für Friedrich Kempf zu seinem 75: Geburtstag und fünfzigjährigen Doktorjubiläum*, a cura di Hubert Mordek (Sigmaringen 1983) 131-158, non vi sarebbe prova che lo scisma del 1054 sia stato all'origine della diffusione bizantina della donazione; ma l'Autore non spiega come e perché il testo sia poi potuto emergere con Balsamon. La questione è ampiamente discussa da Gilbert Dagron, *Emperor and Priest: The Imperial Office in Byzantium* (Cambridge 2003) 240-247 [volume originariamente pubblicato in francese: *Empereur et prêtre: Étude sur le 'césaropapisme' byzantin* (Paris 1996)]. Sembra che la *Donatio* potesse essere conosciuta a Costantinopoli a partire dal 968, quando Liutprando da Cremona la presuppone in un discorso rivolto ai suoi interlocutori bizantini. Secondo altri la prima allusione si troverebbe in un passaggio della *Epitome* di Giovanni Cinnamo (Spiteris, *La critica bizantina* 197-201). Dagron ritiene che non si possa negare che la *Donatio* fosse conosciuta a Costantopoli già intorno al 1054.

[31] È un tema di retorica sacrale e politica sviluppatosi nel V secolo: Dagron, *Emperor and Priest* 135-143.

puntualmente enumerati nel testo accolto nel *Nomocanon*. Ma Balsamon è estremamente selettivo rispetto a quanto avrebbe potuto trarre dalla *Constitutum*, che è tutto impostato sul principio della successione petrina e ripetutamente manifesta l'idea della superiorità di Pietro e dei suoi successori su tutti gli altri vescovi.[32] Nel frammento di testo che Balsamon riprende nel suo scolio si dice, infatti, che, come san Pietro rappresenta il figlio di Dio sulla terra, 'così anche i vescovi successori del corifeo degli apostoli hanno una primaria potestà (*archichèn exousían*) sulla terra'. Il passo prosegue con un conseguenziale riferimento alle sedi patriarcali: la Chiesa Romana ha una primaria potestà ed è capo (*kephalé*) dei quattro troni di Alessandria, Antiochia, Gerusalemme e Costantinopoli. Nel commento al can. 28 Balsamon è del tutto sordo rispetto ai principî ecclesiologici emergenti dal *Constitutum* e alle conseguenze che ne discenderebbero nell'ordine canonico. A noi resta il dubbio su quale sia la causa di questo silenzio: se, cioè, Balsamon sia stato ecclesiologicamente impreparato a raccogliere il senso delle citate affermazioni contenute nel *Constitutum* (che pure egli sfrutta in altra direzione), oppure se esse erano talmente sconvolgenti rispetto al quadro canonico che egli aveva configurato, che egli preferì passarle sotto silenzio proprio per non turbare le sue consolidate certezze.

L'obiettivo di parificare la condizione giuridica di Costantinopoli a quella di Roma prosegue nei commenti sui canoni di Sardica relativi al diritto di appello al vescovo di Roma.

Commentando il can. 3 Giovanni Zonara ripete le parole del canone che ricollegano il diritto di appello al papa con la volontà di onorare la memoria dell'apostolo Pietro, e in questa sede tace di qualsivoglia equivalenza di poteri tra il vescovo di Costantinopoli e quello della Vecchia Roma.[33] Questo appare

[32] Su quest'uso parziale della *Donatio* da parte di Balsamon v. Spiteris, *La critica bizantina* 234; cfr. Dagron, *Emperor and priest* 244-247 e 257.

[33] Giovanni Zonara su concilio di Sardica, can.3 (PG 137.1435s.). Sui canoni di Sardica nell'interpretazione dei canonisti bizantini del secolo XII è

coerente, peraltro, con la convinzione di Zonara che i canoni di Costantinopoli (381) e Calcedonia (451) avevano sancito una relazione di 'sottoposizione e diminuzione' tra le sedi della Nuova e dell'Antica Roma. E tuttavia, ritornando sul tema nel commento al can. 5 di Sardica, Zonara mostra di ritenere che esso riguardasse specificamente ed esclusivamente le Chiese situate nelle aree territoriali che al tempo del concilio (343) erano sottoposte alla giurisdizione romana: 'A causa di questo canone gli arcivescovi dell'Antica Roma pretendono che in qualsiasi causa i vescovi facciano appello a loro. E affermano falsamente che tale canone sia stato emanato nel primo concilio ecumenico di Nicea'.[34] Lasciando da parte questo ulteriore rilievo concernente l'origine dei canoni sardicensi,[35] il pensiero di Zonara si rende esplicito quando egli afferma che il canone non intendeva attribuire al vescovo di Roma una competenza di appello universale. Esso riguardava solo i vescovi orientali che al tempo del concilio erano soggetti a Roma: ossia i vescovi di Macedonia, Tessaglia, Illirico, Grecia, Peloponneso, Epiro, territori che poi furono trasferiti alla giurisdizione di Costantinopoli.

Se bene intendo, diversa è la prospettiva di Teodoro Balsamon. Là dove Zonara aveva detto che il diritto del vescovo di Roma sancito a Sardica era sin dall'origine ristretto alle aree soggette alla giurisdizione papale, Balsamon trasferisce in capo al vescovo di Costantinopoli la competenza originariamente sancita in favore del papa di Roma: conosciamo già l'argomento, cioè la dottrina degli *ísa presbeîa* e della equiparazione canonica

specifico il citato studio di Troianos, 'Der apostolische Stuhl im früh- und mittelbyzantinischen kanonischen Recht'.

[34] Giovanni Zonara su concilio di Sardica, can. 5 (PG 137.1443s.)

[35] Fino a che Dionigi l'Esiguo li collocò nella sua collezione sotto la corretta epigrafe del concilio di Sardica, i canoni erano stati utilizzati dalla Chiesa di Roma come se fossero stati emanati a Nicea. Nel celebre caso di Apiario, prete africano che si era appellato a Roma, i legati romani al concilio di Cartagine (419) avevano citato i canoni sardicensi attribuendoli a Nicea, ciò che suscitò l'opposizione dei Padri del concilio. Sul tema v. Ohme, 'Sources of the Greek Canon Law to the Quinisext Council (691/2)' 74.

tra Roma e Costantinopoli sancita dal Concilio di Costantinopoli (381), confermata a Calcedonia (451), rinnovata nel concilio Trullano (691). Se questa interpretazione è corretta, dunque, Balsamon riconosce una originaria competenza universale d'appello del vescovo di Roma, ma ritiene che tale competenza sia stata successivamente ristretta territorialmente a causa della equiparazione dei privilegi dell'Antica e della Nuova Roma. Nell'esporre il senso del can. 3 di Sardica, Balsamon trasforma l'originario richiamo alla necessità di onorare la memoria dell'apostolo Pietro in un più generico riferimento all' 'onore del trono apostolico' (*dià timèn toû apostolikoû thrónou*), per concludere nel seguente modo: 'le cose che sono state definite a proposito del papa, le medesime valgono anche riguardo al patriarca di Costantinopoli, a causa del fatto che diversi canoni lo onorano in tutto e per tutto similmente al papa'.[36] Il concetto è ulteriormente ribadito a margine del can. 5: 'Poiché dunque nei precedenti canoni abbiamo detto che le cose stabilite riguardo al papa non sono privilegi esclusivi di lui solo, ossia che qualunque vescovo condannato debba necessariamente accedere al trono di Roma, poiché costui può essere ascoltato anche di fronte al trono di Costantinopoli: altrettanto di nuovo ribadiamo'.[37]

La creazione di due aree geografiche sostanzialmente indipendenti è dunque per Balsamon l'effetto di un sistema canonico definito nell'evo antico e fondato sulla parità tra Roma e Costantinopoli, nonché l'effetto della successiva separazione dell'Antica Roma dal corpo dell'ortodossia. Questo quadro appare confermato alla lettura del commento sul can. 12 del concilio di Antiochia (341).[38] La norma puniva il chierico condannato da un vescovo o il vescovo condannato da un sinodo, che avessero fatto appello all'imperatore così disattendendo l'ordine canonico che impone il ricorso a un sinodo maggiore. In questo quadro Balsamon si pone il problema: se qualcuno sia stato condannato o deposto dal patriarca, poiché non ha un

[36] Teodoro Balsamon su concilio di Sardica, can. 3 (PG 137.1433s.).
[37] Ibid. can. 5 (PG 137.1441s.).
[38] Teodoro Balsamon su concilio di Antiochia, can. 12 (PG 137.1307-1312).

sinodo maggiore a cui appellarsi, ha il diritto di rivolgersi all'imperatore? Il canonista dà atto di un'ampia dibattito dottrinale e presenta un quadro articolato di opinioni; per parte sua ritiene che le sentenze patriarcali non possano essere appellate di fronte all'imperatore (evidentemente ritiene anche che la causa non possa essere ulteriormente giudicata dal papa di Roma). Sebbene tale conclusione sia affermata in termini generali, il discorso di Balsamon verte specificamente sul patriarca di Costantinopoli. Al di là delle varie norme, civili e canoniche, messe sul tavolo della discussione, l'argomento principale a sostegno della soluzione di Balsamon è fondato proprio sui canoni di Sardica che prevedevano l'appello al papa di Roma. Poiché il decreto di Costantino (il *Constitutum* citato nel *Nomocanon*) stabilisce che il papa abbia tutti i diritti imperiali (*pánta tà basilikà díkaia*), e i concili di Costantinopoli e Calcedonia hanno conferito al patriarca di Costantinopoli i privilegi del papa (*tà pronómia*) e stabilito che esso sia onorato come il papa stesso, di conseguenza, e necessariamente, la sentenza del patriarca di Costantinopoli è inappellabile come inappellabile è la sentenza dell'imperatore.

Un luogo per il primato: la concordia dei cinque patriarchi nel sistema della pentarchia

Visto che Balsamone esclude che il papa di Roma abbia una superiorità giurisdizionale sopra il patriarca di Costantinopoli, occorre chiedersi se vi sia un luogo istituzionale nel quale si concentri una funzione primaziale di carattere universale. Potremmo rispondere che questo luogo è il concilio ecumenico, e che certamente i concili ecumenici tenuti nel primo millennio proiettavano la loro missione di ordine universale attraverso l'autorità dei canoni trasmessi dalle collezioni canoniche. Ma resteremmo delusi se pensassimo che i canonisti bizantini si siano impegnati nello specifico approfondimento giuridico della natura e le funzioni del concilio ecumenico. Il concilio ecumenico era stato nel primo millennio, e continuava in teoria ad essere anche dopo la consumazione dello scisma, il luogo nel

quale si manifestava in modo formale e visibile l'unanimità e il consenso dei cinque patriarchi della Chiesa.[39] Al tema dei privilegi patriarcali Balsamon dedica uno specifico trattato, che nella tradizione porta il titolo di *Riflessione o risposta sui privilegi patriarcali*.[40] La persona alla quale l'opera è destinata aveva chiesto al canonista perché il numero dei patriarchi sia cinque, quali siano i loro privilegi, e se vi sia tra loro una differenza, come alcuni sostenevano. Balsamon all'inizio traccia una storia dell'istituzione patriarcale, facendo capo all'era apostolica. L'apostolo Pietro pose Evodio come patriarca ad Antiochia, poco dopo Marco ad Alessandria, Giacomo a Gerusalemme, in Tracia Andrea. Il seguito è stupefacente: trecento anni dopo Silvestro fu denominato papa da Costantino. Nell'esposizione di Balsamon, paradossalmente, l'unica sede che non ha una fondazione apostolica sarebbe quella di Roma, che deriverebbe il suo status dalla concessione fatta da Costantino a Silvestro![41] Bisanzio—continua Balsamon—era soggetta a Perinto, cioè Eraclea, ma dopo il trasferimento della sede imperiale a Costantinopoli, il vescovo Metrofane assunse il rango di arcivescovo. Il concilio di Costantinopoli attribuì alla

[39] Nell'ampia letteratura sulla pentarchia spiccano i lavori di Ferdinand Gahbauer, Enrico Morini, Vittorio Parlato, Vittorio Peri, menzionati in Condorelli, 'Il primato del Vescovo di Roma' 56 nota 11 e 59s. n.17.

[40] Teodoro Balsamon, *Meditatum (Meléte) sive responsum (apókrisis) de patriarcharum privilegiis* (PG 138.1013-1034, in particolare 1013-1016 per i punti qui appresso considerati).

[41] Spiteris, *La critica bizantina* 240s. Dagron, *Emperor and Priest* 246s. si sofferma su un passo del trattato relativo all'uso del titolo 'ecumenico' da parte del patriarca di Costantinopoli, nel quale Balsamon conferma che il patriarca in effetti non usava i privilegi spettanti al papa in virtù della *Donatio* (PG 138.1029s.). Secondo Dagron (ma dubitativamente) il passo potrebbe rivelare una leggera esitazione quanto alla autenticità della *Donatio* da parte di Balsamon. Dagron inoltre ritiene che il canonista qui voglia sottolineare la modestia del patriarca rispetto alla vanagloria del papa. Però questa lettura a mio avviso contrasta con quanto Balsamon aveva scritto nel commento al can. 28 di Calcedonia, dove aveva affermato con decisione, e senza alcuna ironia, il suo desiderio che il patriarca usasse i privilegi che Costantino aveva conferito a papa Silvestro e che ora spettavano anche al patriarca della Nuova Roma (cfr. sopra, nota 28 e relativo testo).

Nuova Roma i privilegi (*presbeîa*) dell'Antica Roma, e il concilio Trullano rinnovò tale disposizione (nulla è stranamente detto di Calcedonia). Per Balsamon il numero quinario dei patriarchi è strutturale e permanente, e non è modificato dalla circostanza storica che Roma si sia separata (e sia stata allontanata) dal corpo degli altri patriarchi ortodossi: 'infatti la giusta esclusione (*ekkopé*) del papa dell'antica Roma non ha affatto abolito l'ordine canonico. Inoltre, il primo non si rivolta contro il secondo, né il secondo contro il terzo; ma, essendo considerati presso il popolo cristiano come i cinque sensi dell'unico capo, sensi che in tale numero sono contati e non sono divisi in parti, [i patriarchi] sono pari nella dignità in tutto (*isotimían en ápasin échousi*) e, denominati capi (*kárai*) di tutte le sante Chiese in tutto l'ecumene, non tollerano alcuna differenza posta dall'uomo'.[42] Questo passo condensa il succo della dottrina di Balsamon sulla natura e i compiti dell'istituzione patriarcale. Secondo un insegnamento che affonda le radici nella tradizione altomedievale, i patriarchi sono rassomigliati ai cinque sensi: nel loro numero essi rispecchiano l'ordine dato Dio, architetto e creatore del mondo; nella loro azione, nessun patriarca, come nessun senso, prevarica sulle funzioni di un altro. Pertanto l'ordine stabilito dai concili ecumenici non pregiudica la fondamentale uguaglianza dei patriarchi.[43] Come si è visto, quest'ordine supremamente disposto non è toccato dalle vicende della storia. Quanto a Roma, 'il demonio dell'ambizione (*philautía*) ha allontanato il papa dall'assemblea degli altri santissimi patriarchi e lo ha ristretto nel solo Occidente'.[44] A prestar fede alle sue parole, Balsamone dichiara di essere intimamente turbato da questa situazione, e di aspirare alla ricomposizione dell'unità della Chiesa: 'e infatti, come l'edera alla quercia, anelo alla concordia del papa di Roma, e ho l'animo lacerato per la sua separazione, e attendo con ansia

[42] Teodoro Balsamon, *Meditatum (Meléte) sive responsum (apókrisis) de patriarcharum privilegiis* (PG 138.1015 s.).
[43] Ibidem.
[44] Ibid. PG 138.1029s.

la sua giusta conversione'.[45] Altro aspetto che caratterizza la dottrina di Balsamon è l'enfasi che egli pone sulla eguaglianza dei patriarchi: papa, patriarca, arcivescovo hanno il medesimo significato di padre, e la diversità dei nomi con cui i cinque patriarchi sono denominati non implica diversità di funzioni o potestà (*dýnamis* è la parola utilizzata da Balsamon):[46] fra i cinque patriarchi vi è 'identità di onore' (*tautótes tês timês*).[47]

Nella esaltazione della figura patriarcale Balsamon mette in luce i peculiari effetti dell'unzione sacra. Per virtù dell'unzione i patriarchi sono perfezionati nella santità, divengono gli unti del Signore, e per questo sono chiamati santissimi e annoverati nei numero dei santi e 'teofori' Padri. Per opera loro le porte del Cielo sono aperte o chiuse agli uomini, e attraverso le loro labbra Dio manifesta le cose future. Infatti non la carne e il sangue, ma il padre celeste, con l'effusione del suo Spirito (con citazione da Gioele 3.1), rivela loro sia le cose presenti che quelle future.[48] Nel suo discorso Balsamon tace di qualsiasi ruolo di peculiare testimonianza evangelica proprio dei successori di Pietro sulla cattedra di Roma, anzi abbiamo visto che per lui l'istituzione del patriarcato romano sarebbe avvenuta per opera dell'imperatore Costantino. Le parole di Balsamon portano il segno di una frattura storica, ecclesiologica e canonica. La dottrina pentarchica, nella versione formulata nel primo millennio, esprimeva l'esigenza della collegialità episcopale nel governo della Chiesa, collegialità che all'apice era manifestata dalla concordia dei cinque patriarchi.[49] Ora, nel pensiero di Balsamon,

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[45] Teodoro Balsamon, *Meditatum (Meléte) sive responsum (apókrisis) de patriarcharum privilegiis* (PG 138.1019s.). È affermazione incidentale nel contesto della frase citata sotto, nota 50.

[46] Ibid. PG 138.1027s.

[47] Ibid. PG 138.1025s.

[48] Ibid. PG 138.102 s.

[49] Cfr. al riguardo le incisive affermazioni di Yves M.J. Congar, *L'ecclésiologie du haut moyen âge. De Saint Grégoire le Grand à la désunion entre Byzance et Rome* (Paris 1968) 379: 'La Pentarchia, i patriarcati stessi, non sono che delle forme storiche: farne, in quanto tali, degli elementi essenziali della Costituzione della Chiesa, sarebbe mal giustificabile. Ma essi sono, nel profondo, nella coscienza ecclesiologica dell'Oriente, delle strutture

la pentarchia si colloca in un quadro ecclesiologico pesantemente ostile nei confonti della sede di Roma, che è dichiaratamente accusata di scisma ed eresia. Per il principe dei canonisti bizantini la pentarchia è dunque il luogo ecclesiologico del primato nella Chiesa: 'Riconosciamo i cinque patriarchi... quale unico capo (*kephalèn*) del corpo di tutte le Chiese di Dio'.[50] O ancora: 'i cinque patriarchi tengono il luogo dell'unico capo del corpo, cioè delle sante Chiese di Dio.[51]

A margine: cenni sulla 'communicatio in sacris' nel pensiero di Balsamon e di alcuni suoi contemporanei (con testimonianze sulla non indiscussa fama di Balsamon)

La visibile ostilità di Balsamon verso i Latini e la Chiesa di Roma si traduceva in posizioni particolarmente dure e rigorose in materia di *communicatio in sacris*. Il rigore delle sue posizioni era noto ai suoi contemporanei e in parte da loro disapprovato.

Tra i responsi (1195) indirizzati a Marco III, patriarca di Alessandria, il quindicesimo tratta il seguente quesito: prigionieri latini accedevano alle chiese ortodosse di Alessandria chiedendo di partecipare ai sacramenti; il patriarca si chiedeva se fosse possibile ammetterli.[52] La risposta di Balsamon comincia con la citazione del brano evangelico: 'Chi non è con me, è contro di me, e chi non raccoglie con me, disperde' (Matteo 12.30; Luca 11.23). Secondo il canonista, la Chiesa 'occidentale', identificata con quella di Roma, da molti anni è separata dagli altri quattro patriarchi quanto alla comunione spirituale, diverge nelle consuetudini (*éthe*) e nei dogmi (*dógmata*) dalla Chiesa cattolica ed è aliena dall'ortodossia. Pertanto Balsamon enuncia le

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e dei mezzi per la realizzazione di un ideale di comunione che si situa, esso, al cuore di questa coscienza. Si tratta di realizzare l'unanimità nella fede e nella sua professione liturgica, che sono il principio d'unità della Chiesa'.

[50] Teodoro Balsamon, *Meditatum (Meléte) sive responsum (apókrisis) de patriarcharum privilegiis* (PG 138.1019 s.).

[51] Ibid. PG 138.1025s.

[52] Teodoro Balsamon, *Responsi (Apokríseis)* a Marco patriarca di Alessandria (PG 138.967s., *interrogatio* 15).

condizioni alle quali i Latini possono essere ammessi alla comunione sacramentale: essi devono prima dichiarare di volersi distaccare dai costumi e dai dogmi della Chiesa occidentale, devono essere istruiti secondo i canoni e devono adeguarsi agli ortodossi.

Qualche decennio dopo (intorno agli anni 1225-1230), due canonisti bizantini di non poco valore, Demetrio Chomatianos (arcivescovo di Ocrida) e Giovanni di Kitros, si confrontarono con le opinioni di Balsamon dando alcuni responsi a quesiti posti da Costantino metropolita di Durazzo.[53] I responsi rivelano che nella Chiesa bizantina circolavano opinioni più moderate di quelle di Balsamon: come quella di Teofilatto, arcivescovo di Bulgaria menzionato da Demetrio Chomatianos.[54]

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[53] Sull'attribuzione dei responsi all'uno e all'altro dei due giuristi v. Jean Darrouzès, 'Les réponses canoniques de Jean de Kitros', *Revue des études byzantines* 31 (1973) 319-334, che riassume in due sequenze i contenuti dei responsi. Su Demetrio Chomatianos (o Chomatenos) v. Troianos, 'Byzantine Canon Law from the Twelfth to the Fifteenth Centuries' 194s., 202s.

[54] Teofilatto di Bulgaria è menzionato nei due responsi di Demetrio Chomatianos citati qui appresso. Teofilatto, arcivescovo di Ocrida, nella Bulgaria bizantina, era nato alla metà del secolo XI e morì verso il 1125-1126. Nei suoi commenti alle Sacre Scritture sottolineò il primato di Pietro, senza tuttavia compiere (con evidenza, almeno) l'ulteriore passo di raccordare tale primato a quello dei successori di Pietro sulla cattedra di Roma. Un suo scritto sul tema degli errori dei Latini si segnala per l'equilibrio e lo spirito conciliante: Spiteris, *La critica bizantina* 44-54; François Dvornik, *Bizance et la primauté romaine* (Unam Sanctam 49; Paris 1964) 129-131; Eleutheria Papayanni, 'Rome et Constantinople dans l'oeuvre de Thophylacte archevêque d'Achrida (1050/55-1125/26?)', *Idea giuridica e politica di Roma e personalità storiche*, a cura di Pierangelo Catalano e Paolo Siniscalco (Da Roma alla Terza Roma. Documenti e studi: Rendiconti del X Seminario, Campidoglio 21 aprile 1990; Roma 1991) 79-93. Quanto ai due autori qui considerati, a giudizio di Darrouzès, 'Les réponses canoniques' 331s., 'il semble tout d'abord que Jean et Dèmètrios ne sont pas d'origine constantinopolitaine: un citoyen de la capitale, à cette date, n'aurait pas sans doute traité des erreurs des Latins avec la même largeur d'esprit que Dèmètrios, ni admis comme Jean des relations confessionnelles entre les deux clergés. Tout au long du XII[e] siècle, l'opinion byzantine est partagée sur la conduite à tenir à l'égard des Latins: Jean et Dèmètrios se rangent dans le parti le plus libéral, plus préoccupé de réaliser l'unité que d'envenimer la division'.

In un responso riguardante il quesito se gli ortodossi possano comunicare con gli azzimi dei Latini, Demetrio invita il suo interlocutore a distinguere tra le questioni dogmatiche, come la processione dello Spirito Santo, sulle quali occorre essere intransigenti, da altre, come quella degli azzimi, nei quali è possibile avere un atteggiamento più consiscendente. Vero è che in tale materia occorrerebbe una decisione sinodale di reciproca ammissione tra Greci e Latini, ma Demetrio sottolinea l'aspetto positivo che, se i Latini chiedono di comunicarsi nelle chiese greche, ciò significa che accettano pienamente l'eucaristia secondo il rito ortodosso.[55]

Sul tema della *communicatio in sacris* Demetrio Chomatianos si sofferma in un altro responso, nel quale si attiene ai criteri sopra menzionati. Fra l'altro egli ricorda che l'Italia, terra dei Latini, è piena di templi intitolati agli apostoli e ai martiri, tra i quali spicca il tempio dedicato a San Pietro, corifeo degli apostoli: tali chiese sono giustamente frequentate dai Greci, laici e chierici, al fine di tributare la debita venerazione ai santi. Qui Demetrio ricorda specificamente il sopra citato responso di Balsamon, affermando che esso non aveva ricevuto l'approvazione unanime degli esperti, anche perché si trattava di un'opinione che non aveva il conforto di una previa decisione sinodale che dichiarasse eretici i Latini. Al passo evangelico allegato da Balsamon Demetrio oppone il versetto 'chi non è contro di noi è per noi' (Marco 9.40), poiché i Latini che vogliono comunicare con gli ortodossi mostrano, dopo tutto, di accettare le loro consuetudini. A dire di Demetrio, la soluzione più condiscendente avrebbe, fra l'altro, il vantaggio di attirare a poco a poco i Latini verso le sacre consuetudini e i dogmi degli ortodossi.[56]

Un atteggiamento parimenti moderato è quello dimostrato da Giovanni di Kitros. Un suo responso concerne il quesito se sia

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La circolazione di opinioni più moderate di quelle di Balsamon è opportunamente segnalata anche da Gallagher, 'Theodore Balsamon' 173s. che però attribuisce i responsi qui segnalati al solo Demetrio Chomatianos.

[55] PG 119.951-958; Darrouzès, 'Les réponses canoniques' 324 n.6.

[56] Ibid. 957-960; Darrouzès, 'Les réponses canoniques' 325 n.7.

possibile celebrare i funerali di fedeli latini nelle chiese greche e viceversa.[57] La soluzione è positiva, non solo perché le modalità dei funerali non sono determinanti ai fini della salvezza o della dannazione del defunto (Dio è il giudice supremo), ma anche perché Latini e Greci hanno una fede comune che si esprime nella preghiera comune. Vi sono cose che dividono, come la processione dello Spirito Santo o l'uso degli azzimi, ma vi sono anche altri aspetti che uniscono i Greci e i Latini: Giovanni enumera le Sacre Scritture, i canti sacri, le chiese, il culto della croce e delle immagini.

Per concludere, è l'occasione di ricordare un ulteriore responso di Giovanni di Kitros concernente l'autorità delle opinioni di Balsamon.[58] Costantino di Durazzo aveva notato che i responsi di Balsamon al patriarca di Alessandro sembravano contraddire in taluni punti i canoni e le leggi civili, e si domandava se fosse opportuno aderire o no alle soluzioni indicate dal canonista costantinopolitano. Giovanni risponde che Balsamon era stato indubbiamente una persona di grande cultura giuridica sia nella scienza delle leggi che in quella dei canoni. Tuttavia i suoi scritti—Giovanni di Kitros li considera in generale, senza limitarsi ai responsi—contenevano delle contraddizioni e degli aspetti non coerenti con l'acribia dell'autore. Giovanni aveva conosciuto Balsamon e ricorda che, quando il canonista costantinopolitano era ancora in vita, numerosi giuristi ritenevano che le sue interpretazioni delle leggi e dei canoni non erano state date sempre in modo corretto. Secondo Giovanni di Kitros, in conclusione, solo una persona veramente esperta delle fonti giuridiche avrebbe dovuto leggere le opere di Balsamon. Un lettore poco avvertito avrebbe corso lo stesso rischio di un commerciante inesperto, quello di comprare al prezzo dell'oro e dell'argento oggetti che dell'uno e dell'altro hanno solo l'apparenza ma non la sostanza.

[57] Ibid. 961-964; Darrouzès, 'Les réponses canoniques' 326 n.3.
[58] Ibid. 981-984; Darrouzès, 'Les réponses canoniques' 330 n.24.

Un tentativo di sintesi

Come ho già accennato nella pagina introduttiva di questo lavoro, l'esame dell'opera dei tre grandi canonisti bizantini del secolo XII rappresenta solo un aspetto, per quanto di sicuro rilievo, della riflessione sul tema del primato sviluppata in ambiente bizantino dopo lo scisma del 1054. La costante tensione e le fasi più o meno acute della crisi ecclesiastica e politica condizionarono inevitabilmente le reciproche posizioni dei Greci e dei Latini. La contrapposizione si era fatta più netta in un contesto in cui si era era dissolta la piena comunione ecclesiastica che nel primo millennio, pur nel ripetersi dei contrasti, aveva tenuto insieme la Chiesa d'Oriente e quella d'Occidente. Nel secolo XII, il progressivo approfondimento della frattura non aveva impedito la prosecuzione del dialogo, e tuttavia la crisi aveva acuito le distanze e favorito la radicalizzazione di posizioni su questioni, come quella del primato, che si riflettevano sulla quotidianità dei rapporti religiosi e sulle possibilità della *communicatio in sacris*.

Il pensiero dei canonisti bizantini del secolo XII è anche indubbiamente condizionato dal materiale canonico che fu oggetto della loro analisi. I canoni del primo millennio non offrivano molti elementi idonei ad alimentare una riflessione attenta ad approfondire i principî ecclesiologici del primato nella Chiesa, ma al contrario indirizzavano gli interpreti a ricollegare la questione del primato a considerazioni di ordine secolare e politico, basate sulla costituzione dell'impero romano.

I concili di Costantinopoli, Calcedonia e Trullano avevano dichiaratamente impostato il tema delle relazioni tra le sedi di Roma e Bisanzio in termini politici. I privilegi della Nuova Roma sono uguali a quelli dell'Antica Roma (*tà ísa presbeîa*) perché Costantino il Grande ha trasferito a Costantinopoli la sede dell'impero e del senato. Il dibattito sull'ordine del primato, e sul primo e secondo posto di Roma e Costantinopoli, alimenta sì l'idea che tra le due sedi vi sia una relazione di sovraordinazione e sottoposizione nella gerarchia dell'onore—la dottrina di Zonara è apparentemente ripresa ma sostanzialmente smentita da

Balsamon—ma questo spunto non arriva a modificare la fondamentale impostazione degli autori. Quei canoni non offrivano elementi per ancorare il primato a principî diversi da quello politico.[59]

In questo quadro, sebbene le fonti canoniche parlassero di 'primato di onore' (*primatus honoris*, *presbeîa tês timès*), solo in una lettura miope e riduttiva tale espressione può essere riferita a prerogative meramente onorifiche.

L'obiettivo dei canonisti, in sostanza, era quello di equiparare la posizione di Costantinopoli a quella dell'Antica Roma. I canoni non ponevano ostacoli alla realizzazione di questo obiettivo, ma anzi lo favorivano. L'idea, poi, che l'Antica Roma si fosse separata dal consorzio dell'ortodossia produceva l'effetto conclusivo, ossia che il primato era ormai rimasto nelle mani della sola Costantinopoli.

Dei canoni analizzati, solo quelli di Sardica relativi al diritto di appello al papa di Roma offrivano una base per possibili sviluppi di una riflessione sul piano ecclesiologico, là dove si affermava che il ricorso a Roma si fonda sull'intento di onorare la memoria dell'apostolo Pietro (can. 3). Ma tale possibile linea di riflessione rimase sostanzialmente obliterata dalla prevalente attenzione dei canonisti bizantini agli elementi canonici che legavano la dimensione del primato al rango politico delle città episcopali. Abbiamo visto, in particolare, che Balsamon rimase sordo o insensibile rispetto ai possibili spunti di riflessione sulla funzione petrina emergenti dal *Constitutum Constantini*, testo

[59] Troianos, 'Der apostolische Stuhl im früh- und mittelbyzantinischen kanonischen Recht' 257, offre una condivisibile lettura della questione. Il can. 3 di Costantinopoli, come poi anche il can. 28 di Calcedonia, non avevano lo scopo di contestare il primato di Roma o di qualificarne l'origine o la natura, quanto piuttosto il fine di esaltare la posizione della Chiesa di Costantinopoli. Poiché questa non vantava un'origine apostolica, l'unica risorsa possibile era quella di tipo politico. L'argomento che serviva per esaltare Costantinopoli, tuttavia, finirà per essere applicato anche a Roma, collegando le sue prerogative alla sua posizione politica e trascurando di approfondire l'esistenza di fondamenti teologici basati sulla figura di Pietro. Sul tema, diffusamente, Spiteris, *La critica bizantina al primato romano* 314-322.

che egli peraltro considerava determinante per provare l'equivalenza della posizione della Nuova e dell'Antica Roma, e per sostenere che il patriarca di Costantinopoli possedesse quei 'diritti imperiali' (*basilikà dîkaia*) che facevano di lui la suprema autorità ecclesiastica della Chiesa patriarcale. Ma a questa posizione eminente del patriarca di Costantinopoli (la sua sentenza è inappellabile) fa da contrappeso la figura, talvolta ingombrante o prevaricante, del *basileus*, al quale le fonti coeve riconoscono una funzione di governo nella Chiesa: Balsamon giunge a dire che l'imperatore 'non è soggetto ai canoni né alle leggi'.[60]

Il *Constitutum Constantini* è utilizzato da Balsamon solo nella parte relativa alle concessioni fatte da Costantino al papa Silvestro e ai suoi successori, ma il canonista non trae alcuna conseguenza dai passi della *Donatio* (ricompresi nella parte citata nello scolio di Balsamon al *Nomocanon*) che avevano esaltato il papa di Roma quale successore di Pietro e capo del

[60] Teodoro Balsamon, commento al can. 16 del concilio di Cartagine (PG 138.93). Non è un caso che Balsamon sia stato qualificato dalla stessa dottrina ortodossa come colui che configurò un sistema di governo ecclesiastico di tipo 'cesaropapista'. Al riguardo Spiteris, *La critica bizantina al primato romano* 236s. ricorda il giudizio di Miodrag M. Petrović, *Il Nomocanone in XIV titoli e i commentari bizantini: Una ricerca sulle relazioni tra Chiesa e Stato e tra i vescovi dell'antica e della nuova Roma* (*Ho Nomokanôn eis XIV titlous kai hoi byzantinoi scholiastai*) (Athênai 1970) 249s. ma anche 50, 85 e altrove (testo che non ho potuto consultare); cfr. inoltre Dagron, *Emperor and Priest* 255-276 e Gallagher, 'Theodore Balsamon' 160-164. Ho trattato specificamente questo tema in 'Tra nostalgie di unità e tentazioni 'cesaropapiste'. Controversie teologiche a Bisanzio al tempo di Manuele Comneno (1143-1180)'. Al riguardo si può ricordare un fatto menzionato dallo stesso Balsamon nel commento al can. 15 del concilio di Cartagine (PG 138.73). Balsamon afferma che al suo tempo rimaneva inapplicata la norma che un chierico non debba essere giudicato da un giudice civile. E racconta il caso del monaco Melezio del monastero di Pantepoptos che, tratto a giudizio di fronte al sinodo, si rivolse al tribunale secolare ottenendo a questo scopo un mandato imperiale. Il patriarca Luca Crisoberge, mal sopportando questo comportamento, faceva di tutto per restaurare la legalità, ma si vide rispondere dai giudici civili che 'la potestà dell'imperatore può far tutto' (*he basilikè exousía pànta dýnatai poieîn*).

collegio dei patriarchi. Invece l'idea della pentarchia—che sta al centro del trattato sui privilegi patriarcali—nell'interpretazione di Balsamon è caratterizzata sulla assoluta parità di posizione e di potestà dei patriarchi i quali, in quanto collegio, sono considerati come 'unico capo del corpo di tutte le Chiese di Dio'.

Sebbene l'autorità dottrinale di Balsamon non fosse indiscussa al suo tempo, le sue opinioni sarebbero circolate per i secoli a venire insieme al testo dei sacri canoni che sono, ancora oggi, il nucleo fondamentale del sistema giuridico della Chiesa ortodossa di tradizione costantinopolitana. Non è arbitrario pensare, peraltro, che l'idea di primato rappresentata nelle opere di Balsamon rispecchiasse il comune modo di sentire della Chiesa bizantina di quel tempo.[61]

Negli anni 1198/1200—forse appena dopo la morte di Balsamon—in uno scambio epistolare col patriarca Giovanni Camateros papa Innocenzo III avrebbe avuto l'occasione di esporre la dottrina del primato papale maturata nella Chiesa latina nel corso del secolo XII. Una dottrina basata sui fondamenti scritturistici e sulla categoria della successione petrina che prosegue sulla cattedra dei vescovi di Roma, nonché sulla concezione della Chiesa di Roma quale *caput*, *mater* e *magistra omnium ecclesiarum*.[62] Non è necessario sottolineare quale distanza vi sia rispetto alle coeve rappresentazioni del ruolo di Roma e del senso del primato che emergono dagli scritti dei canonisti bizantini qui esaminati.

Questa apparente inconciliabilità di posizioni, tuttavia, non avrebbe impedito alle due Chiese, nei ripetuti tentativi di unione intercorsi nei due secoli successivi, di trovare una formula comune e condivisa concernente il primato romano. Mi riferisco alla formula contenuta nel decreto di unione sottoscritto il 6

[61] Su questi aspetti insiste Spiteris, *La critica bizantina al primato romano* 244-247, il quale condivide l'opinione di Steven Runciman, *The Eastern Schism* (Oxford 1955) 138, che ritiene Teodoro Balsamon una figura determinante (da parte orientale) nel processo che condusse all'approfondimento della divisione tra Oriente e Occidente.

[62] Sul punto ha scritto approfonditamente Spiteris, *La critica bizantina* 248-299; più brevemente Condorelli, *Unum corpus, diversa capita* 11-16.

luglio 1439 nel concilio di Firenze, concilio che avrebbe unito a Roma, come ancora unisce, una parte dell'ortodossia.

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1111 and Canon Law in Rome

Uta-Renate Blumenthal

With the Concordat of Worms of September 1122 the bitter struggle between the reformed papacy and the Empire over investiture of ecclesiastics with ring and crozier came practically to an end.[1] To be sure, it was a compromise as Robert Benson phrased it,[2] but it endured despite occasional attempts from either the papal or the imperial side to introduce advantageous changes. Ernst Bernheim showed in a detailed textual analysis that the agreements exchanged in 1122 at Worms were based on the records of two earlier attempts to settle the burning issues that destroyed the traditional harmony of *regnum* and *sacerdotium*: the negotiations in February and April 1111 in Rome and of 1119 at Mouzon.[3] This paper will focus on the first set of these, since

[1] Ludwig Weiland (MGH Const. 1, no. 107 [the imperial privilege], and no.108 [JL 6986, the privilege of Calixtus II]. A more complete edition of the papal document by Adolf Hofmeister should be consulted: *Das Wormser Konkordat*: *Zum Streit um seine Bedeutung*, ed. Roderich Schmidt (Darmstadt 1962) 84-85. More recent discussions are carefully evaluated by Beate Schilling, *Guido von Vienne – Papst Calixt II.* (MGH Schriften 45; Hannover 1998) , especially 507-546 with an extensive bibliography. See also Peter Classen, 'Das Wormser Konkordat in der deutschen Verfassungs-geschichte', *Investiturstreit und Reichsverfassung*, ed. Josef Fleckenstein (Vorträge und Forschungen 17; Sigmaringen 1973) 411-469 and Rudolf Schieffer, 'Rechtstexte des Reformpapsttums und ihre zeitgenössische Resonanz', *Überlieferung und Geltung normativer Texte des frühen und hohen Mittelalters: Vier Vorträge, gehalten auf dem 35. Deutschen Historikertag 1984 in Berlin*, ed. Hubert Mordek (QF 4, Sigmaringen 1986) 51-69. Cf. Monika Minninger, *Von Clermont zum Wormser Konkordat* (Beihefte zu J.F. Böhmer 2; Köln-Wien 1978) 159-176. The abbreviated version of the agreement in *Codex Udalrici* is now available in the critical edition of Klaus Nass (MGH Die Briefe der deutschen Kaiserzeit 10; Wiesbaden 2017).

[2] Robert L. Benson, *The Bishop-Elect: A Study in Medieval Ecclesiastical Office* (Princeton 1968) 228-250. The quote is found on 229; Hofmeister, *Das Wormser Konkordat* 32 used the same expression.

[3] Ernst Bernheim, *Das Wormser Konkordat und seine Vorurkunden* (Breslau 1906, reprinted Aalen 1970). For the discussions at Mouzon see the account of Hesso (*Hessonis scholastici relatio de concilio Remensi*, ed. Wilhelm

they form an often neglected but illuminating aspect of the background to the Concordat of Worms.

In August 1110 King Henry V set out for Rome for his imperial coronation, accompanied by an unusually large army.[4] Henry's chancellor, Archbishop Adalbert of Mainz, and lay magnates were sent by the king from Aquapendente as emissaries to Rome. They met in February 1111 with representatives of Paschal II, chief among them Petrus Leonis (Pierleone). The delegations negotiated in the church of Santa Maria in Turri, a part of the complex of the basilica of St. Peter's. The location was not chosen by accident as this paper will show, for nearby were three bronze portals leading into the basilica inscribed with the names of the possessions of St. Peter's, its *patrimonium.*[5] On February 4 the imperial party presented Henry's promise, a document to be exchanged with Paschal during Henry's coronation as emperor, envisioned for February 12. 'Rex scripto refutabit omnem investituram omnium ecclesiarum in manu domni pape . . . in die coronationis sue . . . Et postquam domnus papa fecerit de regalibus sicut in alia carta scriptum est . . .'. read the most significant sentences in the

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Wattenbach, MGH Ldl 3, 21-28) and Schilling, *Guido* esp. 418-421 with literature; Theodor Schieffer,'Nochmals die Verhandlungen von Mouzon 1119', *Festschrift für Edmund E. Stengel zum 70. Geburtstag am 24. Dezember 1949*, ed. Erika Kunz *(*Münster 1952) 324-341; Hartmut Hoffmann, 'Ivo von Chartres und die Lösung des Investiturproblems', DA 15 (1959) 393-440.

[4] Carlo Servatius, *Paschalis II. (1099-1118)* (Päpste und Papsttum 14; Stuttgart 1979) 214-253 with a detailed discussion of the background to the events of the spring of 1111. Among older literature particularly valuable is Gerold Meyer von Knonau, *Jahrbücher des Deutschen Reiches unter Heinrich IV. und Heinrich V.* (7 Vols. Leipzig 1890-1909) 6.138-230 and 370-390. See also my 'Patrimonia and Regalia in 1111', *Law, Church, and Society: Essays in Honor of Stephan Kuttner*, edd. Kenneth Pennington and Robert Somerville (Philadelphia 1977) 9-20; reprinted in my *Papal Reform and Canon Law in the 11th and 12th Centuries* (Variorum CS 618; Aldershot1998) IX. Cf. also the survey of Friedrich Kempf et alii, *The Church in the Age of Feudalism,* tr. Anselm Biggs (Handbook of Church History 3.1; New York 1969) 395-397.

[5] For the concept "regalia S. Petri see Johannes Fried, 'Der Regalienbegriff im 11. und 12. Jahrhundert', DA 29 (1973) 450-528, here 500-516 (Die 'regalia s. Petri').

imperial document,[6] supported by oaths there and then, and by an oath on behalf of Henry V on February 9 at Sutri.[7] The *alia carta* is Paschal's promise, as first formulated on his behalf by Petrus Leonis on February 4 at S. Maria, and repeated in similar but briefer form in Paschal's *Privilegium primae conventionis* intended for Henry's imperial coronation.[8] This 'other document' to be granted in exchange for the long wished-for renunciation of investiture by Henry V contained an order to the bishops present at the coronation to return the *regalia* to the king and to the kingdom, with the famous definition of what constituted the *regalia:* [9]

> Civitates, ducatus, marchias, comitatus, monetae, teloneum, mercatum advocatias regni, iura centurionum et curtes quae [manifeste] regni errant, cum pertinentiis suis, militiam et castra [regni].

On the day of the planned coronation, February 12, these documents were to be exchanged by the two parties. But what should have been a highpoint of Paschal's reign, Henry's renunciation of investiture, turned into a 'dramatic . . . fiasco'.[10] Violent opposition to Paschal's proposal prevented the coronation, and by nightfall the pope and almost all cardinals—including Cardinal Gregory of S. Grisogono, author of the canonical collection *Polycarpus*[11]—were captured and imprisoned by the king and his army.[12] After two months of

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[6] MGH Const. 1 no. 83, 137f., lines 18-20. The 'other document' referred to is no. 85, *Promissio papae per Petrum Leonis dicta* , MGH Const. 1.138f.

[7] Ibid. 139f., no. 87

[8] Ibid. 140-142, no. 90.

[9] Ibid. 141,no.90, line 28-30. It is often forgotten that Paschal allowed exceptions to the required return. The above excerpt continues: 'nec se deinceps nisi per gratiam regis de ipsis regalibus intromittant'.

[10] Benson, *Bishop-Elect* 11.

[11] Uwe Horst, *Die Kanonessammlung Polycarpus des Gregor von S. Grisogono, Quellen und Tendenzen* (MGH Hilfsmittel 5; München 1980) and Kéry, 266-269. This paper will use the abbreviation Pol. for the collection.

[12] MGH Const. I, no. 100, 151, line 13-16: 'Cum . . . universis in faciem eius resistentibus et decreto suo [Paschal's] plenam heresim inclamantibus'. The propaganda purpose of this royal encyclical is evident in light of the records of February 4. Servatius, *Paschalis II* 233-242, accepts its narrative nonetheless for the description of the events of February 12 which remain nonetheless somewhat unclear. Cf. Blumenthal, 'Patrimonia' 15-16 for the differences

captivity Paschal II abandoned the fight for the liberty of the church as formulated during the Gregorian reform. At Ponte Mammolo on April 11 he granted Henry V the imperial crown and the customary right of investiture, in a privilege that was known almost immediately as the *Pravilegium* and could have meant the end of Paschal's pontificate if not calmer voices like that of Ivo of Chartres had prevailed.[13]

'It is hardly possible to imagine the consequences the planned action [regarding the *regalia*] would have had for the government and for the economy', concluded Tellenbach.[14] Fried emphasized that the *regalia* that were to be returned, 'Herrschaftsrechte, Gerechtsame und Grundbesitz', constituted the essential parts of the *regnum*, the kingdom, and stood in contrast to everything that did not pertain to the *regnum*, such as gifts of any kind, including landed property and tolls.[15] Very different was the perspective of Hoffmann who characterized the treaty of February 1111 at S. Maria as naive and 'absurd' on the part of the pontiff, and the negotiations since 1107 on the whole as "inszenierte Farce" on the part of King Henry V.[16] It should be

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between the account in BAV lat. 1984 derived from Paschal's register, and the account in the royal encyclical just quoted. Cf. also Blumenthal, 'Bemerkungen zum Register Papst Paschalis II.' QF 66 (1986) 9-15, for more information on BAV lat. 1984 (reprinted in Blumenthal, *Papal Reform*) XIII.

[13] MGH Const. 1 no. 91, 142. For Ivo of Chartres see particular his letters 227 (PL 162.230-231C) and 233 (PL162.236A-C) with Christof Rolker, C*anon Law and the Letters of Ivo of Chartres* (Cambridge 2010) 333 and 334 with reference to Ivo, *Decretum* 14 c.43and c.45. For current updates on the investigations of Ivo's canonistic works see:
https://ivo-of-chartres.github.io/index. html; for the *Panormia*:
https://ivo-of-chartres.github.io/panormia.html. Cf, my 'Opposition to Pope Paschal II: Some Comments on the Lateran Council of 1112', AHP 16 (1978) 15-30, reprinted in my *Papal Reform* X. See also n.22 below.

[14] Gerd Tellenbach, *The Church in Western Europe from the Tenth to the Early Twelfth Century*, tr. Timothy Reuter (Cambridge Medieval Textsbooks; Cambridge 1993) 280.

[15] Fried, 'Regalienbegriff' 450-528, 473 with n.72.This corresponds to the interpretation by Gerhoch von Reichersberg, *De aedificio De*i c.17 (MGH Ldl. 3.149). Cf. Fried, 'Regalienbegriff' 451 with a quote from Irene Schmale-Ott regarding Paschal's 1111 definition.

[16] Hoffmann, 'Ivo' 423.

noted that historians no longer assume that Paschal wished to turn the Church into a pauper, for while the pope wanted to return the *regalia* to the kingdom, the February document simultaneously insisted that the king would fully restore to the papacy the 'Patrimonium Petri . . . sicut a Karolo, Lodoico, Heinrico et aliis inperatoribus (sic) factum est' with all rights attached. [17] This point, while presumably accepted at face value by Paschal and Roman nobles like the Pierleoni, was naturally of little interest to the ecclesiastical magnates from the Empire assembled at St. Peter's basilica for Henry's coronation.

The evolution of ideas behind Paschal's radical—and that is what it is—proposal of February 12 for Henry V is not clear.[18] The privilege *Primae conventionis*, preserved in Paschal's register, that one would think would spell out such reasons, begins with a reference to St. Paul's epistle to the Corinthians (1 Cor. 6,4), laments in particular the military service required of ecclesiastics on account of investiture and, of course, condemns simony. Furthermore, the pontiff refers to the respective prohibitions of Gregory VII and Urban II and finally to c.31 of the *Canones Apostolorum*,[19] but refrains from mentioning explicitly his own condemnation of investiture at his earlier councils.[20] In short, Paschal's reasoning for his remarkable

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[17] MGH Const. 1 no.83, 137 lines 23-25. See Fried, 'Regalienbegriff' in general 472f. Cf. Piero Zerbi, 'Pasquale II e l'ideale della povertà della Chiesa," *Annuario dell'Università Cattolica del Sacro Cuore* (Milano 1965) 203-229. Blumenthal, 'Patrimonia', 10 with the example of the feudal rights required of Ninfa.

[18] MGH Const. 1 no.90, 140-142.

[19] This canon was frequently cited at the time, e.g. Burchard (3.109), Deusdedit (4.17) as well as in Ivo's *Decretum* (3.85). See for additional collections with this text Linda Fowler-Magerl, *Clavis Canonum: Selected Canon Law Collections Before 1140; Access with data processing* (MGH Hilfsmittel 21; Hannover 2005). C.31 reads in Deusdedit's collection: 'Si quis episcopus secularibus potestatibus usus ecclesiam per ipsas optineat, deponatur et segregentur omnes qui illi communicant'.

[20] See, for instance, his 1106 council of Guastalla, c.3 (Nullus laicorum) and c.6 (Si quis clericus) of the series transmitted in the collection of Anselm of Lucca and eventually included in Gratian's *Decretum* (C.16 q.7 c.16 and c.18; c.16 is included in Gratian's first recension but not c.18); Uta-Renate

proposal of February 1111 is hard to find, a proposal that according to Tellenbach was despite its failure an event of immense importance in the history of the Church.[21] The papal arguments in the February privilege were basically conventional, repeating only the standard accusations used for more than two decades to condemn and prohibit investiture in order to free the Church from lay influence. They say little regarding the ideology behind the revolutionary proposals of Paschal II and his advisors at the curia.

No definitions such as those of S. Maria in Turri concerning *regalia* are found in the works of Bishop Ivo of Chartres (†1115), Paschal's contemporary and friend.[22] The bishop was a prominent representative of the theory of dispensation, dubbed 'théorie chartraine'.[23] Certainly Pope Paschal II was no stranger

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Blumenthal, *The Early Councils of Pope Paschal II: 1100-1110* (Studies and texts 43;Toronto 1978) 63-65; and 119 with the decree *Constitutiones* probably repeated in March 1110 with a reference to the *Canones Apostolorum* in c.2. The decree *Constitutiones* repromulgated a canon from the council of Clermont held by Pope Urban II in 1095; Robert Somerville, *The Councils of Urban II*, 1: *Decreta Claromontensia* (AHC Supplementum 1; Amsterdam 1972) 90, c.2.

[21] Tellenbach, *Church in Western Europe* 281.

[22]For a brief survey of the literature on Ivo of Chartres see Peter Landau, 'Ivo von Chartres', Theologische Realenzyklopädie 16 (1987) 422-427; Kéry 244-260; Rolf Sprandel, *Ivo von Chartres und seine Stellung in der Kirchengeschichte* (Pariser historische Studien; Stuttgart 1962); Bruce C. Brasington, *Ways of Mercy: The Prologue of Ivo of Chartres* (Vita regularis Editiones 2; Münster 2004); a translation of the Prologue is found in Robert Somerville and Bruce Brasington, *Prefaces to Canon Law Books in Latin Christianity: Selected Translations 600-1245* (New Haven 1998) 132-158; see especially Rolker, *Letters of Ivo of Chartres* 265-289. Rolker showed on the basis of Ivo's letters that only the *Decretum*, but not the *Panormia*, could be identified as a work of the bishop. See also Jean Werckmeister, *Yves de Chartres: Prologue* (Sources canoniques 1; Paris 1997) and above n.13.

[23]Hoffmann, 'Ivo' (*passim*), fully discusses dispensation. It became the standard defense for ecclesiastics who had been invested by rulers. For the letter of Pope Urban II (JL5383) that inspired Paul Fournier's essay 'Un tournant de l'histoire du droit: 1060-1140', *Nouvelle* RHD 41 (1917) 129-180; (reprinted *Mélanges de droit canonique*, ed. Theo Kölzer, 2 vols. Aalen 1983) see Stefan Kuttner, 'Urban II and the Doctrine of Interpretation: A Turning Point?' SG 15 (Rome 1972) 55-86 (reprinted in S. Kuttner, *The History of*

to this ancient concept as, for instance, his letter to Anselm of Canterbury of March 1106 demonstrates.[24] It allowed the archbishop eventually to conclude the compromise of London in 1107: King Henry I renounced investiture but retained, based on Paschal's permission, homage, at least temporarily until the king's heart should be softened by Anselm's sermons.[25] However, given the pope's lively interest in canonistic developments,[26] the hypothesis does not seem far-fetched that the pontiff was not only influenced by theories of dispensation that he shared with Ivo as well as with his predecessors, but also by Ivo's differentiated concepts of ownership influenced by the bishop's acquaintance with the reviving study of Roman law, not to mention his role in canon law.[27] Despite an occasional

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Ideas and Doctrines of Canon Law in the Middle Ages (Variorum CS 113; London-Great Yarmouth 1980) IV with *Retractiones, 5-6.* Kuttner shows that the here relevant passages in the text of Urban's letter found in the *Collectio Britannica* were interpolated on the basis of the *Prologue* of Ivo of Chartres. See the parallel texts on 69f. For the *Collectio Britannica* see now Robert Somerville With the collaboration of Stephan Kuttner, *Pope Urban II, The Collectio Britannica and the council* of Melfi (1089) (Oxford 1996).

[24] JL 6073 (PL 163.186D). The letter followed long drawn-out negotiations subsequent to King Henry's conditional renunciation of investiture at the treaty of L'Aigle of 1105. The best summary of the events is Tellenbach, *Church in Western Europe* 272-273. Controversial but stimulating is the overall thesis of Norman F. Cantor, *Church, Kingship, and Lay Investiture* (New York 1969) especially chapter V, 202-273 with older historiography for the 'Ivo thesis', 203-209. Rolker, *Letters of Ivo of Chartres* 292-297 discussed the thesis most recently; but see Kuttner, 'Turning Point?' for the canonistic approach to the problem. Cf. Blumenthal, *Early Councils* 17-19 and 128-129.

[25] JL 6073: 'Si qui vero deinceps praeter investituras ecclesiarum praelationes assumpserint, etiamsi regi hominia fecerint, nequaquam ob hoc omittendum a benedictionis munere arceantur donec per omnipotentis Dei gratiam ad hoc omittendum cor regium tuae praedicationis imbribus molliatur'. (PL 163.186D)

[26] Paschal quoted the *Coll. In 74 Titles*, as well as the collection of Cardinal Deusdedit; see Blumenthal, *Early Councils* 125.

[27] Ivo's use of Roman law in his *Decretum* has not been given much emphasis. See, however, the very nuanced and positive evaluation of the *Decretum* in particular found in Max Conrat (Cohn), *Geschichte der Quellen und Literatur des Römischen Rechts im frühen Mittelalter* (Leipzig 1891; reprinted Aalen 1963) 378-383. According to Rolker, *Letters of Ivo of Chartres*, only the

disagreement, Ivo had excellent connections to both Urban II and Paschal II.[28] The intellectual continuity from Urban II to Paschal II—and the link to contemporary canonistic arguments represented by Ivo of Chartres—is beautifully illustrated by Paschal's council of Guastalla held in October 1106, when once again the issue of dispensation arose as justification for Paschal's permission to allow bishops of the Empire, who had been schismatically ordained, to retain their offices. The respective conciliar decision reads in part:[29]

> Per multos iam annos . . . Tot igitur filiis in hac strage iacentibus, Christiane pacis necessitas exigit ut super hos maternal Ecclesie viscera aperiantur. Patrum itaque nostrorum exemplis et scriptis instructi, qui diversis temporibus Novatianos, Donatistas et alios hereticos in suis ordinibus susceperunt, prefati regnis episcopos . . . in officio episcopali suscipimus; id ipsum de clericis cuiuscumque ordinis constituimus, quos vita scientiaque commendat.

This decree of 1106 is closely related, in part verbatim, to Urban's legislation at the council of Piacenza in March 1095, specifically to canons 10 and 11/12.[30] Somerville argues:[31]

> The intellectual frame-work of . . . cc.11-12 specifically, and in a general sense cc.1-12 [of the council of Piacenza] as a whole, could be seen as the 'legislative enactment of the legal principles announced in Ivo of Chartres' *Prologue*'.

Decretum was used in Ivo's correspondence, and therefore presumably constitutes Ivo's only work. Rolker specifically excluded the *Panormia* from the Ivonian canon, see 296-297, where he also discusses the well-known thesis of Paul Fournier of Ivo as a pre-scholastic. Rolker excluded Ivo's *Prologue* from his examination. Its history and its precise relationship with Ivo's works is still uncertain, 'but it appears at the beginning of a group of canon law collections attributed to Bishop Ivo that probably were assembled in the 1090's'. Robert Somerville, *Pope Urban II's Council of Piacenza* (Oxford 2011) 107. See also Somerville-Brasington, *Prefaces*, 111, where they note that 'Ivo ((c.1040-1115) was one of the finest legal scholars of the reform era and one of the most significant figures in the history of medieval canon law'.

[28] See Hoffmann, 'Ivo' 394: 'die Gedanken des Bischofs von Chartres sind nicht unbekannt geblieben. Er stand zu den Päpsten Urban und Paschalis in besten Beziehungen; die Zierde seiner Zeit, war er gleichermassen ob seines vorbildlichen Lebenswandels und seiner eminenten Gelehrsamkeit geachtet'.

[29] Blumenthal *Early Councils* 52-53 c.4 with further references.

[30] Somerville, *Piacenza* 95-97.

[31] Ibid. 107 with n.29, quoting Edward Reno.

The canon preceding the decree just cited partially from Paschal's council of Guastalla, quotes expressly some of the patristic authorities underlying a papal dispensation, in this instance for German bishops and clergy, beginning with a reference to the famous letter 185 of St. Augustine.[32] This letter, *De Correctione Donatistarum Liber*, was frequently cited during the Gregorian Reform, but that the same excerpts from this epistle appear at Piacenza, at Guastalla, as well as in Ivo's *Prologue* deserves to be noted; it is more than an accidental coincidence.[33]

Ivo of Chartres addressed the issue of investiture for the first time in his well-known epistle 60, dated to 1097.[34] Its historical context is the quarrel over the primacy between Sens and Lyon, with Ivo as a suffragan firmly on the side of Sens. Uncharacteristically outspoken in reproaching the primate and legate of Gregory VII, Hugh of Lyon, for having replaced ancient

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[32] Blumenthal, *Early Councils* 52, c.3 with annotations; see also: *1106. Il Concilio di Guastalla e il mondo di Pasquale II*, edd. Glauco Maria Cantarella and Daniela Romagnoli (Alessandria 2006); cf. In general Servatius, *Paschalis II.* 224-253 regarding the events of 1111; Ian S. Robinson, *The Papacy 1073-1198* (Cambridge Medieval Textbook, Cambridge 1990) 401-431.

[33] Somerville, *Piacenza* 96 c.12: 'Quamvis autem . . . Ubi enim multorum strages iacet subtrahendum est aliquid severitati ut addatur amplius caritati'. Blumenthal, *Early Councils* 53 c.4: 'Per multos . . . Tot igitur filiis in hac strage iacentibus . . . christiane pacis necessitas exigit ut super hos materna Ecclesie viscera aperiantur'. Ivo, *Prologue*: 'In eiusmodi causis ubi per graves dissensionum scissaras non huius aut illius est hominis periculum set populorum strages iacent detrahendum est aliquid severitati'. (Brasington, *Ways of Mercy*, 126)

[34] The edition of the letters of Ivo by Jean Leclercq: Yves de Chartres, *Correspondance 1 (1090-1098)*(Les Classiques de l'Histoire de France au Moyen Āge 22, 1949) is incomplete, and for the sake of uniformity letter numbers will be cited below according to Migne PL 162. Epistle 60 has also been edited by Ernst Sackur, 'Ivonis Episcopi Carnotensis epistolae ad litem investiturarum spectantes' (MGH Ldl 2; Hannover 1892) 640-647, and is now accessible as a provisional critical edition at https://Ivo –of-Chartres.github.io/ Appendix B: Selected letters. (B.5, 314-320; accessed 10/03/2019). See Hoffmann, 'Ivo' 405-406 with n.30 for additional bibliography. The Sackur edition will be cited here.

traditions and practices with his private law and new traditions, the letter, Ivo's epistle 60, demanded that Daimbert, canonically elected to the archbishopric of Sens, should be consecrated as customary.[35] Hugh of Lyon had required a special examination as well as an oath of obedience, mentioning among the various reasons Daimbert's alleged investiture by the French king.[36] It is only for this reason that epistle 60, primarily concerned with the primacy claims of Hugh, addressed itself to the prohibition of investiture, attempting a) a rebuttal of Hugh's charge and b) to defuse the issue, should investiture indeed have occurred. Investiture, meant was investiture with the undifferentiated e*piscopatus*, belongs to the category, important in Ivo's theological thought, of matters that are indifferent and do not affect eternal salvation either for better or worse. Furthermore, since a layman who confers investiture does not bestow a sacrament, investiture with bishoprics can never be heretical. He, continued Ivo, did not think at all that apostolic authority had prohibited kings from the concession of bishoprics after a canonical election. On the contrary, the popes themselves had written to kings with the request for investiture, deferring consecrations because the royal concession had not yet occurred.[37] Pope Urban II, too, Ivo appears to say, agreed with

[35] Migne PL 162.70C-75B; Sackur, *Epistolae* 642-647, here 642 with a long list of authorities. For background see Alfons Becker, *Studien zum Investiturproblem in Frankreich* (Schriften der Universität des Saarlandes; Saarbrücken 1955) 99-102 and Alfons Becker, *Papst Urban II.* (MGH Schriften 19,1; Stuttgart 1964) 192; Tellenbach, *Church in Western Europe* 270-271.

[36] Sackur, *Epistolae* 644: 'miramur cur privatis legibus et novis traditionibus veteres traditiones et consuetudines removere contenditis precipiendo, ut Senonensis electus ante consecrationem suam vobis presentetur et iure primatus vestri subiectionem et obedientiam profiteatur…Quod autem scripsistis predictum electum investituram episcopatus de manu regis accepisse, nec relatum est nobis ab aliquo qui viderit nec cognitum. Quod tamen si factum esset, cum hoc nullam vim sacramenti gerat in constituendo epicopo, vel admissum vel omissum quid fidei, quid sacrae religioni officiat, ignoramus: cum post canonicam electionem reges ipsos apostolica auctoritate a concessione episcopatuum prohibitos minime videamus'.

[37] The text of the previous note continues: 'Legimus enim sanctae recordationis summos pontifices alioquando apud reges pro electis aecclesiarum ut eis

this interpretation for he only prohibited *investitura corporalis*, not excluding laymen from election or concession.[38] Royal actions, Ivo further explained to Hugh of Lyon, constituted either assent to election and/or conveyance of possessions, in Ivo's words *bona exteriora*.[39] In this, his first and only theoretical exposition on investiture and papal decrees, Ivo was still groping for a logical explanation for a function that he at the time considered appropriate to the royal dignity, offering justifications which he was never to repeat, at least not in quite the same words.[40] Ivo's letter to Hugh of Lyon supports his arguments regarding *bona exterior* with a well-known Augustinian text:[41]

> Dixisti: Quid michi et regi? Noli dicere possessiones tuas, quia ad ipsa iura renunciasti humana, quibus possessions possidentur.

The evolution of Ivo's theories regarding property and possessions, evidently under the tutelage of Roman law, becomes much clearer later in two letters he addressed to Pope Paschal II. Epistle 95, sent a short time after the legatine council of Poitiers held in 1100,[42] throws some additional light on Ivo's terminology

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ab ipsis regibus concederentur episcopatus, ad quod electi erant, intercessisse; aliquorum quis concessiones regum nondum consecuti fuerant, consecratione distulisse'. (Sackur, *Epistolae* 644)

[38] Sackur, *Epistolae*, 644, l.26-645, l.3 : 'Domnus quoque papa Urbanus reges tantum a corporali investiture excludit, quantum intelleximus, non ab electio, in quantum sunt caput populi vel concessione, quamvis octava sinodus solum prohibeat eos interesse electio, non concessioni'.

[39] Ivo's exposition continues, following n.37: 'Quae concession sive fiat manu, sive fiat nutu, sive lingua, sive virga, quid refert, cum reges nichil spiritual se dare intendant, sed tantum aut votis petentium annuere, aut villas aecclesiasticas et alia bona exteriora, quae de munificentia regum optinent ecclesiae, ipsis electis concedere' (p.645, l. 3-6).

[40] Cf. Sprandel, *Ivo von Chartres* 73 with additional quotations from Ivo's Letters addressing royal rights.

[41] Sackur, *Epistolae* 645, l.13-16. Augustine, *In evang. Ioh.* Tract. VI, paragraph 25; PL 35, col.1436f); Ivo, *Decretum* 3.194; Gratian, *Decretum* D.8 c.1.

[42] Mansi 20.1123; PL 162.115. Ivo's letters have not been preserved in chronological sequence, and internal evidence is needed for dating purposes. See the preliminary list given by Sprandel, *Ivo von Chartres*, Appendix III, 183-198; Rolker, *Letters of Ivo of Chartres* 314-315 with references to the *Decretum*; cf. also 24-25. For context see Becker, *Frankreich* 112, 119, however without reference to the council of Poitiers.

used in epistle 60 just discussed, specifically his use of the word 'concessio'.[43] Ivo asked Paschal in epistle 95 not to overturn a decision in favor of the Bishop of Châlons pronounced at the council, outlining to the pope the reasons for the synodal rejection of the claims of the plaintiff, a certain Drogo. On his deathbed, overcome by the importunities of Drogo, Bishop Philipp of Châlons had not invested Drogo as the treasurer (tesaurario) of Châlons, Ivo wrote to Paschal, but had only conceded it to him under the condition that he—Drogo—should never take over the office as long as the bishop lived, nor should he usurp the usufruct of the office. 'Ex ratione et auctoritate' the entire council, or one may assume rather Ivo on behalf of it, had decided that this deathbed event did not constitute a canonical investiture—an investiture, Ivo added hastily in 1100, that was attacked by the canonically instituted papal decrees and almost all the councils. The reason for the decision was that "the laws do not appeal the 'investitura concessionis' but the 'investitura possessionis'. This, the 'investitura possessionis', Drogo did not have during the lifetime of the bishop, arrogating it to himself after the bishop's death. What is significant in the present context is the difference between two types of investiture, defined as concession and possession, respectively, with possession only being of concern to the law because it alone was legally binding, Ivo implied.[44]

In another letter, epistle 219, also addressed to Pope Paschal II, Ivo defended himself from the accusation that he had deprived the Chartres chapter of canons of one half of a 'praepositura',[45] saying that he could not have taken away what he had not given to them in the first place, 'and restitution could not be made of something that could not be proven to have been decreed at one time'.[46] But although Ivo claimed in his explanatory letter to

[43] The most debated terms of ep. 60 are 'investitura corporalis' and 'concessio'. See Hoffmann, 'Ivo' 409 with literature.
[44] PL 162.115; Rolker, *Letters* 314-315; Becker, *Frankreich,* 119; GC 9.876.
[45] Jan Frederik Niermeyer, *Mediae latinitatis lexicon* minus, ed. Co van de Kieft (Leiden 1976) 835b, 2: church or monastery headed by a provost.
[46] PL 162.222 -224, epistle 219

Paschal that he had merely deliberated whether he ought to give half of the 'praepositura' to the canons to allow them the baking of bread, obviously some events had taken place that cast an altogether different light on the situation, favoring the side of the canons. To begin with, the chapter had dispatched two deputies to Ivo at his request. According to Ivo's own admission in his letter to Paschal, he gave the deputies that year's harvest (commisi illius anni fructus) and promised at the time that if the canons would prove faithful stewards it 'would please him very much to transfer to them and confirm with a lawful stipulation its [permanent] possession'.[47] But since the canons did not live up to Ivo's expectations—they continued to skip mass—he later decided against making the gift 'not to take away from them what I did not give but not to fulfill what I proposed'.[48] However, Ivo continued, those canons who were less learned about such transactions thought that the matter had been something different from what it actually was, 'intellexerunt rem aliter fuisse quam fuerit'[49] It would seem that this misunderstanding must be traced to the ceremony in which Ivo gave the year's harvest—presumably a symbol for it—to the deputies of the canons. Elsewhere in Ivo's correspondence such a ceremony is clearly identified as investiture, a term Ivo avoided for obvious reasons in his undated letter to Paschal II.[50] What is significant in the present context are the different aspects of transferring gifts. Whatever form the conveyance may have taken in the case of the half 'praepositura', it is perfectly clear from Ivo's letter that this formality was considered binding by the canons, but not by Ivo. So binding it appeared to the canons that they did not hesitate to appeal to the pope over the head of their bishop, Ivo. Ivo, however, considered his former action incomplete and argued

[47] PL 162.223D epistle 219: 'possessionem rei eis concedere et legitime stipulatione firmare'.
[48] Ibid. col.224A: 'non ut auferrem eis quod non dederam sed nec aggrederer quod proposueram'.
[49] Ibid. col.224B.
[50] None of the terms Ivo used in this particular letter is found in any of the canonical collections associated with him; see Rolker, *Letters of Ivo of Chartres* 331 (Appendix).

that the conveyance of 'possessio' required a legitimate 'stipulatio' in the technical legal Roman sense, one assumes.

In both letters Ivo expressed the opinion that investiture as commonly understood did not convey possession in Roman legal terms and was therefore non-binding, however confusing that might appear to those without legal training. Both the 'investitura possessionis' that Drogo of epistle 95 did not receive and the donation by 'stipulatio'[51] of epistle 219 that the canons could not claim, indicate that the actions of transferring property in both instances were incomplete and therefore revocable and/or meaningless. As noted earlier, Ivo welcomed Roman law and blazed a trail for its revival north of the Alps, but most French contemporaries would have been among those whom Ivo called *minus periti*.[52] This includes Hugh of Lyon, for instance, the recipient of epistle 60. Hugh evaluated Ivo's letter very shrewdly, but he was at the same time completely unable to respond to Ivo's different arguments regarding various types of investiture.[53] In Rome, however, Ivo's explanations regarding them might not have appeared quite so enigmatic. The canonical collection *Polycarpus*, completed between 1111 and 1113 by the same Cardinal Gregory of S. Grisogono who together with the pope and other cardinals was a prisoner of Henry V, is in many passages so close to texts of Ivo's *Decretum*, that it used to be argued that Ivo was one of Gregory's direct sources. Uwe Horst who most recently analyzed the collection based on preliminary studies of Carl Erdmann, argued, however, following Paul Fournier that Burchard's *Decretum* with its many twelfth-century

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[51] See Adolf Berger, *Encyclopedic Dictionary of Roman Law* (American Philosophical Society, Transactions n.s. 43; Philadelphia 1953) 716f.

[52] See PL 162.224B, epistle 219: 'Sed quidam talium actionum minus periti, intellexerunt rem aliter fuisse quam fuerit'.

[53] For Ivo's letter 60 see n.11 above. The letter caused a great deal of contemporary upset, specifically a rather serious rift with Pope Urban II to whom Hugh of Lyon must have shown a copy. Ivo offered to resign. See Ivo's explanatory letter to the pontiff, 67, PL 162.85): 'multa dissona ibi legantur, nisi suo modo intelligantur et ad sententiam scriptoris accommadentur'. see also the commentary of Becker, *Frankreich* 99-102; Rolker, *Letters of Ivo of Chartres*, 17-21; Hoffmann, 'Ivo' 406-409.

Italian manuscripts was the more likely source for the relevant passages that overlap between Ivo and Burchard.[54] In the present context this issue can be left aside, since what matters here is the close intellectual relationship between the Roman cardinal priest and the bishop of Chartres. It is not only evidenced by the same selection of certain texts in Rome and at Chartres, but also by Gregory's reliance on the theory of dispensation as found in Ivo's *Prologue*. Like Ivo, Gregory differentiated mutable and immutable laws and authorities.[55] However, the slightly later *Polycarpus*—Rolker dates Ivo's works to the 1090*'s*—is evidence for the rapid advances in the re-discovery of Roman law at least in Italy and also takes account of the most recent events in Rome, the upheavals of 1111 and 1112.[56] The date of the *Polycarpus* has been debated in the past. Horst summarizes the debates but concludes persuasively that Cardinal Priest Gregory of S. Grisogono, who dedicated his collection to Diego Gelmírez of Compostela, apparently composed his work during the last years of his life (†1113).[57] Gregory included a few texts in his collection that hint at the tumultuous events of the very recent past. The cardinal insisted that even though Peter denied the Lord three times, he was nonetheless entrusted with the Church (*Polycarpus* 1.2 *De principatu Petri*) and stresses in Polycarpus 1.22: 'Quod nemo papam audeat iudicare, etiam si reprehensibilis sit'.[58] Book three, *De fundatoribus ecclesiarum.*[59] of the *Polycarpus* contains a very striking text that brings us back to the matter on hand. An excerpt from a letter of Pope

[54] Horst, *Polycarpus* , 21-24.
[55] Ibid. 101: 'So unterscheidet er zwischen unabänderlichen und wandelbaren Rechtsvorschriften und wägt den Verpflichtungscharakter von Vorschrift und Ermahnung ab'.
[56] For Roman law in the *Polycarpus* see Conrat (Cohn),*Geschichte*, 374f.
[57] Horst, *Polycarpus* 3-6 with literature.
[58] Ibid. 5-6, arguing that this could be best understood as a reaction against the accusations raised against the pontiff after the grant of the *Pravilegium*, a document signed by the cardinals, including Gregory.
[59] See the summary of the content of book III in Horst, 30-34. Cf. the preface, V-VI explaining the focus of Horst's analysis on parallel sources.

Symmachus (JK 764 c.4) to Caesarius of Arles is highlighted by a rubric and is worth quoting in full:[60]

> Non licet romanum pontificum ecclesiastica praedia perpetuo alienare. Simachus papa in generali residens sinodo. Mansuro cum dei nostri consideratione decreto, sancimus ut nulli apostolico sedi presuli a presente die donec disponente domino catholice fidei manserit doctrina salutis, licet predium ecclesiasticum quanticumque fuerit vel magnitudinis vel exiguitatis sub perpetuo alienatione vel commutatione ad cuiuslibet iura transferre.

Given the redaction of the text by Gregory—even when compared to the probable source of the canon (*Collection in 74 Titles* c.266*)* variants are present—emphasizes the link of the collection to the negotiations of February 1111. The cardinal naturally also cites elsewhere in book three *Ex libro Iustiniani Institutionum* the well-known statement 'Nullius autem sunt res sacrae . . . quid in muro deliquerint'.[61] But a rare passage from Justinian's *Digest*: 'Sive autem corpore sive animo possidens quis deiectus est, palam est eum vi deiectum videri'.[62] appears to describe the legal concepts of the papal negotiators at S. Maria in Turri in February 1111 even more directly. 'Possessio in animo',[63] the psychological aspect of ownership, is defended from expulsion or loss by force in this passage from Justinian's *Digest* under the title *De vi et de vi armata* (Dig. 43.16) in the same terms as physical explusion. The first example quoted in Justinian's text refers to an individual who left his field or house without leaving anyone from his household behind. When, upon his return, he is prevented from entering, he is legally considered as driven out by force (vi), for he has been deprived of a possession that he retained in his mind (animo) although not

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[60] Horst, *Polycarpus*, 11-12 lists the manuscripts of this collection. I have used MS Vat. lat. 1354. Pol. III, 12,10 is found on Fol.64r. It is accessible digitized at the website of the Bibliotheca Vaticana: https://digi.vatlib.it/view/ MSS. Vat.lat.1354. All secondary references (under the incipit Hortatur nos) reveal significant textual variations; the incipit "Mansuro cum dei nostri consideration decreto" corresponds, however, to c.266 of the *Collectio in LXXIV titulos digesta*, ed. Johannes T. Gilchrist (1973) 162; Kéry, 204-210.

[61] Polycarpus 3.12.31 = Inst. 7.8.10, Vat. lat. 1354, fol. 65v.

[62] Polycarpus 3.12.36 = Dig. 43.16.1.24, Vat. lat. 1354, fol.66r.

[63] Text of Ulpian, Dig. 43.16.1.24-30.

physically. Nothing could more adequately describe the loss of the ecclesiastical patrimony, its individual properties incised in the bronze portals leading into the basilica of St. Peter. Even at the nadir of his papacy at Ponte Mammolo when everything seemed lost, Henry V had to agree to return the 'Patrimonia et possessiones Romane ecclesiae' to the papacy.[64] Pope Paschal II relied on Henry's promise as his correspondence shows.[65] This fact may be difficult to accept today. The pontiff is rarely given his due, but the negotiations with Henry V were not an enterprise undertaken lightly by Paschal and his curia. Developments in canon law, as exemplified in the letters of Ivo of Chartres and the *Polycarpus* of Gregory of S.Grisogono, provided an impetus towards the negotiations at S. Maria in Turri in February 1111 and despite the failures of Ponte Mammolo and Mouzon towards the concordat of Worms.

Washington, D.C.

[64] MGH Const. 1.143-144, No.94: 'Domnum papam Paschalem fideliter adiuvabo ut papatum quiete et secure teneat, patrimonia et possessions Romane ecclesiae que abstuli, restituam, et cetera que iure habere debet more antecessorum meorum recuperare et tenerre adiuvabo bona fide'.

[65] See JL6295 and additional references in Blumenthal, 'Patrimonia' 17 notes (IX in the reprint).

Gratian, Original Sin, and the Sins of the Fathers: A Question of Sources and the Influence of the School of Laon

Atria A. Larson

In 1984, Peter Landau published a pioneering article on Gratian's formal sources, the canonical collections from which he drew his *auctoritatibus* in the *Decretum*.[1] That article inspired subsequent work by Landau and others, especially in light of confirmed stages of development of Gratian's text.[2] Certain formal sources seem to have been used extensively in early redactions of the text, culminating in R1, while other formal sources became used or more widely used in later redactions of the text, culminating in R2.[3] All the same, ambiguities abound; scholars still cannot, and

[1] 'Neue Forschungen zu vorgratianischen Kanonessammlungen und den Quellen des gratianischen Dekrets', *Ius commune* 11 (1984) 1-29; reprinted in *Kanones und Dekretalen: Beiträge zur Geschichte der Quellen des kanonischen Rechts* (Bibliotheca eruditorum, Internationale Bibliothek des Wissenschaften 2; Goldbach 1997) 177*-205*.

This essay in honor of Peter Landau derives from a conversation and a gift from Dr. Titus Lenherr at the 14th International Congress of Medieval Canon Law in Toronto in 2012, a conference where I spoke about Professor Landau's contributions to the study of canon law in the twelfth century. Dr. Lenherr had stumbled across a text in a Bamberg manuscript (see below) that had similar language to what Gratian used when talking of original sin in C.24 q.3. He did not have the time to pursue the issue but invited me to do so and sent me the reference to the manuscript. This essay is the long overdue fruit of his kind encouragement to me.

[2] See overview of literature in Atria Larson, 'Peter Landau's Contribution to the Study of Gratian and Twelfth-Century Canon Law', *Proceedings Toronto 2012* 1176-1177.

[3] There is as yet still no scholarly consensus on what to call these redactions. The designation of R1 (short-hand for first recension) and R2 (short-hand for second recension) is my preferred nomenclature because it makes possible the designation of post-R1 stages of development (e.g. R2a, R2b) leading to a finalized second recension (essentially everything in the 1879 Emil Friedberg edition of the *Decretum Gratiani* minus the *paleae*). For further explanation of my terminology, see Atria Larson, 'Gratian's *De penitentia* in Twelfth-Century Manuscripts', BMCL 31 (2014) 61-64.

perhaps never will be able to, identify all the sources from which Gratian drew his materials, especially since Gratian and/or later redactors of the text as personal agents occasionally made changes in the text, especially by adding or altering inscriptions and rubrics; additionally certain formal sources may be lost to history.[4] In research connecting Gratian's *De penitentia* (*Decretum* C.33 q.3) to ideas, texts, and methods from the school of Laon, I have previously suggested that a subsidiary question consists in asking in what intellectual milieu Gratian was educated and formed, recognizing that no author worked purely from a physical library.[5] Education matters; oral teaching, sometimes preserved in written texts and sometimes not, matters. While Gratian might be connected to the school of Laon on the basis of similar methodologies and usage of the same concepts and sources, the case is made stronger when textual ties are evident. More than any particular collection of 'sententiae' from the school or Anselm of Laon himself, some early glosses on various books of the Bible emerging from that school and soon to become the *Glossa ordinaria* have been proven to have been known to Gratian.[6] This paper will provide additional evidence of Gratian's connection to the school of Laon by looking at his treatment of original sin in connection to the question of the sins

[4] A point also made in particular relationship to R2 in Stephan Dusil, *Wissensordnungen des Rechts im Wandel: Päpstlicher Jurisdiktionsprimat und Zölibat zwischen 1000 und 1215* (Mediaevalia Lovaniensia, Ser. I, Studia 47; Leuven 2018) 370.

[5] Larson, 'Peter Landau's Contribution', 1177 n.10.

[6] Titus Lenherr, 'Die *Glossa ordinaria* zur Bibel als Quelle von Gratians *Dekret*: Ein (neuer) Anfang', BMCL 24 (2000) 97-129; Tatsushi Genka, 'Hierarchie der Texte, Hierarchie der Autoritäten: Zur Hierarchie der Rechtsquellen bei Gratian', ZRG Kan. Abt. 95 (2009) 104-6, 123-24; Atria Larson, 'The Influence of the School of Laon on Gratian: The Usage of the *Glossa* ordinaria and Anselmian *Sententiae* in *De penitentia* (*Decretum* C.33 q.3)', *Mediaeval Studies* 72 (2010) 197-244; Atria Larson, *Master of Penance: Gratian and the Development of Penitential Thought and Law in the Twelfth Century* (Studies in Medieval and Early Modern Canon Law 11; Washington, DC 2014), 35-312 *passim*; see also the formal source attributions in John Wei, 'Law and Religion in Gratian's *Decretum*' (PhD dissertation, Yale University 2008).

of the fathers, namely, whether children can justly be punished for the sins of their parents.

The topic of the Christian doctrine of original sin was also one that attracted the attention of Professor Landau. In 2000, he published an essay entitled 'Der biblische Sündenfall und die Legitimität des Rechts'.[7] According to biblical teaching, God created humans good. The first two humans, Adam and Eve, sinned, thus tainting all of creation, including all of their posterity. As a result of this event of the first sin, known as The Fall, all humans generated from the first parents inherit a guilt making them worthy of God's punishment. That 'original sin' in which they are conceived is to be distinguished from the 'actual sins' that they in their own agency commit; it also makes them more disposed to commit actual sins than Adam and Eve were in their original state of innocence. Landau drew out how the Christian doctrine of original sin provided a basis on which to legitimize any system of law, even non-religious ones, since, in a post-Fall world, sin is inevitable and therefore (positive) law must be enacted to restrain that evil. Although the early church developed and the medieval church adopted a view of baptism as that sacrament that wipes out original sin and previously committed actual sins, subsequent actual sin was still an obvious reality; sin would only go away altogether in the world to come. Thus, so too did the church need a law to restrain evil; such is canon law.

For Gratian, original sin also pertained to a concern to determine guilt so that the punishments meted out in canon law were just. He applied discussions going on among those associated with the school of Laon about original sin to another widespread intellectual question of the day, namely whether or in what way the sins of the fathers (cf. Ex. 20:5, Ex. 34:7) can be said to return to the sons; in other words, can children be

[7] Landau, 'The biblische Sündenfall und die Legitimität des Rechts', *Die Begründung des Rechts als historisches Problem*, ed. D. Willoweit (Schriften des Historischen Kollegs, Kolloquien 45; München 2000) 203-214.

punished for the sins of their parents?[8] This question had multiple points of contact with practical decisions to be made in canon law cases. Gratian maintained that sons cannot be punished spiritually for the sins of their fathers, and he maintained this in part based on his understanding of the transmission of original sin from parents to their children. Throughout, his treatment of these issues and biblical texts relevant to them relied heavily on biblical glosses stemming from the school of Laon and, more loosely, on terminology and 'quaestiones' about original sin evident in certain collections associated with the school.

Gratian mentioned the sins of the fathers in four places in the *Decretum*, all present in some form in R1: *prima pars* D.56, *secunda pars* C.1 q.4, C.24 q.3, and *De penitentia* D.4. The first of these, D.56 treats the ordination of sons of priests. If they cannot be ordained, it seems that sons are being punished for their fathers' sins of incontinence. In C.1, the case revolves around the ecclesiastical fate of a son whose lay father committed simony to help his son's career. The fourth question asks directly 'whether a man who is ignorant of the crime his father committed is guilty of it'.[9] C.24 presents the scenario of an orthodox-bishop-turned-heretic. Following his death, he was accused and condemned for heresy, and his whole family is excommunicated. The third question asks whether a family can rightly be excommunicated for the sin of one individual. The fourth distinction within *De penitentia* asks whether forgiven sins return. Gratian distinguished what I have called the individual return of sins from the intergenerational return of sins.[10] In all these places, Gratian consistently affirmed the accountability of every baptized individual for his or her own actions and the

[8] The foundational treatment of this question in early scholastic thought is Artur M. Landgraf, 'Die Vererbung der Sünde der Eltern auf die Kinder nach der Lehre des 12. Jahrhunderts', *Gregorianum* 21 (1940) 203-247; largely duplicated in his *Dogmengeschichte der Frühscholastik* 4.1 (Regensburg 1955) 155-192.

[9] C.1 q.4 pr.: 'Quarto, an iste sit reus criminis, quod eo ignorante pater admisit?'.

[10] Larson, *Master of Penance* 169-170, 197-199.

culpability for his or her own sins and those alone. He consistently affirmed that sons are punished for the sins of their fathers only when in imitation of them, in which case they are punished for their own actual sins. All the same, canonistic complexity exists—sons are not to be punished *spiritually* for the sins of their fathers (but sometimes temporal punishments do fall upon family members), and sometimes a stain causing an irregularity can still come from a father, and so a dispensation might be needed. To support his position, Gratian held to the following theological position: a child bears the guilt of original sin from his parents until he is baptized; he can also acquire the guilt of the actual sins of his parents, but only those sins performed up until his conception or, at the latest, his birth; yet this guilt too is wiped away in baptism.

The patristic and medieval question of whether sons were punished for the sins of the fathers was not coterminous with the question of original sin, but the two were linked because the notion that baptism did away with original sin provided a 'solutio' to the apparent contradiction of biblical texts. In Exodus, both at the initial issuing of the Decalogue (Ex. 20:5) and after the first, broken tablets were replaced (Ex. 34:7), Yahweh identifies himself as one who is merciful but also will render judgment against sinners 'and return the iniquities of the fathers on the sons to the third and fourth generation'. A plain reading would suggest that children, grandchildren, and great-grandchildren *are punished* for their fathers' sins. And yet, in Ezekiel 18 (v.4 and v.20), Yahweh affirms that each person is punished for the sins of his own soul, and the son does not bear the iniquity of his father. As typical for theological questions of the day, Augustine's and Gregory's exegesis carried immense weight, and certain of their texts became standard source material when dealing with the issue.[11] Two avenues, and sometimes both, opened for resolving the apparent contradiction. The Bible

[11] See Landgraf, 'Vererbung' 205-207. Key passages included Augustine, *Enchiridion* 46-47; Augustine, *Quaestiones in Heptateuchum* 5.42; Gregory, *Moralia in Iob* 15.51 and Jerome, *Epistola* 147 n.10.

exhorted individuals to imitate God, Christ, and Paul and not to imitate evil, so a relatively simple way to interpret the Exodus passages in light of Ezekiel was to say that the sins of the fathers returned upon those sons who imitated the erroneous ways of their fathers; some authors noted that this most naturally happened among generations who witnessed the sins of the older family member, namely to the third or fourth generation. Landgraf referred to this as the *Nachahmungshypothese*.[12] One could also assert that Exodus was referring, at least primarily, to original sin, and one might subsume under 'original sin' passed on for three or four generations the actual sins of the parent in question.[13] In this case, the guilt of original sin plus, or including, the actual sins committed by the parents before the birth of future generations were passed on through physical reproduction, and baptism remitted all of this.

The tradition of this thinking is evident in the *Glossa ordinaria* on the Bible, a source not investigated by Landgraf.[14] The glosses on Exodus 20 give allegorical readings coming from Origen, but the glosses on Exodus 34:7 pertain. The biblical

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[12] Landgraf, 'Vererbung' 213.

[13] Ibid. 220. The *Nachahmungshypothese* became widely accepted; after Peter Lombard, one rarely saw anyone speak of children inheriting in original sin the actual sins of the parents (ibid. 246).

[14] I am not able for this essay to return to early copies (mid-twelfth century) of what would become the *Glossa ordinaria*. Such work should be done, however. My research is at this point limited to the Rusch edition, now conveniently available in a modified and reader-friendly online edition, the *Glossae scripturae sacrae-electronicae (Gloss-e)*. The print version remains useful: *Biblia latina cum Glossa ordinaria: Facsimile Reprint of the Editio princeps*, Adolph Rusch of Strassburg, 1480-1481, introduction by Karlfried Froehlich and Margaret T. Gibson (Turnhout 1992). An introduction to the *Glossa ordinaria* is found in Lesley Smith, *The* Glossa ordinaria*: The Making of a Medieval Bible Commentary* (Commentaria: Sacred Texts and Their Commentaries: Jewish, Christian and Islamic 3; Leiden-Boston 2009); see also the extensive work of Alexander Andrée; his 'Editing the Gloss (later *Glossa ordinaria*) on the Gospel of John: A Structural Approach', *The Arts of Editing Medieval Greek and Latin: A Casebook*, ed. Elisabet Göransson et alii (Toronto 2016) 2-6, provides a succinct overview of the *Glossa ordinaria*, its authorship, and its textual development, followed by observations on challenges to editing the text.

verse includes the phrase 'visiting the iniquity (iniquitatem) of the father on the children (filiis) and on the children's children (nepotibus)'. The interlinear gloss on 'iniquitatem' reads 'originalem', and a second reads 'quamlibet', likely to be joined to the interlinear gloss on 'filiis' reading 'non baptizatis'. The interlinear gloss on 'nepotibus' then reads 'scilicet imitatoribus'. The interlinear glosses on Exodus guide one to this exegesis: the sin of the fathers being talked about is primarily original sin, but it can also refer to any sin of the fathers for those who are not baptized. Moreover, the children and grandchildren who will be held responsible for the sins of their elders are those who imitate the ancestral wickedness. Multiple layers of interpretation from a rich tradition are thereby hinted at and preserved in succinct form.

In a marginal gloss is a lengthy excerpt from Gregory (*Moralia in Iob* 15.51), which in fact constitutes the main Gregorian text identified by Landgraf as governing much early scholastic discussion. This text clearly states that the 'visiting the iniquity' passage refers to original sin, which is drawn from parents and the guilt of which children bear if they are not baptized. This is the text from Gregory cited by Gratian, directly from the *Glossa ordinaria* on Exodus 34:7, in *De penitentia* D.4 c.13. Not surprisingly, Gratian's commentary in D.4 d.p.c.24 centered on original sin.[15] Albeit in a somewhat opaque passage unless one is familiar with all the contemporary conversations, Gratian clearly asserted this much: original sin is that which comes from the fathers and is punished in the sons (if not cleansed through baptism).[16] For Gratian, when sons sin and thus bring back to life the sins of their fathers, which they are now imitating, this scenario is not what the verses in Exodus 20:5 and 34:7 are speaking about. He did affirm, though, that those subsequent sins, if left unrepented of, do in fact bring back

[15] *Gratian's* Tractatus de penitentia*: A New Latin Edition with English Translation*, ed. and trans. Atria A. Larson (Studies in Medieval and Early Modern Canon Law 14; Washington DC 2016) 236-239, 242-245.

[16] See a fuller discussion of this see *dictum* in *Gratian's* Tractatus de penitentia, ed. Larson, 285-287 (Appendix B).

original sin, which does constitute the 'iniquity of the fathers' of Exodus visited upon the sons and which had formerly been cleansed through faith and baptism.

In *De penitentia* D.4, Gratian did not use the language of imitation, although he conveyed the same meaning by saying things like 'following the guilt of their fathers' (d.p.c.24: *eorum culpam sequuntur*); nevertheless the terminology of sons being punished when they imitate the sins of their fathers does arise in other passages in the *Decretum*. In D.56, Gratian continued on the theme of who cannot be ordained; he opened with the statement that 'sons of priests are also not to be admitted to holy orders'.[17] A prohibition to that effect from Pope Urban II follows in c.1. In the *dictum* following, Gratian responded:[18]

> But this is to be understood concerning those who will have been imitators of their fathers' incontinence. But if integrity of conduct renders them commendable, by examples and by authority they can become not only priests but also the highest-ranking priests.

In R1 he immediately names some sons of priests who had even become popes. A text from Augustine follows, to which Gratian applied the rubric:[19] 'The vices of parents are not to be imputed to sons', showing that Gratian was thinking in terms of culpability and the justice of imputing the sins of one human to another. Gratian's application to ordination was not straightforward—sons who did not imitate the incontinence of their fathers should not bear the guilt of their fathers' sin; nevertheless, an irregularity ensues, thus necessitating a dispensation by the church. Later in the distinction, Gratian affirmed likewise that sons of adulterers are an 'abomination to the Lord' only when they inherit, as it were, their parents' shameful, disgraceful

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[17] D.56 d.a.c.1: 'Presbiterorum etiam filii ad sacra officia non sunt admittendi'.

[18] In R1, d.p.c.1 and d.p.c.2 are combined; c.2 is not present. D.56 d.p.c.1: 'Sed hoc intelligendum est de illis, qui paternae incontinentiae imitatores fuerint. Verum si morum honestas eos commendabiles fecerit, exemplis et auctoritate non solum sacerdotes, sed etiam summi sacerdotes fieri possunt'.

[19] Rubric for D.56 c.3: 'Vicia parentum filiis non imputentur'.

acts (flagitia).[20] And so, sons of adulterers who are pure in their own lives may receive a dispensation to be ordained and ascend to higher orders.

Imitation of the fathers' sins and whether sons can be held accountable for the sins of their fathers also played into Gratian's treatment in C.1 q.4, a section with elaborate engagement with biblical, especially Old Testament, narratives. Here, too, the contemporary theological discussions of the sins of the fathers intersect with particular readings of biblical passages preserved in the *Glossa ordinaria* on the Pentateuch and other historical books of the Old Testament. The question at hand was 'whether a paternal crime is to be imputed to a person when it is agreed it was committed without his knowledge?' Gratian developed a juridically relevant concept of ignorance, distinguishing *ignorantia iuris* from *ignorantia facti*,[21] but that notion was combined with a consistent return to the concept of imitation. If someone is ignorant of the wickedness of others, such as their own parents, and especially if they are not in imitation of such wickedness, they cannot be held culpable for those sins. Gratian named numerous Old Testament stories that seemed to say both that ignorance did not excuse anyone and that family members or other things attending a person would be punished for those persons' sins. At the end of d.p.c.11, Gratian gave his response:[22]

> But by these examples they are not proven to be held accountable for the sin of others unless they are imitators of their wickedness. For whoever from the seed of Esau and of the rest turned to God and detested the malice of their fathers experienced not the hatred but the clemency of God.

An earlier *dictum* gave another lens through which to understand the Old Testament examples: affiliates of a sinner might feel the

[20] D.56 d.p.c.13- c.14 (R1).
[21] C.1 q.4 d.p.c.12.
[22] C.1 q.4 d.p.c.11§12: 'Sed his exemplis non probantur teneri peccato aliorum nisi imitatores nequiciae eorum. Quicumque enim de semine Esau et ceterorum ad Deum conuersi paternam malitiam detestati sunt, non odium, sed Dei clementiam experti sunt'. Sankt Gallen, SB 673 p.38-40 (Sg) contains most of C.1 q.4 as found in R1. It contains a *nota* beside this section, highlighting the notion of imitation.

effects of his sins, receiving temporal punishments, but spiritual punishments do not come to one person on account of the sin of another.[23] Gratian had to provide a different interpretation of biblical narratives, such as the livestock of the Amalekites being killed when the Amalekites sinned and the people of Israel suffering when Achan stole precious objects from the spoil of Jericho. To do so, he drew on interpretations lending themselves to allegorical exegesis in the biblical glosses from the school of Laon. The Amalekites are, Gratian said, 'those who lick blood' (lingentes sanguinem), the very designation given them in the interlinear gloss on 'Amalekites' in Numbers 14:45; this means that they signify the lustful and greedy.[24] Meanwhile, the 'Israelites' are 'men seeing God' and the 'multitude of saints', which Gratian took from the interlinear glosses on 'filii Israel' in Exodus 1:1 (deum uidentes) and 1:13 (sanctos, deum videntes).[25] Jericho, Gratian said, represents the present world (istum mundum), just as was specified in the *Glossa ordinaria* on Joshua 6:1.[26] The point of Gratian's lengthy exegesis in R1 was to argue that the biblical passages do *not* support the idea that those who are ignorant of the sins of others or not personally sinning can be punished spiritually for the sins of others. Rather, if a person sought God, even if his father were Esau, he would receive mercy. Therefore the church should not deprive of spiritual office a man seeking God and living well on account of the fact that his father had committed simony behind his back.

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[23] C.1 q.4 d.p.c.10. Cf. *Glossa ordinaria* (Roma 1582) and *Gl. Ord.* ad C.24 q.3 (Roma 1582), where three types of punishment are distinguished: eternal, corporal, and spiritual. In the first, one never receives punishment on the basis of the sins of others. In the second, one often does, but this is meant to deter or create fear in others (ad terrorem aliorum) (see *casus* gloss ad C.24 q.3 *s.* Si habes [Roma 1582]). In the third, in some cases one could be punished for the sin of another (e.g. in an interdict), but one should never be excommunicated or prevented from obtaining holy orders because of the sins of others.

[24] Gratian, C.1 q.4 d.p.c.11 §7. See *Gl. Ord.* ad Numbers 14 (ed. Rusch, 1. Rusch 1.309a).

[25] Ed. Rusch 1.112a and 1.113a.

[26] Ibid. 1.437b.

The connection to original sin and baptism lay more in the background in C.1 q.4 but came to the fore in C.24 q.3, a section with a similarly elaborate litany of biblical examples of sons possibly being punished for the sins of their fathers. In C.1 q.4, R1 already included a short text from Augustine at c.10, which stipulated that 'the sins of the parents which are committed *after their children's birth* are not imputed to the children'; in the tradition, in the thought of some, this meant that sins committed by the parents before a child's birth could be considered among those sins whose guilt the child bore until baptism cleansed them of all guilt to that point and thus could be considered part of original sin. R2 contained a passage from another of Augustine's epistles, a letter to a bishop named Boniface, and gave it the following rubric: 'Sins of the parents are not to be imputed to those who are shown to be divided personally from them'.[27] In this epistle, Augustine was answering a question about baptized children whose parents, when the children were sick, resorted to magic and 'sacrifices to demons' to try to heal them; did the children bear any guilt from this action by their parents?[28] Augustine's answer was 'no'; he spoke of original sin, but, appealing to Ezekiel 18, affirmed that once the child was his own soul and own individual, each soul was responsible for his own sin. As Ezekiel had written, 'The soul that sins is the one that will die' (Ez. 18:4).

The rubric's language of 'being personally divided', i.e. of being a person substantially separated from the persons of one's parents, does not derive directly from the letter of Augustine. It demonstrates reflection on its argument,[29] but it does not imitate the precise language used. The rubric also does not come from

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[27] C.1 q.4 c.8 [R2] rubric: 'Non imputantur peccata parentum his, qui ab eis personaliter diuisi probantur'.

[28] Augustine, *Epistula* 98 *Ad Bonifatium*, in *Aurelii Augustini Opera, pars III, 1*, ed. Kl. D. Daur (CCSL 31A; Turnhout 2005) 227-34; the section excerpted in R2 at C.1 q.4 c.8 appears at 227.17-25.

[29] Note especially Augustine's phrases 'quia nondum erat anima separatim uiuens, id est altera anima' and 'cum homo in se ipso est ab eo qui genuit alter effectus' (CCSL 31A, 227.15-17).

Gratian's likely formal source. The text appears rarely in pre-Gratian collections and only twice with the same incipit and explicit, namely in Ivo's *Decretum* and in the *Collectio Tripartita*. The latter has been demonstrated to have been a major formal source of R2.[30] The rubric in both Ivonian texts is simply 'De baptismo. Utilis solutio de baptismo, et parentum sacrilegio de filiis'.[31] If R2 took the text from the *Tripartita*, Gratian or someone else changed the rubric. Within the *Decretum*, the language of the R2 rubric to Augustine's letter to Boniface finds its greatest similarity to language Gratian uses in an R1 *dictum* in C.24 q.3, the fourth location within the *Decretum* where Gratian addresses children possibly being held accountable for the sins of the fathers, and this language in turn has parallels in sentence collections connected to the school of Laon.

The treatment in C.24 q.3 was intended to show that family members should not be excommunicated for the sin of one of the family's members. Initially, in dictum ante c.1, Gratian mentioned biblical examples (many of these are repeated from C.1 q.4) to argue that family members should be excommunicated. After all, to take but one example, 'for the sin of the Amalekites, not only their children but even their beasts were commanded by the Lord to be wiped out'.[32] But Gratian's conclusion was the opposite, distinguishing corporal punishments, which sometimes are applied to children on account of sins of parents, from spiritual punishments, which are not. In this instance, Gratian

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[30] José M. Viejo-Ximènez, 'La investigación sobre las fuentes formales del Decreto de Graciano', *Initium* 7 (2002) 217-239; John Wei, 'A Reconsideration of St. Gall, Stiftsbibliothek 673 (Sg) in Light of the Sources of Distinctions 5-7 of the *De penitentia*', BMCL 27 (2007) 141-80.

[31] ID 6.417 and Trip. 3.10.48. See provisional editions by Martin Brett, Bruce Brasington, and Premysław Nowak, available at https://ivo-of-chartres.github.io/; accessed 4 September 2019.

[32] C.24 q.3 d.a.c.1: 'pro peccato Amalecitarum non solum paruuli eorum, sed etiam bruta animalia . . . iussa sunt deleri a Domino'. This *causa* was important in later canonistic jurisprudence about interdicts, where it would seem that a ruler's subjects were punished for their leader's sins. On interdicts and the jurisprudence about them, see Peter D. Clarke, *The Interdict in the Thirteenth Century: A Question of Collective Guilt* (Oxford 2007).

appealed to Exodus 20:5 ('I am a zealous God, visiting the sins of the fathers upon the sons to the third and fourth generation') as supporting the extension of corporal punishment to family members. But then he turned to original sin, baptism, and Ezekiel 18 to restrict spiritual punishment to the sinner alone. He wrote:[33]

> But spiritually children are not held accountable for the sins of their parents, from the fact that they have been cleansed of original sin through the sacrament of regeneration. For this reason, the Lord says through Ezekiel, 'The soul that sinned itself will die; the son will not bear the iniquity of the father, and the father will not bear the iniquity of the son; the righteousness of the just will be upon him, and the wickedness of the wicked will be upon him' [Ez. 18:20]. Also, whatever sins the parents committed, on account of the fact that the son personally has separated from them (personaliter ab eis separatus fuerit), are not imputed to him for punishment. For this reason in the sin of Adam are all his posterity said to be held because someone had not yet materially been propagated (materialiter proseminatus) by him. But because before God it is not the sentence of priests but the life of the guilty that is inquired into, it is clear that he is not to be marked with a judicial sentence whom the stain of sin does not infect.

In other words, Gratian's argument was this: baptism (the sacrament of regeneration) cleanses children from original sin and thus also from any sins of their parents whose guilt might come to them through physical generation. That transfer of guilt from the parents stops at the point of personal separation. Crucially, *all* humans could draw original sin from the first man, Adam, because *no* human had yet been generated or 'materially propagated' by him (the Fall occurred before Adam and Eve procreated), and thus all the matter or physical substance of every human being inhered in Adam, and the guilt of original sin

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[33] C.24 q.3 d.a.c.1: 'Spiritualiter autem peccatis parentum paruuli non tenentur, ex quo per sacramentum regenerationis ab originali peccato fuerint emundati. Unde per Ezechielem Dominus ait: "Anima, que peccauerit, ipsa morietur; filius non portabit iniquitatem patris, et pater non portat iniquitatem filii; iustitia iusti super eum erit, et inpietas inpii erit super eum." Quecumque etiam peccata parentes conmiserunt, ex quo filius personaliter ab eis separatus fuerit, ei non inputantur ad penam. Unde peccato Adae ideo omnes posteri teneri dicuntur, quia nondum aliquis ex illo materialiter fuerat proseminatus. Quia uero apud Deum non sentencia sacerdotum, sed uita reorum queritur, patet, quod non est notandus sentencia quem peccati macula non inficit'.

was transferred to all human beings deriving their matter ultimately from Adam. Thus, once a child is conceived, quickened, or born (Gratian is not specific which is the case), no guilt from actual sins can transfer from parents to children. God then takes each individual life and renders a judgment for the spiritual fate of each one on the basis of whether he or she is stained by sin or not; once cleansed from original sin, each soul is judged purely on the basis of its own actual sins, not anyone else's. The application to canon law and ecclesiastical discipline was simple: ecclesiastical judges should imitate God and not punish children spiritually (i.e., excommunicate them) for the sins of their parents.

Sentence collections connected to the school of Laon contain numerous 'sententiae' devoted to questions surrounding original sin.[34] Oftentimes, they do not mention material or personal separation or division because it would not be relevant to the particular question at hand, but the terminology shows up enough to show that classroom discussions in Laon and under masters who had been trained there included careful thought about the transfer of guilt through matter and noted material or personal separation of child from parents as an important moment when thinking about guilt drawn (the verb often used in the tradition is 'trahere') from parents in the doctrine of original sin.[35] Of particular interest is an unedited collection of

[34] In Odon Lottin, ed. *Psychologie et morale aux XII^e^ et XIII^e^ siècles*, 5: *L'école d'Anselme de Laon et de Guillaume de Champeaux* (Gembloux 1959) 'sententiae' nn.43-46, 108, 117, 148, 246-253, 328-336 (hereafter PM).

[35] A sentence most likely by Anselm of Laon himself addressed whether the soul is transferred from one generation to the next; in his answer, Anselm lays out logical possibilities of the soul being transferred with or without the seed and uses the language of separation of the flesh: 'et si sine semine, uel ante separationem eius uel post uel in ipsa separatione. Prius, non; alioquin anima pueri creatur et traducitur priusquam caro separatur a parentibus cui est incorporanda' (Sententia n.161, in PM 119). A sentence of Guillaume de Champeaux argued that the sacrament of marriage absolves the parents of the sin committed in the act of conception, but the power of the sacrament does not extend to the child generated since it is not yet separated as a person from its parents; in other words, a sacrament can only be efficacious for a separate person, 'namque [sacramentum] solis attribuitur personis a persona separatis'

'sententiae' preserved in Bamberg, Staatsbibliothek Can. 90. The very first 'sententia' deals with original sin, concupiscence, and guilt passed from father to son; it is a short exercise in reconciling Exodus 20:5 and 34:7 with Ezekiel 18. A short excerpt from Augustine's letter to Boniface is inserted, without attribution.[36] The master then concludes:[37]

(Sententia n.246, in PM 203). A sentence from the school of Laon preserved in Paris, BNF lat. 18108, fol. 61rb asked how original sin is imputed to the son if it was erased in the parents through baptism. The response emphasizes the point of personal separation – the sacrament does not benefit what was materially contained in the flesh of the parents once it has separated into another person: 'Ad quod dicitur quia dum in parentibus sue nature materialiter unius continentur, quamuis sacramentum eorum sibi prodesset, unde [et non] alio indigent, tamen postquam ab eis in aliam personam separatur, nichil prodest' (ed. Lottin, *PM* 349). The *Sententiae Atrebatenses* or *Diuina essentia teste* spoke of the child's body already having been separated from the 'mass of the father' when the father's seed separates from the father's body: 'Ad quod quidam dicunt quia in corpore, scilicet in paterno semine iam separato, concupiscentia et ardor turpitudinis qua ipsum separatur et totus homo occupatur est originalis macula, reatu cuius tenetur, et est dignum puniri, non quod in hoc statu peccauerit, sed quia antequam a massa patris esset separatum . . .' (ed. Lottin, *PM* 413; also in O. Lottin. 'Les sententiae Atrebatenses', RTAM 10 [1938] 215.14-17). The *Sententiae Berolinenses* or *Quid de sancta* argued that Romans 5:12 (the locus classicus for the doctrine of original sin) was not contrary to Ezekiel 18 since the latter refers 'to actual and not original sins and to those sons who have already been born and separated from the loins of their fathers' ('hoc esse dictum de actualibus peccatis et non de originalibus, et de illis filiis qui sunt separati a lumbis patris et iam nati' (in F. Stegmüller, '*Sententiae Berolinenses*: Eine neugefundene Sentenzen-sammlung aus der Schule des Anselms von Laon', RTAM 11 [1939] 53.49-40). There is also some similar terminology in Hugh of St Victor's *De sacramentis christianae fidei*, pars 7 [1.38], where Ezekiel 18:20 is explained: 'ad illa ueraciter iniquitate intelligitur, quam personaliter discreti et essentialiter ad inuicem diuisi pater et filius operantur. Ex quo filius a patre et pater a filio est. Alius in persona affectus [*recte* effectus], sicut uterque proprio arbitrio operari habet, sic quod alter facit deinceps, alteri imputari non debet' (ed. Rainer Berndt, SJ [Corpus Victorinum, Textus historici 1; Aschendorff 2008] 192.22-193.3).

[36] Corresponding to Augustine's letter in CCSL 31A at 227.12-25.

[37] Bamberg, SB can. 90 (1st half of 12th c.), fol. 1r: 'Unde colligimus hanc sententiam 'filius non portabit iniquitatem patris' esse dictam de filiis *postquam est alter effectus et personaliter diuisus* a patre. Peccatum autem

> From this we gather that this sentence 'the son will not carry the iniquity of the father' [Ez. 18:20] is said concerning sons *after a second entity has been effected and has been personally divided* from the father. But the sin of the father which he did *before the son was born* God can punish in the son, according to that text, 'I will punish the sins of the fathers in the sons until the third and fourth generation' [cf. Ex. 20:5 and 34:7].

The opening of Augustine's letter to Boniface is included on a later folio.[38]

It is impossible to know whether Gratian knew and had that letter in mind when he wrote his R1 *dictum* in C.24 q.3 d.a.c.1. Text from the letter itself only entered the *Decretum* in later additions to R1 leading to the finalized R2. Not only did an excerpt of the letter enter into the R2 *Decretum* at C.1 q.4 c.8, but a near-complete copy of the letter was included in the R2 *Decretum* at *De consecratione* D.4 c.129.[39] Nevertheless, this does seem to constitute the Augustinian text standing behind the terminology in the school of Laon of personal separation or division of child from parent, and so theological reflection on the text in the school of Laon seems at least indirectly to have influenced Gratian's earlier thinking about the guilt of children in respect to the sins of their parents.

That issue seems also to have been fundamental to the thinking of Bonizo of Sutri in the eleventh century, for he

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patris cum fecit pater *antequam natus esset filius*, potest deus punire in filio iuxta illud, 'Puniam peccata patrum in filios in terciam et quartam generationem'. Landgraf cited this and surrounding text in 'Vererbung der Sünde', *Gregorianum* 219 (*Dogmengeschichte* 4.1, 167). He did not recognize that part of it was an excerpt from Augustine. The section quoted from Augustine (prior to the passage cited above) begins at 'Non autem [anima] peccat cum parentes' and runs through 'ex quo regeneratur oblatus'. It skips over Augustine's sentence reading, 'Non autem trahit alter ab altero, quando sua unoquoque propria vita vivente iam est, unde dicatur'. The codex is also notable for having a copy of the *Panormia* (incomplete, through 8.136), preceded by Ivo of Chartres's prologue, beginning on fol. 14v. Between the *sententiae* and the *Panormia* is a catalog of heresies (fol. 4v-14r).

[38] Fol. 2r, beginning 'Quaeris a me utrum parentes baptizatis', corresponding to Augustine's letter in CCSL 31A at 227.1-5.

[39] While some short sections are omitted or rearranged, the text corresponds to most of the edition of Augustine's letter in CCSL 31A, 227.1-234.230.

included Augustine's letter to Boniface as his first preamble to his *Liber de uita christiana* (1090-1094), as if to assert that, before understanding the proper life of all baptized Christians in the church, that is, all those subject to the *canones* of the church, one had to be clear about the separation of children from their parents and that each baptized individual is to be held accountable by the church for his own actions and those alone.[40] Bonizo's work has not been named by other scholars as a formal source for Gratian, and so Gratian likely did not know Bonizo's text with its preambles. But they shared a basic understanding of baptism as the sacrament that initiates a person into the society of those governed by canon law and, more particularly, as the mark even beyond the personal separation of child from parent that prohibits ecclesiastical officials from punishing children for the sins of their parents. More explicitly than Bonizo, Gratian maintained that determinations of guilt in a community of baptized individuals depended in part on one's understanding of original sin, the transfer of guilt from parents to children, and the cleansing effect of baptism. As he thought about these issues, he had at his disposal texts and classroom discussions from the school of Laon. His reflections mimicked some of those going on in 'sententiae' from the school, and he also obviously was drawing from biblical glosses of that school on the Pentateuch and historical books of the Old Testament.

If, looking backward from Gratian, Gratian's reflection on original sin and the sins of the fathers and his sources pertaining to it once again show him to be within the orbit of the school of Laon, looking forward, it seems that Gratian's theological argument about the guilt of persons *qua* individualized

[40] Bonizo, *Liber de vita christiana*, ed. E. Perels (Berlin 1930; reprinted Hildesheim 1998) 1.1-2.2. The rubric given is 'Cur peccatis parentum filii non tenentur obligati, quemadmodum per fidem illorum in baptismo sunt salvati'. On Bonizo and his work, see Walter Berschin, *Bonizo von Sutri: Leben und Werk* (Berlin 1972), and recently William L. North, 'Bonsai of the Consanguinities: Cultivation and Control of Incest Regulation in the Works of Bonizo of Sutri', *Early Medieval Europe* 23 (2015) 478-99. North describes this work as Bonizo's 'comprehensive canonical guide to pastoral care' (484).

persons had potential for development within canonistic jurisprudence. Ken Pennington wrote an essay on later canonistic thought on children of heretics being punished for the heresy of their parents.[41] What is striking there is a parallel argument derived from the notion of a legal person. Gratian had argued that a human person, once differentiated from his or her parents, could not be punished *spiritually* for the sins of those parents, and yet he and, even more precisely, decretists commenting on C.1 q.4 and C.24 q.3 maintained that children often are punished corporally for the sins of their parents. Later jurists drew arguments from Roman law rather than from theology, even as they still wrestled with the same biblical texts in Exodus 20:5, 34:7, Ezekiel 18:4, and 18:20. Some jurists specified that sons *born before* the lapse of their fathers into heresy should not be punished (understood: corporally, since the point at issue was losing property).[42] When commenting on the *Liber Augustalis*, the jurist Marinus de Caramanico (d. *c.*1288) stayed true to the tradition and maintained that only those sons who were imitators of the heresy of their fathers should be punished, as supported by Exodus 20:5.[43] But, the penalty stipulated in Frederick II's constitution (infamy) should apply only to those sons who had not yet been emancipated (i.e., not yet freed to become their own heads of household)—in other words, those sons who were not yet their own fully legal persons.[44] Marinus was, likely

[41] '*Pro peccatis patrum puniri*: A Moral and Legal Problem of the Inquisition', *Church History* 47:2 (1978) 137-54. This present essay might serve as a modest corrective to Pennington's assertion in 150 n.48 that earlier canonists were not concerned by the contradiction between biblical texts in Exodus and in Ezekiel. In fact, these texts had been central to the project of reconciling authorities, had concerned Christian thinkers from patristic times, and was central to Gratian and other scholastic treatments of original sin and the punishment of sons for the sins of their fathers.

[42] E.g., Johannes Calderinus (*c.* 1340); see Pennington, '*Pro peccatis*', 149 and 149 n.46.

[43] Marinus, ad *LA* 1.2 v. *ipsorum filiorum*; cited in Pennington, '*Pro peccatis*' 148 n.36. The constitution is Frederick II's *Patarenorum receptatores*, issued in 1231, reissued in 1232, and included in a decretal of Innocent IV in 1243.

[44] Ibid., cited in Pennington, '*Pro peccatis*' 148 n.38. That Marinus has the notion of 'person' in mind is proven as he writes in his gloss about instances

unwittingly, making an argument parallel to Gratian's, and, if implemented, it would in fact have limited the extent of the *temporal* punishment that could reach family members of sinners. Canonistic jurisprudence, built on Gratian's argument, had consistently maintained that sons who did not consent to or imitate the sins of their fathers should not be punished *spiritually* for them but had been less clear on the extent to which temporal punishment could legitimately be applied. Marinus might not have had the doctrine of original sin on his mind when he commented on the *Liber Augustalis*, but Gratian, with his training in or strong connections with the school of Laon, certainly did when he addressed the sins of the fathers in his *Decretum*.

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in Roman law when the son, not yet emancipated, 'adds to the father and is said to be one person and voice with the father' ('filius acquirit patri et dicitur una persona et vox cum patre') (*Constitutionum regni siciliarum libri III, cum commentariis veterum jurisconsultorum* [ed. Naples 1773] 14).

A Desire for the Latest and the Greatest: Recent Papal Decretals and Roman Law in the *Collectio decem partium*

Melodie H. Eichbauer

Peter Landau will forever remain a scholar to imitate. His attention to detailed manuscript work, drawing of nuanced connections, and ability to place his findings within a larger, yet always accessible, framework model how legal history can be a window into our world and our values. His contributions are important not simply for their quality, but also for their quantity. When beginning any project, it is only natural to sift through Prof. Landau's publications for approaches, perspectives, and insights. The question has always been what has he written—not whether he has written—on the topic. He will be truly missed.

My hope is to pull together a few threads of Prof. Landau's wide-ranging interests, namely the time and space law that occupied, the transmontane schools of legal thought outside of Bologna, the shift from the *ius vetus* to the *ius novum*, and the reception of Roman law into canon law. This essay will focus on elements of Pars 3 and Pars 6 of the *Collectio decem partium* (hereafter Cdp). Traditionally attributed to Walter (Gautier) of Thérouanne and compiled between 1125 and 1130 as a revised update to the *Panormia*,[1] these parts demonstrate that compilers in the first half of the twelfth century did not shy away from, but

[1] Paul Fournier, *Les collections canoniques attribuées a Yves de Chartres* (Paris 1897) 156-158; Joaquín Sedano, 'The Manuscript Tradition of the Collection in Ten Parts', *Proceedings Esztergom 2008* 268-269. The attribution of the collection has been debated. Somerville and Brasington noted in their own commentary that while the author of the preface and the patron remained unknown, the preface that accompanied Ivo's Prologue is often attributed to Walter of Thérouanne and dedicated presumably to John of Warenton. It notes that he obeyed his patron's will and surveyed diligently libraries of many churches to gather that which would be useful. See 'Preface to the Collection in Ten Parts', trans. Robert Somerville and Bruce C. Brasington, *Prefaces to Canon Law Books in Latin Christianity: Selected Translations, 500-1245* (New Haven 1998) 116, 158.

rather turned to, the most recent papal decretals and to the Roman law available for texts that supported reforms to ecclesiastical governance and to better deal with increasing litigation.

In addressing investiture, simony, and clerical celibacy Pars 3 represents the most deliberate and concerted effort to incorporate the decrees and conciliar canons of Popes Paschal II, Calixtus II, and in particular of Urban II. Included are c.15 and c.16 of Urban II's Council of Clermont (1095), which decreed that no one should receive any ecclesiastical honor from the hand of laymen. Kings and princes were forbidden from investing ecclesiastics with their honors.[2] Canon 16 of his Council of Rome (1099) held that any abbot or provost who accepted contrary to ecclesiastical law, administration of churches without concession of bishop from the laity was judged a heretic.[3] Pope Paschal II reinforced this view in a letter to his legate Archbishop Gui of Vienne, the future Calixtus II, stating that those who were invested to an episcopacy, abbacy, or with any ecclesiastical goods by the hand of a layman were judged as heretics.[4] In total, Pars 3 of the Cdp included ten canons from Urban II's Council of Rome on the question of simony. These texts held that nothing could be given or promised to enter the orders, progress through the orders, or enter a monastery. Those who received their position from laymen, or bought their office or ordination did not have the *cura animarum* at the forefront of their mind. When one has entered the sacred orders, he must progress methodically through them and not skip grades.[5]

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[2] Cdp 3.7.4: 'Ut nullus aliquem honorem ecclesiasticorum a manu laicorum accipiat' (Berlin, Staatsbibl. Preußischer Kulturbesitz, Phill. 1746, fol. 44vb; though not cited Berkeley, Robbins, 103 manuscript was also consulted) [hereafter Berlin, S.P.K., Phill. 1746], Mansi 20:817; Cdp 3.7.6: 'Interdictum est ne reges uel aliqui principes aliquam inuestituram de ecclesiasticis honoribus ecclesiasticis faciant' (Berlin, S.P.K., Phill. 1746, fol. 44vb), Mansi 20:817.

[3] Cdp 3.7.5: 'Nullus abbas nullus ecclesiarum preapositus qui iuris - sequentes heresim iudicamus esse' (Berlin, S.P.K., Phill. 1746, fol. 44vb); Mansi 20:964.

[4] Cdp 3.7.7: Inuestituram episcopatuum abbaticarum et omnium rerum ecclesiasticarum de manu laica sancta romane ecclesiae auctoritate sequentes heresim esse iudicamus' (Berlin, S.P.K., Phill. 1746, fol. 44vb); JL 4678.

[5] In addition to Cdp 3.7.5, Cdp 3.34.6-.8, 3.35.1-.6 (Berlin, S.P.K., Phill. 1746, fol. 54va-54vb); Mansi 20:961-964.

Also included was c.13 of the Council of Clermont decreeing that every cleric must begin with the same title when first ordained.[6] Canon 3 of the same council held that one must be a priest before obtaining the rank of deacon or provost; to be an archdeacon one must be a Levite.[7] Pope Calixtus II at the Council of Tolentano in 1119 (c.2) extended the policy to state that one must be ordained a deacon in order to be a provost, archpriest, or archdeacon.[8]

Pope Urban II's texts also held a prominent position with respect to clerical chastity. A supposed letter to Herman, Bishop of Metz, stated that just as those who buy and sell ecclesiastical honors should lose their rank, so too should those priests, deacons, and subdeacons who were married.[9] At the Council of Clermont it was held that no sons of concubines and of clerics should advance through the ecclesiastical orders or obtain any ecclesiastical honor unless having lived as a monk or regular canon in the church.[10] Also included, c.3 of the Council of Melfi (1090) held that no one should presume to enter the sacred orders unless, when he entered the subdeaconate, he was either a virgin or had undertaken chastity having been married to one wife who had been a virgin at the time of their marriage.[11] Canon 12 of the same council decreed that it

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[6] Cdp 3.13.3: 'Ut omnis clericus ad eundem titulum ad quem primum ordinatus est semper ordinetur' (Berlin, S.P.K., Phill. 1746, fol. 46vb); Mansi 20:817.

[7] Cdp 3.15.1: 'Ut nullus fiat decanus uel praepositus in ecclesia nisi presbyter; nullus archidiaconus nisi Leuita' (Berlin, S.P.K., Phill. 1746, fol. 48vb); Mansi 20:817.

[8] Cdp 3.15.2: 'Nullus etiam in praepositum nullus in archipresbyterum, nullus in decanum nis presbyter nullus archdiaconum nisi diaconus ordinetur' (Berlin, S.P.K., Phill. 1746, fol. 48vb); Mansi 21:226.

[9] Cdp 3.34.9: 'Vendentes uel ementes honores ecclesiasticos, et sacerdotes, diaconos ac subdiaconos coniugatos, quamdiu in suo errore permanserint nullam sui ordinationis potestatem in ecclesia habere permittas' (Berlin, S.P.K., Phill. 1746, fol. 54va); *Panormia* 3.122. I could not find a corresponding letter in JL, but a similar concept attributed to Urban II is found in C.1 q.3 c.8.

[10] Cdp 3.18.2: 'Ne nulli filii concubinarum et clericorum ad ordines uel aliquos honores ecclesiasticos promoueantur, nisi monachaliter uel canonice uixerint monachi uel regulares fiant in ecclesia' (Berlin, S.P.K., Phill. 1746, fol. 49va). The text is a melding of c.11 and c.25, Mansi 20:817-818.

[11] Cdp 3.11.3: 'Nemo propteria ad sacrum ordinem permittatur accedere, nisi aut uirgo, aut probate sit castitatis, et qui usque ad subdiaconatum unicam et

was the bishop's responsibility to correct such transgressions and princes should take these women into servitude. Should bishops not execute their correction faithfully, they would be fined with banishment from their office.[12] Pope Paschal II reiterated Urban's stance to the bishop and clergy of Thérouanne: ordained clerics were not to socialize with women either in public or in private otherwise be deprived of their benefice. The bishop was to ensure compliance with the decree.[13] Echoing this view are two texts misattributed to Urban II. The first is a letter to the bishops and king of Damietta stating that if any bishop, priest, deacon married or retained a woman he was downgraded from his position and could not retain his benefice until satisfaction was made.[14] Also misattributed to Urban II is a letter to the clergy of Milan stating that if any priest, deacon, or subdeacon deserted his office because he chose to fornicate with women, he was dismissed from his office and compelled to forfeit his benefice.[15]

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uirginem uxorem habuerit' (Berlin, S.P.K., Phill. 1746, fol. 46ra); Mansi 20:723.

[12] Cdp 3.28.18: 'Eos qui…Quod si ab episcopo commoniti non correxerint, principibus licentiam indulgemus, ut eorum feminas mancipent seruituti. Si uero episcopi consenserint eorum prauitatibus, ipsi officii interdictione multentur' (Berlin, S.P.K., Phill. 1746, fol. 53ra); Mansi 20:724.

[13] Cdp 3.30.2: 'Pascalis episcopus seruuus suorum dei Taruennensis parrochie clericis salutem et apostolicam benedictionem. …clericalis ordinis uiri qui audent publice qui non audent occulte mulieribus sociantur. Super quibus propter ceteros piae memorie predecessorum nostrum urbanus pp consistuit ut officiis simul et beneficiis ecclesiae priuarentur. Nos quoue eiusdem predecessoris nostri sententie consonantes per presentia scripta precepimus ut quicumque inter uos clerici ab episcopo suo canonice ammoniti ab huius modi nequitia cessare noluerint tam officiorum que beneficorum priuatione plectantur' (Berlin, S.P.K., Phill. 1746, fol. 53rb); JL 4760.

[14] Cdp 3.41.6: 'Si quis amodo episcopus, presbiter, diaconus feminam acceperit uel acceptam retinuerit, proprio gradu decidat usque ad satisfactionem ueniat, nec in choro psallentium maneat, nec aliquam portionem de rebus ecclesiasticis habeat' (Berlin, S.P.K., Phill. 1746, fol. 56rb). The correct attribution is Alexander II (JL 3510).

[15] Cdp 3.41.7: 'Si quis sacerdotum, uel diaconorum, uel subdiaconorum officium contumaciter deserens, feminam sibi potius eligit, sicut sponte ob fornicationem dimittit officium, ita ob preuaricationem dimittere cogatur et inuitus beneficium' (Berlin, S.P.K., Phill. 1746, fol. 56rb), *Panormia* 3.139;

The purposeful inclusion of recent papal decrees and conciliar canons represents the importance of new law to the curbing of investiture and simony, and the enforcement of clerical celibacy. It may also help to situate the Cdp a bit closer with Walter and Thérouanne. Urban II, Paschal II, and Calixtus II were members the same social and professional network as Lambert of Guines, bishop of Arras, and John of Warneton, first archdeacon of Arras under Lambert and then confirmed by Urban II as bishop of Thèrouanne.[16] The compiler thus may have had firsthand access to the material. There is one instance in which a text, a letter from Pope Paschal II, is only found in this collection.[17] There are two instances—conciliar texts from the pontificates of Urban II and Calixtus II—in which the other collections that included the texts

Cdp 3.41.8: 'Eos etiam qui ut fornicari liceat diuinum officium dereliquunt, et a Deo recedentes diabolo et eius operibus seruiunt, sicut se iustissime officio alienos faciunt, ita beneficio ecclesiarum priuatos esse abiudicamus' (Berlin, S.P.K., Phill. 1746, fol. 56va), *Panormia* 3.140. In both cases the correct attribution is Alexander II (JL 3477).

[16] *Le registre de Lambert, évêque d'Arras (1093-1115)*, ed. and trans. Claire Giordangengo (Sources d'histoire médiévale 34; Paris 2007) 25-27, no. 10 pp. 342-343; Walter of Thérouanne, *Vita Johannis episcopi Tervanensis* (MGH, Scriptores 15.2; Hannover 1888) 1136-1150; 'De Atrebatensi Episcopatu b Urbano II Restituto', *Receuil des historiens de Gaul et France*, ed. Michel-Jean-Joseph Brial, vol. 14 (Paris 1877) 738-757, here 754; Lotte Kéry, *Die Errichtung des Bistums Arras 1093/1094* (Beihefte der Francia 33; Ostfildern 1994) 356; Robert Somerville, *The Councils of Urban II*, 1: *Decreta Claromontensia* (Annuarium Historiae Conciliorum; Amsterdam 1972) 25, 56-57; Linda Fowler-Magerl, 'The Collection and Transmission of Canon Law along the Northern Section of the *Via Francigena* in the Eleventh and Twelfth Centuries', *Bishops, Texts and the Use of Canon Law Around 1100: Essays in Honour of Martin Brett*, edd. Bruce C. Brasington and Kathleen G. Cushing (Church, Faith and Culture in the Medieval West; Farnham 2008) 133-134; Walter Simons, 'Jean de Warneton et la Réforme Grégorienne', *Mémoires de la Société d'histoire de Comines-Warneton et de la region* 17 (1987) 35-54, here 43.

[17] Cdp 3.7.7; Benoit-Michel Tock, 'Jean de Warneton, Évêque de Thérouanne (1099-1130): Un Grégorien', *Le diocese de Thérouanne au Moyen Age: Actes de la journée d'études tenue à Lille, 3 mai 2007* (Arras 2010) 107-118, here 111-112; Simons, 'Jean de Warneton et la Réforme Grégorienne' 47-49.

are known not to be formal sources for the Cdp.[18] Furthermore, a number of the texts in the Cdp attributed to Pope Urban II are found only in the *Collectio IX librorum*,[19] which may have been compiled by John of Warnenton.[20] The inclusion of Paschal II's letter with such a local concern points further to Thérouanne as the place of compilation.[21] Finally, there are the three canons in which the attribution was changed to Urban II, despite the *Panormia* including the correct attribution of Alexander II.[22] Either the compiler did not rely on the *Panormia* and had access to a text that credited Urban II with these letters or he chose to the change the attribution to give Urban II credit. Both scenarios again demonstrate the close connection between Thérouanne and the papacy.

Pars 6 of the Cdp turned to the Roman law available to treat judicial procedure, which in turn reveals much about the eleventh

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[18] Cdp 3.7.5 = *Collectio VII librorum* in Turin, Biblioteca Nazionale Universitaria, D.IV.33 (6.202) is the only other collection to have this canon; Cdp 3.15.2 = Anselm of Lucca, *Collectio Canonum* A' recension (4.56b) and the *Collectio XIII librorum* in Vat. Lat. 1361 (4.34b).

[19] Cdp 3.7.4, 3.7.6; 3.13.3; 3.15.1; 3.18.2; 3.34.6-.8; 3.35.1-.6. These canons are in Book 9 title 5 of the *Collectio IX librorum* (Ghent, Bibliothèque Universitaire 235, fol. 131r-132r). Joaquín Sedano has argued that Pars 2 drew 49 canons from the 9L, Pars 3 drew 60 canons from the 9L, and Pars 4 drew more than 100 canons from the 9L, see Sedano, 'The Manuscript Tradition of the Collection in Ten Parts' 263.

[20] Like the *Collectio decem partium*, the authorship of the *Collectio IX librorum* remains an open question. While it is not for certain that John of Warneton compiled the *9L*, it is well within the realm of possibility according to Linda Fowler-Magerl. For discussion on John of Warenton's authorship see: Max Sdralek, *Wolfenbüttler Fragmente: Analekten zur Kirchengeschichte des Mittelalters aus Wolfenbüttler Handschriften* (Kirchengeschichtliche Studien 1.2; Münster 1891) 3-86; Jean Marie De Smet, 'De heilige Jan van Waasten en de Gregoriaansche hervorming in het bisdom Terwaan', *Mémoire de licence, Université de Louvain* (1943) 125-138; Laurent Waelkens and Dirk Van Den Auwelle, 'La collection de Thérouanne en IX livres à l'abbaye de Sainte-Pierre-au-Mont-Blandin: Le codex Gandavensis 235' 115-153; Sedano, 'The Manuscript Tradition of the Collection in Ten Parts' 262-263, 268-269; Fowler-Magerl, 'The Collection and Transmission of Canon Law along the Northern Section of the *Via Francigena* in the Eleventh and Twelfth Centuries' 133-134.

[21] Cdp 3.30.2.

[22] Cdp 3.41.6-.8 = *Panormia* 3.138-.140

and early twelfth century. First, while the complete Justinianic corpus may not have been available to legal thinkers, that does not mean they were ignorant of Roman law. Efforts were being made to uncover it from the archives and libraries of the Roman curia. The *Digest*, *Codex*, and *Institutes* were incorporated alongside the *Breviary Alarici*, and *Benedictus Levita*.[23] Second, as diocesan courts became more formalized, understanding and implementing proper procedure required understanding the individual roles of those involved in the judicial process.

The Cdp addressed the responsibilities of the accuser, the accused, the judge, and the witnesses in turn. As the burden of proof lay on the accuser and not on the accused,[24] and the accuser had up to a year of the alleged offense to bring forth the accusation.[25] A judge should not consider the accusations of one absent from court and should not pronounce a sentence against the accused unless he was present. The judge may forego this policy if he made three calls and the accused failed to show.[26] Delays in civil cases or in lighter criminal cases were permitted thought not in cases involving homicide, adultery, malice, or poisoning (*ueneficium*).[27] In the event of a guilty verdict, the goods of the

[23] Ex. Cdp 6.5.36 = Dig. 41.3.15.1 (Berlin, S.P.K., Phill. 1746, fol. 98va); Cdp 6.5.40 = Cod. 8.51.1 (fol. 98va); Cdp 6.5.53 = Inst. 2.12.1 1 (fol. 99rb); Cdp 6.5.4= Breviary Alarici 11.14.6 (fol. 97ra); Cdp 6.5.75 = Benedictus Levita 2.106 (fol. 100ra).

[24] Cdp 6.5.5: 'S[E]i incumbit probatio qui dicit non qui negat' (Berlin, S.P.K., Phill. 1746, fol. 97ra); Dig. 22.3.2.

[25] Cdp 6.5.2: 'Quicumque inscriptione premissa cuiuscumque criminis reum accusare uoluerit, ab eo die quo inscripsit intra annum peragat propositas actiones' (Berlin, S.P.K., Phill. 1746, fol. 97ra); Breviary Alarici 9.26.1.

[26] Cdp 6.5.3: 'Conuinci nemo…In causa capitali nemo absens dampnetur. Neque absens per alium accusatorem accusari potest' (Berlin, S.P.K., Phill. 1746, fol. 97ra), Benedictus Levita 3.204; Cdp 6.5.35: 'Iudices autem sententiam scriptis dicant, et prouocationes condempnato non denegentur, nisi forte ter appellare aliquis maluerit, uel contumax in absentia fuerit. Nam et tertia prouocatio illicita est, et contumaces condemnati appellare non possunt' (Berlin, S.P.K., Phill. 1746, fol. 98rb-98va), Epitome Juliani 76.5.

[27] Cdp 6.5.29: 'In ciuilibus causis uel leuioribus criminibus legibus dilatio prestanda est. Homicidi, adulteri, malefici, uenefici, conuicti si appellare uoluerint non audiantur' (Berlin, S.P.K., Phill. 1746, fol. 98ra); Benedictus Levita 3.181.

convicted are to be returned to his family.[28] In the event of an acquittal, the charge could not be dredged up again.[29] With respects to jurisdiction, bishops were not to pass sentences in matters pertaining to praetorian or civil law under pain of having the sentence retracted. A bishop's sentence could not be retracted, however, if the matter was under his purview.[30]

The evidence to be considered was a particular concern. Testimony of witnesses should be in the flesh, or, if necessary, done in writing.[31] It should be confirmed that the witness is held in good regard, living an honest life, and of worthy dignity whether of the military or holding laudable title. Otherwise the testimony should not be received. Nor should testimony be received if the witness was financially compensated.[32] Also invalid was the testimony of those who were compelled or forced as they were more apt to offer false testimony.[33] Also not permitted to testify

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[28] Cdp 6.5.44: 'Capitali crimine damnatorum bona non ad lucrum praesidis referri, sed cognatis punitorum reddi oportet' (Berlin, S.P.K., Phill. 1746, fol. 98vb); Epitome Juliani 21.10.

[29] Cdp 6.5.1.32: 'De his criminibus de quibus quis absolutus est ab eo qui accusauit, refricari accusatio non potest iudicatum' (Berlin, S.P.K., Phill. 1746, fol. 98rb); Benedictus Levita 3.291.

[30] Cdp 6.5.1.10: 'Quicumque litem…Omnes igitur cause que uel praetorio iure uel ciuili tractantur, episcoporum sententiis terminate, perpetuo stabilitatis iure firmentur. Nec liceat ulterius retractari negotium quod episcoporum sententiis deciderit' (Berlin, S.P.K., Phill. 1746, fol. 97rb-97va); Benedictus Levita 2.366.

[31] Cdp 6.5.6: 'Testimonia autem sic exhiberi oportet ut dicant testes quod sub presentia sua uel susceptum est depositum uel quod depositarius suscepisse conscripsit' (Berlin, S.P.K., Phill. 1746, fol. 97ra); Epitome Juliani 66.1.

[32] Cdp 6.5.12: 'Nullius recipiatur testimonium nisi eius qui sit bona opinione, uel quem dignitas commendat uel militia uel uite honestas uel artis titulus laudabilis uel etiam aliorum testium uox de bona uita eius consentiens. Alius autem testis uilissimus si productus in iudicio fuerit liceat iudici, si hoc existimauerit, tormentis eum subigere' (Berlin, S.P.K., Phill. 1746, fol. 97va), Epitome Juliani 83.1; Cdp 6.5.13: 'Non admittimus autem testimonia eorum qui dicere solent transeuntes se audisse aliquem dicentem pecuniam sibi solutam esse' (Berlin, S.P.K., Phill. 1746, fol. 97va), Epitome Juliani 83.1.

[33] Cdp 6.5.23: 'Idonei non uidentur esse testes, quibus imperari potest ut testes sint' (Berlin, S.P.K., Phill. 1746, fol. 97vb), Dig. 22.5.6; Cdp 6.5.38: 'Qui metu et impressione alicuius terroris apud acta presidis seruum se esse mentitus est postea statum suum defendendi non preiudicetur' (Berlin, S.P.K., Phill. 1746, fol. 98va), Benedictus Levita 3.342.

were: one's enemies (particularly in criminal cases), criminal allies, the infamous, false accusers, and those legally prohibited from testifying.[34] The testimony of a father-in-law, son-in-law, stepfather, stepson, cousin, cousin's children, or any other close relative, such as a father against a son or a son against a father, could not be compelled.[35] Servants may testify if of free status. A freedman, however, had to provide evidence of his manumission. Slaves were forbidden to serve as witness.[36] The prohibition of the *lex Julia* on women testifying who had been found guilty of adultery offered evidence that the testimony of women could be accepted, provided they were in good legal standing.[37] Heretics were permitted to testify against heretics and those who were

[34] Cdp 6.5.17: 'Si quis dixerit testem productum inimicum suum esse, si quidem ex criminali causa, omnino non dicatur testimonium; sin autem alia occasione, dicatur quidem testimonium eius, sed praescriptio ei opponatur' (Berlin, S.P.K., Phill. 1746, fol. 97vb), Epitome Juliani 83.5; Cdp 6.5.18: 'Placuit ut testes non admittantur qui sunt socii criminis nec infames nec calumniatores, uel ceteri quos canones et lex prohibet' (Berlin, S.P.K., Phill. 1746, fol. 97vb), Benedictus Levita 1.309; Cdp 6.5.19: 'Placuit ut qui de se confessus est super alium non credatur' (Berlin, S.P.K., Phill. 1746, fol. 97vb); Benedictus Levita 1.313.

[35] Cdp 6.5.20: 'Ne inuito denuntietur ut testimonium litis dicat aduersus socerum, generum, uictricum, priuignum, sobrinum, sobrinam, sobrino natum, eosue qui priore gradu sint'' (Berlin, S.P.K., Phill. 1746, fol. 97vb), Dig. 22.5.4; Cdp 6.5.23: 'Idonei non…Testis idoneus pater filio, aut filius patri non est' (Berlin, S.P.K., Phill. 1746, fol. 97vb); Dig. 22.5.9.

[36] Cdp 6.5.14: 'Si testis productus seruus esse dicatur, ille autem dicat se liberum esse, siquidem ingenuum scribatur testimonium eius. Postea autem si probatus fuerit seruus, nullius momenti sit. Sin autem libertinum se esse dixerit, si quod strumentum manumissionis sue ostenderit, dicat testimonium. Sin autem in alio loco dicat strumenta sui status habere, scribatur quidem testimonium eius. Postea autem si non produxerit strumenta nullius momenti sit' (Berlin, S.P.K., Phill. 1746, fol. 97va-97vb), Epitome Julian 83.4; Cdp 6.5.15: 'Seruo penitus non credatur si super aliquem crimen obiecerit aut si etiam dominum suum crimine inpetierit. Nam si in tormentis positus exponat quod obicit, creditum illium nullomodo oportebit' (Berlin, S.P.K., Phill. 1746, fol. 97vb), Benedictus Levita 2.344.

[37] Cdp 6.5.26: 'Ex eo quod prohibet lex Iulia de adulteriis testimonium dicere condempnatam mulierem, colligitur etiam mulieres testimonium in iudicio dicendi ius habere' (Berlin, S.P.K., Phill. 1746, fol. 98ra); Dig. 22.5.18.

orthodox may testify against heretics. A heretic, though, may not offer testimony against one who was orthodox.[38]

Pars 6 of the Cdp also turned to Roman law for regulating economic transactions and financial matters. As the twelfth century economy became more urbanized and with the increased circulation of money, forgery became more of a concern. Those who forged money were to have their hands cut off. Those who turned a blind eye were to pay 40 solidos if free born or to receive 40 lashes if they were slaves.[39]

Of particular concern were the legal issues surrounding the entering into and the settling of monetary loans. The individual must be legally able to create a lien and a lien could not be imposed on a man's possessions by a slave, a procurator, serf, agent or chief lessee without the owner's consent.[40] If a creditor holding a surety deposit for someone without condition, the creditor was able to take the surety should the debtor not repay his debt after three admonitions to do so.[41] In cases where there were many guarantors who promised repayment and all of them were able to do so, the repayment of the debt was to be divided amongst them so that one

[38] Cdp 6.5.16: 'Si hereticus contra hereticum litiget, liceat cuiuis eorum haereticum testem adducer. Sin autem orthodoxus contra haereticum litiget, pro orthodoxo quidem etiam haeretici testimonium ualeat. Orthodoxis autem litigantibus, ad testimonium nullus heretico pateat aditus' (Berlin, S.P.K., Phill. 1746, fol. 97vb); Epitome Juliani 41.2.

[39] Cdp 6.5.69: 'Quicumque falsam monetam percussisse comprobatus fuerit, manus eius amputetur, et qui hoc consensit si liber est xl solidos componat, si seruus xl ictus accipiat' (Berlin, S.P.K., Phill. 1746, fol. 100ra); Ansegisus 4.31.

[40] Cdp 6.5.37: 'Nexum non facit prediorum nisi persona que iure potuit obligare. Per seruum autem, colonum, procuratorem uel auditorem conductoremue preiudicium possessioni inuito uel inscio domino imponi non posse, et iure et legum actoribus declarator' (Berlin, S.P.K., Phill. 1746, fol. 98va); Cod. 8.15.8.

[41] Cdp 6.5.65: 'Creditor si sine conditione pignus sibi depositum tenens, ter debitorem suum conuenerit ut soluto debito pignora sua recipiat. Quod si debitor noluerit post tres admonitiones soluto debito pignora sua suscipere, creditor distrahendi pignoris liberam habebit potestatem' (Berlin, S.P.K., Phill. 1746, fol. 99vb); Sententiae Pauli 2.1.5.1 int.

each pays his own part.[42] Heirs of debtors loaned money, however, were not held liable for the debt.[43]

Financial transactions also included the loaning of physical goods. If gold, silver, jewels, or objects have been loaned to someone, have been placed in their custody, or were to be sold, and were burned in a house fire, the one who held the goods along with his witnesses may attest that he was not trying to profit from them. In such cases he was not compelled to repay the items which were loan with the exception of gold and silver.[44] Held accountable were those who accepted on loan a servant (*seruum*), horse, or anything else, and then he led them to battle or put their life in danger. In such cases, the loaned item was to be returned to the owner without delay.[45] To also be held accountable were those who had sold an item but had also loaned it out to someone else for additional profit. Should the item be destroyed, then he was to be held accountable, since had he loaned the item without asking the permission of the one to whom he sold it.[46] Should a loaned

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[42] Cdp 6.5.67: 'Si alienum…Cum multi fideiussores institerint, etiamsi ad soluendum que promiserunt, probantur idonei, et possint omnes in solidum retineri, tamen restitutio debiti inter eos diuidenda est, ut unusquisque id quod eum pro portione sua contingit exsoluat' (Berlin, S.P.K., Phill. 1746, fol. 99vb-100ra); Sententiae Pauli 1.20.1.

[43] Cdp 6.5.60: 'Heres eius cui pecunia credita dicitur, ad sacramentum uocari non potest, quia que egerit auctor suus ad integrum scire non potuit' (Berlin, S.P.K., Phill. 1746, fol. 99va); Sententiae Pauli 2.1.4 int.

[44] Cdp 6.5.66: 'Si cui aurum, uel argentum, aut ornamenta, uel quecumque species fuerint commodate, siue ad custodiendum tradite sint, uel uendende, et in domo ipsius cum rebus suis forsitan fuerint incendio cremate, una cum testibus qui commodata susceperant, prebeat sacramenta nihil exinde suis profuisse compendiis, et nihil cogatur exsoluere, excepto auro et argento quod ardere non poterat' (Berlin, S.P.K., Phill. 1746, fol. 99vb); Benedictus Levita 1.356.

[45] Cdp 6.5.63: 'Si seruum uel equum uel quecumque alia aliquis ab altero ad usum tantum seruiendi commodata susceperit, et eos ad pugnam uel ubi uite periculum incurrant duxerit, ad redditionem commodate rei merito a domino retinetur' (Berlin, S.P.K., Phill. 1746, fol. 99va); Sententiae Pauli 2.1.4.3 int.

[46] Cdp 6.5.64: 'Si facto pretio rem uendendam aliquis cuicumque crediderit, et dum ab eo uendenda profertur, quacumque occasione perierit, ei perit qui eam dederat distrahendam. Ceterum si rem acceptam, non rogante domino sed permittente eo qui accepit, dum uelit uenundare, perdiderit, sibi rei perdite

item be used for less than upright purposes, the owner may recover it.[47] Repayment, however, was not required on goods loaned that were burned, ruined, or lost in a shipwreck. An exception, however, was granted in cases where the goods could have been saved.[48]

The use of Roman law from varied sources both underscores a keen interest in its use and demonstrates a network of legal knowledge in northern France.[49] The Cdp drew the Roman law texts from the *Panormia*, which in turn them from the *Decretum* of Ivo of Chartres.[50] Dafydd Walters has noted that Ivo (and thus the compiler of the *Panormia*) drew upon Justinian's *Corpus iuris civilis*, imperial laws described as *novellae constitutiones* taken from the *Epitome Iuliani*, and *Benedict Levita* for the bulk of Book 16.[51] Antonia Fiori has suggested that Ivo may have consulted the libraries and archives of the papal curia for his Roman law sources.

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ingerit detrimentum' (Berlin, Phill. 1746, fol. 99va-99vb); Sententiae Pauli 2.1.4.4 int.

[47] Cdp 6.5.61: 'Quicquid in rem commodatam ob morbum uel aliam rationem impensum est a domino recipi potest' (Berlin, S.P.K., Phill. 1746, fol. 99va); Sententiae Pauli 2.1.4.1.

[48] Cdp 6.5.62: 'Si facto incendio, ruina, naufragio aut quolibet simili casu res commodata amissa sit, non tenebitur eo nomine is cui commodata est, nisi forte cum possit rem commodatam saluam facere, suam pretulit' (Berlin, S.P.K., Phill. 1746, fol. 99va); Sententiae Pauli 2.1.4.2.

[49] Linda Fowler-Magerl brought attention to this community with her work on the *Via Francigena*, see, 'The Collection and Transmission of Canon Law along the Northern Section of the *Via Francigena* in the Eleventh and Twelfth Centuries' 129-139. So too did Christof Rolker in noting the number of collections that included Ivo of Chartres's Prologue, see *Canon Law and the Letters of Ivo of Chartres* (Cambridge Studies in Medieval Life and Thought, Fourth Series; Cambridge 2010) 29-30, 134.

[50] Fournier, *Les collections canoniques attribuées a Yves de Chartres* 147-156; Joaquín Sedano, 'A Comparative Analysis of the *Panormia* and the *Collectio X partium*', ZRG Kan. Abt. 96 (2010) 80-110; Sedano, 'The Manuscript Tradition of the Collection in Ten Parts' 262-264; Fowler-Magerl, 'The Collection and Transmission of Canon Law along the Northern Section of the *Via Francigena* in the Eleventh and Twelfth Centuries' 134.

[51] Dafydd Walters, 'From Benedict to Gratian: The Code in Medieval Ecclesiastical Authors', *The Theodosian Code*, edd. Jill Harries and Ian Wood (Ithaca 1933) 200-216, here 208-210.

Ivo was in Rome between November 1093 and January 1094. Another possibility is that he may have taken the Roman law texts from a no longer extant version of the *Collectio Britannica*.[52] The *Collectio Britannica* (c.1090) and the *Collectio canonum* in Paris, Bibliothèque de l'Arsenal, ms. 713 (Arsenal 713B), which share a close relationship, also included a number of these texts.[53] Jean Gaudemet commented that the fragments from the *Digest vetus* in the *Collectio Britannica* may very well be the earliest example of the use of the *Digest* in a canonical collection and it exemplifies the triumph of Justinianc law.[54]

By no means is this essay intended to be exhaustive. The decretals and conciliar canons of Popes Urban II, Paschal II, and Calixtus II are featured in Pars 2 and Pars 4 in addition to Pars 3. Pars 2 deals with the constitution of the Church and ecclesiastical property while Pars 4 addresses the life of canons regular and pastoral care.[55] In addition to Pars 6, Roman law features prominently in Pars 7 on matrimonial law.

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[52] Antonia Fiori, 'La 'Collectio Britannica' e la riemersione del Digesto', RIDC 9 (1998) 81-121; here 109-110.

[53] On the *Collectio Britannica*, see Fournier and Le Bras, *Histoire des Collections Canonique en Occident: Depuis les Fausses Décrétales jusqu'au Décret de Gratien*, 2:155-163; Robert Somerville, 'The Letters of Pope Urban II in the *Collectio Britannica*', *Proceedings Cambridge 1984* 103-114; Christof Rolker, 'History and Canon Law in the Collectio Britannica: A New Date for London, BL Add. 8873', *Bishops, Texts and the Use of Canon Law around 1100: Essays in Honour of Martin Brett* (Church, Faith and Culture in the Medieval West; Aldershot 2008) 141-152. On Arsenal 713B see Greta Austin, 'Were There Two Arsenal Collections? Arsenal 713B and the Ivonian *Panormia*', *Canon Law, Religion, and Politics: Liber Amicorum Robert Somerville*, edd. Uta-Renate Blumenthal, Anders Winroth, and Peter Landau (Washington D.C. 2012), 3-14; Martin Brett, 'The Sources and Influence of Paris, Bibliothèque de l'Arsenal MS 713', *Proceedings Munich 1992* 149-167; Robert Sommerville, 'Papal Excerpts in Arsenal MS 713B: Alexander II and Urban II', *Proceedings Munich 1992* 169-184.

[54] Jean Gaudemet, 'Le droit romain dans la pratique et chez les docteurs aux XIe et XIIe siècles', *Cahiers de civilization médiévale* 8/31-32 (1965) 365-380, here 377.

[55] On Pars 4 see Joaquín Sedano, 'The *Collectio decem partium*'s Distinctive Sections: Parts 4 and 10', *Proceedings Toronto 2012* 31-60.

Rather, this essay hopes to use the *Collectio decem partium* as an example of how administrators in the environs of northern France, in the late eleventh and early twelfth centuries, were turning to recent papal decretals and conciliar canons to enact policies central to the reform of ecclesiastical discipline as well as turning to as Roman law to enable ecclesiastical courts to cope with litigation. While their full penetration happened later in the twelfth century, these authorities were beginning to infiltrate a canonical tradition that had relied on the ancient authority of their sources.

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Un maître parisien: Pierre Peverel

In memoriam alii magistri Petri

Anne Lefebvre-Teillard

Au XVIIe siècle, du Boulay dans sa fameuse histoire de l'université de Paris écrivait au sujet de Pierre Peverel: 'Petrus Pulverellus à propos duquel nous n'avons rien si ce n'est dans le petit pastoral la mention de l'institution d'un anniversaire . . .'[1] C'était effectivement peu! Dans le *Cartulaire de l'Eglise Notre Dame de Paris* édité depuis par Guérard, on trouve en effet à plusieurs reprises mention de cet anniversaire institué en mai 1236 par un certain Geoffroy archidiaconus Parisiensis.[2] L'acte contenu dans le *Parvum Pastorale* est celui qui mérite le plus de retenir notre attention. Dans celui-ci Geoffroy fait au chapitre de l'Eglise Notre Dame le don d'un cens capital de douze deniers assis sur trois maisons situées derrière sa propre maison 'qui est dans le cloître'.[3] En contre partie le doyen et le chapitre acceptent de

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[1] César Égasse du Bulay, *Historia universitatis parisiensis* (6 vols. Paris 1666) 3.680 dans le *Catalogus illustrium academicorum* où il reproduit l'acte du *Parvum Pastorale* daté in fine de mai 1236 et non de 1234, comme l'écrit par inadvertance Chris Coppens dans son étude citée infra note 14, 319.

[2] Benjamin E. C. Guérard, *Cartulaire de l'Eglise Notre Dame de Paris* (4 vols. Paris 1850) pars secunda sive Parvum Pastorale, 1.410 (n° XL); pars tertia sive Magnum Pastorale, 2.517 (n° XIV) ; Obituarium, 4.114 (n° CXCVII) et 175 (n° CCCVI). Peu avant lui il y a un autre archidiaconus parisiensis du même nom qui sera élu évêque de Tours en 1206, cf. John W. Baldwin, *Philippe Auguste et son gouvernement* (Paris 1991, trad. de l'édition américaine de 1986) 670.

[3] Ibid. 1.410 (n° XL) 'et tandem quicquid juris habebat in domibus et censu supradictis' ajoute le texte. Geoffroy (Gaufridus) avait acquis ce cens le 8 août 1226 d'un certain chevalier, Jean de monte calvo, cf. Ibid. 2.467 (n°CIV), cens revendiqué par le chapitre de saint Germain l'Auxerois, à bon droit semble-t-il, cf. l'arrangement qui intervient en juin 1227 entre les trois protagonistes, 2.517 (n° XV). Geoffroy est par la suite devenu propriétaire de deux de ces trois maisons comme l'indique notre premier texte: 'Gaufridus… emit retro domum suam que est in claustro censum capitalem duodecim denariorum supra tres domos quarum postmodum duas emit…'. Parmi elles, figure la maison d'un certain Bourdon avec lequel Geoffroy avait eu un conflit de voisinage arbitré en avril 1218 cf. 2.517 (n° XVI). D'après Guérard (ibidem note 1), il aurait

distribuer annuellement en deux anniversaires le 'produit' (*proventus*) de ces trois maisons. Le premier anniversaire concerne le père, la mère, Geoffroy et son frère aîné soit quatre personnes dont deux au moins sont encore vivantes.[4] Le second 'pro animabus' concerne en revanche deux personnes certainement décédées: Guillaume 'quondam archidiaconus' et maître Pierre Peverel 'quondam canonicus'.[5]

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racheté cette maison à ses héritiers en 1227. Ce conflit prouve en tout cas que Geoffroy était déjà en 1218 archidiaconus ecclesiae Parisiensis et en possession d'une maison dans le cloître. La même année, il est envoyé en compagnie de 'magister Galterus' (i.e.Gautier Cornut) par le chapitre auprès de Pierre archevêque de Sens cf. 2.345 (n° XXXVI). Pierre [de Corbeil] est un ancien chanoine et maître en théologie parisien, nommé archevêque par Innocent III en décembre 1200 et mort en juin 1222, cf. *Fasti Ecclesiae Gallicanae*, 11: *Diocèse de Sens*, sous la direction de V.Tabbagh (Turnhout 2009) 99 et s. Gautier Cornut lui succèdera (cf. ibidem 104). Il ressort de ce qui précède que Geoffroy a pu connaître Pierre Peverel quelques années plus tôt, bien qu'il ne semble pas avoir été son maître. Mais il est aussi possible que cette institution soit en rapport avec le statut très particulier des maisons situées dans le cloître ; sur ce statut cf. Guérard, *Le cartulaire* CIX-CX.

[4] Cf. Guérard, *Le cartulaire* 1.410 (n° XL): 'Concessimus autem prefato G. archidiacono quod proventus trium domorum predictarum distribuentur in duobus anniversariis que fient annuatim in ecclesia Parisiensi: unum videlicet patris et matris dicti G. archidiaconi et ipsius archidiaconi, et fratris sui primogeniti post mortem ipsorum '. Cette dernière précision doit être interprétée comme ne concernant que Geoffroy et son frère aîné, même s'il n'est pas dit que l'institution est faite 'pro animabus' de ses père et mère, comme il le sera pour les bénéficiaires du second anniversaire (infra note 5). Un texte qui figure dans l'Obituaire au 30 octobre et que Guérard date 'circa 1255' accorde à Geoffroy qu'après sa mort, son anniversaire sera célébré le même jour que celui de ses parents et de son frère, en rappelant le cens de douze deniers 'supra tres domos' qu'il a donné au chapitre, cf. ibidem 4.175-76.

[5] Suite du texte du 1.410: 'et aliud pro animabus venerabilis Guillelmi, quondam archidiaconi et magistri Petri Pulverelli, quondam canonici Parisiensis'. Dans l'Obituaire (4.114, n°CXCVII) à la date du 18 juillet (XV Kal augusti) il est écrit: 'Eodem die obiit Guillemus archidiaconus qui dedit nobis tres purpuras albas . . . Concessit autem capitulum [anniversarium] ejusdem archidiaconi hac die celebrari. Concessit etiam capitulum ad preces venerabilis viri Gaufridi, archidiaconi Parisiensis quod anniversarium magistri Petri Pulverelli simul ea die perpetuo celebretur. Qui archidiaconus dedit capitulo capitalem censum duodecim denariorum supra tres domos'. C'est ce dernier texte qui figure dans l'ouvrage d'Auguste Molinier, Auguste Longnon et alii, *Obituaires de la*

Intéressante mais brève mention faite par du Boulay de ce maître que seul des travaux relativement récents ont permis de mieux connaître. Magister *Petrus Pulverellus* a d'abord été connu par les fonctions de juge délégué que le pape Innocent III lui avait confiées. Son nom figure à ce titre dans plusieurs lettres de ce pape[6] dont une sera présente dans la collection officielle des Décrétales de Grégoire IX[7]. C'est l'historien américain John W. Baldwin qui dans sa thèse: Masters, princes and merchants' publiée en 1970[8], a attiré l'attention sur Pierre Peverel dans l'exercice de cette fonction. Les deux notes qui s'y réfèrent[9]

province de Sens: 1: *Diocèses de Sens et de Paris* (Paris 1902) 1.156. Les archidiacres nommés Guillaume, présents dans ce cartulaire sont nombreux comme on peut le constater dans l'Index generalis dressé par Guérard in fine de son ouvrage (cf. *Le cartulaire* 270 col. b). Après vérification des références auxquelles il renvoie, le seul possible paraît être Guillelmus archidiaconus Parisiensis Briae. L'archidiaconé de Brie est un des trois archidiaconés du diocèse de Paris.

[6] Sur les lettres d'Innocent III, cf. Léopold Delisle, 'Mémoire sur les actes d'Innocent III', BEC 19 (1858) 1-73. L'auteur y donne depuis Sirlet au XVIe siècle jusqu'à Migne au XIXe siècle, en passant notamment par Baluze, l'histoire de leur publication d'après les registres de la chancellerie pontificale (8-10). Sous l'impulsion d'Othmar Hageneder, ces registres dont il manque malheureusement une partie entre 1200 et 1202, font depuis 1964 (1. Pontifikatsjahr 1198/99) l'objet d'une remarquable édition scientifique par l'Académie des sciences autrichienne sous le titre *Die Register Innocenz III*. (= Innocent III, *Register*). Le dernier volume paru, 14 (Wien 2018) concerne 1es années 1211/1212. Il convient de souligner après Delisle 'Mémoire'11, que toutes les lettres n'étaient pas enregistrées, loin de là. C'est le cas de plusieurs lettres intéressant notre sujet (cf. infra).

[7] Il s'agit de la décrétale *Cum dilecti* (3 Comp. 1.3.7[X 1.4.8]) ou *Cum dilectus* dans l'édition du Friedberg. Dans sa note 2 sous cette décrétale Friedberg souligne déja les nombreuses variantes du surnom de Pierre Peverel dans les manuscrits qu'il a utilisés: Penetel, Penerel, Pulverel, Pernel. Sur l'affaire qui est à l'origine de cette décrétale cf. infra n. 25.

[8] John W. Baldwin, *Masters, Princes and Merchants* (2 vols. Princeton 1970). Le sous-titre, *The Social Views of Peter The Chanter and his Circle*, rend mieux compte du contenu de l'ouvrage, Pierre le Chantre, Petrus Cantor (†1197) ayant été un célèbre théologien parisien dont l'influence reste considérable au début du XIIIe siècle.

[9] Ces deux notes sont situées dans le volume II entièrement consacré aux notes. Elles correspondent au chapitre 2 consacré dans le volume I à 'The Chanter's

n'échapperont pas à l'œil vigilant de Stephan Kuttner.[10] Pierre Peverel a été ensuite connu comme l'auteur très probable d'un de ces nombreux petits traités de procédure qui ont fleuri à partir du milieu du XIIe siècle:[11] l'ordo *Sapientiam affectant omnes*. Alors que ces ouvrages sont généralement anonymes, le nom de son auteur est livré par le prologue d'un autre traité, l'ordo *Scientiam omnes appetunt naturaliter*, édité en 1913 par Wahrmund.[12] Il s'agit bien de Pierre Peverel comme le démontrera Jean-Marie

Circle at Paris'. C'est d'une manière incidente, à propos des fonctions de juge délégué de Robert de Courson, que John Baldwin 'Masters' II 11 n.27, attire l'attention sur Pierre Peverel. Il en va de même à propos des fonctions de juge délégué du doyen de Salisbury, Richard Poore, alors résidant à Paris ibidem 21 n.150. Il signale à cette occasion un certain nombre de textes inédits mentionnant Pierre Peverel.

[10] Dans la réédition en 1983 de son article 'Bernardus Compostellanus Antiquus', *Gratian and the Schoosl of Law* (Variorum Reprints ; London 1983) n° VII, Stephan Kuttner modifie (in Retractationes 23) la note 39 de son article primitivement publié en 1943 dans la revue *Traditio* qui concernait l'auteur de l'ordo *Scientiam* dont nous parlerons ci-après. C'est à propos du nom de celui dont l'auteur suit les 'vestigia' que Stephan Kuttner cite les deux notes de Baldwin ainsi que l'étude de Jean Marie Carbasse (cf. infra n.13).

[11] On possède actuellement un précieux répertoire de ces traités dressé par Linda Fowler-Magerl: *Ordo iudiciorum vel ordo iudiciarus: Begriff und Litteratur* (Frankfurt am Main 1984 dont elle a élargi le champ chronologique dans *Ordines Iudiciarii and Libelli de ordine iudiciorum* (Typologie des sources du Moyen Age occidental 63; Turnhout 1994).

[12] Ludwig Warhmund, *Quellen zur Geschichte des Römisch-kanonischen Prozesses im Mittelalter* (Innsbruck 1913, réimp. Aalen 1962) 2.1: 1-66 dont voici le passage du prologue qui nous intéresse: 'Inde est quod ego G. ad petitionem sociorum meorum . . . compendioso tractatu tradere proposui, sequens vestigia excellentissimi ingenii magistri P. Penerch.'. L'ouvrage est édité d'après deux manuscrits: Luxembourg BN13, fol. 1r-15ra et Madrid BN 243, fol. 44r-52va. Stephan Kuttner dans son *Repertorium* 33 n.1 critiquera l'attribution à Guillelmus Vasco de *Scientiam* faisant remarquer qu'un manuscrit du British Museum porte: 'ego galterus'; il critiquera également 324 n.3, l'identification de l'auteur des 'vestigia' que suit G. avec Petrus Hispanus. Ces critiques seront reprises et amplifiées dans la réédition de son article sur Bernardus Compostellanus n.10. Les variantes du surnom attribué à Pierre Peverel dans ce prologue ont été recensées non seulement par Kuttner mais également par Linda Fowler-Magerl dans *Ordo* 131.

Carbasse dans une étude approfondie, parue en 1979.[13] Dès lors il ne fait plus de doute que maître Pierre Peverel est un juriste. Les travaux menés sur les manuscrits témoins de l'enseignement du droit canonique délivré à Paris au début du XIIIe siècle, en particulier ceux de Chris Coppens sur l'apparat au Décret *Animal est substantia,* le confirmeront amplement.[14] Mieux connu mais pas encore bien connu, c'est pourquoi nous voudrions tenter d'enrichir le dossier sur deux points d'inégale importance: son activité en tant que maître parisien et son élection à l'évêché d'Agde qui marque la fin de sa vie.

L'activité du maître parisien

Pierre Peverel apparaît à peu près au même moment dans nos sources tant en ce qui concerne son activité de juge délégué que celle de maître. Le plus ancien acte qui le désigne comme juge délégué date de mars 1207. Or dans les manuscrits témoins de l'enseignement du droit délivré à Paris au début du XIIIe siècle, c'est seulement vers cette date qu'il apparaît. Il n'est pas cité par Petrus Brito, auteur de l'apparat au Décret *Ecce vicit leo* qui est antérieur à 1205.[15] En revanche Pierre Peverel est cité par l'auteur de l'apparat *Animal est substantia* que l'on peut dater des années 1205-1210.[16] C'est tout aussi tardivement qu'il est cité par deux des maîtres parisiens dans leurs gloses sur la *Compilatio prima* de

[13] Jean-Marie Carbasse, 'L'ordo judiciorum "Sapientiam affectant omnes",' *Confluence des droits savants et des pratiques juridiques: Actes du colloque de Montpellier* (Milan 1979) 15-35. Il y établit notamment une comparaison très significative entre les textes de *Sapientiam* et de *Scientiam* qui ne laisse aucun doute sur l'attribution du premier à Pierre Peverel.

[14] E. Chris Coppens, 'Pierre Peverel, glossateur de droit romain et canoniste?', *La cultura Giuridico-canonica medioevale*, a cura di Enrico de Léon e Nicholas Alvarez de las Asturias (Milano 2003) 303-394. L'auteur qui avait alors entrepris l'édition de l'apparat *Animal est substantia,* y publie (358-394) les gloses qui citent Pierre Peverel.

[15] Cf. notre étude, 'Petrus Brito, auteur de l'Apparat Ecce vicit leo', *Proceedings Esztergom 2008* 117-135.

[16] Sur cette datation, cf. infra 'Pierre Peverel enseignant'.

Bernard de Pavie, base de l'enseignement du *ius novum*.[17] Reprenons plus en détail l'étude de ces deux activités.

Pierre Peverel, juge délégué

Juge délégué mais aussi arbitre, deux fonctions que les actes qui nous ont été conservés permettent d'entrevoir.[18] Ils sont huit au total et s'étendent de 1207 à 1213. Le plus ancien conservé dans le cartulaire de Saint Germain l'Auxerrois donne la copie d'une lettre d'Innocent III en date du 19 mars 1207, nommant Pierre Peverel juge délégué en compagnie d'A [=Adam], archidiacre majeur et du succentor de l'Eglise de Paris.[19] Ce dernier étant décédé peu après, ce sont 'a archidiaconus et magister p. pelverellus' qui vont rendre la sentence conformément aux instructions contenues dans le mandat d'Innocent III.[20] On peut

[17] Sur ces différents manuscrits, cf. Anne Lefebvre-Teillard, 'La lecture de la *Compilatio prima* par les maîtres parisiens du début du XIIIe siècle', *Proceedings Washington 2004* 223-250.

[18] C'est grâce à la thèse de John Baldwin, *Masters* que nous avons retrouvé quatre d'entre eux dont trois particulièrement intéressants sont publiés infra en annexe.

[19] Paris, Archives Nationales LL 387 fol. Vv-VIr, infra Annexe I texte n.1. Au XIIIe siècle, le diocèse de Paris étant divisé en trois archidiaconés, le terme 'maior' qui n'est pas toujours utilisé, désigne l'archidiacre de Paris proprement dit. C'est un personnage important comme Paul Fournier l'avait souligné dans sa thèse *Les officialités au Moyen Age: Étude sur l'organisation, la compétence et la procédure des tribunaux ecclésiastiques ordinaires en France, de 1180 a 1328* (Paris 1880) 10 n.4.

[20] Il prévoit en effet cette possibilité par sa formule placée in fine: 'Quod si non omnis hiis exequendis potueritis, interesse duo vestrum ea nichilominus exequatur'. Le décès du succentor indiqué au début de la sentence, est une excuse valable ; mais lorsqu'un des trois juges fait défaut 'se nullatenus excusante', la sentence rendue par les deux autres sera déclarée nulle. C'est ce qui est arrivé dans l'affaire assez complexe opposant le prieur et le couvent de Saint Martin des Champs à l'archiprêtre de Saint Jacques de la Boucherie ; une affaire à l'intérieur de laquelle un appel d'une sentence interlocutoire interjeté par l'archiprêtre avait valu au prieur de Saint Victor, à l'archiprêtre de Saint Séverin et à Pierre Peverel d'être nommés juges délégués par Innocent III ; ce dernier décrète leur sentence 'irritam et inanem' parce que 'iuris ordine non servato a duobus tantum iudicibus tertio se nullatenus excusante prolata fuerat', cf. Innocent III, *Register* 12 n° 147 (20 décembre 1209).

noter à cette occasion que Pierre Peverel est qualifié de 'canonicus sancti Clodoardi' (sic) dans la lettre d'Innocent III et de 'canonicus parisiensis' dans la sentence[21] comme d'ailleurs dans les autres actes le concernant. On peut également noter qu'il est qualifié d'emblée de *magister*.[22] Pierre Peverel est donc arrivé à Paris durant l'épiscopat d'Eudes de Sully († 13 juillet 1208). Il est dès la fin de cette même année 1207 ou au début de l'année suivante, arbitre en compagnie de Jean, abbé de saint Victor dans un conflit opposant Pierre de Nemours, nouvel évêque de Paris aux chanoines de saint Cloud; la sentence qui donnera raison aux chanoines sera rendue en juin 1209.[23] Cette année 1209 paraît assez chargée pour Pierre Peverel que nous retrouvons par deux fois nommé juge délégué en compagnie de l'archidiacre Adam. Le 3 janvier 1209 Pierre et Adam sont nommés en compagnie du doyen de Salisbury 'Parisius commoranti'[24] dans une affaire assez complexe concernant l'élection de l'abbé du monastère

[21] Dans cette collégiale de Saint Cloud, comme dans celle de Champeaux, de Saint Marcel et de Saint-Germain-l'Auxerrois, la collation des prébendes appartient à l'évêque de Paris comme le rappelait Innocent III dans une lettre du 30 décembre 1204 adressée à l'évêque de Paris, Eudes de Sully, cf. Innocent III, *Register* 7 n° 179. Sur l'ancienneté de ce 'privilège' octroyé par Innocent II à l'évêque de Paris, cf. Guérard, *Le cartulaire* 1.23.

[22] La sentence qu'Adam et Pierre rendent à l'égard des chanoines de Saint Germain l'Auxerois qui ne remplissent pas correctement leurs devoirs a dû paraître sévère, même si elle s'inscrit dans une politique de réforme des chapitres voulue par Innocent III. C'est sans doute pour cela qu'elle fera en novembre 1208, l'objet d'une approbation officielle par Pierre de Nemours le tout nouvel évêque de Paris, approbation qui figure dans le même cartulaire fol. XV r°, cf. infra Annexe I, n° 1.

[23] Cf. GC 7. 673-674. C'est à propos de 'Johannes I. vulgo Teutonicum dicunt' nommé en octobre 1206 juge délégué 'auctoritate apostolica' dans une affaire antérieure, que les auteurs de la Gallia ajoutent un peu plus loin: 'Idem una cum Petro Pulverello Parisiensi canonico delectus arbiter et iudex inter P. Parisiensem episcopum et sancti Clodoaldi canonicos super ecclesia sancti Iohannis quae est infra ambitum aedium episcopi apud sanctum Clodoaldum, eam canonicis adjudicavit anno 1209 mense iunio, sabbato ante festum sancti Iohannis Baptistae'.

[24] A la suite de l'interdit jeté sur l'Angleterre par Innocent III en mars 1208 (affaire de l'élection de Stephen Langton) plusieurs grands dignitaires anglais se réfugieront à Paris dont Richard Poore doyen de Salisbury.

d'Andres.[25] Le 29 janvier Pierre et ce même archidiacre de Paris sont nommés juges délégués avec l'abbé de Sainte Geneviève dans une affaire également assez complexe concernant l'élection de l'évêque de Thérouanne.[26] Enfin une lettre d'Innocent III adressée au prieur et au couvent de Saint Martin des Champs en date du 20 décembre nous apprend que Pierre Peverel avait été nommé juge délégué en compagnie du prieur de Saint Victor et de l'archiprêtre de Saint Séverin.[27] Ce mandat dont Innocent III nous indique

[25] Innocent III, *Register* 11 n° 200 (205). Elle oppose Guillaume 'Andrensis ecclesie monachus qui pro electo eiusdem ecclesie se gerebat' et l'abbé de Charroux qui prétend que, d'après un statut de l'évêque de Thérouanne, l'élection doit se faire à Charroux et porter sur quelqu'un tiré du sein du monastère de Charroux: 'ut monasterio Andresis vacante, Andrenses fratres in Karroffensi capitulo aliquem de gremio monasterii karroffensis sibi elegerint in abbatem'. Déjà en décembre 1207, Innocent III avait demandé à l'évêque, au doyen du chapitre de Senlis et à l'abbé de Chaalis d'enquêter sur les prétentions des uns et des autres, cf. Innocent III, *Register* 10 n°170. L'affaire ne sera définitivement tranchée qu'en 1211, cf. infra n.30.

[26] Innocent III, *Register* 11 n° 220(226). Elle avait été primitivement confiée en avril 1208 à l'abbé de saint Victor [Jean], au doyen du chapitre de Notre Dame [Hugues Clément] et à Robert de Courson, cf. ibidem n° 40(43) mais ils avaient continué la procédure et cassé l'élection malgré l'appel a gravamine interjeté par l'élu: 'At ipsi appellationi eiusdem minime deferentes in ipso negotio procedere decreverunt'. Le mandat du pape adressé à nos trois juges, leur demande de vérifier la concordance entre les originaux des dépositions testimoniales et celles qui lui ont été transmises et si elles sont concordantes, de déclarer 'irritum et inane' tout ce qui a été fait après l'appel de l'élu au siège apostolique, afin que la consécration de ce dernier ne soit pas différée. La prudence manifestée par Innocent III s'explique notamment par le contexte politique particulièrement complexe des rapports entre Philippe Auguste et les comtes de Flandres, cf. Raymonde Foreville, *Le pape Innocent III et la France* (Päpste und Papsttum 26 ; Stuttgart 1992) 277-281.

[27] Innocent III, *Register* 12 n° 147. L'affaire opposait Saint Martin des Champs à l'archiprêtre de Saint Jacques [de la Boucherie] depuis plusieurs années, puisque trois juges délégués avaient été désignés le 20 mars 1206, cf. Bernard Barbiche, *Les actes pontificaux originaux des Archives Nationales de Paris*, 1: *1198-1261* (3 vols. Città del Vaticano 1975) 1.28 n° 62. C'est sur l'appel d'une sentence interlocutoire interjeté par l'archiprêtre de Saint Jacques que nos juges sont intervenus; leur sentence a été déclarée nulle par Innocent III car rendue par deux des juges 'tertio se nullatenus excusante' (on ne dit pas lequel), cf. supra n. 20.

incidemment l'existence, ne figure pas dans les registres tout comme celui dont nous allons parler à présent.

C'est dans le cartulaire de l'abbaye de Longpont qu'en 1211 nous trouvons la mention de ce mandat. Il avait été donné au doyen de Salisbury, à Pierre succentor [de l'église de Paris] et à magister Pierre puln. (sic pour pulv.= pulverellus) dans une affaire opposant l'archiprêtre de Saint Séverin au prieur de Saint Julien. Les parties ont finalement choisi la voie de l'arbitrage.[28] Il est assuré par deux arbitres: le prieur de Saint Martin des Champs et *Galterius Cornutus canonicus parisiensis*, le très probable auteur de l'ordo *Scientiam* dont nous avons parlé ci-dessus.[29] C'est également en 1211 que nous retrouvons cité le nom de Pierre Peverel dans une lettre d'Innocent III adressée le 23 mars à l'abbé et au couvent de Charroux. Elle les informe, après avoir rappelé toute la procédure concernant le conflit qui les opposait à l'abbé du monastère d'Andres, que le pape y a personnellement mis fin par une amiable composition acceptée par les procureurs des deux parties.[30]

En 1213 enfin, l'année même où il est témoin dans la donation d'une maison que Pierre de Nemours, évêque de Paris, fait au profit du monastère de Saint Antoine,[31] il est à nouveau nommé

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[28] Cf. infra Annexe I n° 2. Le texte n'indique que le millésime et ne donne pas la date du mandat adressé aux trois juges délégués.

[29] Galterius qui le rédigera peu après le IVe concile de Latran (1215) dira y suivre les 'vestigia excellentissimi ingenii magistri P. Penerch'. cf. supra n. 12. Sur l'étroite parenté entre l'ordo *Scientiam* rédigé par Gautier et l'ordo *Sapientiam* rédigé par Pierre Peverel, cf. supra n.13.

[30] Innocent III, *Register* 14 n° 19. Le pape rappelle le mandat qu'il avait donné au doyen de Salisbury, à l'archidiacre A et à Pierre Peverel au sujet de la coutume 'que iuri communi preiudicaret' invoquée par Charroux (supra n.25) mais le pape nous apprend aussi que 'unus eorum, videlicet decanus [Richard Poore] astrueret sibi de cause meritis non liquere, quam ad nostrum cupiebat examen remitti'. Les deux juges restant 'cupientes negotium expedire prout partes pluries instanter petierant' ont poursuivi la procédure jusqu'à la sentence. Ils l'ont rendue malgré 'quasdam suspitionis causas' proposées juste avant par le procureur du monastère d'Andres, causes dont il n'avait fait nulle mention au cours de la procédure. Il s'est retiré sans même avoir demandé comme il se doit dans ce cas, la nomination d'arbitres 'ad cognocendum de ipsis'.

[31] Cartulaire du monastère saint Antoine, Paris, AN. LL 1595 fol. 28r: 'p. [Petrus] dei gratia parisiensis episcopus universis qui litteras presentes viderint

juge délégué par Innocent III. C'est l'expédition d'une lettre datée d'août 1213 et conservée à la Bibliothèque Nationale qui nous en informe. Pierre Peverel y est nommé juge délégué en compagnie de l'évêque de Paris et du doyen de Salisbury, dans une affaire opposant l'archevêque de Rouen à l'abbesse de Montivilliers.[32] C'est le dernier acte, mais non des moindres, qui témoigne de son activité comme juge délégué. Leur nombre et la qualité des personnes en compagnie desquelles il est nommé dès le début de sa présence à Paris, laissent penser qu'il est un maître plus important qu'on ne le supposait et peut-être déjà d'un certain âge.

L'enseignant

L'activité de Pierre Peverel dans le domaine de l'enseignement du droit est certaine, mais ne nous est connue jusqu'à présent que par les références qu'y font ses collègues parisiens contemporains. Tel est en particulier le cas de l'auteur de l'apparat au Décret *Animal est substantia.* Cet apparat qui emprunte beaucoup à son prédécesseur, l'apparat *Ecce vicit leo* mais sait aussi s'en démarquer, date des années 1205-1210.[33] Il témoigne d'une

salutem in domino. Universitati vestre notum facimus quod nos domum que fuit Theobaldi de braya sitam in recti sancti Maglorii ante domum domini regis donavimus et concessimus in elemosinam monasterio sancti Anthonini parisiensis ut habeant et perpetuo possideant domum illam...Huic nostra donationi et concessioni, presentes fuerunt . . . magister petrus pulverellus et nicholaus de carnoto canonici parisienses . . . Actum anno domini millesimo duecentisimo tertio decimo, mense mayo in crastino beati Iohannis ante portam latinam' (=7 mai 1213).

[32] Paris BNF, n.a.f. 23056 fol. 2. C'est grâce à John Baldwin que nous avons retrouvé cette lettre dont la bulle de plomb est encore intacte. Elle figure dans un dossier concernant cette abbaye dont l'abbesse défend vigoureusement les privilèges. La copie de cette bulle ne figurant pas dans les registres, nous en donnons le texte infra Annexe I n°3.

[33] Il est antérieur à la *Compilatio tertia*, cf. Coppens, 'Pierre Peverel' 311 et 334. Il est regrettable que l'auteur n'ait pas songé à consulter pour résoudre les questions qu'il se pose (ibidem 334-335) à propos de cette datation aux collections intermédiaires entre la *Compilatio prima* et la *Compilatio tertia*, notamment à celle de Gilbert (1202-03), d'Alain (1206) et de Bernard de Compostelle (1208) ; toutes les décrétales citées page 334 notes 91 à 95 sont en

utilisation croissante du droit romain par les canonistes parisiens, croissance à laquelle Pierre Peverel n'est certainement pas étranger. Les gloses dans lesquelles son auteur fait référence à ce dernier ont été éditées par Chris Coppens en 'Addendum' de son étude précitée.[34] Si l'on examine de près ces différentes gloses, l'on s'aperçoit qu'elles portent au total sur soixante dix huit textes du Décret (canons ou *dicta*) et pour un peu plus de la moitié d'entre eux, sur des textes empruntés directement ou indirectement au droit romain.[35] Dans les gloses portant sur ces textes comme sur les trente six autres 'non romains' il est fait une large utilisation des arguments tirés du droit romain à commencer par l'auteur de l'apparat lui-même. C'est le plus souvent à l'occasion du texte qu'il cite, que ce dernier fait en effet référence à l'interprétation que Pierre Peverel a pu en donner,[36] tout particulièrement lorsqu'il

effet dans Gilbert, Alain ou Bernard et il en va de même page 335 pour la décrétale *Cum dilecti* (Potth. 947) placée sous le titre *De electione* dans la collection de Gilbert éditée en 1940 par Heckel (anh. n°1) ; elle figure également sous ce titre dans trois manuscrits témoins de la diffusion de la collection de Gilbert dans la France du Nord (D, H et La). L'auteur d'*Animal est substantia* a donc utilisé cette version de la collection de Gilbert dans sa glose n° 85 et non la version du manuscrit de Bruxelles qui la place sous le titre *De causa proprietatis* (2.6.2) comme dans la *Collectio romana* de Bernard de Compostelle (2.5.1) reprise par la *Compilatio tertia* (2.5.1= X 2.12.3). Sur ces manuscrits cf. notre étude: 'La diffusion de la collection de Gilbert l'Anglais dans la France du Nord', BMCL 33 (2016) 69-135, à paraître également dans les *Proceedings Paris 2016*.

[34] Coppens 'Pierre Peverel' 358-394. L'auteur y donne pour nombre d'entre elles les variantes des divers manuscrits sur le même passage du Décret, car *Animal est substantia* est encore un apparat 'ouvert' dont la version des manuscrits L et E est à mon avis postérieure à la *Compilatio romana* de Bernard de Compostelle (cf. infra n.36). On y trouve donc au total cent quatre gloses provenant des quatre manuscrits restants, cf. ibidem 310.

[35] Sur trente et un textes directement tirés du *Corpus Iuris Civilis* et sur onze textes indirectement tirés du droit romain au travers notamment des passages empruntés par Gratien aux Faux isidoriens, soit au total quarante deux textes sur soixante dix huit.

[36] Ce trait caractéristique avait été relevé par Chris Coppens dans son étude 'Pierre Peverel' 330-331. Il y souligne (337-340) l'autonomie que l'auteur garde vis à vis de cette interprétation. Dans l'addendum n° 13 à 15, l'auteur cite (MSS K et L) la décrétale *Dilectus* sous le titre *De restitutione spoliatorum*

s'agit de procédure, puisque plus des deux tiers des gloses citant Pierre Peverel y ont trait.[37] Il est rare en effet qu'il soit cité en dehors de toute référence au droit romain[38] et encore plus rare que son argumentation ne repose pas sur ce dernier.[39]

Ces traits caractéristiques se retrouvent dans deux manuscrits témoins de l'enseignement du *ius novum* tel qu'il était délivré à Paris durant ces mêmes années 1205-1210: le manuscrit 107 de la bibliothèque municipale de Saint Omer et le manuscrit 385 de la bibliothèque municipale de Troyes.[40] Dans ce dernier manuscrit, plus connu sous le nom d'apparat *Militant siquidem patroni* dont l'auteur a très probablement utilisé la *Compilatio romana* de

conformément à la collection de Gilbert (app. 7) et à H et La (2.7.3). Cette référence qui permet à l'auteur de corriger l'opinion de Pierre est reprise dans le manuscrit E mais celui-ci y ajoute une référence au titre *De ordine cognitionum* sous lequel elle figure dans la *Compilatio romana* (2.4.un). Elle est utilisée également sous ce même titre par le manuscrit L sur l'addendum suivant (n°16) qui concerne également C.2 q.2 c.1. Elle sera reprise sous ce dernier titre dans la *Compilatio tertia* (*Cum Dilectus* 2.4.un ; X 2.10.2).

[37] Pierre est particulièrement cité sur la Causa 2: dix huit citations dont douze sur la questio 6 et sur la Causa 3: douze citations dont cinq sur la questio 7.

[38] Cf. par exemple les gloses n° 6, 66, 85, 93.

[39] Il cite une seule fois une décrétale, la décrétale *Super questionum* (1204, Potth. 2163, Alain 1.13.3 ; Bernard 1.21.8) à l'appui de celle-ci (addendum n° 18) et peut-être, à moins que ce ne soit l'auteur, Sedes apostolica (1203, Potth. 2062, Alain 1.3.2 ; Bernard 1.4.4) dans l'addendum n° 91. Toutes les autres sont citées par l'auteur de l'apparat et non par Pierre Peverel comme le laisse entendre Coppens, 'Pierre Peverel' 333-334. Il n'est pas toujours facile de distinguer ce qui appartient à l'un ou à l'autre, sauf lorsque l'auteur après avoir fait référence à Pierre s'exprime à son tour à la première personne du pluriel (dicimus: add. n°99) ou du singulier (non credo: add. n° 37) ou encore lorsqu'il corrige son interprétation, à l'aide d'une décrétale récente (add.14-15).

[40] Une copie sélective du manuscrit de Saint Omer est conservée aux Archives départementales de Lons le Saunier (ms. n° 17). A côté du manuscrit de Troyes 385, seul complet, il existe plusieurs manuscrits qui contiennent partiellement l'apparat *Militant siquidem patroni*, cf. notre étude (citée à la note suivante) 1314. Les gloses figurant dans ces deux manuscrits seront partiellement reprises après la parution des Compilationes tertia et secunda dans le manuscrit Paris BNF latin 9632, cf. notre étude 'Un curieux témoin de l'Ecole de Petrus Brito: le manuscrit Paris BN latin 9632', BMCL 26 (2004-2006) 125-152.

Bernard de Compostelle,[41] Pierre Peverel n'est cité que deux fois.[42] En revanche il l'est onze fois dans la deuxième couche de gloses du manuscrit de Saint-Omer dont l'auteur est peut-être le même que celui de l'apparat au Décret *Animal est substantia.*[43] Comme lui en effet il cite à plusieurs reprises Pierre en compagnie d'un certain magister A,[44] comme lui il rapporte dans des termes fort proches certaines positions particulièrement marquantes prises par Pierre Peverel.[45] C'est notamment le cas en matière de mariage où Pierre Peverel tente de se servir du droit romain pour s'opposer à une évolution récente du droit canonique en la matière. Il refuse en effet de voir dans les fiançailles suivies de 'copula

[41] Cf. Anne Lefebvre-Teillard, '"D'oltralpe", observations sur l'apparat Militant siquidem patroni', *Amicitiae Pignus: Studi in ricordo di Adriano Cavanna*, edd. Antonio Padoa Schioppa, Maria Gigliola di Renzo Villata, Gian Paolo Massetto (Pubblicazioni dell'Istituto di Storia del Diritto Medievale, Moderno dell'Università degli Studi di Milano 31; Milano 2003) 1311-1335.

[42] Une première fois sur la décrétale *Requisivit* au titre *De integrum restitutione* (1Comp. 1.32.1= X 1.41.1), cf. Annexe I n° 4 et une deuxième fois dans le cadre d'une longue glose sur *Quicumque* au titre *De conditionibus appositis* (1 Comp. 4.5.1=X 4.5.1) à propos des mots 'conditio facta': 'id est modus, dicit .p.pulverel, ff. de conditionibus' (fol. 71rb).

[43] Nous écrivons 'peut-être' car la question nécessiterait des investigations bien plus amples, hors de propos dans la présente étude.

[44] Anne Lefebvre-Teillard, 'Magister A.: Sur l'école de droit canonique parisienne au début du XIIIe siècle', *'Panta rei': Studi dedicati a Manlio Bellomo* (5 vols. Roma 2004) 3.239-257 où l'on trouvera en Annexe trois gloses citant Pierre Peverel en compagnie de magister A qui, lui, l'est beaucoup plus. Tantôt dénommé Aubertus comme dans l'addendum n° 1 publié par Chris Coppens et dans le texte extrait d'*Animal est substantia* publié par Rudolf Weigand dans sa thèse *Die bedingte Eheschließung im kanonischen Recht*, 1: *Die Entwicklung der bedingten Eheschliessung im kanonischen Recht: Ein Beitrag zur Geschichte der Kanonistik von Gratian bis Gregor IX*. (Münchener Theologische Studien 3; Kanonistische Abteilung 16; München 1980) 300, tantôt Albertus comme dans le manuscrit Paris BNF latin 9632 fol. 23vb, tantôt Albericus comme dans *Le cartulaire de Notre Dame de Chartres*, edd. Eugène de Buchère de Lépinois et Luc Merlet (3 vols. Chartres 1861-1865) 3.197; il s'agit d'Albert ou Aubri Cornut, frère de Gautier Cornut.

[45] En dehors même de toute question de pure procédure. Voyez à propos du paiement de la dîme par les histrions ou par l'héritier du négociant le texte publié infra Annexe I n° 5 qui ressemble fort à l'addendum n° 84 publié par Chris Coppens.

carnalis' un véritable mariage d'autant que la jeune fille 'ante duodecimum annum potest corrumpi'.[46] Pour lui est-il précisé dans *Animal est substantia*, il faut pour qu'il y ait mariage qu'intervienne la 'traditio' de la future épouse, c'est-à-dire l'accord des parents.[47]

Presque toutes les autres citations de Pierre Peverel par ce glossateur de la *Compilatio prima* qui sert de base à l'enseignement du *ius novum* ont trait à la procédure. Nous en avons déjà publié certaines dans des études précédentes[48] et nous donnons ci-après le texte de celles qui restaient encore inédites.[49]

Il importe enfin de souligner que le manuscrit 107 de Saint Omer contient par ailleurs en marge des deux couches principales de gloses, un certain nombre d'ajouts dont certains sont

[46] Cf. Annexe I n° 6 à comparer avec l'addendum n° 101 où l'on retrouve la même objection appuyée sur la même référence à 'ff. de adulteriis, Si uxor § ult.' Sur la formation de cette doctrine où les théologiens parisiens ont joué un rôle essentiel, cf. Jean Gaudemet, *Le mariage en Occident: Les moeurs et le droit* (Paris 1987) 166-169. Visiblement Pierre Peverel se montre ici plus civiliste que canoniste.

[47] Comme l'auteur l'écrit dans l'addendum n° 100 sur le mot 'tradita' de la C.27q.2 c.38: 'a sensu contrario si non tradita, non vocatur coniugium. Ita faceret pro opinione p.p. qui ad hoc idem inducit, arg. legis ff. De ritu nuptiarum, l.Mulierem (Dig. 23.2.5)'. C'est une opinion que l'auteur tout comme magister A. ne partage pas.

[48] Trois gloses dans Lefebvre-Teillard, 'Magister A.' 251-256: la première sur *Sicut nobis* au titre *De testibus* (1 Comp. 2.13.7= X 2.20.9) qu'on pourra rapprocher de l'addendum n°29 d'*Animal est substantia* ; la seconde sur De confirmatione au titre *De Confirmationibus* (1 Comp. 2.21.2=X 2.30.2) et la troisième sur *Non est dubium* au titre *De regularibus transeuntibus ad religionem* (texte repris ici en annexe I n° 6) ; enfin une glose dans 'Un curieux témoin'151-152 sur *Super illa* au titre *De restitutione spoliatorum* (1 Comp. 2.9.5=X 2.13.5) et une autre sur *Plures*, au titre *De usuris* (1Comp. 5.15.1=X 5.19.1) dans Lefebvre-Teillard, 'Magister B.: Étude sur les maîtres parisiens du début du XIIIe siècle', TRG 73 (2005) 1-18 à 18.

[49] Cf. Annexe I n° 7. Aux quatre gloses qui y figurent il faudrait en ajouter une cinquième située en marge de la glose sur *De arbitris, Iustitiam* (1 Comp. 1.34.1=X—), mais comme elle a été en bonne partie rognée lorsque l'on a doté ultérieurement notre manuscrit d'une forte reliure et qu'elle n'a pas été reprise dans la copie de Lons le Saunier, nous ne faisons que la signaler. De la même manière au fol. 39rb en marge d'une glose sur *De appellationibus, Si duobus* (1 Comp. 2.20.7=X 2.28.7) on a une glose de magister A. devenue illisible.

postérieurs aux *Compilationes tertia* et *secunda*.[50] Ce sont des adjonctions variées dont deux méritent de retenir notre attention car elles confortent l'hypothèse d'un enseignement de Pierre Peverel lors de sa présence à Paris. Elles sont toutes deux rapportées par des mains différentes et terminées par le sigle p.p. La plus longue, toute de droit romain, figure sur le titre *De emptione et venditione* qui dans la *Compilatio prima* est relativement pauvre et suscite de ce fait un appel accru au droit romain.[51] La seconde est située sur le v. *maxime* de la décrétale *Ad hec* au titre *De appellationibus* (1 Comp. 2.20.6=X 2.28.6) et semble impliquer une lecture de ce titre par Pierre Peverel.[52]

Pierre Peverel apparait donc essentiellement comme un civiliste[53] auquel ses collègues ont avant tout recours sur des questions de procédure. Faut-il s'en étonner puisque nous savons qu'il est par ailleurs l'auteur d'un 'ordo iudiciarius', l'*ordo Sapientiam*?[54] C'est dans cet opuscule où il s'exprime à la

[50] Ces adjonctions compte tenu de leur position dans le manuscrit ont été souvent, comme il est dit à la note précédente, soit partiellement prises dans la reliure, soit rognées lors de la confection de cette dernière. Comme la copie de Lons le Saunier 17 est antérieure à ces adjonctions, nous ne pouvons y avoir recours pour restituer les textes en leur entier. C'est donc une tentative de restitution que l'on trouvera en annexe.

[51] Cf. annexe I n° 8.

[52] Pierre dont quelqu'un a trouvé la glose suffisamment intéressante sur ce mot pour la rajouter ici.Cf. le texte en annexe I n° 9, texte rogné que nous n'avons pas malheureusement réussi à restituer en entier.

[53] Deux gloses relevées par Gero Dolezalek dans son *Repertorium* en attestent. La première contenue dans le commentaire d'un certain Simon sur Cod. 3.31.11 fait référence à l'interprétation qu'en avait donnée Pierre Peverel; la seconde relevée dans une glose d'un maître inconnu sur Dig. 50.17.69 en fait autant, cf. G. Dolezalek, *Repertorium manuscriptorum veterum Codicis Iustiniani* (2 vols. Ius commune Sonderhefte; Repertorien zur Frühzeit der gelehrten Rechte 23; Frankfurt 1985) 1.331 et 498 n.43a. Elles sont probablement le fruit d'un enseignement délivré à Paris mais pour le moment, aucun manuscrit y. correspondant n'a pu être retrouvé.

[54] Il ne reste que deux copies de cet ordo dont la plus ancienne figure dans le manuscrit 649 de la bibliothèque municipale de Douai, l'autre dans le manuscrit Chis. E.VII.218 de la bibliothèque Vaticane. Sur cet ordo et la copie très partielle présente dans Chis E.VII. 211, cf. l'analyse détaillée de Carbasse, 'L'ordo judiciorum' 15-16. Chris Coppens en a donné une transcription dans

première personne que l'on apprend qu'il doit sa formation de civiliste à Iohannes Bassianus qu'il qualifie à plusieurs reprises de 'magister meus',[55] une formation qui a peut-être eu lieu à Bologne.[56] L'ouvrage renferme également une autre indication: l'auteur y fait à propos du serment de calomnie référence à la coutume qui s'observe à Montpellier.[57] L'indication est précieuse car on voit mal quelqu'un d'étranger au midi de la France procéder de la sorte, surtout lorsqu'on sait que Pierre Peverel sera élu par la suite évêque d'Agde. Avant d'en terminer avec cette rubrique consacrée à l'enseignement de Pierre Peverel, il est une dernière question que nous nous sentons obligés de poser. La voici: est-ce à lui qu'appartient cette 'main du midi' dont nous avions relevé la

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'De Ordo Iudiciarius Sapientiam: Een korte inleiding in het vroegste middeleeuwse procesrecht', *Voortschrijdend procesrecht: Een historische verkenning*, ed. C.H. van Rhee et alii (Leuven 2001) 151-169, 218-295. Compte tenu de la manière défectueuse dont sont citées les trois décrétales auxquelles l'ordo fait référence, sa rédaction nous paraît bien antérieure à la venue de Pierre Peverel à Paris. Deux sont citées de manière vague 'ut in decretali' (MS de Douai fol. 1va) et la troisième (ibidem fol. 3va) à l'ancienne: 'ut in extravaganti 'Litteras dilecti'(= Litteras dilectionis vestre benigne qui figure sous cet incipit dans nombre de collections antérieures à la *Compilatio prima* et sous l'incipit 'Litteras benignitatis' dans cette dernière (1.35.3= X 2.7.2). C'est l'annotateur du manuscrit de Douai dont nous reparlerons ci-après qui écrit (fol. 1va) 'de officio ord. Quesitum' en marge du premier 'ut in decretali' et 'XVI q.i. Monachi' en marge du second. Sur l'assimilation des chanoines réguliers aux moines qui avait fait repousser le terminus a quo à la décrétale Ne clerici (1206, Potth. 2712), cf. L. Fowler-Magerl, 'L'ordo'132 qui fait remarquer qu'une décrétale d'Alexandre III (JL 1280) effectuait déjà ce raprochement.

[55] Cf. entre autres exemples, celui relevé par Carbasse, 'L'ordo judiciorum'17 n.10: 'et in hac opinione est magister meus Iohannes cremonensis'. C'est ce qui a fait attribuer un peu trop facilement à son élève, le grand civiliste Azon, la paternité de cet ordo, cf ibidem 20-22. Sur les rapports entre l'œuvre de Jean Bassien et celle de Pierre Peverel, cf. les recherches menées par Chris Coppens, 'Pierre Peverel' 345-349.

[56]La vie mouvementée de Jean Bassien († fin XIIe s.) ne permet pas de fixer avec certitude la période pendant laquelle il a enseigné à Bologne, cf. l'article d'Ennio Cortese, 'Bassiano, Giovanni', DGI 1.191, qui l'établit du côté de 1187 et avant l'enseignement d'Azon qui commence en 1192.

[57] 'Apud Montem Pesulanum hec observatur consuetudo ut partes iurent se verum dicere secundum animi opinionem in omni eodem quo fuerint a iudice requisiti'. Sur ce passage cf. Carbasse, 'L'ordo judiciorum'18-19.

présence dans le manuscrit 649 de la bibliothèque municipale de Douai?[58] Est-ce lui qui annote un certain nombre d'œuvres contenues dans ce manuscrit très composite? Est-ce lui qui y écrit notamment une *Summa decretalium* à laquelle il renvoie à plusieurs reprises?[59] La chose est d'autant plus troublante que prenant pour base la *Compilatio prima* de Bernard de Pavie il y ajoute des décrétales empruntées à la *Collectio* de Gilbert et même à la *Compilatio romana* dont il donne par ailleurs dans ce même manuscrit une 'abbreviatio'.[60] Chronologiquement tout ceci correspond bien à la période où Pierre Peverel enseigne à Paris mais est-ce bien à lui que cette main appartient? Rien ne nous permet de l'affirmer[61] mais la coïncidence méritait d'être signalée. Elle permettrait de mieux comprendre son élection comme évêque d' Agde.

L'élection de Pierre Peverel à l'évêché d'Adge

Le diocèse d'Agde, situé dans la province ecclesiastique de Narbonne, est 'le plus petit peut-être mais non 'le plus crotté' du Royaume de France', écrivait Raymonde Foreville dans l'introduction de son étude sur les testaments agathois du Xe au

[58] Cf. notre étude: 'Un précieux témoin de l'École de droit canonique parisienne à l'aube du XIIIe siècle: Le manuscrit 649 de la bibliothèque municipale de Douai', RHD 95 (2017) 1-57, spécialement 4-7.

[59] Sur le contenu de cette summa, cf. notre étude: 'Une *summa decretalium* peu ordinaire', *Mélanges en l'honneur de Brigitte Basdevant-Gaudemet* 795-815 (sous presse).

[60] Elle s'interrompt avant la fin du livre II, cf. Lefebvre-Teillard, 'Un précieux témoin' 7 n.34.

[61] Les annotations sont le plus souvent une simple mise à jour par le renvoi à des décrétales d'Innocent III, mais il arrive aussi que le texte soit plus copieux, voyez les exemples que nous en avons donnés à propos de la *Summa duacensis*, dans Lefebvre-Teillard, 'Un précieux témoin' notes 68, 71, 75,79, 81, 82, 86, 87 et 89. Dans sa Summa decretalium sur le titre *De matrimonio contra interdictum ecclesie* (1 Comp. 4.17) il arrive à glisser que 'secundum leges non est matrimonium ubi non intersunt parentes' une incise qui n'est pas sans rappeler les positions de Pierre Peverel, cf. supra p.245

XIIIe siècle.[62] Appuyé à l'Ouest sur le diocèse de Béziers, il est au Nord limitrophe du diocèse de Maguelone dans lequel se situe Montpellier. Lorsque les chanoines de la cathédrale Saint Etienne d'Agde procèdent 'communi voto atque consensu' à l'élection de 'dominum magistrum P[etrum] Pulverellum Parisiensis ecclesie canonicum', le siège d'Agde n'était pas 'vacant depuis plus de neuf ans', comme l'écrit par erreur Chris Coppens en se fondant sur la *Hierarchia catholica Medii Aevi* de R. Ritzler et P. Sefrin,[63] mais seulement depuis la disparition de son titulaire précédent, Raimond II, de la famille des Guillems seigneurs de Montpellier. Son testament qui figure dans le cartulaire du chapitre cathédrale Saint Etienne est en effet daté du 3 novembre 1213.[64] Il précède vraisemblablement de peu sa mort dont, faute d'obituaire, on ignore la date exacte.[65] L'élection de Pierre Peverel nous est connue par la lettre que ces mêmes chanoines d'Agde ont adressée à l'archevêque de Narbonne Arnaud Almaric. Elle a été publiée 'ex tabula capituli Narbonensis' par les bénédictins de la congrégation de Saint- Maur dans le tome VI de leur *Gallia*

[62] Raymonde Foreville, 'Les testaments agathois du Xe au XIIIe siècle, d'après les cartulaires de l'Eglise d'Agde', *Bulletin philologique et historique (jusqu'à 1610)* (1961) 357-388, reprint in *Gouvernement et vie de l'Église au Moyen-Âge: Recueil d'études* (Collected Studies; London 1979) XII.

[63] Coppens, 'Pierre Peverel' 325 qui renvoie (76 n.1) en note à R. Ritzler et P. Sefrin, *Hierarchia catholica Medii Aevi* (Regensburg 1913) source de l'erreur. Elle provient d'une mauvaise interprétation de la lettre d'Innocent III de mai 1205 (cf. infra). C'est une erreur qu'en nous fondant sur l'étude de Chris Coppens, nous avons commise à notre tour dans la brève notice que nous avons consacrée à Pierre Peverel dans le *Dictionnaire historique des juristes français, XIIe-XXe siècle*, edd. Patrick Arabeyre et alii (Paris 2015) 621.

[64] Cf. infra Annexe II n°1.

[65] Cf. Jean-Loup Lemaître, 'Les obituaires des chapîtres cathédraux du Languedoc au Moyen Age', *Le monde des chanoines (XIe- XIVe siècle)* (Cahiers de Fanjeaux 24; Toulouse 1989) 117-149 sp.126. Raimond avait participé en septembre 1213 à la fameuse bataille de Muret (12 sept.), cf. Dom Claude de Vic et Dom Jean Joseph Vaissette, *Histoire générale de Languedoc* (Vol. 6. Toulouse 1872, réed.Toulouse 2004) 6.423. Son testament a donc été rédigé peu après son retour. Si, comme son frère Guillem VIII, il a fait son testament peu de temps avant de mourir, l'élection de Pierre a pu avoir lieu dès la fin de l'an 1213.

christiana.[66] Elle n'est malheureusement pas datée mais comporte parmi les onze chanoines dont les souscriptions sont mentionnées in fine, les noms des cinq chanoines (dont un dignitaire: le sacriste) qui étaient présents lors de la confection de son testament par Raimond II.[67] Les six autres chanoines sont connus comme appartenant essentiellement à la noblesse locale ou régionale.[68] Parmi ces derniers figure notamment le premier dignitaire du chapître, l'archidiacre B[ernardus] de Muro Veteri d'une famille très liée aux Guillems de Montpellier. Il est lui-même témoin dans plusieurs actes intéressants ces derniers, ainsi qu'on peut le constater dans le *Liber instrumentorum memoralium* des seigneurs de Montpellier.[69] C'est dans ce même livre que l'on trouve à

[66] Dont nous reproduisons le texte en Annexe II n°2.

[67] Nous avons signalés par un astérisque les noms de ces cinq chanoines dans le texte publié en Annexe II n° 2. Sur le chapître cathédral de l'église d'Adge dont le nombre de chanoines a été fixé par l'évêque Guillaume II en 1173 à douze, cf. André Castaldo, *L'Église d'Agde (Xe- XIIIe siècle)* (Travaux et Recherches de la Faculté de Droit et des Sciences Économiques, Sciences Historiques 20; Paris 1970) 12.

[68] Cf. Castaldo, 'L'Eglise'16-21, spécialement 16 pour Pontius de Cocone qui deviendra archidiacre d'Agde et 20 pour Raymondus Michaelis precentor. Guillaume de Lodève (1158-1229) absent lors de cette élection est cité comme chanoine 19. C'est lui dont les auteurs de la *Gallia christiana* écrivent à propos de Pierre Peverel: 'electus adhuc dicitur in hominio Guillelmi de Leuteva an. 1214 praestito' (GC 6.681).

[69] En particulier en août 1199 dans l'affaire concernant la renonciation de Titburge, fille de Raimond Aton et petite fille d'Adémar de Murviel, à se prévaloir de la 'convenientia' de mariage entre elle et Guillaume fils de Guillem VIII. La 'convenientia' avait été passée en juin 1191 entre Ademar de Murviel et Guillem VIII, cf. A. Germain, ed. *Liber instrumentorum memorialium*: *Cartulaire des Guillems de Montpellier, publié d'après le manuscrit original* (Montpellier 1884-1886, reprint Montpellier 2018) 751-754 pour la 'convenientia' (dans laquelle figure également sa sœur Sibille dans le cas où Titburge 'ante contractum matrimonium premori'). La renonciation est transcrite ibidem 762-763. Entre temps Titburge et Sibille avaient été mariées; leurs époux respectifs approuvent et confirment la vente qu'elles font à Guillem VIII d'un certain nombre de biens hérités de leur père, acte dont 'B. de Muro veteri canonicus Agathensis' est témoin avec ici aussi Raimond évêque d'Agde (754-759). Les deux sont également témoins de la reconnaissance de dot faite par le mari de Titburge (759-761) et enfin tous deux figurent dans le procès verbal de l'enquête menée sur l'âge de Sibille (764-767). Le cas a été analysé

plusieurs reprises, comme l'avait relevé Jean-Marie Carbasse,[70] des membres d'une grande famille bourgeoise: les Peverel.[71] Même si le surnom de Pulverellus se rencontre ailleurs, il serait plus que surprenant que notre Pierre Peverel qui fait référence, on l'a vu, dans son 'ordo' à la coutume de Montpellier, n'ait aucun rapport avec les Peverel de Montpellier.

Pour comprendre néanmoins cette élection, il faut la situer dans son contexte plus général: celui d'un Languedoc qui sort très difficilement de ce qu'on a appelé la 'croisade des Albigeois' provoquée par l'assasinat, en janvier 1208, de Pierre de Castelnau, légat du pape.[72] Il est hors de propos de refaire ici l'histoire très complexe de cette croisade[73] lancée par Innocent III en mars 1208, ni même celle des années qui la précèdent, marquées par la volonté qu'il manifeste dès le début de son pontificat d'en finir avec cette hérésie.[74] Soulignons néanmoins que l'archevêque de Narbonne

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du point de vue historique par Claude Duhamel-Amado dans son étude: 'Les Guillems de Montpellier à la fin du XIIe: Un lignage en péril', *Revue des langues romanes* 84 (1985) 13-25. On est très loin ici du droit canonique qui n'est mis à profit que pour défaire des accords qui ne conviennent plus.

[70] Carbasse, 'L'ordo judiciorum' 25 n.41 dans laquelle figurent de nombreuses références.

[71] La plupart du temps comme témoins. Ugo Pulverellus est un des quinze 'probi homines' chargés par Guillem VIII dans son testament du 4 novembre 1202 de payer ses dettes; il leur confie en outre l'administration de 'tous les biens lui appartenant' jusqu'à ce que son fils Guillaume qu'il institue son héritier parvienne à l'âge de 25 ans, cf. *Liber instrumentorum* 196 et 201.

[72] Archidiacre de Maguelone, il avait été adjoint dès 1199 à frère Rainier, un cistercien, légat depuis avril 1198 'pour les affaires de l'hérésie méridionale'. Devenu à son tour moine cistercien en l'abbaye de Fontfroide, il succède en 1203 à frère Rainier (†) en compagnie de Raoul, un autre cistercien de l'abbaye de Fontfroide. Arnaud Alméric (ou Amaury), abbé de Citeaux, leur sera adjoint par Innocent III en février 1204 cf. Innocent III, *Register* 6 n° 241(242).

[73] Elle a boulversé, avant même la descente des croisés les anciens rapports de force dans le midi en provoquant le rapprochement des deux grandes puissances traditionnellement rivales: le comte de Barcelonne et celui de Toulouse, comme le souligne Martin Aurell dans *Les noces du Comte: Mariage et pouvoir en Catalogne (785-1223)* (Paris 1995) 405.

[74] Elle sévissait dans le midi depuis plusieurs décennies et avait été une des préoccupations du concile de Latran III (cf. c.27). On trouvera dans le n° 4 des Cahiers de Fanjeaux intitulé *Paix de Dieu et guerre sainte en Languedoc au XIIIe siècle* (Toulouse 1969) plusieurs articles interessants ce contexte,

auquel nos chanoines s'adressent n'est autre qu'un des légats qui avaient mené quelques années au paravant l'enquête aboutissant à la suspension de Raimond évêque d'Agde,[75] alors que la famille auquel Raimond appartenait était traditionnellement le plus sûr appui de la papauté dans le midi.[76] Si les juges délégués par Innocent III ont résolu l'affaire dans le sens qui a permis à Raimond de conserver son siège, puisque nous le retrouvons ensuite dans l'exercice de sa charge,[77] elle a certainement laissé des traces. La 'croisade' a en effet déstabilisé le recrutement

notamment deux de Marie-Humbert Vicaire: l'un (102-127) intitulé 'L'affaire de paix et de foi du midi de la France' qui a le mérite de situer le problème dans une perspective à long terme et l'autre (260-280) concernant 'Les clercs de la croisade' qui a celui de donner notamment une chronologie des différents légats qui y ont été envoyés. On y trouvera également un article de Raymonde Foreville plus spécifiquement centré sur 'Innocent III et la croisade des Albigeois' (184-217).

[75] Ce sont les trois légats cités supra n.72. Les différentes étapes de la procédure sont exposées par Innocent III dans la lettre qu'il adresse le 25 mai 1205 à Michel de Morèse archevêque d'Arles, Pierre abbé de Valmagne (abbaye cistercienne du diocèse d'Agde) et à Pierre Raimundi abbé de Saint Guilhem du Désert (diocèse de Lodève) qu'il charge d'examiner sous qu'elle forme Raimond a prêté serment devant les légats, cf. Innocent III, *Register'* 8 n°77 (76). Cette décrétale sera intégrée par Pierre de Bénévent dans sa C*ompilatio tertia* 5.1.5 et reprise dans les Décrétales de Grégoire IX (X 5.1.18). Sur la procédure inquisitoriale suivie ici par les légats, cf. Winfried Trusen, 'Der Inquitionprozeß: Seine historischen Grundlagen und frühen Formen', ZRG kan. 74 (1988) 168-230.

[76] Cf. Archibald R. Lewis, 'The Guillems of Montpellier: A Sociological Appraisal', *Viator* 2 (1971) 159-169. de Vic et Vaissette, *Histoire* 6.224-225, avaient déjà souligné l'importance de ce lien.

[77] Il est présent, en tant que témoin, au traité de paix entre Pierre roi d'Aragon (époux de Marie de Montpellier, issue du premier mariage de Guillem VIII) et les habitants de Montpellier, le 27 octobre 1206, cf. de Vic et Vaissette, *Histoire* 207 et *Preuves* 8.537. Il est surtout présent à l'engagement souscrit par Raimond VI, comte de Toulouse, le 19 juin 1209 à Saint Gilles, cf. Innocent III, *Register* 12 n°6; présent en 1210 à l'abjuration entre les mains d'Arnaud Alméric d'Etienne de Servian, un des principaux seigneurs du diocèse de Béziers, cf. de Vic et Vaissette, *Histoire* 6.325; à la conférence de Narbonne en 1211, cf. ibidem, 344 et au concile de Narbonne en avril 1212, *Histoire* et *Preuves* 8.619-620. Il est surtout enfin présent le 2 mai 1212 à la consécration d'Arnaud en tant qu'archevêque de Narbonne, *Histoire* 6.380.

traditionnellement local des évêques du midi dont le comportement avait été particulièrement fustigé en 1204 par Innocent III dans une lettre qu'il adressait à ses trois légats d'alors.[78] Plusieurs évêques ont été en effet supendus[79] ou contraints à la démission[80] par les légats et remplacés par des membres actifs de la 'croisade', étrangers au midi[81] et élus plus d'une fois sur des sièges prestigieux comme Arnaud Almaric à Narbonne ou Guy, abbé des Vaux-de-Cernay à Carcassonne.[82] L'élection de Pierre Peverel au siège d'Agde aurait pu s'expliquer de cette manière si Pierre avait pris une part active à la croisade, mais tel ne fut pas le cas. Son nom n'apparaît nulle part dans la fameuse *Historia Albigensis* de Pierre des Vaux de Cernay, neveu de Guy.[83] Il faut éliminer également, nous semble-t-il, une

[78] Cf. Innocent III, *Register* 7 n°76 (75) 28 mai 1204. Le pape les traite de 'chiens muets qui n'avaient plus la force d'aboyer' de pasteurs plus soucieux 'de paître eux-mêmes' que 'de mettre en fuite de la voix ou du bâton les loups qui ravagent le bercail du Seigneur'.

[79] Outre le cas de Raimond, signalons celui de Guillaume de Roquerelles, évêque de Béziers dont la suspension sera confirmée par Innocent III, cf. Henri Vidal, *Episcopatus et pouvoir episcopal à Béziers à la veille de la Croisade Albigeoise, 1152-1209* (Montpellier 1951) 79.

[80] Démission qui ne peut avoir lieu qu'avec son acceptation par le pape ; elle a été utilisée en particulier lorsque ces évêques appartenaient à de grandes familles locales comme par exemple l'évêque de Viviers, cf. de Vic et Vaissette, *Histoire* 6.242, mais aussi celui de Toulouse (cf. note suivante).

[81] A l'exception notable de Foulque 'marchand et troubadour de Marseille' devenu moine cistercien, élu évêque de Toulouse le 10 novembre 1205, cf. Patrice Cabau, 'Foulque, marchand et troubadour de Marseille, moine et abbé du Thoronet, évêque de Toulouse', *Les Cisterciens de Languedoc (XIIIe-XIVe siècle)* (Cahiers de Fanjeaux 21; Toulouse 1986) 151-171. Foulque est élu à la place de Raimond de Rabatens (élu mais non consacré), contraint à démissionner par Innocent III, ibidem, 157-158.

[82] Sur Guy, cf. l'article de Monique Zerner-Chardavoine, 'L'abbé Gui des Vaux-de-Cernay, prédicateur de croisade', *Les cisterciens* 183-204; sur Arnaud, cf. Raymonde Foreville, 'Arnaud Almaric, archevêque de Narbonne (1196-1225)', *Narbonne, Archeologie et histoire* (Montpellier 1973) 129-146, repr. *Gouvernement et vie de l'Eglise: Recueil d'études* (London 1979) XIV.

[83] Elle a été éditée par P. Guérin et E. Lyon en trois volumes Paris 1926-1939. Elle a été écrite grâce notamment aux documents fournis par Arnaud Alméric, cf. Vicaire, 'Les clercs' 266 ; sur sa confection cf. Yves Dossat, 'La croisade vue par les chroniqueurs', *Paix de Dieu et guerre sainte en Languedoc au 13e*

possible influence sur les chanoines d'Agde des deux légats nommés plus tardivement, Robert de Courson et Pierre de Bénévent.[84]

Ce contexte historique explique en revanche le soin que prennent les chanoines de souligner l'appartenance de Pierre à l'Eglise de Paris et le fait qu'élu à l'unanimité, il remplit toutes les conditions requises par le droit canon pour être évêque. Pour eux, il est l'élu 'parfait' en quelque sorte.

Elu, Pierre Peverel n'a jamais été consacré.[85] Est-il décédé avant sa consécration? Arnaud Alméric s'y est-il refusé? Questions sans réponse dans l'état actuel de notre documentation. Tout au plus peut-on remarquer que son 'successeur' qui apparaît 'iam sedens' comme évêque d'Agde en 1215, est ce Thédise, chanoine de Gênes et légat depuis 1210, dont de Vic et Vaissette soulignent à plusieurs reprises les liens étroits qu'il entretenait avec Arnaud Alméric.[86]

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siècle (Cahiers de Fanjeaux 4; Toulouse 1969) 221-259 à 223-233. Elle constitue une source irremplaçable mais est toute à la gloire des croisés.

[84] Robert de Courson qu'Innocent III a chargé de faire prêcher en France la nouvelle croisade pour la Terre Sainte, est le seul a avoir pu connaître Pierre Peverel à Paris mais il est très hostile comme son maître Petrus Cantor aux juristes; de plus, d'après l'itinéraire retracé par Marcel et Christiane Dickson dans leur étude sur Robert, il n'est guère venu dans cette partie du midi et n'a pas assisté en personne au concile de Montpellier qu'il avait convoqué en décembre 1214, cf. Marcel et Christiane Dickson 'Le cardinal Robert de Courson, sa vie', *Archives d'histoire doctrinale et littéraire du Moyen Âge* 9 (1934) 53-142, sp. 85-101 et 140-141 pour l'itinéraire des années 1213-1214. Pierre de Bénévent nommé en janvier 1214 par Innocent III pour préparer le prochain concile de Latran, devient actif sur place à partir d'avril 1214. A supposer que l'élection ne soit pas intervenue au paravant, il avait alors bien d'autres préocupations.

[85] Alors qu'il avait apparemment accepté son élection, si l'on en juge par le document de 1214 cité par les auteurs de la *Gallia christiana,* cf. supra note 68.

[86] Dès son arrivée, à propos de la 'purgation canonique' du comte de Toulouse Raimond VI, ils écrivent que Thédise 's'aboucha avec l'abbé de Citeaux pour ne rien faire sans son ordre', cf. de Vic et Vaissette, *Histoire* 6.328. Selon eux Thédise, chargé avec l'évêque de Riez de recevoir à se justifier le comte de Toulouse, a tout fait pour l'en empêcher avec la complicité des évêques réunis à Lavaur début janvier 1213, cf. ibidem 382-383, 404 et 417. En avril 1214,

Annexe I

1. Cartulaire de Saint Germain l'Auxerois, Paris, Archives Nationales, LL 387 fol. Vv-VIr:

Carta super hoc quod canonici debent habere vicarios vel per se deservire secundum quod prebende recurrunt etsi defectum faciant tenentur solvere, alias incurrent sententiam.

Christi nomine sancte et individue trinitatis amen. Nos A. archidiaconus et magister .P. pelverellus canonicus parisiensis omnibus ad quos presens scriptum pervenerit notum fieri volumus: nos mandatum domini pape recepisse sub hac forma: Innocentius episcopus servus servorum Dei dilectis filiis maiori archidiacono et succentori parisiensi et magistro p. pelverello canonico Sancti Clodoardi (sic=Clodoaldi) Parisiensis (dyocesis) salutem et apostolicam benedictionem. Insinuante dilecto filio decano Sancti Germani Autissiodorensis Parisiensis, nostris est auribus intimatum quod cum in ecclesia sua quedam prebende presbiteribus, quedam vero diaconis et quedam sunt subdiaconis deputate, plerumque contingit quod persona prebenda habens superioris ordinis in ea facit per vicarium minoris ordinis deserviri; unde predicta ecclesia sepius defraudatur ministerio divinorum et alia quoque nonnulla in eadem ecclesia presumuntur que canonicam correctionem exposcunt. Quo circa discretioni vestre per apostolica scripta mandamus quatinus, inquisita super hiis diligentius et cognita veritate, personas huiusmodi ut in ecclesia memorata deserviant in ordine quo tenentur vel per vicarios faciant ydoneos deserviri, monitione premissa, per censuram ecclesiasticam sicut iustum fuerit, compellatis. Alia que ibidem corrigenda videritis, auctoritate apostolica canonice corrigentes. Testes autem qui fuerint nominati si se gravi odio vel timore subtraxerint, per censuram eamdem, appellatione cessante, cogatis, veritati testimonium perhibere. Quod si non omnis hiis exequendis potueritis, interesse duo vestrum ea nichilominus exequatur. Datum Laterani XIIII kal. aprilii pontificatus nostro anno decimo.[= 19 mars 1207 absente de Potthast et du registre publié par O. Hageneder et alii pour cette dixième année du pontificat d'Innocent III].

Convocatis itaque et diligenter auditis decano et canonicis eiusdem ecclesie, inspecto tenore rescripti domini pape, habito prudentium et bonorum virorum consilio, tertio coniudice nostro il.[Ilario ?] bone memorie succentore parisiense sublato de medio, adhuc vacante succentoria, auctoritate apostolica qua fungitur in hac parte, constituimus in perpetuum bona fide [observandum] quod in ecclesia Sancti Germani quilibet canonicus sit residens in ordine prebende sue

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Pierre de Bénévent pour tenter d'apaiser les tensions avant la tenue du futur Concile de Latran IV, prendra cette affaire en main, cf. ibidem 439.

vel habeat proprium vicarium residentem illius ordinis cuius habet prebendam nisi aliquis forsan maioris sit quam prebenda sua requirat; tunc enim si aliquis sit maioris ordinis quam prebenda sua requirat, sufficiat si ipse sit residens et non requiratur ut habeat vicarium illius ordinis cuius patet prebendam quod ab ipso requireretur si non esset residens, sed faciat deserviri ecclesie in septimana sua in missa per clericum talis ordinis qualem requirit prebenda sua. Contituimus etiam quod si aliquem defectum fecerit in missa duodecim denarios solvat pro singulis missis; si quis defectum fecerit in Ewangelio in septimana sua singulis diebus pro singulis ewangeliis sex denarios reddat; si quis defectum fecerit in epistula in septimana sua pro singulis epistolis quatuor denarios reddat ; quatuor denarios solvat; si defecerit in iconne sibi addita, duos denarios reddat; si quis defecerit in lectione sibi addita, duos denarios solvat; si quis defecerit in assistentia ad missam similiter duos denarios reddat; si quis defecerit in responsorio, unum denarium reddat. De istis denariis dabitur medietas illi persone que supplebit defectum et alia medietas reservabitur ad communes distributiones. Excomunicavimus etiam omnem illum qui non fuerit residens vel per se vel per vicarium, sicut supra scriptum est infra mensem postquam sciverit dictum nostrum. Excommunicavimus etiam omnem illum qui defecerit in aliquo superiorum nisi penam constitutam superius solvat infra octo dies a tempore defectus sibi cogniti et tamdiu maneat in excommunicatione quousque solverit. Hec omnia precipimus auctoritate apostolica districte observari. Actum Parisius publice anno ab incarnatione domini millesimo duocentesimo septimo.

NB succentor: Chanoine au sein du chapître chargé d'entamer les réponds après le Chantre (cantor) cf. Du Cange ad verbum. Les nombreuses références données par Guérard dans son édition du *Cartularium Ecclesie Parisiensis*, v. succentor soulignent son rôle dans les distributions aux pauvres (cf. 1.439). Notre succentor est mort après mars 1207 et avant novembre 1208 date de l'approbation par l'évêque de Paris [Pierre de Nemours] de la sentence ainsi rendue (fol. XVr). Cette approbation contient comme ci-dessus la copie du mandat d'Innocent III et de la décision des deux juges délégués restant. Elle est elle-même une copie et débute par l'adresse suivante:

Dei gratia parisiensis episcopus universis sancte matris ecclesie filiis ad quos presens scriptum pervenit salutem et sinceram in domino caritatem. Noveritis nos autenticum virorum venerabilium a archidiacono et magistri p. peverelli canonici parisiensis diligenter inspexisse et verbo ad verbum illud idem sub hac forma perlegisse:

In nomine sancte et individue trinitatis amen. Nos a archidiaconus et magister p. peverellus…

Elle se termine par la mention suivante: Nos ergo sententia predictorum iudicium tamquam iuste et rationabiliter latam approbamus et eundem assensum et consensum nostrum prebuimus sententiam illam observari precipientes. Actum parisius anno gratie millesimo duocentessimo octano mense novembri.

2. Cartulaire de Longpont, Paris BNF n.a.l. 932, fol. 27v:

Universis Christi fidelibus presentem paginam inspecturis. Frater Prior sancti Martini de Campis et magister Galterius Cornutus canonicus parisiensis eternam in domino salutem. Noverit universitas vestra quod cum archipresbiter sancti Severini contra priorem sancti Juliani ad decanum salisberiensem (sic=sarisberiensem), p. succentorem et magistrum .p. puln (sic)[87] canonicum parisiensem, iudices delegatos, a sede apostolica litteras impetrasset. Partibus in presentia iudicum constitutis mediantibus bonis viris ut potius amicabiliter de iure suo dissererent quam in forma iudicii litigarent, in nos duos fuerit ab utraque partium compromissum. Comparentes igitur post modum coram nobis prefati prior et archipresbiter tactis sacrosanctis ewangeliis iuraverunt quod nos, inquitione facta super querelis infra memoratis arbitrando, diceremus se fideliter et firmiter in posterum servaturos. Exhibuit etiam prefatus archipresbiter nobis litteras patentes venerabilis patris .p.[Pierre de Nemours] parisiensis episcopi in quibus notificabat se compromissionem ab archipresbitero in nos factam velle et approbare. Similiter ex parte prioris sancti Juliani, nobis fuerunt exibite littere prioris et conventus longi pontis continentes quod idem prior et conventus ratam habebant et gratam compromissionem eamdem. Sic igitur bona fide compromissione firmata, idem archipresbiter contra priorem prefatum petiit ut hostium capelle sancti Blasii quod est versus garlandiam[88] obstrueretur, quoniam ubi factum erat hostium illud solebat manere parrochianus quidem sancti Severini, unde quia masura illa destructa erat maxime propter hostium quod versus garlandiam factum erat, ius parrochie ipsius ledebatur. Item petiit ut monachi sancti Juliani prohiberentur celebrare missas et campanas pulsare post matutinas donec ad primam in ecclesia Beate Marie pulsaretur dicens quod ipsi contra consuetudinem et contra ius ecclesie sue aliter facere presumebant; adiunxerit etiam quod prenominati monachi parochianos ipsius ad confessiones et sanos et infirmos recipiebant. Unde petiit eos ne hoc de cetero facerent prohiberi ; asserebat insuper quod ipsi monachi

[87] Pulv[erellum] devient ici Puln[erellum]. Une variante de plus à ajouter à toutes celles signalées par Fowler-Magerl, *Ordo iudiciorum* 131.

[88] Après ce premier ‘garlandiam’ figure la phrase exponctuée suivante: ‘ factum erat ius parrochie ipsius ledebatur’ qui figure après le second ‘garlandiam’ situé un peu en dessous ; c’est un bel exemple de l’erreur que le copiste a failli commettre par homoiotéleuton, erreur assez fréquente chez les copistes.

pro parrochianis beati severini annualia faciebant et ab eis legata accipiebant, licet illi parrochiani in ecclesia beati severini nulla annualia fieri pro animabus suis instituissent. Unde quia hoc in preiuditium ecclesie sue redundare dicebat, ipsos prohiberi ne id amplius facerent (fol. 28 r°) postulabat instanter. Nos igitur super premissis testes ab utraque parte productos diligenter audivimus et examinavimus fideliter. Postmodum de consilio et assensu multorum et iurisperitorum pronuntiavimus in hunc modum: prenominato archipresbitero super querelis de hostio capelle sancti Blasii, de pulsatione campanarum et celebratione missarum ante primam Beate Marie et de annualibus pro deffunctis parrochianis sancti Severini faciendis et legatis ab eis percipiendis perpetuum imposuimus silentium nec aliquid cura prefatis articulis diximus immutandum. Pronunciamus autem quod prior sancti Juliani nichil quod ad ius parrochiale pertineat debet parrochianis beati Severini sive vivis sive morientibus exibere nisi forte in necessitate que legem non habet et tunc etiam si aliquid perciperet propter hoc emolumentum presbitero sancti Severini illud restituere teneretur ut igitur predicta nulla possunt oblatione deleri. Sigilli nostri presens scriptum fecimus in testimonium communiri. Actum anno gratie millesimo duocentisimo undecimo.

3. BNF n.a.f. 23056, fol. 2: lettre d'Innocent III du 1er août 1213 (encore scéllée par une bulle de plomb sur laques de soie (verte/jaune):

Innocentius episcopus servus servorum dei Venerabili fratri episcopo parisiensi et dilectis filiis decano Saresberiensi parisius commoranti et magistro .p. peverel canonico Parisiensi salutem et apostolicam benedictionem. Constitutis in nostra presentia procuratore venerabilis fratris nostri Rothomagensis archiepiscopi et dilecta in christo filia abbatissa monasterii Villariensis. Pro parte archiepiscopi fuit propositum coram nobis quod cum idem archiepiscopus villariensem monasterium ex officii sui debito visitaret ac multa tam in spiritualibus quam temporalibus inveniret ibidem que correctionis et reformationis officio indigebant. Volens corrigere corrigenda tam in capite quam in membris quedam de prudentium et religiosorum consilio statuit in ipso monasterio observanda. Sed abbatissa nullo privilegio exemptionis ostenso, eiusdem archiepiscopi salubribus monitis se contumaciter cepit opponere ad defensionem sue malitie ad nos vocem appellationis emittens. Archiepiscopus autem considerans quod appellationis beneficium inventum ad remedium oppresorum ad tam iniquum trahi dispendium non debebat ut sub eius pretextu correctionis eluderetur officium et vitia canonicam effugerent disciplinam ; diligenti commoratione premissa cum correctionem non reciperat abbatissa eam, exigente iustitia, excommunicationis vinculo innodavit; unde petebat archiepiscopi procurator ut latam in ipsam excommunicationis sententiam robur faceremus firmitatis habere, ac exhiberi de ea et clericis suis iustitie

complementum quare archiepiscopo inobedientes in multis super institutionibus quarumdam ecclesiarum et rebus aliis, ut dicebat, iniuriantur eidem. Pars vero abbatisse proposuit ex adverso quod cum monasterium sibi commissum a tempore cuius non extat memoria multa libertate ac dignitatibus pluribus gaudere noscatur et in possessione libertatis existens in quibusdam ecclesiis suis prebendis parrochianis earum episcopale ius habeat ab antiquo, instituendo sacerdotes et clericos in eisdem, a quibus ipsa canonicam obedientiam recipit, multa in eis que sunt episcopalis iurisdictionis exercens. Memoratus archiepiscopus impatiens libertatis et quietis monasterii adversus abbatissam et moniales eiusdem super statu monasterii ecclesiis, prebendis et rebus aliis ad abbatem et priorem sancte Genovese ac cancellarium Parisiensem litteras apostolicas impetravit, optentis aliis litteris ad decanum et suos coniudices Belvacenses contra sacerdotes et clericos monasterii supradicti super fidelitatis et obedientie iuramento et sic a Parisiensi abbatissa et clerici quorum defensio in hac parte pertinebat ad ipsam, a Belvacensibus iudicibus citabantur et quamvis multas et validas exceptiones contra Belvacenses iudices ad declinandum eorum iudicium pars clericorum opponeret, petens arbitros coram quibus suspitionis causas probaret, eos ipsi et iudices concedere noluerunt qui appellatione contempta propter hoc ex parte clericorum ad sedem apostolicam interposita, in ipsos clericos excommunicationis sententiam promulgarunt. Postmodum vero eadem causa que ad nos per appellationem delata fuerat decano Baiocensi et suis coniudicibus delegata, dum lis super eorum penderet examine, idem archiepiscopus duos presbiteros abbatisse iurisdictioni subiectos iurare sibi obedientiam fecit, crisma denegans clericis abbatisse quod dare secundum iura monasterii consuevit. Ceterum cum archiepiscopus abbatissam coram Parisiensibus iudicibus traxisset in causam pro parte monasterii procuratore idoneo comparente, quia pro archiepiscopo non comparebat sufficiens procurator terminis ad eius instantiam assignatis, iudices eundem in quinquaginta libris turonensis monete abbatisse ac monialibus expensarum nomine condempnarunt. Unde archiepiscopus tantum rancorem et indignationem concepit adversus easdem quod ipsis postmodum iniurias et gravamina intulit subnotata. Et cum eidem abbatisse memorata pecunia sit soluta ipsam repetit minus iuste, adhuc quidem principali negotio indeciso, cum quedam eiusdem monasterii monialis iuvenis moribus et etate peccasset et abbatissa regulari disciplina castigare vellet eandem, ipsa que tunc non videbatur obiicem contradictionis opponere, ad suggestionem clericorum archiepiscopi sicut fertur ut manum correctionis effugeret ad ipsum archiepicopum appellavit, nichilominus ad sue perditionis augmentum quasdam alias moniales sibi colligationibus impietatis astringens ut eo facilius transgrederetur impune quo difficilius cum aliis punietur. Verum abbatissa cum ulterius procedere non auderet, eas vinculo excommunicationis astrinxit, sed ex accessu archiepiscopi ad monasterium memoratum se predicte conspiratrices in

maiorem superbiam erexerunt cum earum insolentiam suo favore nutriret. Sane post recessum archiepiscopi non post multum tempus quidam clerici quorum conversatio inter moniales merito poterat haberi suspecta ex parte archiepiscopi abbatissa ac monialibus litteras presentarunt ut ipsis tanquam archiepiscopo devote intenderent et humiliter obedirent; abba-tissa quoque visis litteris appellationem quam pluries interposuerat innovavit postmodum ad cautelam, sed archiepicopus eo magis acensus quo fortius ipsa se ac monasterium communire per invocationem sedis apostolice nitebatur in eam de facto cum de iure non posset, excommunicationis sententiam promulgavit et monialem predictam egressam de monasterio, licentia non petita, recipi fecit ab abbatissa monasterii sancti amandi, ad hoc ecclesiastica censura coacta que ipsam recipere non volebat pro eo quod vinculo erat excommunicationis astricta et pernitiosa nimis moribus et exemplo, alias etiam moniales adeo in contumacia sua fovet quod cum abbatissa nolunt divinis officiis interesse ac iugo religionis abiecto, in dissolutionem nimiam abierunt comedentes aliquando extra claustrum cum personis minus honestis. Offerens igitur abbatissa se ab archiepiscopo super hiis et aliis indebite molestari, postulavit ut predictam excommunicationis sententiam in ipsam ab archiepiscopo post appellationem legitimam et pendente questione super statu monasterii promulgatam denunciaremus penitus non tenere ac tam causam ipsam quam etiam clericorum cum ex eis fere idem subsequatur effectus sub uno iuberimus iure terminari.

Nos igitur auditis hiis et aliis que fuere proposita coram nobis, abbatissam absolvi fecimus ad cautelam. Et quia nobis de premissis non potuit fieri plena fides causam tam abbatisse quam etiam clericorum de ipsius abbatisse ac archiepiscopi procuratoris assensu vestre duximus experientie commitendam, per apostolica scripta mandantes quatinus vocatis qui fuerint evocandi et inquisita super predictis sollicite veritate, causam fine canonico si de partium voluntate processerit, terminetis, alioquin eam sufficienter instructam ad nostram presentiam remittatis, prefigentes partibus terminum competentem quo per se vel per procuratores idoneos nostro se conspectu representent, iustam dante domino sententiam recepture. Testes autem qui fuerunt nominati si se gravi odio vel timore subtraxerint, per censuram ecclesiasticam, appellatione cessante, cogatis veritati testimonium perhibere. Quod si non omnes hiis exequendis potueritis interesse, tu frater episcopus cum eorum alter ea nichilominus exequaris. Cum denique frater episcopus super te ipse et credito tibi grege taliter vigilare procures extirpando vitia et plantando virtutes ut in novissimo districti examinis die coram tremendo iudice qui reddet unicuique secundum opera sua, dignam possis reddere rationem. Datum Signie Kal. Augusti ponticatus nostri anno sextodecimo.

4. BM de Troyes 385, fol. 22ra, sur De integrum restitutione, c.Requisivit (1 Comp. 1.32.1= X 1.41.1) s.v. *Conditionem ecclesie deteriorem*:

Ut infra de donationibus, Fraternitatem (3.20.2=X 3.24.2), sicut nec procuratoribus licet conditionem domini facere deteriorem ut ff. de procuratoribus l. Ignorantis (Dig. 3.3.49), ar. ibidem xvi. q.vi. Si episcopus (c.2), xvi. q.iii. Placuit (c.15) contra, ad hoc dicendum quod in omittendo, puta permuttendo, prescriberi contra ecclesiam potest prelatus conditionem ecclesie facere deteriorem si in augendo non potest tamen ubi agendo ea que pertinent ad suam administrationem, ita suplet magister .p. pulverel.[89]

5. BM de Saint Omer 107, fol. 58va sur De decimis, Pervenit (1 Comp. 3.26.2; X 3.30.5), sans renvoi:

Sed queritur de istrionibus, utrum debeant dare decimam, Ipsi enim venatores dicuntur lxxxvi. d. Qui venatoribus (c.8) ? R/ Si detur eis propter adulationem non debet dare decimam quia fiscus debet illud occupare, que enim scelere adquiruntur fisco applicari debent quia succedit peccatoribus ff. de iure fisci, Lucius (Dig. 49.14.9). Si vero detur ei ne male dicat, ipse quidam male accipit sed ille bene dat et tunc competit ei repetitio per condictionem ex turpis causa, ff. de condictionem ob turpem causam l ii (Dig. 12.5.2) et ita nec in hoc casu tenetur dare decimam, sed tamen quia fiscus eos patitur melius est quod dent inde decimam quodquod retineant.

Item queritur: aliquis negociator decedit insoluta decima de negociatione, tenetur ne eius heres? Videtur quia inde factus est locupletior; nullus autem debet locupletari aliena iactura ut ff. de regulis iuris, Iure nature (Dig. 50.17.206), econtra si procederet obligatio in infinitum et multi hodie dampnarentur. Solutio: pp dicit quod successor non tenetur quia non est ibi personalis obligatio sed lex est apposita ex cuius transgressione nihil redundat in successorem.[90]

6. BM de Saint Omer 107, fol. 62vb sous De regularibus transeuntibus ad religionem, Non est vobis dubium (1 Comp.3.27.2=X 3.31.7).[91]

Queritur quare femina potest se obligare in matrimonio carnali et etiam spirituali XII anno, masculis autem non nisi XIII anno completo ? Quod enim in matrimonio spirituali se sic possit obligare patet xx. q.ii. Puella (c.2) ; in iure

[89] Glose identique dans Douai 595 fol. 56 rb. Elle est reprise dans Paris BNF latin 9632 fol. 18vb dont l'auteur écrit: 'magister pulverel'.

[90] Glose mieux rapportée ici que dans Animal est Substantia. Elle n'est pas reprise dans le manuscrit de Lons le Saunier fol. 32 rb.

[91] Sans renvoi mais précédée d'un A majuscule.

enim invenitur ita esse hic potius coniugium cum aetas duodecimi discretior sit femina XIIII annorum. R/ in matrimonio carnali ibi est quod tunc presumitur esse matrimonium quando completus est duodecimus annus in iuvena quartodecimus in masculo et taxatum est tale tempus quia tunc possunt generare; nec ibi est matrimonium secundum pp. etiam si femina fuerit cognita, quia invita potuit corrumperi ff. de adulteriis, Si uxor § Si minor (Dig. 48.5.13.8). A dicit esse matrimonium si ibi cognita fuerit, infra de desponsatione impuberum, Manifestum (1 Comp.4.2.3=X—) sed in voto non procedit ratio ista, dicit quod iusta quod iam duodecimum fuerit in matrimonio carnali limitatum, in spirituali ut ex tunc se possit obligare per votum sicut et per matrimonium potest. Placentinus hanc reddit rationem quia magis crescit mala herba quam bona.

7. BM de Saint Omer 107:

A. fol. 17vb en marge de Signifiscati (1 Comp. 1.21.9=X 1.29.7) sans renvoi:

Queritur an iudex delegatus possit excommunicare communicantes ei quem ipse excommunicavit ? Videtur quod non quia in illis nullam habet iurisdictionem nec mandatum, ergo non potest ar. ff. de bonis auctoritate iudicis possidendis, l. Cum unus § i. (= de rebus auctoritate iudicis, Dig. 42.5.12.1) ubi dicitur iudex non potest mittere aliquem in possessionem bonorum que non sunt de sua iurisdictione. Solutio: pp dicit quod non potest; alii quod potest.

B. fol.19ra sous le début de Super eo (1 Comp. 1.21.20=X 1.21.15) sans renvoi:

Inst. Mandati § Recte secus (Inst. 3.26.9), ff. de muneribus et honoribus, l. ult. § Defensores (Dig. 50.4.18.13) qui ad certam causam eliguntur laborem personalis muneris agrediuntur, iudicandi quoque necessitas inter munera personalia habetur. Solutio re vera p.p. dicit quod iudicium personale deberet esse de iure stricto, sed propter laborem hominum ne frustrareatur qui deferunt litteras, admititur quod hic dicitur, nam propter bonum publicum contra rationem disputandi, ideo hec decretalis quemadmodum; dicit lex quod multa recepta sunt pro publica utilitate contra rationem iuris, ff. Ad legem aquiliam, Ita vulneratus in fine (Dig. 9.2.51.2) et quod hic dicitur factum est quia partes consensirent litem contestande unde subiungunt sententiam latam.

C. fol. 51vb sur de his que fiunt a maiori parte capituli, Cum in cunctis (1 Comp. 3.10.1=X 3.11.1) s.v. *periura*: Nota quod dominus potest vindicare colonum sicut pater filium de iure quiritium ff. de rei vendicatione l.i. (Dig. 6.1.1), Co. de episcopali audientia, l. Nemini (Cod.1.4.24), ff. Ad municipales, l. de iure omnium incolarum (Dig. 50.1.37) quos queque civitas sibi vindicat presidium provinciarum cognitio est verbali, Co. de colonis tracentibus, l.unica.

(Cod.11.52.1) ubi dicitur quod coloni possidentur et ideo non habeant potestatem loca permutandi sed possessor eorum iure utatur cum patroni sollicitudine cum domini potestate; sic episcopus potest vindicare clericum [et] abbas monachum ut dicit p.p. Item ex hiis legibus colligitur quod si iniuria facta fuerit colono, licet liber homo sit quod dominus potest agere iniuriarum cum res illius repetere si ei ablate fuerint, secus inst. de iniuriis 'sed si libero homini qui bona fide servit iniuria facta sit, nulla tibi actio dabitur sed suo nomine is experiri poterit nisi in contumeliam tuam pulsatus sit, tunc enim tibi competit iniuriarium actio; idem ergo est cum in servo alieno bona fide tibi serviente ut totiens admittatur iniuriarium actio quotiens in tuam contumeliam iniuria ei facta sit'. Verba legis.[92] (=Inst.4.4.6). Idem dicitur ff. de iniuriis l. Item § penult (Dig. 47.10.15.48). Item secus ff. de regulis iuris Nemo (Dig. 50.17.123) rei aliene sit satisdactionem defensor ydoneus invenitur ergo multo minus in re aliena potest agere.

D. fol. 113 va sur De sententia excommunicationis, De cetero (1 Comp. 5.34.16; X 5.39.11) sans renvoi:

Item hec absolutio facta fuit causa mortis, ergo non debet valere nisi sequitur mors sicut non valet donatio causa mortis nisi mors sequeritur Co. (sic) de donationibus causa mortis, l. Non videtur (= Dig. 39.6.32) et in Inst. de donationibus (Inst. 2.7) ubi idem dicitur. Solutio: pp dicit quod tunc demum absolutus est cum mortuus est, sed secundum hoc videtur quod non esset ei danda equivalentia, dicit quod immo in dubio tali danda est ei, quia in hoc nihil deperit, supra lxviii. d' Presbiteri (c.2), ff. de rebus dubiis, Quotiens (Dig. 34.5.12) res est dubia ius procedendum est quod sic in tuto potest dici quod absolutus est per hoc quod dicitur in littera absolutionis et cum in dubio enim potest iudex aliquod quod alias non posset, supra de transactionibus, Statuimus (1 Comp. 1.27.2; X 1.36.2), unde maritus litigando de fundo dotali potest transigere, licet alias non possit, Co. de fundo dotali l.ii. (Cod.5.23.2).

8. BM de Saint Omer 107, fol. 52vb en haut au dessus du titre De emptione et venditione (1 Comp. 3.15), sans renvoi:

Quia in re vendita antequam tradatur contigat cui est periculum, ideo de periculo et commodo rei vendite ita notanda sunt quid ius? Notanda est cum fit venditio rei certe specei pure sine scriptis, omne periculum et commodum, excepto casu plubicationis (sic! =publicationis) ad emptorem pertinet nisi pactum, culpa,

[92] Dans le manuscrit de Saint Omer, il est assez fréquent que le maître cite en entier le passage du Corpus iuris civilis sur lequel il s'appuie comme ici sur les Institutes (4.4.6) en le faisant suivre de la mention 'verba legis' ou 'tota lex'.

mora aliusdem suadeant. Nota singula: cum fit venditio: [quando per]fecta est, est autem perfecta statim postquam convenit de precio, Inst. de contrahenda emptione § Cum autem (Inst. 3.23.3). Specei: que si fit venditio [sic]: puta quoddam equuum vendidi, genus perire non potest ut co. Si certum petatur l. Incendium (Cod. 4.2.11), etiam si ita dixi [ven]do tibi unum ex equis meis et omnes perieant, periculum non pertinet ad emptorem que debet aparere [quando ?] datur ad hoc quod emptoris sit periculum, ff. de periculo rei vendite l. Necessario (Dig. 18.6.8). Conditione: quia si vendatur sub [condi]tione hec autem illa species periculum prius pereuntis pertinet ad venditorem, alterius ad emptorem ut ff. de contrahenda emptione l.[Si in] emptione (Dig. 18.1.34). Pure quia si sub conditione periculum amissionis ad venditorem pertinet, deteriorationis ad [empto]rem ff. de periculo rei vendite l. Necessario (Dig. 18.6.8). Sine scriptis: ideo dicitur quia si in scriptis fiat, videtur fieri [mentio?] conditione, in scriptis enim videatur fieri venditio quando hoc agitur, inter contrahentes, ut non alicui valeat nisi sc[riptum] fiat et tunc non perficitur contractus nisi conditione mundum compleatur Co. de fide instrumentorum l. Contractus (Cod. 4.21.17) et si contin[gat] periculum ante mundum id est quartam completam idem est acsi contingat ante conditione executionem, inst. de contrahenda emptione § [Emptio] (Inst. 3.23.1.4), Co. de periculo rei vendite, Cum inter (Cod. 4.48.4). Excepto casu plubicationis (sic) ideo quia hoc casus ad venditorem. pp.

9. BM de Saint Omer 107, fol. 39rb en haut sur De appellationibus, Ad hec (1 Comp.2.20.6=X 2.28.6) s.v. *maxime*:

Quoniam si appellatum a delegato sit, non est exemptus a iurisdictione sua etiam si delegatus est a quo appellatus ea ei [suscrit] causa commititur, potest recusari quia si dominus papa sciret ab ei appelatum non interveniet ei causam com[missam] vel etiam si appelat, non est omnino exemp[tus] a iurisdictione iudicis quia potest a // terminum adiudicare si s[it per]plexus infra e. Consuluit (c.18 = X—) et si[bi] cognoscere an sua sit iurisdictio. pp.

Annexe II

Testament de Raimond II, évêque d'Agde (texte édité par Raymonde Foreville dans *Le cartulaire du chapitre cathédral Saint Etienne d'Adge,* éd. CNRS (Paris 1995) 312-313:

In christi nomine. Notum sit cunctis hec audientibus quod dominus R[aimundus] Agathensis episcopus, timens ingredi viam universe carnis, impetrata licentia et voluntate et assensu canonicorum Agathensis ecclesie qui tunc presentes erant: A[rmanni] sacriste, P[etri] de Crispiano], B[ernardi] de

Moresio et R[aimundi] de Rochafixa et G[uillelmi] de Duabus Virginibus et Pon[tii] de Marcelliano, rebus suis ita disposuit…

Acta sunt hec anno ab Incarnatione Domini MCCXIII, III nonas novembris, in presentia et testimonio predictorum canonicorum in camera ipsius episcopi et in presentia et testimonio fratris Guillelmi de Florea monachi Vallismagne et dicti B[ernardo] Caprarii.

2. Lettre extraite ‘ex tabula capituli Narbonensis’ concernant l’élection de Pierre Peverel à l’évéché d’Agde (GC 6.332, n° XXII):

Reverendo et domino A.[Amalrici] Dei providentia Narbonensi archiepiscopo apostolicae sedis legato, universus Agathensis clerus et populus totius devotionis formulatum. Credimus non latere praesulatus vestri celsitudinem quod nostra ecclesia suo sit viduata pastore acpropter hoc solatio fit proprii destituta rectoris. Quapropter ne pastore absente grex dominicus perfidorum luporum morsitus pateret et ne improbi raptoris fieret praeda, communi voto atque consensu, elegimus nobis in pastorem dominum magistrum P.Pulverellum Parisiensis ecclesie canonicum, virum utique prudentem, hospitalem, ornatum moribus, castum, sobrium et mansuetum. Deo et hominibus per omnia placentem, ad paternitatisque vestrae clementiam humiliter accedentes unanimiter postulamus et obsecramus in Domino ipsum a vestra majestate nobis concedi pontificem, quatenus auctore Deo nobis velut idoneus pastor praeesse valeat et prodesse nosque sub sacro ejus regimine Domino semper militare possimus. Ut autem omnium nostrum vota in hanc electionem convenire noscatis, huic canonico decreto propriis manibus roborando subscripsimus.

Ego B. de Muro Veteri, archidiaconus subscribo. Ego Armandus de Petra*, sacrista subscribo. Ego Pontius de Cocone, abbas sancti Affrodisii et canonicus Agathensis subscribo. Ego Raymondus Michaëli, praecentor Agathensis subscribo. Ego Stephanus Johannini, camerarius et canonicus subscribo. Ego B. de Moressio* subscribo. Ego R. de Rocafuga* subscribo. Ego P. de Marcellinas* subscribo. Ego G. de Duabus Virginibus* subscribo. Ego Raymondus, canonicus subscribo. Ego G. Jordani, canonicus subscribo.

Université Paris II.

Vecchie e nuove ipotesi sul magister Rufinus[1]

Antonia Fiori

Nel 1902, recensendo l'edizione della *Summa decretorum* di Rufino, pubblicata da Heinrich Singer a distanza di soli dieci anni da quella di Schulte,[2] Francesco Ruffini ebbe a definire una tale 'concorrenza di edizioni' come 'il risultato di una delle più astiose e più dolorose polemiche che la nostra scienza abbia visto di questi ultimi anni'.[3]

Non aveva torto. La controversia che si sviluppò nei decenni finali dell'Ottocento sulla riscoperta del testo autentico della *Summa*—'l'oeuvre la plus considerable de la première génération des décrétistes'[4]—fu aspra e portò con sé anche un intrico di illazioni sulla biografia del decretista, alcune delle quali smentite dagli studi condotti nella seconda metà del secolo successivo. Le confutazioni hanno però impegnato gli storici del diritto canonico quasi più delle complesse ricerche sulla vita di Rufino, che resta per la gran parte avvolta nel mistero.

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[1] Nel 2017 il DBI della Treccani ha dedicato due voci distinte (Antonia Fiori, 'Rufino da Bologna', DBI 89 [2017] 169-171 e Luigi Russo, 'Rufino', ivi 171-173) ad ecclesiastici omonimi e contemporanei, che la letteratura canonistica aveva in precedenza unificato immaginando che ognuna delle cariche, o dei ruoli, che essi avevano ricoperto costituisse una tappa del *cursus honorum* del nostro decretista. Come autrice, la redazione della voce sul decretista Rufino mi ha spinto ad una ulteriore riflessione sulle molte suggestioni storiografiche che, nel corso di quasi un secolo e mezzo, hanno contribuito alla formazione di una biografia quantomai incerta. Ed è con un commosso ricordo che dedico queste pagine alla memoria di Peter Landau, un Maestro della storia del diritto canonico, appassionato investigatore della paternità di tante opere decretistiche.

[2] Rufinus von Bologna, *Summa Decretorum*, ed. Heinrich Singer (Paderborn 1902, rist. Aalen 1963); Johann F. von Schulte, *Die Summa magistri Rufini zum Decretum Gratiani: Mit einer Erörterung über die Bearbeitung derselben* (Giessen 1892).

[3] Francesco Ruffini, 'La *Summa Decretorum* di maestro Rufino: Nota a proposito di recente pubblicazione', *Rivista italiana per le scienze giuridiche* 35 (1902) 113, ed. separata (Torino 1903) 4.

[4] Così Paul Fournier nella recensione all'ed. Singer (supra n.2) BEC 68 (1907) 372.

Sulle pagine di questo periodico, ormai venti anni fa, Roman Deutinger offrì un contributo di chiarezza al dibattito, sottolineando come la carriera del decretista potesse supporsi 'relatively well-known', senza però essere certa, paradossalmente, se non per pochissimi elementi[5].

Per questa ragione, non sarà inutile, credo, cercare di ripercorrere le tappe del dibattito storiografico sulla vita e sull'opera del *magister* Rufino, per valutare quali ipotesi siano ancora valide e cosa sia da considerare superato.

Alla ricerca della Summa di Rufino: Un decretista franco?

Era cosa nota agli storici del diritto che Rufino, decretista frequentemente citato dai canonisti medievali e considerato già dai contemporanei un maestro di prima grandezza, avesse scritto una *summa* all'opera di Graziano. Ne parlava il Sarti,[6] così come il Diplovatazio che faceva riferimento ad un apparato di glosse:[7] ma si sa che le prime *summae* decretistiche costituivano in effetti degli apparati, che potevano circolare con o senza il testo grazianeo.[8] L'opera, tuttavia, non era stata identificata e l'unico indizio per riconoscerla sembrava la precisazione di Giovanni d'Andrea che essa non conteneva decretali, e dunque doveva essere stata scritta prima dell'affermarsi delle compilazioni di *extravagantes.*[9]

Nel 1859 Friedrich Maassen ritenne di avere individuato riproduzioni parziali della *Summa* di Rufino in due manoscritti,

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[5] Roman Deutinger, 'The Decretist Rufinus—A well-known Person?', BMCL 23 (1999) 10-15 (in particolare p.10).

[6] Mauro Sarti-Mauro Fattorini, *De claris Archigymnasii Bononiensis professoribus a saeculo XI. usque ad saeculum XIV* (Bologna 1769) 1.1.287.

[7] Thomas Diplovatatius, *Liber De claris iuris consultis*, edd. Fritz Schultz-Hermann Kantorowicz-Giuseppe Rabotti, SG 10 (1968) 47.

[8] Kuttner, *Repertorium* 132.

[9] Il passo di Giovanni d'Andrea—un'*additio* al Proemio (§ *Porro*, v. *Bernardum Papiensem*) dello *Speculum iudiciale* di Guillaume Durand—è famosissimo ed è stato pubblicato, tra gli altri, da Friedrich C. von Savigny, *Geschichte des römischen Rechts im Mittelalter* (7 vols. Heidelberg 1834[2]) Anhang II 3.633 e da Schulte, *Geschichte* 1 Anhang 2 241s.

uno di Mainz (già segnalato da Savigny,[10] senza alcun tentativo di attribuzione) e uno di Bamberg. A suo giudizio il primo (Mainz Stadtbibliothek 477, allora iur. 52) avrebbe restituito l'esegesi di Rufino alle prime dieci 'distinctiones', mentre l'altro (Bamberg Staatsbibliothek can. 17, allora P.I.11) avrebbe rivelato la seconda parte della *Summa*, fino a C.23 q.6.[11] Benché incompleta, l'opera così individuata sarebbe stata quella originale: Maassen arrivò a questa conclusione basando la sua analisi sul confronto dei testi con i passi di Rufino tramandati da altri giuristi.

Johann Friedrich von Schulte riprese nel 1875 la tesi di Maassen, aggiungendo un terzo manoscritto conservato in Germania (Göttingen Niedersächsische Staats- u. Universitäts-bibliothek Jur. 159),[12] del quale pubblicò il *Proemio*,[13] convinto che i tre codici permettessero, per parti, la ricostruzione del testo della *Summa* di Rufino.

L'ipotesi di Maassen aveva indubbiamente depistato Schulte: l'errore, presto rilevato dai contemporanei, risulta più evidente oggi, alla luce degli studi successivi. Tra i manoscritti esaminati da Maassen prima, e da Schulte poi, si nascondeva una pluralità di opere autonome, che riflettevano solo in parte l'insegnamento di Rufino, e che sono ormai comune conoscenza degli storici del diritto canonico medievale.

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[10] Savigny, *Geschichte* 3.515.

[11] Friedrich Maassen, 'Paucapalea. Ein Beitrag zur Literaturgeschichte des canonischen Rechts im Mittelalter', *Sb. Akad. Wien* 31 (1859) 455-464, ed. separata (Wien 1859) 9-18. Il Mainz SB 477 è composito, e diviso in tre parti più a meno corrispondenti alla suddivisione del *Decretum*: secondo Maassen, la prima parte (fol. 1-37ra, inc. *Antiquitate et tempore*, cfr. infra note seguenti) era tratta dalla *Summa* di Rufino, la seconda dalla *Summa* di Stefano di Tournai, mentre la terza, sul *De consecratione*, era in qualche modo dipendente da Rufino ma il decretista, che veniva frequentemente citato, non poteva esserne stato l'autore. Il Bamberg SB can. 17 avrebbe invece contenuto l'esegesi di Rufino alla seconda parte del *Decretum*, fino a C.23 q.6 (dal fol. 147 al fol. 162, inc. *Conditio ecclesiasticae religionis*, cfr. infra n.20).

[12] Schulte, *Quellen* 1.121s. (i codici sono indicati alla n. 5 di p. 122). Il manoscritto avrebbe contenuto la *Summa* di Rufino fino a D.89 c.2.

[13] Ibid. 245-250.

Infatti, la prima parte del ms. Mainz Staatsbibliotek 477, che conteneva secondo Maassen un'incompleta esegesi di Rufino alle 'distinctiones', è la *Summa* denominata dal suo incipit *Antiquitate et tempore*[14]. Scritta negli anni '70 del XII secolo, è ora annoverata tra i prodotti della scuola di Colonia,[15] dipendente dall'insegnamento di Gerard Pucelle.[16] L'anonimo autore, che aveva fatto uso della *Summa* di Rufino, possedeva conoscenze teologiche e filosofiche;[17] secondo recenti ricerche di Peter Landau, potrebbe identificarsi con un Goffredo, canonico agostiniano della chiesa di S. Andrea di Colonia.[18] L'opera è conservata in quattro manoscritti che contengono, in prevalenza, solo l'esegesi delle prime 10 'distinctiones'.[19] La versione più lunga è quella del già citato manoscritto di Göttingen individuato da Schulte, che arriva fino a D.89 c.2.

Quella che, a parere di Maassen, poteva essere la seconda parte (anch'essa incompleta) della *Summa* di Rufino, è—come si è detto—conservata in un manoscritto bambergense, e comincia

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[14] Kuttner, *Repertorium* 178-179.

[15] La scuola canonistica di Colonia è nota soprattutto per la sua opera più importante, la S*umma Elegantius in iure divino* o *Coloniensis* (ed. Gérard Fransen-Stephan Kuttner [Città del Vaticano 1969-1990] I-IV), oggi prevalentemente attribuita a Bertram di Metz, cfr. P. Gerbenzon, 'Bertram of Metz, the Author of *Elegantius in iure divino* (*Summa Coloniensis*)?' *Traditio* 21 (1965) 510s.; Peter Landau, *Die Kölner Kanonistik des 12. Jahrhunderts*: *Ein Höhepunkt der europäischen Rechtswissenschaft* (Kölner rechtsgeschichtliche Vorträge; Badenweiler 2018) 17s.

[16] Rudolf Weigand, 'The Transmontane Decretists', HMCL 2.184; Johannes Fried, 'Gerard Pucelle und Köln', ZRG Kan. Ab. 68 (1982) 125-315; Landau, *Die Kölner Kanonistik* 18-21.

[17] Tanto da menzionare Platone nel *Timeo*, Stephan Kuttner, 'Gratian und Plato', *Church and Government in the Middle Ages: Essays Presented to C.R. Cheney*, cur. Christopher N.L. Brooke et alii (Cambridge 1976) 93-118, ora idem, *The History of Ideas and Doctrines of Canon Law in the Middle Ages* (Collected Studies 113; 2nd ed. London 1992) XI.

[18] Secondo Landau Goffredo di S. Andrea sarebbe anche il poeta (mediolatino) tedesco che si nascondeva sotto il *nom de plume* di Archipoeta: Peter Landau, *Der Archipoeta—Deutschlands erster Dichterjurist: Neues zur Identifizierung des politischen Poeten der Barbarossazeit*, *Sb. Akad. München* 2011.

[19] Mainz SB 477, fol. 1-37r; Praha UL XIV.E.31, fol. 1-35r; BAV Pal. lat. 678, fol. 34-70v; Göttingen UB Jur. 159 fino a D.89 c.2.

con le parole *Conditio ecclesiastice religionis*. Questa *Summa*[20] è anche nota come *pseudo-Rufinus*, perché comunemente considerata un plagio dell'opera del nostro decretista.

Per inciso, il manoscritto maguntino segnalato da Savigny e poi da Maassen, conteneva nella seconda parte la *Summa* di Stefano di Tournai sulle *Causae* di Graziano[21] e, nella terza, un commento al *De consecratione*[22] che è stato erroneamente edito da Schulte come opera di Stefano. In realtà la *Summa*, denominata dal suo incipit *Fecit Moyses tabernaculum*, è una ulteriore opera della scuola di Colonia, e—dopo essere stata sottratta da Stephan Kuttner alla paternità del decretista tornacense[23] — in tempi più recenti è stata anch'essa, come la *Auctoritate et tempore*, attribuita da Peter Landau a Goffredo di S. Andrea.[24]

Il lavoro pioneristico compiuto da Maassen e poi da Schulte non fu dunque esente da errori. Sulla base del testo ipoteticamente così ricostruito, nel 1875 Schulte identificò Rufino come un franco, probabilmente un tedesco renano, che aveva vissuto e insegnato a Parigi, che aveva appreso a Bologna il diritto romano ascoltando le lezioni di Bulgaro, e che doveva aver scritto la sua *Summa* tra il 1164 ed il 1166, anno della morte di Bulgaro.[25]

L'idea che Rufino fosse tedesco o francese ebbe seguito presso qualche autorevole studioso,[26] ma la gran parte delle ipotesi inizialmente avanzate da Schulte per tratteggiare le caratteristiche dell'autore si basavano su passi della *summa Auctoritate et tempore*: i suoi frequenti riferimenti alla città di Colonia, e la

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[20] Bamberg SB can. 17 (fol. 147ra-162rb); è anche in Vaticano BAV Pal. lat. 678, fol. 5-35v. Cfr. Kuttner, *Repertorium* 132-133; Robert L. Benson, 'Rufin', DDC 7.781.

[21] Fol. 37rb-107ra.

[22] Fol. 107ra-116ra.

[23] Stephan Kuttner, 'The Third Part of Stephen of Tournai's Summa', *Traditio* 14 (1958) 502-505.

[24] Peter Landau, 'Zur Dekretsumme *Fecit Moyses tabernaculum*—ein weiteres Werk der Kölner Kanonistik', ZRG Kan. Ab. 127 (2010) 602-608.

[25] Schulte, Quellen 1.121-130.

[26] Ad esempio, Friedrich Thaner, nella recensione—non priva di critiche—all'edizione Schulte, pubblicata nelle *Göttingische gelehrte Anzeigen* 24 (1892) 955.

dipendenza dall'insegnamento francese che aveva caratterizzato la scuola renana, spiegano oggi il fraintendimento.

L'individuazione della Summa e l'affermazione dell'italianità di Rufino

Nel 1888, con un articolo pubblicato sulla *Nouvelle revue de droit français et étranger*, Louis Tanon, allora Consigliere della Corte di Cassazione, indicò in altri quattro manoscritti, conservati in biblioteche francesi, i testimoni dell'opera originale di Rufino, e chiarì che i codici individuati da Schulte contenevano al massimo delle forme abbreviate.[27]

L'anno seguente, in novembre, Schulte presentò alla Kaiserliche Akademie der Wissenschaften di Vienna una richiesta di sovvenzione per la pubblicazione delle opere decretistiche di Paucapalea, Stefano di Tournai e Rufino, le cui edizioni definiva già 'pronte per la stampa'.[28]

Lo stesso mese, con una comunicazione all'Accademia viennese, Heinrich Singer[29]—un promettente allievo di Maassen—contestò il progetto di Schulte, indicando i medesimi manoscritti individuati da Tanon come testimoni della *Summa* originale di Rufino: ma ignorò il saggio di Tanon, ed attribuì la scoperta alle proprie ricerche. Schulte ritirò allora la richiesta, ammise l'errore, ma riconobbe la primogenitura della scoperta al

[27] Louis Tanon, 'Ètude de littérature canonique: Rufin et Huguccio', *Nouvelle* RHD 12 (1888) 823-831 e 13 (1889) 681-728. I MSS. erano Moulins BM 22, Paris BNF lat. 15399 e 4378, Troyes BM 645; i primi due codici riproducono integralmente la *Summa* di Rufino. Il MS Troyes 645 era stato indicato anche da Schulte, *Quellen* 1.122 n.5. Tanon arrivò alle sue conclusioni confrontando il testo dei quattro manoscritti non solo con i passi di Rufino tramandati da altri giuristi, ma anche con la *Summa* di Giovanni di Faenza, sul presupposto che essa fosse 'une artificieuse combinaison des deux sommes de Rufin et d'Ètienne de Tournai' (p. 830).

[28] Seduta del 6 novembre, *Sb. Akad. Wien* 1889 (1891) n. XXII xiii.

[29] Comunicazione del 20 novembre, *Anzeiger Akad. Wien* 1889 (1891) n. 24 85ss. Sullo studioso austriaco Peter Landau, 'Singer, Heinrich Joseph', *Neue deutsche Biographie* 24 (Berlin 2010) 459s. Lo sviluppo del dibattito è raccontato da Nikolaus Grass, *Österreichs Kirchenrechtslehrer der Neuzeit, besonders an den Universitäten Graz und Innsbruck* (Freiburg 1988) 105-114.

giurista francese.[30] La polemica—l'‘astiosa e dolorosa' polemica di cui ha parlato Ruffini—si trascinò ancora: il professore austriaco insistette di essere giunto a conclusioni simili a quelle del magistrato francese in modo del tutto indipendente, e continuò a rivendicare per sé la priorità della scoperta evidenziando una serie di errori commessi da Tanon.[31]

Nel 1890, in base al testo della *Summa* da lui ricostruito, Singer affermò per la prima volta e senza ombra di incertezza ('mit voller Gewissheit') l'italianità di Rufino, e propose la sua identificazione con l'omonimo vescovo di Assisi che aveva preso parte al concilio lateranense III del 1179.[32]

Nel 1892, Schulte pubblicò ugualmente un'edizione della *Summa*,[33] per la quale, pur con alcune accortezze e utilizzando anche i manoscritti indicati da Tanon e Singer, continuò a basarsi sui primi di cui si era fidato. Nella Prefazione, cosciente di essere stato inizialmente tratto in inganno da quei codici, mostrò di aver cambiato idea su Rufino, e lo riconobbe italiano, vissuto a Bologna e monaco, probabilmente benedettino. Due le possibili identità: quella del vescovo di Assisi proposta da Singer, oppure quella del Rufino vescovo di Nola, poi divenuto vescovo di Rimini e cardinale di Santa Prassede.[34]

L'edizione di Schulte non venne accolta positivamente dalla comunità scientifica.

Singer, che la giudicava 'completamente inutilizzabile',[35] nel 1902 presentò una propria edizione critica della *Summa*, che è

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[30] Il ritiro della richiesta, in *Anzeiger Akad. Wien* 1890 (1891) n.4 14-15, era seguito a uno scambio epistolare con Singer, che poi lo stesso Singer pubblicò, *Einige Bemerkungen zu Schulte's Rufin-Ausgabe* (Innsbruck 1892) 23ss.

[31] Anche la corrispondenza tra Singer e Tanon è stata pubblicata, nella *Nouvelle* RHD 15 (1891) 121ss.

[32] *Anzeiger* 27. Jahrgang 1890 n. 8 38; Mansi 22.459.

[33] Supra n.2.

[34] Schulte, 'Einleitung' xxxviii s. Sul vescovo di Rimini Ferdinando Ughelli, *Italia sacra* (Venezia 1720^2) 6.257 e (Venezia 1717^2) 2.423 e ora Marco Vendittelli, 'Rufino', DBI 89 (2017) 173-174.

[35] Heinrich Singer, *Beiträge zur Würdigung der Decretistenlitteratur I.*, AKKR 69 (1893) 370.

considerata l'unica attendibile.[36] La terza sezione dell'Introduzione era significativamente intitolata 'Rufino, maestro della scuola di Bologna e vescovo di Assisi'. L'autore non mostrava dubbi sull'identificazione, ed anzi proponeva ora Assisi come città natale del decretista che, in una data imprecisata prima del 1179, vi sarebbe tornato in veste episcopale[37].

La ricostruzione di Singer ricevette un'ampia approvazione, e da allora l'assimilazione tra il decretista e il vescovo di Assisi divenne corrente.

Il dibattito su Rufino si riaccese nel 1926, quando Germain Morin pubblicò il discorso di apertura del III concilio lateranense, rinvenuto in un manoscritto della Biblioteca Ambrosiana di Milano (C 30 Sup.) che conteneva una raccolta di sermoni[38]. Morin arrivò alla conclusione che l'autore dei sermoni fosse il decretista Rufino—che come vescovo di Assisi aveva preso parte al concilio—ed introdusse nel dibattito un ulteriore elemento: la paternità di un'opera teologica, il *De bono pacis*, il cui autore era un Rufino sorrentino.

Seguito per decenni dalla storiografia, Morin ipotizzò che il decretista, dopo essere stato vescovo di Assisi, negli anni '80 del XII secolo fosse divenuto arcivescovo di Sorrento. Studi recenti hanno però messo in luce la natura miscellanea del codice ambrosiano individuato da Morin, non riconducibile ad un unico autore,[39] come invece la teoria dello studioso belga presupponeva.

Poiché la paternità del discorso di apertura del concilio lateranense era fondata su raffronti di stile e contenuto tra

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[36] Supra n. 2. Sulle pagine di questo periodico José Miguel Viejo-Ximénez ('La suma *Quoniam in omnibus* y las primeras *summae* de la Escuela de Bolonia', BMCL 33 [2016], 31 n. 7) ha recentemente sostenuto che neanche l'edizione di Singer può essere considerata una edizione critica: sia perché basata su otto manoscritti e non su tutti quelli oggi conosciuti (12 completi e 10 frammentari), sia perché l'indicazione delle varianti non sarebbe stata rigorosa.

[37] Singer, 'Einleitung' lxv ss.

[38] Germain Morin, 'Le discours d'ouverture du concile général de Latran (1179) et l'oeuvre littéraire de maître Rufin, évèque d'Assise', *Atti della Pontificia Accademia Romana di Archeologia*, Ser. 3.2 (1928) 113-133.

[39] Adele Simonetti, 'Rufino di Assisi e il cod. C 30 Sup. dell'Ambrosiana', *Studi medievali* 31 (1990) 125-142.

l'insieme dei sermoni e l'opera teologica, gli elementi per l'identificazione dell'autore della prolusione lateranense con il vescovo di Assisi sono venuti meno. Ed è anche stata smentita da Deutinger ('senza ombra di dubbio', ad avviso di Martin Bertram)[40] la possibilità di riconoscere quest'ultimo nel Rufinus Sorrentinus autore del *De bono pacis.*[41]

Nascita, estrazione sociale, studi e insegnamento.

Cosa resta allora, dopo oltre un secolo di discussioni, della biografia di Rufino? Quali gli indizi ancora oggi validi per ricostruirla?

La supposizione che sia nato ad Assisi[42] è—oggettivamente—fragile, basata com'è sulla coincidenza onomastica con il patrono della cittadina umbra, san Rufino martire, e sul presupposto (poi rivelatosi errato) che Rufino fosse un nome poco diffuso e dunque attribuito per devozione verso il santo.[43]

Un'affermazione contenuta nella *Summa* ha poi suggerito l'idea, più volte ribadita, che Rufino fosse di umili origini: 'quamvis simus filii excussorum, est tamen valde ridiculosum de sacco vacuo excutere frumentum'.[44] Secondo Singer, Rufino avrebbe qui voluto 'con una certa ostentazione' presentarsi come figlio di contadini.[45] La lettura del passo in chiave autobiografica sembra però forzata.

'Filii excussorum' è un'espressione biblica, tratta dal salmo 126 e nota ai teologi per la sua ambiguità.[46] Secondo l'esegesi agostiniana, accolta nella *Glossa ordinaria* alla Bibbia, i 'filii excussorum' potevano essere i figli degli Apostoli, o gli Apostoli

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[40] Martin Bertram, QF 78 (1998) 641.
[41] Roman Deutinger, 'Einleitung', in Rufinus von Sorrent, *De bono pacis* (Hannover 1997) 1-42.
[42] Singer, 'Einleitung' lxxi.
[43] Deutinger, 'Einleitung' 14-15.
[44] Rufinus, *Summa* ad C.3 q.1 (d'ora in avanti citata sempre nell'ed. Singer) 261.
[45] Singer, 'Einleitung' lxxiv; Ruffini, 'La *Summa Decretorum*' 120, Benson, 'Rufin' 779.
[46] Ps. 126:4: 'Sicut sagittae in manu potentis: ita filii excussorum'.

stessi, figli dei profeti.[47] Agostino si soffermava sui significati del verbo 'excutere', scuotere, per sottolineare che gli Apostoli avevano scosso gli involucri che custodivano le parole enigmatiche dei profeti, svelandole. Dunque esortava a scuotere gli involucri 'si volumus esse filii excussorum',[48] e utilizzava la stessa metafora del sacco fatta poi propria da Rufino ('dicimus excuti saccum, ut illud quod intus latebat, exeat').[49]

Difficilmente un canonista del XII secolo, dotato di formazione teologica e buon conoscitore della Glossa alla Bibbia[50], avrebbe potuto utilizzare una simile espressione per definirsi figlio di contadini. Il contesto suggerisce invece un gioco di parole, non oscuro per i suoi lettori di estrazione ecclesiastica. Il tema trattato, quello dell''exceptio spolii', era già stato esposto in una *quaestio* precedente (C.2 q.2). Rufino voleva sottolineare quanto la ripetizione fosse superflua, e che sarebbe stato eccessivo, anzi espressione di 'ignavia' o 'iactantia', esaminare nuovamente concetti ormai chiari (e dunque il passo potrebbe essere così interpretato: 'per quanto siamo figli degli scuotitori—cioè come gli Apostoli vogliamo svelare gli 'aenigmata'—è certamente ridicolo cercare di scuotere il frumento da un sacco vuoto').

L'unica informazione sulla quale non ci sono più dubbi è il fatto che Rufino abbia insegnato diritto canonico a Bologna, città nella quale—accanto a quella civilistica di Irnerio—si era sviluppata per merito di Graziano una fiorente scuola canonistica. È anche possibile che sia stato allievo diretto di Graziano, ma non se ne hanno indizi.

Oltre ad essere suggerito da molti elementi presenti nella *Summa*, l'insegnamento bolognese è testimoniato da un altro

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[47] 'In psalmum cxxvi enarratio', PL 37.1667ss.
[48] Ibid. 1678-1679.
[49] Ibid. 1675: 'et aliter dicimus excuti saccum, ut illud quod intus latebat, exeat. Ergo intelligo, fratres, quantum possum, filios excussorum fortasse ipsos Apostolos dictos, filios Prophetarum: Prophetae enim clausa sacramenta et operta continebant: excussi sunt, ut inde manifesta procederent'. Nella glossa alla Bibbia, ad v. *Filii excussorum* si legge: '[…] vel excuti dicitur aliquid ut saccus, ut exeat quo intus latebat […]', *Bibliorum Sacrorum glossa ordinaria primo quidem à Strabo Fulgensi collecta* (Venezia 1603) 3.1451s.
[50] Singer, 'Einleitung' cxxii.

celebre decretista, Stefano di Tournai, che fu ispirato dall'opera di Rufino e lo indicò come proprio maestro.[51] I precisi limiti temporali di questa docenza restano indeterminati, ma si ritiene sia iniziata negli anni '50 del XII secolo.

Al periodo di insegnamento bolognese risalgono le uniche opere certamente attribuibili al nostro Rufino: glosse sparse al *Decretum*[52] e, soprattutto, la *Summa Decretorum*, che in base ad un'analisi delle sue fonti è stata datata intorno al 1164[53] e che fu la più influente tra le prime *summae* decretistiche. Essa venne ampiamente utilizzata da Stefano di Tournai—attraverso il quale fu conosciuta Oltralpe—e da Giovanni di Faenza; fu consultata da Vacario a Oxford[54] e numerose sono le opere anonime, a tal punto dipendenti dalla *Summa* di Rufino da essere considerate sue abbreviazioni o plagi.

Vescovo di Assisi o di Atina?

Secondo la tradizionale ricostruzione storiografica—come abbiamo visto—smessi i panni del docente Rufino sarebbe divenuto vescovo di Assisi, e in quel ruolo nel 1179 avrebbe preso parte al concilio lateranense.

L'identificazione si fonda su un documento in scrittura beneventana: un privilegio del 29 giugno 1180 aggiunto al Registro di Pietro Diacono, con il quale l'arcivescovo di Benevento Ruggero

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[51] *Die Summa des Stephanus Tornacensis über das Decretum Gratiani*, ed. Johann F. von Schulte (Giessen 1892) 275, ad de con. D.2 c.73. Cf. Ken Pennington, 'Stephen of Tournai (Étienne de Tournai) (1128-1203)', *Great Christian Jurists in French History*, a cura di Olivier Descamps e Rafael Domingo (Cambridge 2019) 35-51 a 50.

[52] Josef Juncker, 'Summen und Glossen: Beiträge zur Literaturgeschichte des kanonischen Rechts im zwölften Jahrhundert', ZRG Kan. Abt. 14 (1925) 384-474; Rudolf Weigand, 'Die Glossen zum Dekret Gratians', SG 25-26 (1991) 425-442 e 583s.; Beate Kann, 'Die Rufinglossen zu den Causae 27-30 des Decretum Gratiani', *Ius et Historia: Festgabe für Rudolf Weigand zu seinem 60. Geburtstag*, cur. Norbert Höhl (Würzburg 1989) 121-142.

[53] André Gouron, 'Sur les sources civilistes et la datation des Sommes de Rufin et d'Etienne de Tournai', BMCL 16 (1986) 55-70.

[54] Frederic W. Maitland, 'Magistri Vacarii Summa de matrimonio', *Law Quarterly Review* 13 (1897) 133-143 a 139.

concedeva l'indulgenza di un anno ai pellegrini che si fossero recati a Montecassino, di un anno e quaranta giorni se lo avessero fatto in occasione della festa di San Benedetto.[55]

Ruggero nominava alcuni vescovi, da lui convocati a san Germano, tutti suffraganei dell'arcidiocesi di Benevento e provenienti da luoghi relativamente prossimi all'abbazia: Avellino, S. Agata dei Goti, Alife, Telese e Bojano. Erano presenti altri due episcopi, invitati non dall'arcivescovo ma dall'abate di Montecassino, Pietro II: un Pietro dalla vicina Teano e un *magister Rufinus*, il cui nome era seguito da un aggettivo geografico che nel 1662 il primo editore del privilegio, Ferdinando Ughelli, lesse come *Atinensis*.[56] Atina era—ed è—un paese a pochi chilometri dall'abbazia di Montecassino, nei cui domini era allora ricompreso: la presenza di un vescovo di Atina sembrava perciò perfettamente coerente nel contesto del documento. Del resto, nella prima edizione dell'*Italia sacra* Ughelli aveva indicato come vescovo di Assisi per quegli anni un certo Pietro, partecipante nel 1179 al concilio lateranense.[57]

Nella seconda edizione ampliata dell'opera Nicolò Coleti inserì però una nota, che emendava la cronotassi dei vescovi di Assisi predisposta dall'Ughelli. Corresse in Rufino il nome del vescovo che aveva partecipato al concilio,[58] sulla base degli *Acta conciliorum* da poco pubblicati dal gesuita Jean Hardouin,[59] che

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[55] *Registrum Petri Diaconi (Montecassino, Archivio dell'Abbazia, Reg. 3)*, cur. Jean-Marie Martin et alii (4 vols. Roma 2015) 1.520s.

[56] Ferdinando Ughelli, *Italia Sacra* (Roma 1662[1]) 8.197.

[57] *Italia Sacra* (Roma 1644) 1.542.

[58] *Italia Sacra* (Venezia 1717) 1.479.

[59] *Acta conciliorum et epistolae decretales ac constitutiones Summorum Pontificum* (11 vols. Paris 1714) 6.2. 2056. La collezione espressamente citata dal Coleti nella seconda edizione dell'Italia sacra (cfr. n. precedente), era una raccolta in 11 volumi, sostanzialmente basata sulla precedente edizione 'labbeana' dei *Sacrosancta concilia* (Paris 1671-1672) che Jean Hardouin aveva in parte ripulito da testi ritenuti inutili o controversi (come le decretali pseudo-isidoriane) e in parte arricchito, aggiungendo anche un indice dei vescovi che avevano partecipato ai concili, nel quale compare anche Rufino di Assisi (Paris 1715) 11.572. La raccolta dell'Hardouin era stata avversata dai giansenisti, tuttavia Coleti stesso se ne servì successivamente per la riedizione

testimoniavano l'esistenza (e la presenza al concilio) di un Rufino di Assisi tra i vescovi provenienti dalla *Provincia Romana*. Non aveva allora motivo di collegare il Rufino di Assisi al documento cassinese: anzi, sulla base di esso introdusse un Rufino tra i vescovi di Atina, pur con una giustificazione un po' contraddittoria. Da un lato, infatti, Coleti riteneva che il privilegio del 1180 smentisse la notizia della soppressione dell'episcopato ai tempi di Eugenio III (metà XII secolo),[60] dall'altro sembrava consapevole del fatto che nel 1180 Atina non fosse sede episcopale ma prepositura, e indicava i nomi di prepositi che si erano succeduti dal 1140.[61]

Nel 1733 Erasmo Gattola—un protagonista della ricerca storico-erudita dei suoi tempi, che di Montecassino era stato, tra le altre cose, prefetto della biblioteca, archivista e priore—diede alle stampe, per i tipi di Sebastiano Coleti, fratello di Nicolò, la sua *Historia abbatiae Cassinensis.* Vi ripubblicò, emendandolo, il privilegio del 1180.[62]

Il testo edito nell'*Italia Sacra* era stato fornito ad Ughelli dall'erudito benedettino Costantino Gaetani,[63] e la descrizione dell'antigrafo, specialmente per il numero del foglio, corrisponde al manoscritto Montecassino Archivio dell'Abbazia 620,[64] una copia integrale quattrocentesca in scrittura gotica[65] del *Registrum Petri Diaconi*. Gattola fece invece ricorso al codice originale,[66] e

(ampliata) dei *Sacrosancta concilia ad Regiam editionem exacta* di Labbé-Cossart, pubblicata a Venezia dal fratello Sebastiano tra il 1728 e il 1733.

[60] Notizia che ricavava dalla stessa opera di Ughelli, *Italia Sacra* (Roma 1659) 6.557.

[61] *Italia Sacra* (Venezia 1722[2]) 10.26.

[62] Erasmo Gattola, *Historia Abbatiae Cassinensis* (2 vols. Venezia 1733) 1.399.

[63] Sull'abate Gaetani la voce biografica di Massimo Ceresa, DBI 51 (1998) 189-191.

[64] 'Ex membranacea charta libri privilegiorum fol. 101' (*Italia Sacra*[1] 8.197). Nel manoscritto il privilegio si trova appunto al fol. 101.

[65] Pierre Chastang-Laurent Felle e Jean-Marie Martin, 'Autour de l'édition du *Registrum Petri Diaconi:* Problèmes de documentation cassinésienne: chartes, rouleaux, registre', MEFR 121 (2009) 106.

[66] Montecassino, Archivio dell'Abbazia Reg. 3, fol. 78rb.

vi lesse—correttamente—*Asisinensis*.[67] Si trattava dunque del vescovo Rufino di Assisi che, l'anno prima del privilegio, aveva partecipato al concilio lateranense indetto da Alessandro III.

Il Rufino vescovo di Atina continuò a sopravvivere in alcune poco fortunate attribuzioni di paternità: nel 1926 Harald Fuchs ipotizzò che fosse l'autore del *De bono pacis*,[68] l'opera dell'omonimo arcivescovo di Sorrento che, nello stesso anno, Morin attribuiva a Rufino di Assisi.[69] Nel 1935 Paul Fridolin Kehr chiuse ogni congettura sull'esistenza di un episcopato ad Atina.

Il catalogo dei vescovi di Atina, che Ughelli aveva tratto dalla *Chronica Atinensis Ecclesiae* di Pietro Diacono[70] era semplicemente fantasioso, e leggendaria era la notizia che la chiesa di Atina fosse stata una diocesi dall'epoca di Giovanni XIII (X secolo) fino

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[67] È opportuno sottolineare che nel cartolario l'atto del quale parliamo è un'aggiunta, successiva alla morte di Pietro Diacono, e databile in base al tratto all'ultimo ventennio del XII secolo: dunque una trascrizione cronologicamente prossima alla concessione del privilegio, cfr. Mariano Dell'Omo, *Il Registrum di Pietro Diacono (Montecassino, Archivio dell'Abbazia, Reg. 3): Commentario codicologico, paleografico, diplomatico* (Montecassino 2000) 66. La scrittura è qua e là un po' sbiadita, sbiadito è anche l'aggettivo e lo scioglimento dell'abbreviazione—che Gattola in realtà evitò scrivendo una volta 'magistro Rufino Asisin.' e l'altra 'magistro Rufino Assisinen.'—sembrerebbe portare ad una desinenza accusativa, anziché all'ablativo necessario per una corretta concordanza ('magistro Rufino Asisinum', così anche nella recente edizione del *Registrum* cfr. supra n. 55). Ciò nonostante, la lettura proposta dall'Ughelli, *Atinensis*, deve essere esclusa perché la *t* beneventana non è in nessun modo confondibile con una *s*; non posso esimermi dal ringraziare dom Mariano Dell'Omo, direttore dell'Archivio di Montecassino e profondo conoscitore del cartolario, per le informazioni e la preziosa consulenza paleografica.

[68] Harald Fuchs, *Augustin und der antike Friedensgedanke: Untersuchungen zum neunzehnten Buch der Civitas Dei* (Berlin 1926) 224ss.

[69] I due autori non si citano e probabilmente non erano reciprocamente a conoscenza delle pubblicazioni comparse nello stesso anno.

[70] La cronotassi dei vescovi di Atina è stata pubblicata anche da Bonaventura Tauleri, *Memorie istoriche dell'antica città d'Atina* (Napoli 1702) 216-243, Giuseppe Cappelletti, *Le Chiese d'Italia dalla loro origine sino ai nostri giorni* (21 vols.Venezia 1844-1870) 21.364-366 e, parzialmente, da Pius B. Gams, *Series Episcoporum Ecclesiae Catholicae* (Regensburg 1873—rist. Graz 1957) 926.

alla soppressione ai tempi di Eugenio III.[71] Alla luce degli studi di Erich Caspar, che avevano smascherato la genuinità di molte informazioni provenienti da Pietro Diacono,[72] Kehr confermò che anche su questo aspetto il monaco aveva 'favoleggiato' ('suo more fabulatur'), indicando come vescovi di Atina dell'XI secolo quelli che erano stati in realtà i vescovi di Sora, diocesi dalla quale verosimilmente la chiesa di Atina dipendeva.[73] Alla metà del XII secolo quest'ultima era una prepositura 'nullius dioecesis' dipendente dall'abbazia di Montecassino. Le ricerche di Herbert Bloch hanno poi definitivamente ricondotto tutte le false informazioni su Atina, compreso il *Catalogus episcoporum Atinensium* pubblicato dall'Ughelli, ad una serie di apocrifi costruiti da Pietro Diacono, una sorta di 'dossier Atina' che Bloch ha definito un 'romanzo agiografico del XII secolo'.[74]

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[71] Già Francesco Lanzoni, *Le diocesi d'Italia dalle origini al principio del secolo VII (an. 604)* (Faenza 1927) 174 aveva escluso la possibilità dell'esistenza di una diocesi di Atina prima del VII secolo, considerando 'tardivo e fantasioso' il *Breve Chronicon Atinensis Ecclesiae*, che indicava i vescovi fino all'XI secolo.

[72] Erich Caspar, *Petrus Diaconus und die Monte Cassiner Fälschungen: Ein Beitrag zur Geschichte des italienischen Geisteslebens im Mittelalter* (Berlin 1909) in particolare 128ss.

[73] Kehr, *Italia pontificia* 8.197. L'informazione venne a Kehr da Hans Walter Klewitz.

[74] Herbert Bloch, *Un romanzo agiografico del XII secolo: gli scritti su Atina di Pietro Diacono di Montecassino*, *VIII Conferenza dell'Unione internazionale degli Istituti di archeologia, storia e storia dell'arte in Roma* (Roma 1991); idem ed. *The Atina Dossier of Peter the Deacon of Monte Cassino: A Hagiographical Romance of the 12th Century* (Città del Vaticano 1998). Intorno al 1128, probabilmente per il sostegno all'abate Oderisio II, che era stato deposto da Onorio II, Pietro Diacono dovette abbondonare Montecassino e fu accolto nella vicina città di Atina. Tornò a Montecassino nel 1131 e, a capo della biblioteca, si diede ad una intensa attività letteraria, in parte dedicata alla costruzione di falsi. In particolare, le opere del cd. *Dossier Atina* (tra le quali la *Passio beatissimi Marci et sociorum eius*, il *Catalogus episcoporum Atinensium*, il *Chronicon civitatis Atinae*) sono state composte per rendere omaggio alla città che lo aveva ospitato durante il suo esilio.

Il Rufino del documento del 1180 è dunque il vescovo di Assisi che l'anno prima aveva preso parte al concilio lateranense. Sorgono però due domande. Perché Heinrich Singer ha identificato il decretista Rufino con il vescovo citato nel privilegio? E perché un vescovo di Assisi era stato convocato dall'abate di Montecassino per assistere, a circa 300 km di distanza, alla concessione di un privilegio che interessava più che altro l'arcidiocesi di Benevento?

La tesi di Singer si fondava, credo correttamente, sul fatto che Rufino, oltre che come vescovo, compariva nel documento come *magister*, titolo allora attribuito ai docenti di arti liberali o di diritto canonico.[75] È vero che, trattandosi di una denominazione di origine pre-universitaria,[76] il titolo non sarebbe di per sé sufficiente ad individuare un canonista e—come ha sottolineato Deutinger[77]—potrebbe essere riferito a qualsiasi docente di una scuola cattedrale. Tuttavia, un ulteriore indizio, emerso successivamente, sembra confermare l'intuizione di Singer che *quel* maestro Rufino fosse il nostro decretista.

Nel 1955 Alfons Maria Stickler ha segnalato un passo della *Summa Reginensis*—un'opera anonima di scuola bolognese terminata intorno al 1191[78]—che riportava un'opinione espressa dal magister Rufinus mentre si trovava presso l'abbazia di Montecassino.[79] In questo caso non c'è dubbio—per il contesto e

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[75] Sul tema ancora fondamentale Johannes Fried, *Die Entstehung des Juristenstandes im 12. Jahrhundert: Zur sozialen Stellung und politischen Bedeutung gelehrter Juristen in Bologna und Modena* (Köln-Wien 1974).

[76] Olga Weijers, 'La spécificité du vocabulaire universitaire du XIII[e] siècle', *Actes du colloque Terminologie de la vie intellectuelle au moyen âge, Leyde-La Haye 20-21 septembre 1985* (Turnhout 1988) 43.

[77] Deutinger, 'The Decretist Rufinus' 11; idem, 'Einleitung' 8.

[78] Alfons M. Stickler, 'Decretisti bolognesi dimenticati', SG 3 (1955) 409 attribuì l'opera a Pietro Beneventano, senza però fornire prove significative.

[79] Ibid. 404, v. *inpenitentibus* ad D.95 d.p.c.2: 'Quia genus est sacramentorum unde queritur, utrum unctio talis possit in aliquo iterari. Magister Rufinus *in claustro apud montem cassinum* fertur respondisse ex quo non inveniebatur expressim prohibitum licite possit iterari. Ego credo cum alia sacramenta, scl. in quibus confertur gracia, iterari non possunt, quod dico propter matrimonium,

per la fama di cui godeva l'autore tra i canonisti—che il riferimento fosse al nostro decretista, e non stupisce che sia indicato senza titoli ecclesiastici, perché così i giuristi venivano citati ordinariamente nelle opere esegetiche.

Il problema riguardava la possibilità di reiterare il sacramento dell'unzione degli infermi; l'autore della *Reginensis*, che era contrario, riportava il parere di Rufino, non ascoltato in prima persona ('fertur respondisse'), secondo il quale la ripetizione non era vietata e dunque doveva ritenersi consentita.

L'argomento non era di interesse recente, perché già nell'XI secolo Ivo di Chartres e Goeffrey di Vendôme si erano espressi contro la possibilità di rinnovare l'estrema unzione in quanto 'genus sacramenti':[80] il rispetto del principio agostiniano 'nulli sacramento facienda est iniuria'[81] ne avrebbe vietato, in questo caso, la ripetizione. Nel secolo seguente, però, diversi teologi, come Ugo da San Vittore[82] e Pietro Lombardo,[83] si erano espressi a favore della reiterabilità dell'unzione. Era noto che fosse una consuetudine monastica benedettina,[84] osservata in particolare da cluniacensi e cistercensi.[85] Pietro il Venerabile—il celebre abate di Cluny—la difese espressamente come necessario strumento di

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nec istud, cum sit sacramentum, non est iterandum. Nulli enim sacramento facienda est iniuria ut infra de cons. di. iiii. ostenditur'.

[80] Ivo di Chartres, *Epistolae*, ep. 255, PL 162.260; Geoffrey di Vendôme, *Epistolae*, l. II ep. 19-20, PL 157.87-88; cfr. Christof Rolker, *Canon Law and the Letters of Ivo of Chartres* (Cambridge 2010) 184-185.

[81] *De baptismo* 1.1.2, ed. Michael Petschenig (CSEL 51; Wien 1908) 146. CSEL 51 146.

[82] Ugo da San Vittore, *De sacramentis*, l.2 p. XV c. 3, PL 171.578-580.

[83] Marcia L. Colish, *Peter Lombard* (2 vols. Leiden-New York-Köln 1994) 1.612s.

[84] Lo dichiarava già Geoffrey di Vendôme, ep.19 (supra n.80): 'Sicut consuetudines monachorum B. Benedicti regulae concordantes laudamus, sic eas, quas sanctus Benedictus nec docet, nec praecipit, et quae a ratione penitus discrepare videntur, laudare non possumus […]. Et, ut caetera taceamus, in hoc . . . non mediocriter errant, quod unctionem infirmorum . . . iterandum putant'. Anche Ivo di Chartres, nell'ep.255, trattava la questione rispondendo ad una richiesta dell'abate benedettino di Saint Fuscien.

[85] Jean de Launoy, *De sacramento unctionis infirmorum liber* (Paris 1673) 370.

reiterazione per la remissione dei peccati.[86] Solo la riflessione scolastica posteriore, e in particolare quella di Petrus Cantor e di Tommaso d'Aquino, portò alla distinzione tra sacramenti che imprimono il carattere, e non possono essere ripetuti, e quelli che non lo imprimono e sono pertanto iterabili, come l'estrema unzione.[87]

Tra i canonisti, come mostra la *Glossa ordinaria*, ancora alla metà del XIII secolo le posizioni erano discordi.[88] Nel luogo corrispondente della *Summa* di Rufino il tema non era stato affrontato e, ad un esame certamente non esaustivo,[89] sembra di poter dire che la questione diventerà corrente nelle opere decretistiche solo a partire dagli anni '80 del XII secolo. Se ne trova traccia ad esempio nella *Lipsiensis* (ca. 1186)[90] e nella *Summa De iure canonico tractaturus* di Onorio del Kent (ca. 1188), che fa anche esplicito riferimento alla consuetudine cistercense.[91] La trattazione certamente più ampia è quella di Uguccio, che identifica come non ripetibili i sacramenti del battesimo, della confermazione e dell'ordine e, quanto all'estrema unzione, prende atto che la sua reiterazione è una consuetudine ormai diffusa 'fere ubique'.[92]

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[86] Pietro il Venerabile, *Epistolae*, l. V ep.7, PL 189.392s.

[87] Per un quadro del problema Louis Godefroy, 'L'extrême onction chez les Scolastiques', *Dictionnaire de théologie catholique* (15 vols. Paris 1899-1950) 5.1985-1997.

[88] Gl. s.v. *santificato* ad D.95 d.p.c.2: '[…] Sed numquid potest hoc sacramentum iterari? Dicunt quidam quod non […]. Alii dicunt quod potest iterari: quia cum quis secundo infirmatur, desinit in eo esse istud sacramentum quod prius accepit'.

[89] Il tema, trattato in D.95 c.3 anche dalla *Glossa ordinaria*, sembra ignorato da Paucapalea, dalla *Stroma*, dalla *Parisiensis*, dalla *Monacensis*, da Giovanni di Faenza, da Stefano di Tournai, da Sicardo, da Simone da Bisignano.

[90] *Summa 'Omnis qui iuste iudicat' sive Lipsiensis*, ed. Rudolf Weigand-Peter Landau-Waltraud Kozur (5 vols. MIC 7 Ser. A; Città del Vaticano 2007) I 395, v. *posse concedi* ad D.95 c.3. Cfr. Peter Landau, 'Rodoicus Modicipassus—Verfasser der *Summa Lipsiensis*?' ZRG Kan. Ab. 92 (2006) 340-354.

[91] Magister Honorius, *Summa 'De iure canonico tractaturus',* edd. Rudolf Weigand-Peter Landau-Waltraud Kozur (3 vols. MIC Ser. A 5; Città del Vaticano 2004) 1.257 s. v. *omnibus* ad D.95 c.3.

[92] Franz Gillmann, 'Der 'sakramentale Charakter' bei den Glossatoren Rufinus, Johannes Faventinus, Sikard von Cremona, Huguccio und in der Glossa

Il soggiorno a Montecassino, durante il quale il parere fu espresso, sembrerebbe dunque successivo all'insegnamento bolognese di Rufino, ma comunque sufficientemente lontano dagli anni in cui veniva redatta la *Reginensis* da poter essere ricordato al passato. Una stima del tutto congetturale, fondata—come si è detto—sulla diffusione del tema nelle *summae* canonistiche, potrebbe riportare tale soggiorno ad anni anche successivi al 1180: dunque non necessariamente in coincidenza con il privilegio cassinese (giugno 1180). Una data diversa però non smentirebbe l'identificazione del decretista con il *magister* vescovo di Assisi, per le ragioni che vedremo.

Ammettendo che si tratti della stessa persona, che per un breve o lungo periodo continuativo, oppure più volte, ha frequentato Montecassino, resta da chiarire il motivo della familiarità con l'abbazia. Una familiarità[93]—desumibile dalla richiesta dell'abate Pietro di presenziare alla concessione del privilegio in San Germano, ed apparentemente confermata dal soggiorno all'interno del monastero ('in claustro')[94]—che non si concilia facilmente con la discreta distanza tra Assisi e la Terra di San Benedetto. Due luoghi non solo geograficamente piuttosto lontani, ma soggetti a poteri politici in quel momento contrapposti, perché Assisi, che faceva parte del Ducato di Spoleto, era allora terra imperiale,[95] mentre Montecassino rientrava nel Regno normanno e godeva della protezione di Guglielmo II,[96] alleato del pontefice.

La risposta è in una decretale di Alessandro III indirizzata a Rufino, vescovo di Assisi, anch'essa individuata da Heinrich

ordinaria des Dekrets, *Der Katholik* 90 (1910) 304; Artur M. Landgraf, 'Zur Frage von der Wiederholbarkeit der Sakramente', *Divus Thomas* 29 (1951) 278 ss.

[93] Sottolineata anche da Kehr: 'unde colligitur eum cum monachis casinensibus usum habuisse' (Kehr, *Italia Pontificia* 8.187 n.287).

[94] Supra n.79.

[95] Entrerà infatti nei domini pontifici nel 1198.

[96] Liugi Fabiani, *La Terra di San Benedetto: Studio storico-giuridico sull'Abbazia di Montecassino dall'VIII al XIII secolo* (3 vols. Montecassino 1968-1980) 1.122.

Singer, una dozzina di anni dopo l'edizione della *Summa*.[97] La datazione generalmente accolta—il 1180—è stata data da Kehr solo 'per relationem' con il privilegio cassinese,[98] ma in realtà l'unico dato certo è il termine 'ad quem' costituito dalla morte di Alessandro III nel 1181. Segnalata per la prima volta da Karl Hampe nel 1897,[99] si trova in una serie di collezioni di decretali della fine del XII secolo: la *Claustroneoburgensis*, la *Wigorniensis* e la *Cheltenhamensis*,[100] la *Rotomagensis prima*, la *Collectio Tanneri* o *Bodleiana*, la *Sangermanensis* e la *Abrincensis prima*.[101]

La missiva confermava a Rufino, vescovo di Assisi, la concessione della chiesa di Valleluce:[102] una chiesa poco distante dall'abbazia di Montecassino, alla quale apparteneva. Il pontefice sottolineava l'anomalia del conferimento ad un vescovo di una chiesa di proprietà di un monastero, soprattutto perché così 'remota', ed aggiungeva di non ritenere tale conferimento 'canonicum aut honestati consonum'. Tuttavia, tenuto conto della 'iusta possessio' che Rufino già esercitava sulla chiesa per attribuzione dell'abbazia, e considerate sia 'devotio e pietas' del

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[97] Heinrich Singer, 'Neue Beiträge über die Dekretalensammlungen vor und nach Bernhard von Pavia', *Sb. Akad. Wien* 171 (Wien 1913) 285-286.

[98] Kehr, *Italia Pontificia* 8.187 n.287.

[99] Karl Hampe, 'Reise nach England vom Juli 1895 bis Februar 1896', NA 22 (1897) 396. La segnalazione riguardava il London, BL Royal 10.A.II, ovvero la *Collectio Wigorniensis*. Nel codice si leggeva *Sisinnato ep*., ma Hampe la ritenne una corruzione di 'Atinati', ovvero di Atina, in base alla cronotassi di Gams (supra n. 70).

[100] Le prime tre collezioni fanno parte del cd. 'gruppo Wigorniensis', le ultime tre del cd. 'gruppo anglo-normanno'. La *Rotomagensis prima* è un supplemento della *Collectio Francofurtana*. Cfr. Charles Duggan, 'Decretal Collections from Gratian's *Decretum* to the *Compilationes antiquae*. The Making of the New case Law', HMCL 2.246-248.

[101] Walter Holtzmann, 'Kanonistische Ergänzungen zur Italia Pontificia' (2), QF 38 (1958) 125s. n.165: 'Alexander III. Rufino Asisinati episcopo'. L'A. ha indicato anche le diverse 'inscriptiones': 'Ruffino Sisinnato ep.' nella *Wigorniensis*, 'Rustino ep.' nella *Cheltenhamensis*, 'Asisinati ep'. nelle altre, tranne la *Claustroneoburgensis* che è priva di iscrizione.

[102] Singer ha pensato erroneamente si trattasse di Villa S. Lucia, altra località vicina a Montecassino, Singer, 'Neue Beiträge' 285 n.16. L'errore è stato emendato da Kehr, *Italia Pontificia* 8.187.

vescovo, sia non meglio precisate necessità della chiesa di Assisi, confermava la concessione—su richiesta di Rufino—limitandola però a soli tre anni, al termine dei quali Valleluce doveva 'ad monasterium . . . libere et sine contradictione redire'.[103]

Il territorio di Valleluce era stato donato all'abbazia, nel 744, dal duca longobardo Gisulfo II e qui era stata fondata una delle prime 'cellae' di Montecassino, perché era una delle zone più fertili e popolate. Vi era stata eretta una chiesa dedicata a S. Angelo, che compariva nei privilegi papali in favore dell'abbazia dal 748.[104]

Lo stesso Alessandro III nel 1159 aveva confermato all'abate Rainaldo da Collemezzo la 'cella S. Angeli Vallislucis' tra le proprietà del monastero: proprietà che nessuno doveva 'perturbare aut . . . auferre vel ablatas retinere'.[105] Il pontefice aveva utilizzato una formula tipica dei privilegi monastici, ma non in modo formale: è noto alla storiografia l'impegno di Alessandro III nel far rispettare le esenzioni concesse ai monasteri, evitando da un lato le prevaricazioni episcopali e, dall'altro, la mancata tutela dei diritti dei vescovi.[106] Questo impegno era anche servito al

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[103] Singer, 'Neue Beiträge' 285-286: 'Postulavit a nobis tua fraternitas, ut ecclesiam de Valle Lucis, quam a monasterio Cassiensi possidere dinosceris, tibi scripto nostro confirmaremus. Licet autem non sit canonicum aut honestati consonum, ut cum episcopus sis, ecclesia monasterii alicuius, et maxime tam remota, tibi debeat confirmari, tua tamen devocione ac pietate pensata et inspecta necessitate ecclesie tue prescriptam ecclesiam, sicut eam a praescripto monasterio iuste possides, tibi usque ad triennium de benignitate sedis apostolice confirmamus, ita quidem, quod eadem ecclesia post triennium ipsum ad monasterium debeat libere et sine contradictione redire'.

[104] Gattola, *Historia* 1.206; Fabiani, *La Terra di San Benedetto* 2.183s. Guglielma Sammartino, 'L'organizzazione territoriale benedettina e le fasi dell'incastellamento nella *Terra Sancti Benedicti*', *Studi cassinati* 5 (2005) 66-74; Giovanni Petrucci, 'Albiano e Valleluce: Le prime due celle di Montecassino', *Studi cassinati* 14 (2015) 13-18; Emilio Pistilli, *Il privilegio di papa Zaccaria del 748: Alle origini della signoria cassinese* (Cassino 2009). Sul rapporto tra *cellae* e sistema curtense, Pierre Toubert, *Dalla terra ai castelli: Paesaggio, agricoltura e poteri nell'Italia medievale* (Torino 1995) 99ss.

[105] Gattola, *Historia* 1.338s.; Kehr, *Italia Pontificia* 8.183 n.273.

[106] Michele Maccarrone, 'Primato romano e monasteri dal principio del secolo XII ad Innocenzo III', *Istituzioni monastiche e istituzioni canonicali in Occidente (1123-1215): Atti della settima Settimana internazionale di studio*

pontefice per rafforzare il proprio consenso[107] nella dura fase di scontro che lo aveva visto contrapposto a Federico Barbarossa e a ben tre antipapi: Vittore IV, Pasquale III e Callisto III.

È questo il contesto della decretale indirizzata al vescovo Rufino. La 'necessitas ecclesiae tuae' riguardava verosimilmente la difficile situazione nella quale versava la diocesi di Assisi. La città, sottomessa da Cristiano di Magonza nel 1174, aveva in quegli anni 'una spiccata identità imperiale',[108] e il duca di Spoleto Corrado di Ürslingen, che dal 1177 la governava, risiedeva nella Rocca come rappresentante del Barbarossa. Il potere vescovile era inoltre fortemente condizionato dalla presenza della canonica di San Rufino, espressione del ceto dominante filoimperiale, la quale esercitava una preminenza patrimoniale, oltre che politica, sulle istituzioni ecclesiastiche della diocesi.[109]

È probabile, insomma, che il vescovado di Assisi avesse difficoltà economiche a causa dell'appoggio al pontefice, e che Alessandro III, pur riluttante, abbia accordato la 'confirmatio' per venire incontro alle necessità di un vescovo che gli era rimasto fedele. Un atto di gratitudine che sarebbe temporalmente inquadrabile sia durante lo scontro con l'imperatore, sia dopo la pace di Venezia del 1177. Sulla riluttanza del papa però non c'è dubbio, sia per la brevità della concessione, appena triennale, sia per le modalità: quando compiuta con la formula 'confirmamus sicut iuste possides'—come in questo caso—una conferma aveva

Mendola, 28 agosto—3 settembre 1977 (Milano 1980) 49-132, in particolare 68-106.

[107] Nicolangelo D'Acunto, 'I Vallombrosani e l'episcopato nei secoli XII e XIII', ed. D'Acunto, *Papato e monachesimo 'esente' nei secoli centrali del Medioevo* (Firenze 2003) 50.

[108] D'Acunto, 'Notariato e istituzioni ecclesiastiche ad Assisi nei secoli XII-XIV', RSCI 60 (2006) 391-404 a 397; l'identità imperiale era resa evidente dalla datazione dei documenti, che seguiva gli anni di regno dell'imperatore. Per un inquadramento storico più ampio, Raoul Manselli, 'Assisi tra impero e papato', *Assisi al tempo di San Francesco: Atti del V convegno internazionale, 13-16 ottobre 1977* (Assisi 1978) 337-357.

[109] Ibid. 393ss.

assai modesta operatività, a differenza di quella accordata 'ex certa scientia'.[110]

Oltre gli aspetti che abbiamo esaminato, doveva aver giocato a vantaggio di Rufino l'ottimo rapporto con Montecassino: la chiesa di Valleluce, con i suoi considerevoli proventi, gli era stata concessa direttamente dall'abbazia, la cui titolarità il vescovo riconosceva. Si era trattato, insomma, di un atto di liberalità dell'abate, atto che contribuisce a delineare, insieme alla presenza del vescovo di Assisi all'emanazione del privilegio del 1180 e al soggiorno testimoniato dalla *Summa Reginensis* (ipotizzando l'identità del decretista con il vescovo assisiate), una amichevole consuetudine tra Rufino e il monastero.

Rufino monaco cassinese?

Le circostanze appena esposte inducono a rivalutare un'ipotesi di Schulte, piuttosto disdegnata ai tempi della polemica sull'attribuzione del testo della *Summa*: la possibilità che Rufino fosse un monaco benedettino.[111]

L'ipotesi nasceva da un passo nel quale Rufino parlava della perfezione della vita monastica. Non era un tema inconsueto: l'associazione tra vita religiosa e perfezione è costante nella teologia medievale[112] e nasce dalla lettura della parabola evan-

[110] Gl. ord. s.v. *confirmatum* ad X 1.2.8: 'si vero sub hac forma confirmat, scilicet 'confirmamus sicut iuste possides', talis confirmatio modicum operatur vel nihil'; cfr. Ennio Cortese, *La norma giuridica: Spunti teorici nel diritto comune classico* (2 vols. Milano 1964, rist. Milano 1995) 2.93 n.99.

[111] Schulte, 'Einleitung' xxxix. L'ipotesi era stata duramente criticata da Thaner (rec. in *Göttingische gelehrte Anzeigen* 956s.: 'das . . . Argument, dass Rufinus benedikter war, trifft aber nicht zu') e poi da Singer, 'Einleitung' lxix ss., che la valutò con un'evidente animosità, coerente con l'atmosfera polemica che si era creata nel dibattito. Ha condiviso le considerazioni di Singer anche John T. Noonan, 'Gratian Slept Here: the Changing Identity of the Father of the Systematic Study of Canon Law', *Traditio* 35 (1979) 145-172 a 152.

[112] Jean Leclercq, 'Perfezione, Monachesimo, Il medioevo', *Dizionario degli istituti di perfezione*, dir. Guerino Pelliccia - Giancarlo Rocca (10 vols. Roma 1980) 6.1456-1462; Simon Légasse, 'Perfection chrétienne' III. 'Moyen âge', *Dictionnaire de spiritualité* (Paris 1984) 12.1119 ss.

gelica del giovane ricco, in Mt. 19:21.[113] Rufino mostrava nella trattazione conoscenza della teologia monastica e inquadrava il tema in categorie che—ovviamente con maggiore ampiezza e profondità—sarebbero state adottate nel secolo seguente da Tommaso d'Aquino,[114] ma che verosimilmente già ai suoi tempi rientravano nel dibattito ecclesiologico sugli 'ordines'.

La 'quaestio' di Graziano (C.14 q.1) riguardava la possibilità che i canonici di una chiesa potessero agire in giudizio per 'repetere sua'. Graziano stesso, nel c.1, citava il passo di Matteo a sostegno della risposta negativa.[115] Rufino colse l'occasione per un'esposizione sulla natura della perfezione cristiana, che distingueva in comparativa e assoluta. I chierici—sosteneva—accedono alla perfezione comparativa, perché non è loro richiesto di essere 'perfecti simpliciter' (espressione che sarà tomistica) ma solo perfetti in comparazione ai laici (Tommaso, in un contesto parzialmente diverso, parlerà di perfezione 'secundum quid').[116] La perfezione 'absoluta' è invece quella dei monaci, che abbandonano in modo radicale le cose terrene. Nessuno ci deve prendere per pazzi, però—continuava Rufino—se parliamo di perfezione assoluta: perché sappiamo bene che persino Noè nella Scrittura veniva definito 'vir iustus atque perfectus in generatione sua',[117] e quindi aveva una perfezione solo comparativa, relativa alla sua generazione. Il decretista precisava di riferirsi alla sola 'perfectio viae', non alla 'perfectio patriae': secondo quella che sarà un'altra nota distinzione tomistica, la 'perfectio patriae' è la perfezione compiuta, che coincide con l'aderenza a Dio e non è di questo mondo; la 'perfectio viae' consiste invece nello sforzo dell'uomo di avvicinarsi alla perfezione eterna.

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[113] Mt. 19:21: 'Ait illi Iesus: Si vis perfectus esse, vade, vende, quae habes, et da pauperibus, et habebis thesaurum in caelo; et veni, sequere me'.
[114] *Summa theologiae* 2.2 q.184.
[115] C.14 q.1 c.1: 'Quod sua repetere non possint, facile posse probari videtur. Ait enim Dominus in evangelio: "Si vis perfectus esse, vade, et vende omnia, que habes, et da pauperibus". Quia ergo isti iter perfectionis arripiunt, non licet eis sua habere'.
[116] Ottavio Marchetti, 'La perfezione della vita cristiana secondo S. Tommaso', *Gregorianum* 1 (1920) 41-77 a 44.
[117] Gen. 6:9.

La ‘perfectio viae absoluta’ poteva riguardare, secondo Rufino, l’ʻhabitus virtutis’ oppure lo ‘status religionis’. I ‘perfecti circa habitum virtutis’ erano coloro che, pur vivendo nel mondo, avendo beni e famiglia, erano così infiammati dalla ‘charitas’ da non essere toccati dalle questioni terrene. Erano invece ‘perfecti statu religionis’ quelli che, attirati dalla via della perfezione, vivevano separati dalla ‘conversatio mundi’, come i monaci e i canonici regolari. I primi potevano ‘ablata repetere’ in giudizio, perché dovevano provvedere alla famiglia; agli altri non era concesso perché non potevano possedere beni propri, a meno che non agissero come procuratori dei propri fratelli (dunque in quanto abati o priori). In questo modo Rufino adottava entrambi i parametri che consentivano di misurare o graduare la perfezione: quello della virtù e quello dello stato di vita religiosa.[118]

L’identificazione della vita religiosa con lo stato di perfezione—lo si è detto—è corrente nella cultura e nella teologia medievali e, dunque, il suo riconoscimento in linea di principio non è necessariamente indice di appartenenza all’ordine monastico.

Il momento storico in cui Rufino scrive, però, è un importante periodo di transizione per la definizione delle forme di vita religiosa, che si andranno consolidando nel secolo seguente con la nascita degli Ordini mendicanti. Il secolo XII, che è stato definito ‘eminentemente monastico’,[119] è stato attraversato da una polemica tra gli ‘ordines’ che poneva al centro il confronto tra chierici e monaci.

Tra i temi che avevano alimentato la discussione c’era il diritto dei monaci di predicare e di riscuotere le decime,[120] ed era controversa la possibilità che chierici secolari e regolari potessero decidere liberamente di abbracciare la vita monastica senza aver preventivamente ottenuto l’autorizzazione del proprio

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[118] Leclercq, ‘Perfezione’ 1456.

[119] Giovanni Lunardi, *L’ideale monastico* 5ss..

[120] Cinzio Violante, ‘Pievi e parrocchie dalla fine del X all’inizio del XIII secolo’, *Le istituzioni ecclesiastiche della ‘societas christiana’ dei secoli XI-XII: Diocesi, pievi e parrocchie: Atti della sesta settimana internazionale di studio Milano, 1-7 settembre 1974* (Milano 1977) 643-799 a 697-699.

superiore.[121] Il *Decretum* di Graziano dedicava a questi temi ampio spazio (le cause 'monastiche' vanno da C.16 a 20), ma non tutti i decretisti li hanno affrontati con la profonda conoscenza del mondo monastico, della sua organizzazione e della sua cultura teologica, mostrata da Rufino.

Nel contesto appena descritto, e che è stato ampiamente studiato dalla storiografia, anche la decisa affermazione sulla perfezione assoluta dei monaci e relativa dei chierici non può essere considerata una valutazione neutra. Almeno tenendo conto che in quello stesso torno d'anni si erano levate voci, come quella di Filippo di Harvengt che, nel *De institutione clericorum* (1156), aveva rovesciato le tradizionali definizioni della vita monastica come 'vita arctior', sostenendo che la perfezione clericale era molto più difficile da raggiungere della perfezione monastica, vista come una sorta di diserzione, attuata nascondendosi in un monastero.[122]

L'asserzione di Rufino sembra poco coerente con una militanza dell'autore nei ranghi del clero secolare, e legittima l'ipotesi che fosse un monaco. Tanto più che lo stesso decretista, nella *Praefatio* alla sua *Summa*—riproponendo un'immagine allegorica anch'essa cara alla tradizione monastica[123]—evocava il tempo lontano in cui gradi e ordini della Chiesa differivano 'concorditer' e concordavano 'differenter', suscitando l'ammirazione persino dei pagani.[124] Nel conflitto dei suoi tempi, del quale

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[121] Lunardi, *L'ideale monastico* 5 ss.

[122] *De institutione clericorum* 4.122, PL 203.832, cfr. Lunardi, *L'ideale monastico* 56.

[123] Il talamo florido del Cantico dei cantici, in cui Cristo si univa alla sua Chiesa, *Canticum canticorum* 1:15: 'ecce tu pulcher es dilecte mi et decorus lectulus noster floridus'; Kurt Ruh, *Geschichte der abendländischen Mystic*, 1: *Die Grundlegung durch die Kirchenväter und die Mönchstheologie des 12. Jahrhunderts* (München 1990), trad. it. (qui cit.) *Storia della mistica occidentale*, 1: *Le basi patristiche e la teologia monastica del XII secolo* (Milano 1995) 294; Inos Biffi, *Tutta la dolcezza della terra. Cristo e i monaci medievali* (Milano 2004) 26.

[124] Rufinus, *Summa Decretorum*, 'Praefatio' 3: 'quod utique parabola erat temporis instantis, quando regnante Christo, qui est pax nostra, faciens utraque unum, in tantum thalamus sponsi quiete floridus est et multiplicatis obsequiis

era dunque consapevole, Rufino avrebbe voluto ricreare una situazione di 'concordia', non solo nei canoni, ma tra gli ordini ecclesiastici. A tal fine evitò personalizzazioni e faziosità, vestendo i panni imparziali del maestro, e non si definì mai come parte di una categoria, né laica, né clericale, né monastica. Pur in questa esibita equidistanza, i princìpi espressi sembrano sempre in linea con i valori e le posizioni monastiche.

L'annosa questione della 'cura animarum' dei monaci, ad esempio, era per Rufino una controversia 'di facile soluzione', nonostante le molte 'auctoritates' canoniche che ponevano il divieto. Distingueva i monaci in solitari, sarabiti o girovaghi, per i quali il divieto era valido, e cenobiti che invece potevano esercitare gli 'officia sacerdotalia' purché autorizzati dall'abate, o assegnati dal vescovo ad una chiesa parrocchiale. I cenobiti potevano sempre esercitarli se appartenenti a monasteri 'privilegiati' (ossia quelli normalmente definiti esenti, come Montecassino).[125] Sullo stesso tema, a titolo di esempio, qualche anno prima Rolando era stato assai più restrittivo.[126]

I medesimi monaci autorizzati a celebrare 'officia', dare penitenze, predicare e battezzare, potevano per Rufino anche 'exigere decimas a populo', e pagarle, salvo privilegio pontificio.[127]

Il problema dei passaggi da uno stato di vita religiosa all'altro—il 'transitus'—era forse tra i più sentiti. Era infatti un'urgenza, ricordata già da Paucapalea, il problema dei numerosi chierici che, 'sine licentia' dei propri vescovi, sceglievano la quiete dei monasteri.[128] A differenza dei suoi predecessori, che

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decoratus, ut etiam ethnici admirentur gradus et ordines ecclesie concorditer differre et differenter concordare'.

[125] Rufinus, *Summa Decretorum* 353, ad C. 16 q.1.

[126] *Die Summa magistri Rolandi nachmals Papstes Alexander III.* ed. Friedrich Thaner (Innsbruck 1874) 37 ad C. 16 q.1: 'Vel dicamus, omnibus monachis generaliter interdictum aliquibus praedicare, nisi fratribus suis vel forte ad eorum conversationem venire volentibus; quod est in omnibus ac de omnibus credimus intelligendum, nisi forte articulus necessitatis immineat'.

[127] Rufinus, *Summa Decretorum* 355 ad C. 16 q.1 d.a.c. 42.

[128] *Die Summa des Paucapalea über das Decretum Gratiani*, ed. Johann F. von Schulte (Giessen 1890) 93 ad C.19: 'Verum quia clericorum plurimi

avevano sottolineato le disposizioni contenute nelle 'auctoritates' contrarie all'accoglienza,[129] Rufino esprimeva limpidamente l'ideale monastico dello stato di elezione, il diritto di ogni uomo di abbracciare la vita monastica come frutto di una libera scelta, volta a perseguire uno stato di vita cristiana più elevato in termini di perfezione ('pro fruge melioris vite').[130] L'unica eccezione riguardava i canonici regolari, che non potevano essere accolti 'sine licentia prioris'. Su questo punto—che riteneva legislativamente vincolato da una decretale di Urbano II[131]—Rufino affermava l'uguale dignità della vita canonica e di quella monastica, in linea con una 'coscienza comune' della Chiesa del XII secolo, manifestata anche dalla contemporanea tradizione sinodale.[132]

Anche nell'occuparsi di temi del tutto diversi, Rufino appare costantemente, e quasi istintivamente, interessato ad aspetti della vita monastica, spesso illustrati in modo assai più ampio di quanto l'esegesi del testo grazianeo richiedesse, e comunque più esteso rispetto alla trattazione dei canonisti del suo decennio. Così quando spiega che i fratelli 'laici' del monastero—quelli che hanno preso l'abito dopo aver vissuto 'in mundo seculariter'—hanno limitate possibilità di promozione rispetto a chi vi è entrato

episcoporum gravamina fugiendo ad hanc quietem incolsultis episcopis se conferunt, de quibus utrum sine licentia eorum recipi debeant, a nonnullis dubitatur, causam duorum clericorum hoc agere volentium subnectit'.

[129] *Die Summa des Paucapalea* 9s. ad C.19 q. 2; *Die Summa magistri Rolandi* 68s. ad loc. cit.

[130] Rufinus, *Summa Decretorum* 292 e 379 ad C.7 q.1 e C. 19, q. 1-3. Cfr. Gerd Melville, 'Zur Abgrenzung zwischen Vita canonica und Vita monastica. Das Übertrittsproblem in kanonistischer Behandlung von Gratian bis Hostiensis', *Secundum regulam vivere: Festschrift für P. Norbert Backmund O.Praem.* cur. Gerd Melville (Windberg 1978) 218.

[131] C.19 q.3 c.3 c. Statuimus. Sulla formazione della Causa 19, Ken Pennington, 'Gratian, Causa 19, and the Birth of Canonical Jurisprudence', *Panta rei: Studi dedicati a Manlio Bellomo* (5 vols. Roma 2004) 4.339-355 e idem, 'La Causa 19, Graziano e lo *Ius commune*', http://legalhistorysources.com/GratianCausa19/Pennington_italiano.htm#_ftn7.

[132] Giorgio Picasso, 'Monachesimo e canoniche nelle sillogi canonistiche e nei concili particolari', *Istituzioni monastiche e istituzioni canonicali*, 149 e 157s.

dall'infanzia.[133] Quando inquadra il problema della simonia in relazione all'ordinazione a vescovo dei monaci.[134] Quando distingue tra l'edificazione laica di chiese 'ad titulum monasterii' o 'non ad titulum monasterii'.[135] Persino quando ricorda che S. Benedetto aveva ricondotto alla ragione qualche monaco 'virga percutiendo'.[136]

Ancora più che per le posizioni assunte, insomma, Rufino sembra monaco per l'estrema attenzione a tutto ciò che riguarda la vita cenobitica e per la cultura monastica che indubbiamente possiede.

Sviluppando ed approfondendo l'ipotesi di Schulte, potremmo immaginare Rufino come un monaco benedettino cassinese che, mandato a studiare diritto canonico a Bologna, si era distinto tra i discepoli di Graziano e, dopo aver insegnato alcuni anni, era stato ordinato vescovo di Assisi.

Non sarebbe un caso insolito. Le ricerche degli ultimi decenni hanno visto provenire dall'Italia centro-meridionale altri canonisti bolognesi: oltre a Pietro Beneventano,[137] mostrano un profilo simile sia l'autore della *Summa Reginensis*,[138] sia quello della *Summa Casinensis* o *Continuatio prima*, operante a Bologna e fedele all'insegnamento di Baziano, ma verosimilmente di origine campana.[139]

Con una formazione cassinese sarebbe coerente la conoscenza della *Lombarda* e la familiarità con espressioni longobarde (come

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[133] Rufinus, *Summa Decretorum* 147 ad D.55 c. 1.

[134] O di chi paga per andare in un determinato monastero, Rufinus, *Summa Decretorum* 229 ad C.1 q.3 c.8.

[135] Ovvero 'ad subiectionem alterius monasterii', Rufinus, *Summa Decretorum* 301 ad C.10 q.1 c.1.

[136] Rufinus, *Summa Decretorum* 104, ad Di. 45.

[137] Sul quale rimando alla voce 'Pietro Collevaccino da Benevento', che ho redatto per il DGI 2.1577-1578.

[138] Infatti Stickler aveva pensato a Pietro Beneventano come autore della *Summa Reginensis*, cfr. supra n. 78.

[139] Wolfgang P. Müller, *Huguccio*: *The Life, Works, and Thought of a Twelfth-Century Jurist* (SMCL; Washington D.C. 1994) 105-107.

'castaldus' o 'gastaldus')[140]: perché anche Montecassino (come Assisi) era terra di diritto longobardo.[141]

La familiarità con le consuetudini ecclesiastiche della *Provincia romana*, evidenziata anch'essa da Singer,[142] sarebbe persino più chiara se in gioventù Rufino avesse frequentato il basso Lazio: perché le sedi episcopali più prossime rispetto a Montecassino—Alatri, Anagni, Ferentino, Veroli—erano diocesi della provincia romana in senso stretto.[143]

Insomma, la provenienza da Montecassino potrebbe spiegare il legame con l'abbazia, mantenutosi vivo anche dopo il periodo bolognese e l'ordinazione episcopale.

Conclusioni

Conosciamo assai poco della vita dei decretisti, e i tentativi di ricostruzione biografica si sono spesso rivelati imprudentemente fondati su coincidenze od omonimie. Paucapalea, ad esempio, è stato immaginato vescovo in Sardegna,[144] ma il caso più celebre è quello dell'identificazione del magister Rolandus autore della *Stroma* con Rolando Bandinelli, il papa Alessandro III, smentita da Weigand.[145]

A ben vedere, l'ipotesi di Heinrich Singer che Rufino fosse vescovo di Assisi si è rivelata la più durevole, e ha resistito anche alla confutazione del 'cursus honorum' successivamente

[140] Singer, 'Einleitung' lxxvi.
[141] Fabiani, *La Terra di San Benedetto* 1.16ss.
[142] Singer, 'Einleitung' lxxiii. Rufinus, *Summa Decretorum* 16s. ad D. 70 pr. Sulla consuetudine della '*provincia romana'* di ordinare '*absque titulo'*, cioè '*absolute'*, Danica Summerlin, *The Canons of the Third Lateran Council of 1179: Their Origins and Reception* (Cambridge Studies in Medieval Life and Thought 116; Cambridge 2019) 103-105.
[143] Conrad Eubel cur. *Hierarchia Catholica Medii Aevi sive Summorum Pontificum, S.R.E. Cardinalium, Ecclesiarum antistitum Series ab anno 1198 usque ad annum 1431 perducta* (Regensberg 1913[2]) 540.
[144] Antonio Mocci, 'Documenti inediti sul canonista Paucapalea', *Atti della reale Accademia delle Scienze di Torino* 40 (1904-1905) 316-327.
[145] Rudolf Weigand, 'Magister Rolandus und Papst Alexander III', AKKR 149 (1980) 3–44, ora in idem, *Glossatoren des Dekrets Gratians* (Biblioteca eruditorum 18; Goldbach 1997) III.

immaginato da Germain Morin, che vedeva la carriera del nostro decretista coronata dal conferimento della cattedra arcivescovile di Sorrento.

La tesi di Singer sopravvive legata a un titolo, 'magister', che nel documento cassinese del quale abbiamo parlato collega il vescovo di Assisi all'insegnamento. Non aveva torto Roman Deutinger nel pensare che quel titolo sia troppo generico per dimostrare una docenza di diritto canonico. Tuttavia, mi sembra che la forza dell'ipotesi di Singer non sia solo la presenza del titolo di 'magister' nel privilegio cassinese, ma la sua assenza dalle altre due testimonianze certe che riguardano il vescovo di Assisi. Sia nella sottoscrizione del concilio lateranense, sia nella decretale a lui indirizzata da Alessandro III, il titolo ecclesiastico assorbe quello accademico. È una circostanza che colpisce specialmente con riferimento ad un papa la cui attenzione alle denominazioni accademiche è notissima:[146] ma nessuna delle numerose 'inscriptiones' con le quali la decretale è stata tramandata contiene l'appellativo di 'magister'. Nel XII secolo i passaggi dalla cattedra canonistica al seggio episcopale non sono rari ma, una volta assunta la guida delle diocesi, i docenti venivano indicati nella documentazione ufficiale semplicemente come vescovi, mentre nelle opere dottrinali—al contrario—restavano 'magistri'. È uno dei motivi per cui l'identificazione storica dei decretisti è assai complessa: persino Uguccio da Pisa, vescovo di Ferrara, in vita non venne mai indicato con le due denominazioni.[147]

In questa prospettiva, il titolo di 'magister' che compare accanto a quello di 'episcopus' nel privilegio cassinese non sembra un ordinario titolo professionale, ma un elemento

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[146] In una celebre decretale in cui annunciava alla Chiesa di Bologna la sua elezione, Alessandro III si era rivolto specificamente a 'legis doctores' (professori di diritto civile) e 'magistri' (canonisti), dando prova di attenzione nell'utilizzare i corretti appellativi per ogni categoria di docenti JL 10587 (7129), Kehr, *Italia pontificia* 5.251 n.20 e 270 n.6, cfr. Ennio Cortese, *Il rinascimento giuridico medievale* (Roma 1996[2]) 42-43.

[147] Cfr. la documentazione in Claudio Leonardi, 'La vita e l'opera di Uguccione da Pisa decretista', SG 4 (1956-57) 37-120; sulla connessione dei due titoli dopo il 1240 ca., Ken Pennington-Wolfgang P. Müller, 'The Decretists: the Italian School', HMCL 2.144.

caratterizzante la notorietà di quel vescovo in quei luoghi. Un po' allo stesso modo in cui Pietro Lombardo poteva essere ricordato semplicemente come 'magister Petrus episcopus':[148] dove il termine 'magister' stava a sottolineare la caratura accademica del vescovo, e in qualche modo rafforzava il titolo ecclesiastico perché non indicava qualsiasi 'magister artium', ma *quel* maestro.

Se così fosse, se cioè l'ipotesi di Singer fosse fondata ed ancora valida, come a me sembra, occorrerebbe capire la ragione della consuetudine di Rufino con Montecassino: perché frequentava l'abbazia, perché aveva ottenuto una vantaggiosa concessione, perché era tra gli uomini di fiducia dell'abate Pietro.

La risposta più ovvia corrisponde ad una possibilità che Singer aveva scartato, cioè l'idea che Rufino fosse un monaco benedettino: percorrendo questa strada, lo abbiamo immaginato cassinese.

Abbiamo provato a verificare tale ipotesi leggendo la *Summa* in una specifica prospettiva, quella della controversia tra chierici e monaci del XII secolo. L'impressione finale, prevalsa in chi scrive, coincide con una convinzione espressa nell'opera da Rufino stesso, senza nessun prematuro autobiografismo: e cioè che nel divenire vescovo un monaco si liberava dall'osservanza della Regola, ma non poteva *dimittere* l'*habitus* monastico.[149] Il legame con l'abbazia di Montecassino potrebbe essere la conseguenza di un filo mai spezzato.

Non riteniamo però di aver fornito risposte definitive, e le incognite restano ancore molte a distanza di quasi centocinquant'anni dal sorgere di quella 'dolorosa polemica' ricordata all'inizio.

La Sapienza, Roma.

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[148] Artur M. Landgraf, 'Der Magister Petrus episcopus', *Recherches de théologies ancienne et médiévale* 8 (1936) 198-203.

[149] Rufinus, *Summa Decretorum* ad C.16 q.1 c.3, 354: 'Si vero episcopi facti fuerint, a iugo regule monastice professionis absolvuntur, ut infra Cs. 18 capit. primo. Quam quidem absolutionem intelligimus quantum ad districtionem obedientie abbatis, ieiunii, silentii et officii, et forte cibi . . . habitum tamen facti episcopi dimittere non possunt'.

The *Distinctiones Tria consideranda sunt in electione* in the Oxford, Bodleian MS Barlow 37

Tatsushi Genka

In his article 'The Decretal 'Presbiterum' (JL 13912) – a letter of Leo IX', Stephan Kuttner wrote:[1]

> A series of *distinctiones*, beg. 'Tria consideranda sunt in electione' (fol. 1v) was copied in the margins of the pre-Gratian material in the later 12th century. It seems to be related to the circle of the *Summa Inperatorie maiestati* [i.e. the *Summa Monacensis*, T. G.] and deserves further study.

The manuscript which contains the 'distinctiones' in question is the Oxford, Bodleian Barlow 37, a late twelfth or early thirteenth century English manuscript.[2] The present paper tries to find out if the sources of some texts of the *Distinctiones Tria consideranda sunt in electione* (henceforth *Distinctiones Tria*) can be identified among the works which belong to the circle of the *Summa Monacensis*. In the sections that follow, I first describe briefly the circle of the *Summa Monacensis* and the works I draw on, and review the researches concerning two controversial points, i.e. the birthplace and the internal relations of the circle. Then I compare some texts of the *Distinctiones Tria* with the corresponding texts in the works which belong to the circle in order to verify Kuttner's supposition and consider how the annotator of the MS Barlow 37 worked, before I come back to reflect on the relation of the

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[1] Stephan Kuttner, 'The Decretal 'Presbiterum' (JL 13912) – A Letter of Leo IX', BMCL 5 (1975) 133-135, here 134 n.8.

[2] *Wigorniensis D (Barlow 37)*, ed. Michael D. Elliot available on the web at the following address: http://individual.utoronto.ca/michaelelliot/manuscripts/texts/transcriptions/wigorniensisD.pdf (accessed on 21. 01. 2020). For a concise description of the manuscript and the secondary sources see Michael D. Elliot, Anglo-Saxon Canon Law, on the web at the following address: http://individual.utoronto.ca/michaelelliot/manuscripts.html (accessed on 21. 01. 2020), and the Bodleian Library, Medieval Manuscripts in Oxford Libraries, on the web at the following address: https://medieval.bodleian.ox.ac.uk/catalog/manuscript_900 (accessed on 16. 01. 2020).

Distinctiones Tria to the circle of the *Summa Monacensis*.

Two controversies concerning the circle of the Summa Monacensis: A Description of the Circle

As described most recently by Rudolf Weigand and Peter Landau,[3] the circle of the *Summa Monacensis* consists of some small, closely related commentaries on the *Decretum Gratiani* written in the 1170s and the 1180s in Northern France. Considered separately, each work enjoyed a very limited manuscript transmission. Taken together, however, they were transmitted widely and influenced larger and more important works, e.g. the use of the *Summa Monacensis* by Huguccio in his *Summa decretorum.*[4]

Of the works that belong to the circle, the present paper draws on the *Summa Monacensis*,[5] the *Distinctiones Consuetudo*,[6] the *Summa Questio si iure naturali*,[7] and the *Summa Permissio quedam.*[8] I further take three *summae* into consideration: the

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[3] Rudolf Weigand, 'The Transmontane Decretists' *The History of Medieval Canon Law in the Classical Period, 1140-1234: From Gratian to the Decretals of Pope Gregory IX*, edd. Wilfried Hartmann and Kenneth Pennington (Washington D.C. 2008) 174-210 at 187-189; Peter Landau, 'Master Peter of Louveciennes and the Origins of the Parisian School of Canon Law around 1170' *Proceedings Toronto 2012* 379-394.

[4] Kuttner, *Repertorium* 180.

[5] Heinrich Singer, 'Beiträge zur Würdigung der Decretistenliteratur I.' AKKR 69 (1895) 369-447; Kuttner, *Repertorium* 179-180; Winfried Stelzer, 'Die Summa Monacensis (Summa 'Inperatorie maiestati') und der Neustifter Propst Konrad von Albeck' MIÖG 88 (1980) 94-112; idem, *Gelehrtes Recht in Österreich: Von den Anängen bis zum frühen 14. Jahrhundert* (Mitteilungen des Instituts für österreichische Geschichteforschung Ergänzungsband 26; Wien-Köln-Graz 1982) 44-59, 191. Stelzer's arguments will be quoted from *Gelehrtes Recht*. See also Weigand, 'The Transmontane Decretists' 187-188; Landau, 'Peter of Louveciennes' 386-394.

[6] Kuttner, *Repertorium* 219; Weigand, The 'Transmontane Decretists' 188-189.

[7] Ibid. 181-182; Weigend, 'The Transmontane Decretists' 188.

[8] Kuttner, *Repertorium* 192-194; Tatsushi Genka, 'Die Hallenser Handschrift ULB Ye 2º 52 im Licht der Überlieferung der *Summa Permissio quedam* zum Dekret Gratians', *Rechtshandschriften des deutschen Mittelalters:*

Summa Lipsiensis,[9] the *Summa Quaestionum*[10] of Magister Honorius as well as his *Summa Decreti*.[11] On the other hand, I exclude the *Summa Inter cetera que ecclesiastice dignitati* from this study, because based on the manuscript Leiden, Bibl. Rijksuniv. Vulc. 48, fol. 9ra-24rb, it is necessary to find out if it really belongs to the circle.[12]

As to the authorship and date of each work, Landau identified Peter of Louveciennes as the author of the *Summa Monacensis* and dated the work to ca. 1172.[13] He also identified the author of the *Summa Lipsiensis*, Rodoicus Modicipassus.[14] The work is dated to ca.1186.[15] The *Summa Permissio quedam* is dated to ca.1185,[16] the *Summa quaestionum* of Magister Honorius to ca.1186,[17] and his *Summa Decreti* to ca.1188-1190.[18] The *Distinctiones*

Produktionsorte und Importwege, edd. Patrizia Carmassi and Gisela Drossbach (Wiesbaden 2015) 147-165.

[9] *Summa 'Omnis qui iuste iudicat' sive lipsiensis* Tom. I (MIC Ser. A Vol. 7), edd. Rudolf Weigand, Peter Landau and Waltraud Kozur, adlaborantibus Stephan Haering, Karin Miethaner-Vent and Martin Petzolt (Vatican City 2007). Cf. Kuttner, *Repertorium* 196-198, 201-204; Weigand, 'The Transmontane Decretists' 195-196.

[10] Kuttner, Repertorium 424; Weigand, 'The Transmontane Decretists'197-198. I would like to note with gratitude that Dr. Waltraud Kozur has kindly provided me with her edition of the *Summa quaestionum* prepared for publication in MIC Ser. A.

[11] *Magistri Honorii Summa 'De iure canonico tractaturus'*. (MIC Ser. A .5), edd. Rudolf Weigand, Peter Landau and Waltraud Kozur, adloborantibus Stephan Haering, Karin Miethaner-Vent and Martin Petzolt (Vatican City 2005). Cf. Kuttner, *Repertorium* 201-203; Weigand, 'The Transmontane Decretists' 198-199.

[12] Kuttner, *Repertorium* 182. Weigand says that the *summa* 'belongs to the same group . . . but is markedly more dependent on Odo of Dover in its treatment of natural law'. Weigend, 'The Transmontane Decretists' 188.

[13] Landau, 'Peter of Louveciennes' 386-390.

[14] Peter Landau, 'Rodoicus Modicipassus – Verfasser der Summa Lipsiensis?' ZRG Kan. Abt. 92 (2006) 340-354; Landau, 'Peter of Louveciennes' 382.

[15] Weigend, 'The Transmontane Decretists' 196; Landau, Peter of Louveciennes' 381-382.

[16] Ibid. 192; Genka, 'Die Hallenser Handschrift' 148.

[17] Ibid. 198.

[18] Ibid. 199.

Consuetudo and the *Summa Questio si iure naturali* have not been dated yet, but, as will be shown in the course of analysis, they are closer to the *Summa Monacensis* than to the *Summa Permissio quedam*.

The Birthplace

No one has ever doubted that the circle or, to be exact, the *Summa Monacensis* was somehow connected to Northern France. For example, Paris and Chartres are mentioned in a commentary on C. 11 (fol. 22ra),[19] so is the coronation of Young Henry in 1170 to be co-regent with his father Henry II in a commentary on D.16 c.7 (fol. 4ra). [20] Opinions differed as to the Austrian localities mentioned in the *Littera formata* (D.73) of the *Summa Monacensis* in the Munich, BSB lat. 16084. The *Littera formata* is a letter issued by a bishop for a cleric of his to be dismissed from his bishopric and recommended to another. Much attention has been payed to the following part of the text, fol. 11va:

> Episcopus gurcensis cuius nomen est Romanus scribit brisingensi episcopo salutem nomine Richero pro clerico qui uocatur Cunradus hoc modo: In nomine π et υ et α et in memoria Petri principis apostolorum. Romanus dei gratia gurcensis ecclesie episcopus I [*sic*] brisingensi episcopo salutem.

Heinrich Singer, who first analyzed the *Summa Monacensis* in detail, thought that the *Littera* was adapted to the local situations between 1175 and 1178 by a scholar who had studied in Paris and later entered the service of Roman, Bishop of Gurk (1174-1179), and then that of Richer, Bishop of Brixen (1174-1178).[21] Franz Gillmann criticised Singer's argument, saying that the birthplace should be identified before considering a possibilty of adaptation, of which he didn't find any. Since Carinthia was also mentioned in the *Summa Monacensis* in the commentary on D.4 c.2 (fol. 2va), Gillmann concluded that the birthplace of the *Summa Monacensis*

[19] Singer, 'Beiträge I' 413-414.

[20] For Weigand 'this is a clear sign that the work was composed in northern France'. Weigand, 'The Transmontane Decretists' 188 at n.74.

[21] Singer, 'Beiträge I' 401-402.

was Carinthia in Austria.[22] Kuttner accepted this conclusion.[23] Finally, Winfried Stelzer argued convincingly for Northern France as the birthplace by pointing out the weaknesses of Gillmann's arguments. In a formulary like this, says Stelzer, it was a common practice to adapt its content to the local situations when the manuscript was transcribed. As to Carinthia, it might be a misunderstanding of an abbreviation for *Carnotia*, that is Chartres.[24] Having studied documents from Gurk and Neustift, Stelzer confirmed Konrad of Albeck, who had later become the provost of the Neustift near Brixen, as the author of this adaptation.[25]

The *Littera formata* of the *Summa Monacensis* in the Arras, Bibliothèque municipale, 1064 (olim 271)[26] supports Stelzer's arguments. The manuscript has variant readings which point to the place where it was copied on fol. 184rb:

M	A
Episcopus g**urcensis** cuius nomen est **Romanus** scribit **brisingensi episcopo** salutem nomine **Richero** pro clerico qui uocatur **Cunradus** hoc modo: In nomine π et υ et α et in memoria Petri principis apostolorum. Romanus dei gratia **gurcensis** ecclesie	Episcopus **bononiensis** cuius nomen est **Iohannes** scribit **mutinensi** nomine **Bernardo** pro clerico qui uocatur **Martinus** hoc modo: In π et υ et α et in memoria beati Petri apostolorum principis. π dei gratia **bononiensis** ecclesie episcopus C.

[22] Franz Gillmann, 'Die Heimat und die Entstehungszeit der Summa Monacensis' AKKR 102 (1922) 25-27, now in *Gesammelte Schriften zur klassischen Kanonistik von Franz Gillmann: I. Schriften zum Dekret Gratins und zu den Dekretisten*, ed. Rudolf Weigand (Würzburg 1988) No. 13.

[23] Kuttner, *Repertorium* 180.

[24] Stelzer, *Gelehrtes Recht* 49.

[25] Ibid. 51-59.

[26] See Henri Loriquet, *Rapport présenté à M. Le Ministre de l'instruction publique sur l'identification de fragments de manuscrits trouvés à Calais, en 1884, suivi d'un tableau des déprédations commises en 1816 sur les manuscrits de la bibliothèque d'Arras* (Arras1886) 30; Kuttner, *Repertorium* 181; idem, 'Interim Checklist of Manuscripts' *Traditio* 11 (1955) 439-448 at 446-447; idem, 'Notes on Manuscripts' *Traditio* 15 (1959) 498-500 at 499; *Notae Atrebatenses in Decretum Gratiani*, ed. Joseph van de Wouw (Leiden 1969) xi-xv.

episcopus I. [*sic*] **brisingensi** episcopo salutem.	[*sic*] **mutinensi** episcopo salutem.

Roman, Bishop of Gurk, has become John, Bishop of Bologna, that is John IV (1165–1187).[27] The addressee, a Modenese called Bernard, is named without any title. The salutation at the end of the text is adressed to the bishop of Modena, but there is no bishop of Modena called Bernard in this period, so that it is impossible to identify him more precisely than someone from Modena. The person for whom the letter is issued is a cleric called Martin.[28] Since, according to Stelzer, the persons acting at the time of copying tends to be eternalized,[29] the *Littera formata* in the Arras manuscript suggests that it was copied in Bologna by a cleric called Martin in the pontificate of John IV. The Arras manuscript also supports Stelzer's argument that the *Littera formata* of the Munich manuscript has been adapted to the local situations. The problem, if 'Carinthia' might be a misunderstanding of 'Carnotia', cannot be solved with the Arras manuscript, as it lacks a commentary on D.4 c.2 in which Carinthia is mentioned in the Munich manuscript. The weight of evidence, however, points to Northern France or, more specifically, to the region around Paris as the intellectual birthplace of the circle.[30]

The internal relations of the circle

At first, the *Summa Monacensis* was thought to be the source from which the other works of the circle had derived. Kuttner's

[27] Pius Bonifacius Gams, *Series episcoporum ecclesiae catholicae* (Regensburg 1873) 676.

[28] In an arbitration of 1186 between the bishop of Bologna and the cathedral chapter, there appears a 'prior Sancti Bartholomei' called Martin as a witness. Cf. *Codice Diplomatico della Chiesa Bolognese: Documenti Autentici e Spuri (Secoli IV-XII) (*Fonti per la Storia dell'Italia Medievale: Regesta Chartarum 54*)*, edd. Mario Fanti and Lorenzo Paolini (Rome 2004) 320-321 at 321. The question, whether the Martin in the *Littera formata* and the witness of the arbitration are identical, must remain open at this moment.

[29] Stelzer, *Gelehrtes Recht* 58.

[30] Landau, 'Peter of Louveciennes' 386-394.

description of them in his *Repertorium* is based on this assumption.[31] In his edition of the *Notae Atrebatenses* of 1969 Joseph van de Wouw argued that the *Summa Monacensis*, the *Notae Atrebatenses* and the *Summa Permissio quedam* are based on different redactions of a common source.[32] Then, in his article 'A Forgotten Definition of Justice', Kuttner questioned his former assumption and announced his intention to prove that at the center of the circle of the *Summa Monacensis* had stood a master 'whose summulae and distinctiones come down to us in several different arrangements as recorded by different pupils'.[33] Kuttner didn't have a chance to fulfill his intention, but the hypothesis that the extant works share a common source rather than one derives from the other, was accepted as plausible by Winfried Stelzer and Rudolf Weigand.[34] Recently Peter Landau identified Peter of Louviciennes as the author of the *Summa Monacensis.*[35] The question, whether he is the master himself or one of his students who transmitted his teachings, remains open.

The affliation of the Distinctiones Tria consideranda sunt in electione

The *Distinctiones Tria* are found in the margins of the Bodleian manuscript Barlow 37 as if marginal glosses. The main body of the manuscript is a late transmission of the so-called Wulfstan's Commonplace Book, a canon law collection of the early eleventh century.[36]

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[31] Kuttner, *Repertorium* 181-184, 219.

[32] Van de Wouw, *Notae Atrebatenses* xxxiiii-xxxvii.

[33] Stephan Kuttner, 'A forgotten definition of justice', SG 20 (1976) 75-109 at 87, now in his *The History of Ideas and Doctrines of Canon Law in the Middle Ages* (Collected Studies; 2nd ed. London 1992) No. V.

[34] Stelzer, *Gelehrtes Recht* 47; Weigand, 'The Transmontane Decretists' 188-189.

[35] Landau, 'Peter of Louveciennes' 389-394.

[36] For Wulfstan's canon law collection see *Wulfstan's Canon Law Collection*, edd. James E. Cross and Andrew Hamer (Cambridge 1999). For Barlow 37 ibid. 49-55; Hans Sauer, 'Zur Überlieferung und Anlage von Erzbischof Wulfstans "Handbuch",' DA 36 (1980) 341-384; idem, 'The Transmission and Structure

That the *Distinctiones Tria* are related to the circle of the *Summa Monacensis* is demonstrated by the following text in the former, fol. 3v:[37]

> Consuetudo aliquando imitatur legem, et tunc omnino seruanda est. Aliquando excedit eam, et tunc aut habet auctoritatem a maioribus et seruanda est ut apostolice traditiones secundum Ieronimum (D.76 c.11), aut ex incerto euentu, et tunc neminem cogit. Aliquando perimit legem, et tunc non est seruanda, nisi in aliquo casuum sit statuta qui numerantur in capitulo Isidori pro persona, capitulo Sciendum est (D.29 c.1), sed tunc cessante causa cessabit effectus. Aliquando propter(!) legem aliquid indicit obseruandum, et tunc obtinet, nisi fuerit honerosa uel mali exempli conscia.

A corresponding text is found in the *Distinctiones Consuetudo*, the *Summa Monacensis*, the *Summa Questio si iure naturali* and the *Summa Permissio quedam*.[38] The text in the *Summa Questio si iure naturali* is an abbreviated veresion of the text in the *Summa Monacensis*. The other three works have texts partially different from each other (see Appendix 1). For example:

Dist. Cons.	*Sum. Mon.*	*Sum. Per. que.*
Quando perimit, reprobatur, nisi constitutio uel nimium rigorem teneat uel nisi sit data ex causa uel loco uel tempore aut aliquo aliorum que distinguntur in xxix. distinctione.	Quando perimit, reprobatur, nisi constitutio uel nimium rigorem teneat uel instituta sit propter causam.	Si uero constitutionem perimit, tunc constitutio prefertur consuetudini, nisi data fuerit ob aliquam illarum causarum quas connumerat Ysidorus infra di. xxviiii. capitulo i. Tunc enim consuetudo uigorem optinebit.
Quando preter constitutionem aliquid	Quando preter constitutionem aliquid	Si autem preter constitutionem aliquam

of Archbishop Wulfstan's "CommonplaceBook",' *Old English Prose: Basic Readings*, ed. Paul E. Szarmach (New York 2000) 339-394. For Wulfstan see Patrick Wormald, 'Archbishop Wulfstan and the Holiness of Society', *Anglo-Saxon History: Basic Readings*, ed. David A. E. Pelteret (New York 2000) 191-224. See above n.2.

[37] Cf. Elliot, *Wigorniensis D* 15, No. D41b.

[38] Some elements are found in glosses. See Rudolf Weigand, *Die Glossen zum Dekret Gratians: Studien zu den frühen Glossen und Glossenkompositionen* (SG 25; Rome 1991) 1-6.

obseruandum inducit, tunc respuitur, uel quia contra fidem est uel quia contra bonos mores uel quia scandali et presumptionis occasio est **uel quia est onerosa**.	obseruandum inducit, tunc respuitur **uel quia honerosa** uel quia prebet occasionem mali. Item consuetudo tripliciter eneruatur, scilicet quando constitutionem perimit et quando est honerosa et quando prebet occasione(m) ma(li).	obseruantiam indicit, **refert utrum consuetudo illa sit honerosa** uel mali exempli causa. Tunc enim multis casibus perimitur. De primo habetur infra di. proxima Omnia talia, de secundo in d. c.Non multum, si autem libera(m) habet obseruationem, ut infra di. proxima Illa.

They apparently represent different redactions of a common source. Compared with the *Distinctiones Tria*, the following readings are of interest:

Dist. Tria	*Dist. Cons*.	*Sum. Mon*.	*Sum. Per. qued*.
imitatur	imitatur	imitatur	immutat
seruanda est ut apostolice traditiones secundum Ieronimum	quasi lex est obseruanda, ut perpenditur ex illo capitulo Vtinam d. lxxvi.	quasi lex obseruanda est, ut perpenditur ex illo capitulo Vtinam d. lxxvi.	Vnde etiam traditiones patrum apostolica iussa arbitramur
aut ex incerto euentu, et tunc neminem cogit	Quando ex incerto euentu rerum, non adeo ligat, sed est obseruanda	Quando ex incerto euentu rerum, non adeo ligat, sed est obseruanda	Si autem incerto rerum euentu orta sit, aut fere nulla aut modica est
in capitulo Isidori pro persona, capitulo Sciendum est		in xxix. distinctione	Ysidorus infra di. xxviiii. capitulo i.
sed tunc cessante causa cessabit effectus			
mali exempli conscia	occasionem mali	scandali et presumptionis occasio	mali exempli causa

The phrase ‘sed tunc cessante causa cessabit effectus’ of the

Distinctiones Tria doesn't appear in any of the other three. The *Distinctiones Consuetudo* lack a reference to D.29 c.1, the Ysidorian text. The *Summa Permissio quedam* has 'immutat' instead of 'imitatur' and lacks an explicit reference to D.76 c.11, the Hieronymus text. The *Summa Monacensis* has 'non adeo ligat, sed est obseruanda' and 'scandali et presumptionis occasio' instead of 'neminem cogit' and 'mali exempli conscia', while the *Summa Permissio quedam* has readings closer to the *Distinctiones Tria* in this respect, i.e. 'aut fere nulla aut modica est' and 'mali exempli causa'.

At first glance the *Summa Monacensis* may seem to be the closest to the text of the Barlow 37. But for the following text of *the Distinctiones Tria* (fol. 1v) no corresponding text is found in the *Summa Monacensis*:[39]

> Tria consideranda sunt in electione: Numerus, dignitas, et zelus. Si <pares> in omnibus non conueniunt, tunc res metropolitani iuditio dirimatur. Si autem in numero tantum, maior numerus optinebit (*add. supra lin.* uel at = optineat). Si autem tantum (*add. supra lin.*) in dignitate, tunc dignior optinebit. Si autem in zelo tantum, tunc que maiori et meliori nititur optineat. Si autem malo zelo, repellatur. Si autem in duobus differant partes, numero scilicetet dignitate, tunc triplex differentia consurgit. Aut altera est maior et dignior, et tunc quocumque zelo nitatur, optinet. Aut minor et dignior, aut maior et non dignior, et si par sit zelus, res meliori iuditio dirimatur. Si autem minor et dignior et meliori zelo ducatur, ipsa optinebit, quia et si cum pari zelo par erit, cum meliori melior. Si autem est maior et non dignior, quod in.(!) pro Christo diximus obseruetur, eo quod iam dictus casus aduerse parti incumbit.

This is the first text of the *Distinctiones Tria*. It explains the principles of election with 'numerus', 'dignitas', and 'zelus'.[40] The corresponding text is the one beginning with 'Cum in eligendo partes dissentiunt' in the *Distinctiones Consuetudo* and the *Summa Permissio quedam* (see Appendix 2). Their texts, which are almost identical except for some additional canons cited in the latter, are longer and more elaborate than the one quoted

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[39] Cf. Elliot, *Wigorniensis D* 8, No. D10a. The "<pares>" is added by T. G.

[40] Note the difference from 'numerus, auctoritas, zelus' of Magister Honorius in his *Summa Decreti* ad D.23 pr. *Summa Decreti* 72-73. See also Kenneth Pennington, 'The Golden Age of Episcopal Elections 1100-1300', BMCL 35 (2018) 243-254 at 251 n.29.

above. As to the outcome of each pattern, however, there is no difference of substance between them. It seems more likely that the text of the *Distinctiones Tria* was rearranged to fit into the margin of the manuscript. The question is rather how to explain such a difference as follows:

Dist. Tria	*Dist. Cons*. and *Sum. Per. qued*.
Si <pares> in omnibus non conueniunt, tunc res metropolitani iuditio dirimatur.	Cum sunt pares numero et dignitate et utraque bono zelo ducitur, auctoritate metropolitani uel apostolici alter alteri prefertur, qui maioribus iuuatur studiis et meritis, ut d. lxiii. c.Si forte.

There are two additions in the *Distinctiones Consuetudo* and the *Summa Permissio quedam.*[41] The one is 'qui maioribus iuuatur studiis et meritis, ut d. lxiii. c.Si forte', which is a quotation from D.63 c.36. This canon provides that the metropolitan should have jurisdiction over the dissension in elections, without mentioning the pope. The other, i.e. 'uel apostolici', is therefore an addition based on an interpretation of the canon. As to the *Distinctiones Tria*, the 'res metropolitani iuditio dirimatur' must be based on D.63 c.36. The omission of 'uel apostolici' may be for some mundane reason, e.g. a lack of space in the margin, or it might reflect something more serious, e.g. the circumstances in England between 1164 and 1172 when the right of the king of England to give (or by implication refuse to give) permission to appeal to the pope was a political issue.[42]

In one case, however, the *Distinctiones Tria* seem to represent a late redaction, fol. 5v:[43]

> Cupiditas alia est honoris et potentie. Hec prohibet a promotione. Idem facit potentie ambitio. Alia diuitiarum uel in adquisitione et retentione, ut qui tenax est, et a promotione arcetur. Que in adquirendo consistit, aut in nimia sollicitudine, ut negociator, aut in turpi modo adquirendi, ut si fenebrem exercet pecuniam. Quo casu deponendum est.

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[41] The phrase 'Cum sunt pares numero et dignitate et utraque bono zelo ducitur' is missing in the *Summa Permissio quedam* through homoioteleuton.

[42] Cf. Mary Cheney, *Roger, Bishop of Worcester 1164-1179: An English Bishop of the Age of Becket* (Oxford 1980) 118-120, 159.

[43] Cf. Elliot, *Wigorniensis D* 24, No. D93a.

A corresponding text is in the *Summa quaestionum* D.2 t.9 pr.[44] the *Summa Decreti* D.47 pr.[45] and the *Summa Lipsiensis* D.47 pr.[46] They are commentaries on usury based on the precept 'non cupidum' of 1 Tim. c.3 v.3:

Sum. quaest.	*Sum. Decreti*	*Sum. Lips.*
Set cum cupiditas quedam sit honoris, que quidem prohibet a promotione, ut i. Q. vi. Sicut is; quedam potentie, que similiter promouendum impedit, ut di. xlvii. Virum; quedam diuitiarum, que consistit tum in retinendo, ut si nimis sit tenax, que promouendum impedit, ut di. lxxxv. Florentinum, tum in acquirendo, que, si maxime ex usurarum exactione proueniat, et promouendum impedit, ut xlvii. De Petro, et promotum deicit, ut e. di. c.i., ii., iii. Set quoniam de hac ultima specie cupiditatis apostolica presertim prodiit inhibitio, de hac uideamus.	Cupiditas alia honoris cuius signum est si se ingerat. Hec prohibet a promotione, ut i. Q. vi. Sicut is, viii. Q. i. In scripturis. Alia potentie que si euidens fuerit a promotione repellit, ut infra eadem di. Virum. Alia diuitiarum que si sit in retinendo auaritia esset et promouendum impedit, ut di. lxxxv. Florentinum; si in adquirendo cupiditas est et si turpi modo promouendum impedit et promotum deicit; de qua hic agitur.	…cupiditas honoris non repellit promouendum, ut i. q. vi Sicut. Item est cupiditas potentie que idem facit, ut infra e. d. Virum. Item est cupiditas diuitiarum que duplex est. Quedam consistit in acquisitione quando aliquis ex turpibus lucris aliquid acquirit utpote ex usuris et aliis; hec repellit promouendum et deicit promotum, ut infra e. d. Quoniam et xiiii. q. iiii. per totam questionem. Item est et alia que consistit in retentione; hec impedit promouendum, ut d. lxxxv. c.i.

The text of the *Distinctiones Tria* has elements from all three works. For example, it shares with the *Summa Decreti* the construction of sentences with 'alia…alia' instead of 'quedam . . .

[44] I quote from the draft edition of Dr. Waltraud Kozur.
[45] *Magistri Honorii Summa* 144.
[46] *Summa Lipsiensis* 195-196.

quedam' or the phrase 'turpi modo'; the phrase 'ut qui tenax est' is similar to 'ut si nimis sit tenax' of the *Summa questionum*; the *Summa Lipsiensis* has 'in acquisitione' and 'in retentione' in this order instead of 'in retinendo' and then 'in acquirendo'. But the word 'negociator' indicates an influence of the *Summa Monacensis*, fol. 7ra:

> Cupiditas alia acquirendi plura quam necessarium sit, alia retinendi superflua. Vsura autem prohibetur, quia sicut cupiditas prohibetur in generali, similiter et in speciebus suis prohibetur, in usura, in qua dupplex cupiditas inuenitur, scilicet cupiditas acquirendi plura quam expediat, cupiditas retinendi superflua. […] Nota quia non inuenitur tanta subtilitas aliquarum(!) delictarum(!) sicut est simonie et usure, quia uix potest inueniri qui se inplicet spiritualibus negotiis qui simonie argui non possit; uix etiam potest inueniri negotiator qui usure se non inplicet.

This is a commentary on D.47 pr. in which the word 'negotiator' appears in connection with usury as a 'species' of 'cupiditas'. But since the *Summa Monacensis* lacks such phrases as 'cupiditas honoris' or 'turpi modo', it is unlikely to be an immediate source. The text of the *Distinctiones Tria* seems to represent a later redaction commonly known to the works of the late 1180s.

Sometimes the author of the *Distinctiones Tria* seems to have drawn on a source of the circle of the *Summa Monacensis*, Rufinus or Johannes Faventinus,[47] as the following text in the *Distinctiones Tria* shows, fol. 1v:[48]

> Tria sunt que maiorem potestatem faciunt in ecclesia (ac.ecclesie): Dignitas consecrationis ut in episcopo; dignitas ordinis ut in diacono respectu subdiaconi; dignitas dispensationis ut in archidiacono, quin etiam archipresbyteris preest. Sacerdos preest in ordine, archidiaconus dignitate uel administratione.

The *Summa Lipsiensis* has a commentary based on the same distinction between 'dignitas consecrationis', 'dignitas ordinis' and 'dignitas dispensationis', but it places 'presbiter' before 'diaconus' in respect of 'dignitas ordinis'.[49] Another corresponding text is found not in the circle of the *Summa*

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[47] Cf. Kuttner, *Repertorium* 180; Weigand, 'The Transmontane Decretists' 196-199.

[48] Cf. Elliot, *Wigorniensis D* 8-9, No. D10b.

[49] Summa Lipsiensis ad D.21 c.2 s.v. *pari consortio*, *Summa Lipsiensis* 66: 'item quandoque ex dignitate ordinis ut preest presbiter diacono'.

Monacensis, but in Rufinus' Summa on D.21 c.2: [50]

> Sed prelatura in clericis provenit aliquando ex dignitate consecrationis, aliquando ex dignitate ordinis, aliquando ex dignitate dispensationis vel amministrationis; hec autem amministratio aliquando est spiritualium, aliquando secularium rerum. Et quidem ex dignitate consecrationis prelatura illa est, qua episcopus ceteris sacerdotibus preminet; ex dignitate ordinis prefertur subdiacono diaconus; ex dignitate amministrationis rerum secularium prestat archidiaconus non tantum aliis, sed etiam ipsi archipresbitero, ut infra dist. XXV. invenitur cap. I. Amministrationis rerum secularium ideo diximus, quia in spiritualium rerum amministratione non archidiaconus archipresbitero, potius e contrario archipresbiter archidiacono preficitur.

Johannes Faventinus has a text closer to that of the *Distinctiones Tria* after 'prefertur subdiacono diaconus':[51]

> ex dispensationis dignitate preest archidiaconus non tantum aliis sed etiam archipresbitero, licet dignitate ordinis sit inferior eo, ut infra di. xxv. inuenitur capitulo i.

It is still impossible to decide which commentary was actually used. Apparently, however, there is a relationship between these texts. More complicated is the next text in the *Distinctiones Tria*, fol. 7v:[52]

> Consentientes aut consentiunt per negligentiam, et tunc nec similem nec maiorem merentur penam, sed sunt redarguendi. Aut per approbationem, nec tunc tantam contrahit culpam, ut qui communicat excommunicato. Non enim anathemati datus est. Aut per cooperationem, et tunc pari pena punitur. Aut etiam per auctoritatem, cum eum defendit. Quo casu acrius puniendus est.

The corresponding text that discusses a theory of accessory and the degree of culpability based on a similar distinction is a commentary on D.83 pr. beginning with 'Episcopus tribus modis dicitur consentire peccato alterius' found in the *Summa Monacensis*, the *Summa Permissio quedam* and the *Distinctiones Consuetudo*. There is no variant reading of substance among them, so that it will suffice to compare the *Distinctiones Tria* with the *Summa Monacensis* (see Appendix 3). Between them there are following differences:

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[50] *Rufinus von Bologna (Magister Rufinus): Summa Decretorum*, ed. Heinrich Singer (Paderborn 1902, reprinted Aalen 1963) 45.

[51] Johannes Faventinus, *Summa*, London, BL 9.E.VII. fol. 11ra.

[52] Cf. Elliot, *Wigorniensis D* 32, No. D134a.

Dist. Tria		*Sum. Mon*.	
Consentientes		Episcopus	
per negligentiam	redarguendi	per negligentiam	increpatione dignus, si non emendauerit, communione debet priuari, demum excommunicari, ad ultimum deponi
per approbationem	nec tantam contrahit culpam	per licentiam	quasi principalis auctor reus constituitur
per cooperationem	pari pena punitur	per cooperationem	uel auxilium dando uel delictum defendendo, dignus depositione
per auctoritatem	cum eum defendit, quo casu acrius puniendus est.		

Of the ‘modi’ of consent, ‘per negligentiam’ and ‘per cooperationem’ are common to both texts. The text of the Barlow 37 adds ‘per approbationem’ and ‘per auctoritatem’, while the text of the *Summa Monacensis* adds ‘per licentiam’. As to the degree of culpability of each ‘modus’ of consent, the sanction against ‘per negligentiam’ is much simpler in the *Distinctiones Tria* than in the *Summa Monacensis*, while the sanction against ‘per cooperationem’ in the former corresponds to that against ‘per licentiam’ in the latter. The sanction against ‘per auctoritatem’ in the *Distinctiones Tria* corresponds only vaguely to the one against ‘per cooperationem’ in the circle of the *Summa Monacensis*.

The works of the late 1180s have commentaries on D.83 pr. closer to the *Distinctiones Tria* in this respect: the *Summa Lipsiensis* has ‘negligentia’, ‘licentia approbando’ and ‘auctoritate’, while the *Summa Decreti* of Magister Honorius has ‘negligentia’, ‘approbando’ and ‘cooperando uel defendendo’, although in each case the degree of culpability of the second

'modus' corresponds to the *Summa Monacensis*.[53] These works may explain how the 'modi' of the *Distinctiones Tria* were formed.

More importantly, the *Distinctiones Tria* and the *Summa Monacensis* also shows evidence that a commentary from Rufinus' *Summa* was used. The reason why two 'modi' are common to both texts, on the one hand, is probably that these texts are built on Rufinus' commentary on D.83 pr., which has only two 'modi':[54]

> Sciendum autem est quia duobus modis dicitur quis consentire: vel cum negligit peccato obviare, cum debeat; vel cum cooperatur peccato defendendo aut aliquo modo auxilium dando.

The description 'uel auxilium dando uel delictum defendendo' for 'per cooperationem' in the *Summa Monacensis* comes apparently from the last part of the quotation, i.e. 'peccato defendendo aut aliquo modo auxilium dando'. The phrase 'cum eum defendit, quo casu acrius puniendus est' for 'per auctoritatem' in the *Distinctiones Tria* also comes from Rufinus.[55] Both texts, on the other hand, have 'per negligentiam' and 'per cooperationem' in stead of 'cum negligit' and 'cum cooperatur' of Rufinus. This suggests that they are related. It seems plausible to assume that they represent different stages of reworking of the same text.

Texts chosen by the annotator of the Barlow 37

The text beginning with 'Consuetudo aliquando imitatur legem' (fol. 3v) describes the validity of *consuetudo* in a general fashion. Taken for itself, the text is not bound to any canon. In the MS

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[53] *Summa Lipsiensis* 354: 'Sciendum uero est quod prelatus tripliciter dicitur consentire: negligentia . . . item licentia approbando . . . item auctoritate. In primo casu minus delinquit quam faciens, in secundo equaliter, in tertio magis'. *Summa Decreti* 235: 'At hic quandoque minus, quandoque magis peccat, quia si consentit negligendo, minus delinquit et punitur minus quam reus . . . Si approbando equaliter . . . si cooperando uel defendendo plus'.

[54] *Rufinus von Bologna: Summa Decretorum* 173.

[55] Ibid. 173-174: 'Aliquando autem magis reatum incurrunt . . . et sicut est de eo, qui alterius defendit errorem: qui multo magis reus est et acrius puniendus'. Cf. Johannes Faventinus, *Summa*, London, BL 9.E.VII. fol. 42vb and London, BL Add.18369 fol. 36vb-37ra.

Barlow 37 it is written in the left margin of the canons prohibiting the act of destroying graves, protecting those who take refuge in the church, and again prohibiting the act of stripping the church under the pretext of the bad quality of the church leaders.[56] In the *Summa Monacensis* the text is placed in D.8, while in the *Summa Permissio Quedam* it is found in D.11, and the place in D.11 varies from manuscript to manuscript.[57] In the *Distinctiones Consuetudo* it is the first text of the entire work and placed before a text which is, judging from the corresponding text of the *Summa Monacensis*, a commentary on D.10 c.1. The exact location cannot be known for lack of further indication.

The text which begins with 'Tria consideranda sunt in electione' (fol. 1v) describes a general principle of election. Taken for itself, this text, too, is not bound to any canon. In the MS Barlow 37 it is placed in the left margin of the canons that deal with ordination, not election.[58] It seems that the text in question explains in a general manner who should be ordained[59] in the same way as the *Distinctiones Consuetudo* and the *Summa Permissio quedam*: In the latter the text is placed between commentaries on D.22 c.1 and D.23 c.1; in the former there is no indication as to where the text is placed. Only by judging from the corresponding texts in the *Summa Monacensis* it is possible to assume that the texts immediately before and after the one in question are commentaries on D.19 pr. and D.24 pr.

As to the text beginning with 'Cupiditas alia est honoris et potentie', it should be noted that the 'cupiditas' appears in the early decretistic or, to be precise, in Rufinus' *Summa* chiefly in two contexts: simony and usury. The text in the *Distinctiones Tria* seems to combine these two, judging from the other works considered in the previous section. But, having no citation of canons, the text is applicable to the 'cupiditas' in general. It is

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[56] Cf. Elliot, *Wigorniensis D* 15-16, Nos. D44-D48; Cross and Hamer, *Canon law Collection* 84-87, Nos. 44-48.

[57] Genka, 'Die Hallenser Handschrift' 154.

[58] Cf. Elliot, *Wigorniensis D* 9, Nos. D11-D13; Cross and Hamer, *Canon Law Collection* 71-72, Nos. 11-13.

[59] Cf. Ibid. 8.

placed in the left margin of the canons prohibiting remarriage after divorce and other sexual intercourses.[60]

The text beginning with 'Tria sunt que maiorem potestatem faciunt in ecclesia' (fol. 1v), which follows directly the one on election, is placed in the left margin of the canons that provide that a priest should not be ordained before thirty and that a virgin should not be veiled, or a deacon should not be ordained, before twenty-five.[61]

The one beginning with 'Consentientes aut consentiunt per negligentiam' (fol. 7v) is placed in the left margin of the canons stipulating sanctions for theft, manslaughter, and assault.[62] These canons begin with 'Si quis' or 'Qui'. The subject 'consentientes' makes it more generally applicable than the corresponding text beginning with 'episcopus tribus modis' found in the other works.

Taken for themselves, therefore, the texts examined here are not bound to any canon. The annotator of the Barlow 37 seems to be interested in general principles which are applicable to a different canon law collection and guide the readers in their interpretation.

The place of the Distinctiones Tria in the circle of the Summa Monacensis

The text beginning with 'Consuetudo' alone will suffice to demonstrate that the *Distinctiones Tria* belong to the circle of the *Summa Monacensis*. The work, however, did not derive from any of the extant works but represents an independent redaction of a common source, possibly a late one, considering its closeness to the *Summa Lipsiensis* (ca. 1186) and the works of Magister Honorius (by 1190). In this case, the reason for omitting 'uel

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[60] Cf. Ibid. 24-25, Nos. D96-D101 (possibly also D.102 and D.103); Cross and Hamer, *Canon Law Collection* 102-104, Nos. 87-91 (possibly also Nos. 92 and 92).

[61] Cf. Ibid. 9, Nos. D14, D15; Cross and Hamer, *Canon Law Collection* 72-73, Nos. 14, 15.

[62] Cf. Elliot, *Wigorniensis D* 32-34, Nos. D134-D140; Cross and Hamer, *Canon Law Collection* 51, Nos. 23-26 (46, Nos. 44-47).

apostolici' in the text beginning with 'Tria consideranda sunt in electione' may not be a political issue of the time.

For some texts of the *Distinctiones Tria*, corresponding texts were not found in the *Summa Monacensis* but in other works. Considering how closely the works belonging to the circle are related, it is unlikely that the texts not found in the *Summa Monacensis* came from outside sources, especially if they are found in the *Distinctiones Consuetudo*, which are closer to the *Summa Monacensis* than to the works of the late 1180s. If the *Distinctiones Consuetudo* are to be placed around 1172, the corpus of commentaries produced by the master must have been larger than the *Summa Monacensis*. The question, if the master was Peter of Louveciennes, remains open.[63]

*Manuscripts**

A = Arras, BM 1064 (olim 271), 12C. Italian
B = Bamberg, SB Can. 17, 12C./13C. German
H = Halle, UB Ye 2º 52, 12C. Italian
L1 = London, BL Add. 24659, 13C. French
L2 = London, BL Cotton Vit. A. III, 12C. English
M = München, BSB lat. 16084, 12C. Austrian
O1 = Oxford, Bodleian Library Barlow 37, 12C./13C. English
O2 = Oxford, Univerisity College 117, 12C./13C. English

*I would like to thank the libraries for their assistance.

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Appendices – Texts

The text of the *Summa Monacensis* is based on M, that of the *Distinctiones Consuetudo* on B, L2, and that of the *Summa Permissio quedam* on B, H, L1.

Appendix 1

Sum. Mon.	*Dist. Cons.*	*Sum. Perm. qued.*
Consuetudo aliquando constitutionem perimit, aliquando imitatur, aliquando preter constitutionem aliquid obseruandum indicit, aliquando constitutionem excedit. Item quando excedit, aliquando sumit initium ex traditionibus maiorum, aliquando ex incerto euentu rerum. Quando ex traditionibus maiorum, quasi lex obseruanda est, ut perpenditur ex illo capitulo Vtinam distinctione lxxvi. Quando ex incerto euentu rerum, non adeo ligat, sed est obseruanda. Quando perimit, reprobatur, nisi constitutio uel nimium rigorem teneat uel nisi sit data ex causa uel loco uel tempore aut aliquo aliorum que distinguntur in xxix. distinctione. Quando preter constitutionem aliquid obseruandum indicit/inducit, tunc	Consuetudo quandoque constitutionem perimit, quandoque imitatur, aliquando preter constitutionem aliquid obseruandum inducit, quandoque constitucionem excedit. Item quandoque excedit, quandoque sumit inicium ex traditionibus maiorum, quandoque ex incerto euentu rerum. Quando ex traditionibus maiorum, quasi lex est obseruanda, ut perpenditur ex illo capitulo Vtinam distinctione lxxvi. Quando ex incerto euentu rerum, non adeo ligat, sed est obseruanda. Quando perimit, reprobatur, nisi constitutio uel nimium rigorem teneat uel instituta sit propter causam. Quando preter constitutionem aliquid obseruandum inducit, tunc respuitur uel quia honerosa uel quia prebet occasionem mali. Item	Consuetudo quandoque constitutionem immutat, quandoque excedit, quandoque perimit, quandoque preter constitutionem aliquam obseruantiam indicit. <Si> inmutat, pro lege habenda, ut in hac distinctione dicitur. Si excedat, refert utrum auctoritatem habuit a maioribus an incerto rerum euentu emerserit. Si a maioribus auctoritatem habuit, obseruanda est. Vnde etiam traditiones patrum apostolica iussa arbitramur. Si autem incerto rerum euentu orta sit, aut fere nulla aut modica est. Si uero constitutionem perimit, tunc constitutio prefertur consuetudini, nisi data fuerit ob aliquam illarum causarum quas connumerat Ysidorus infra distinctione xxviiii. capitulo i. Tunc enim consuetudo uigorem optinebit. Si

respuitur, uel quia contra fidem est uel quia contra bonos mores uel quia scandali et presumptionis occasio est uel quia est onerosa.	consuetudo tripliciter eneruatur, scilicet quando constitutionem perimit et quando est honerosa et quando prebet occasione(m) ma(li).	autem preter constitutionem aliquam obseruantiam indicit, refert utrum consuetudo illa sit honerosa uel mali exempli causa. Tunc enim multis casibus perimitur. De primo habetur infra di. proxima Omnia talia, de secundo in d. c.Non multum, si autem libera(m) habet obseruationem, ut infra distinctione proxima Illa.

Appendix 2

Dist. Cons.	Sum. Perm. qued.
Cum in eligendo partes dissentiunt, aut ipse sunt pares numero et dignitate, aut impares numero et dignitate pares, aut pares numero et impares dignitate, aut impares numero simul et dignitate. Item quando dissentiunt, aut utraque pars bono zelo ducitur, aut altera tantum, aut neutra. Cum sunt pares numero et dignitate et utraque bono zelo ducitur, auctoritate metropolitani uel apostolici alter alteri prefertur, qui maioribus iuuatur studiis et meritis, ut d. lxiii c.Si forte. Quod si altera tantum bonum zelum habet, altera carnali affectu ducatur, que partium bonum zelum habuerit, obtinebit, nisi altera pars indignum esse probauerit qui eligitur. Sed si neutra bonum zelum habuerit, alter eligatur, ut d. lxxix. c.Si duo. Quod si partes sunt impares numero, pares autem dignitate et utraque bono zelo ducatur, obtineat sententia plurimorum, ut in distinctione	Cum in eligendo partes dissentiunt, aut pares sunt numero et dignitate, aut impares numero et dignitate pares, aut impares numero et dignitate. Item aut utraque bono zelo ducitur et auctoritate metropolitani uel apostolici altera prefertur alteri que maioribus iuuatur studiis et meritis, ut di. lxiii. Si forte. Quod si altera tantum bonum zelum habuit, altera carnali ducatur affectu, que bonum zelum habuit optinebit nisi altera pars probauerit indignum esse quem elegerit. Si neutra bonum zelum habuit, altera eligitur, ut di. lxxviiii. Si duo. Quod si numero sint impares, dignitate uero pares, et utraque bono zelo ducatur, optineat sententia plurimorum, ut di. lxv. c.i., ii. et iii. et di. lxxviiii. Si transitus, nisi paucitas probauerit illum indignum sicut in primo casu diximus. Quod ex hoc capitulo conici potest, illud autem in omni controuersia eligentium debet

lxxviiii. Si transitus, nisi paucitas probauerit illum indignum, sicut in primo casu diximus, quod potest conici ex illo capitulo d. xxiii. Ilud. Hoc in omni controuersia eligentium intellige, quod partes pares numero et impares dignitate, si uel utraque pars uel dignior bonum zelum habuit, iudicium dignioris obtinebit. Sed si utraque malo zelo ducatur, iudicio maioris terminabitur. Sed si dignior malo zelo ducatur, indignior bono, tunc erunt partes equales, quia quod in illis dignitas, in istis zelus. Quando sunt impares numero et dignitate, si plures maioris sunt dignitatis siue bono zelo siue non, sententia eorum obtinebit, cum et paucitas malo zelo ducatur, ut infra d. lxv. ca. i. §Tria sunt dignitas, bonus zelus, numerus. Quotiens duo ex istis in aliqua parcium conueniunt, illa, inquam, obtinebit, siue sit maior siue minor. Quod si paucitatem simul et multitudinem bonus zelus duxerit paucitas autem dignioris opinionis fuerit, compensanda erit dignitas paucitatis cum numero multitudinis et utraque electio eiusdem uidebitur auctoritatis argumento illius capituli Augustini quod est in xiiii. distinctione In canonicis, ubi dicitur: Si alie scripture a pluribus alie a grauioribus habentur, equalis esse auctoritatis	intelligi. Quod si pares sint numero et impares dignitate, uel si utraque pars uel dignior bonum zelum habuerit, iudicium digniorum optinebit. Sed si utraque malo zelo ducatur uel indignior bono, tunc erunt partes equales. quia in illis dignitas, in istis zelus supplet. Quando autem sunt impares numero et dignitate, si plures maioris sunt auctoritatis, siue bono zelo ducantur siue non, eorum sententia optinebit, cum et paucitas malo zelo ducatur, ut di. lxv. c.i. Vel aliter: Tria sunt dignitas, bonus zelus et numerus. Quotiens duo ex istis in aliqua parte concurrunt, illa optinebit siue sit maior siue non. Quod si paucitatem simul et multitudinem bonus zelus duxerit, paucitas autem dignioris oppinionis fuerit, compensanda est dignitas paucitatis cum numero multitudinis et utraque electio eiusdem uidebitur auctoritatis, ar. di. xviiii. In canonicis. De his plenius infra di. lxiii. capitulo ultimo.

Appendix 3

Episcopus tribus modis dicitur consentire peccato alterius, scilicet per negligentiam et per licentiam et per cooperationem. Tunc enim per se consentit, cum negligit corripere subditos, et tunc dignus est increpatione et, si non emendauerit, communione debet priuari, demum excommunicari, ad ultimum deponi. Quod dignus sit increpatione potest coici ex illo capitulo quod in xxvii. causa Q. i. Si custos (C. 27 q. 1 c.18). Si per licentiam consentit quasi principalis auctor reus constituetur. Sed licentia dupplex, in iam facto et

in fatiendo, et in utroque reus constituitur, sicut ex illo capitulo xii. cause presumi potest De rebus (C. 12 q. 2 c.22). Si uero per cooperationem consentit, quod fit uel auxilium dando uel delictum defendendo, et tunc est dignus depositione, ut in ii. c.Q. i. capitulo ultimo (C.2 q.1 c.21) continetur.

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‘New’ and ‘Old’ Law in the Twelfth Century: A Contribution to the Current Debate

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The recent attempts to resist the clear meaning of ‘new’ as used by twelfth-century canonists to distinguish more recent materials from older legal sources which lay outside Gratian seem determined to ignore the obvious meaning of the terminology of ‘old’ and ‘new’ law as it was employed by collectors and commentators. Bernard of Pavia’s very short introduction to his *Breviarium extravagantium* (1189-1191), later known as *Compilatio prima*, explains in simple terms its author’s intention. It was, he wrote:[1]

> So that a richer supply of arguments and judgments may be provided, I, Bernard, provost of Pavia, for the honour of God and the Holy Roman Church and the benefit of students, have compiled *extravagantia* from old and new law (de vetero novoque iure) under titles.

He added further precision in the preface to the S*umma* that he later composed (before 1198) to elucidate his *Breviarium*:[2]

> For the sake of scholastic utility, I, Bernard, who as provost of Pavia compiled decretals and *extravagantia*, now, as bishop of Faenza, although unworthy,[3] with Christ as guide, undertake to produce a little summary of the same small work.

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[1] *Breviarium extravagantium Bernardi prepositi Papiensis, Quinque compilationes antiquae necnon collectio canonum Lipsiensis*, ed. Emil Friedberg (Leipzig 1882; repr. Graz 1956) 1-65, at 1: ‘Ut autem uberior allegationum uel iudiciorum copia preparetur ad honorem Dei sancteque Romanae ecclesiae ac studentium utilitatem, ego B. Papiensis prepositus extrauagantia de ueteri nouoque iure sub titulis compilaui’.

[2] *Bernardus Papiensis Faventini episcopi Summa decretalium*, ed. E. Theodor Laspeyres (Regensburg 1860; reprinted Graz 1956) 1-2: ‘scholasticae utilitatis gratia compulsus, ego N., qui decretales et extravagantia compilavi, tunc praepositus Papiensis, nunc Faventinus episcopus licet indignus, super eodem opusculo summulam Christo duce aggredior elimare ’.

[3] Provost of Pavia 1187-1191, bishop of Faenza 1191-98, bishop of Pavia 1198-1213: Filippo Liotta, ‘Bernardo di Pavia’, DBI 9 (1967) 279-284. Antonia Fiori, ‘Bernardo da Pavia’, DGI 1.231-232.

> Furthermore, he explained the title, contents, and purpose of the original composition:[4]
>
> The little book, consisting *for the most part* of *decretals*, received the title *extravagantia*. Its contents are *decretals*, and certain useful chapters (*capitula*) in the corpus of canons, the register of Gregory, and Burchard, which Gratian had **left behind** (*reliquerat*), saving for us fruit, both old and new.[5] The intention is to collect the aforementioned into one volume and to arrange them under appropriate titles, according to their judgments *(sententias*). The usefulness is evident, because through knowledge of this work we will be more prepared for advising, presenting arguments, and deciding (cases) [*emphases mine*].

There is nothing here that implied anything other than differentiation between the Gratian's book and 'the materials scattered outside it (*extravagantia)*', which Bernard listed, in order, as 'decretals' and some 'useful chapters' from specified pre-Gratian sources—a *corpus canonum* (probably Pseudo-Isidore, mid-ninth century); Gregory I's *Register* 590–604; and Burchard's *Decretum*.[6] This interpretation is confirmed by Tancred of

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[4] *Summa decretalium*, 1-2: 'Libellus extravagantium a maiori parte decretalium nomen accepit . . . Materia sunt decretales et quaedam utilia capitula, quae in corpore canonum, registro Gregorii et Brocardo reliquerat Gratianus, poma nova et vetera nobis servans. Intentio est praedicta in unum colligere volumen ac secundum suas sententias sub propriis titulis ordinare. Utilitas patet, quia per huius operis scientiam promtiores erimus ad consulendum, allegandum et diffiniendum'.

[5] Song of Songs, 7:13: 'Mandragorae dederunt odorem. In portis nostris omnia poma: nova et vetera, dilecte mi, servavi tibi'. It should be stressed, against Summerlin's interpretation in 'Using the "Old Law" in Twelfth-Century Decretal Collections', *New Discourses in Medieval Canon Law Research: Challenging the Master Narrative*, ed. Christof Rolker (Leiden 2018) 145-169, at 158), that 'old fruit' meant pre-Gratian material and 'new fruit' the decretals, and both were equally precious.

[6] On Bernard, see Kenneth Pennington, 'Decretal Collections 1190-1234', HMCL 2.292-317at 296-300, esp. 298: 'When he wrote that he had completed a collection of "extravagantes", he meant all materials that circulated independently of Gratian. He included many canons from ancient church councils and synods, a large number of letters from Pope Gregory I, and many letters of pre-Gregorian popes. The bulk of his collection, however, consisted of the decretals of Pope Alexander III (1159-81)'.

Bologna's *Proemium* to his own apparatus written between 1220 and 1225 for Petrus Beneventanus' *Compilatio tertia* (1210, based on Innocent III's registers, and promulgated by him). Tancred wrote:[7]

> After the compilation of the decrees by Gratian, many decretal letters emanated from the Roman curia, which magister B., then provost (of Pavia), afterwards bishop of Pavia (*recte* Faenza), collected in appropriate titles for the use of students, inserting certain more ancient materials (antiquiora), and it is called *Compilatio prima.*

Contrary to Greta Austin's interpretation, shared by Danica Summerlin, this usage did not 'call to mind the Christian distinction between the New Testament and the Old Testament, and more generally the "new covenant" and the "old covenant",' nor did it '[imply] a hierarchy in which the new law takes precedence over the old law';[8] and Austin's reluctance to accept 'the evidence of the sources',[9] seems based on a singular misunderstanding of the context of use. The terms 'old', meaning the *Decretum* and what had preceded it, and 'new', meaning recent papal conciliar decrees and decretals, as employed by Bernard and his successors, were simply chronological denominators, not discriminatory labels. This usage is similar to the distinction

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[7] Florence, Bibliotheca Laurenziana, Santa Croce IV.sin.2, fol. 128ra, BAV lat. 1377, fol. 148ra, BAV Borgh. lat. 264, fol. 108ra: 'Post compilationem decretorum factam a Gratiano, multe a Romana curia decretales epistolae manauerunt quas magister Bernardus (al. Bernardinus, Bertandus) tunc prepositus postmodum episcopus papiensis ad studentium utilitatem sub competentibus titulis collocauit quedam antiqua iura interserendo et uocatur compilatio prima'.

[8] Greta Austin, 'How Old was the Old Law? Talking about Change in the History of Medieval Church Law', BMCL 32 (2015) 1-18, at 9-10; Summerlin, 'Using the "Old Law",' 160-161. I should emphasise that Berman's thesis of a revolution in law unleashed by Gregory VII was comprehensively demolished twenty years ago by Rudolf Schieffer, '"The Papal Revolution in Law"? Rückfragen an Harold J. Berman', BMCL 22 (1998) 19-30; cf. Peter Landau's even earlier critical review in *The University of Chicago Law Review* 51 (1984) 937-943

[9] Ibid.10: 'We do not uncritically deploy the early modern distaste for the Middle Ages as the 'dark ages'. And, in general, we do not accept uncritically everything our sources tell us'.

between the 'old logic' and the 'new' in twelfth-century Paris. There, when Aristotle's *Topica, Analytica priora et posteriora* and the *De sophisticis elenchis* entered the curriculum around mid-century, they were designated 'logica nova' to differentiate them from the 'logica vetus' (Aristotle's *Categoriae* and *De interpretatione* and the *Isagoge* of Porphry), which until then had formed the basis of study.[10] In fact, the adjective 'vetus' was rarely used for pre-Gratian material, or, indeed for the contents of Gratian. 'Old' did not mean obsolete and 'new' did not necessarily mean better. Both were subject to continuous examination and debate by canonists in the light of changing understanding of the complexity of cases and the law relating to them.[11] Far from denigrating the 'old law', Bernard (and other masters) continued to retrieve relevant material, not only from his list, but also from other early sources; and so did litigants. In the celebrated dispute between the archbishops of Compostela and Braga heard before Pope Innocent III in 1199, for example, the validity of a canon from the seventh-century Spanish council of Mérida (666), which Archbishop Pedro of Compostela cited in his defence, was accepted, although it was not in Gratian, because it was contained in the *Collectio Hispana*, which Pope Alexander III had recognized as authentic; and Pedro added that the authenticity of the Mérida decrees themselves was confirmed by the presence of another of its canons in the *Corpus decretorum* (Gratian).[12] Gratian's own book was nothing other than a highly structured compendium of 'old law' and whatever contemporary papal material had come to hand, designed for teaching, which was recognized as a reliable legal textbook for classrooms and courts.

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[10] John W. Baldwin, *Masters, Princes, and Merchants: The Social Views of Peter the Chanter and his Circle* (2 vols. Princeton 1970) 1.80-81.

[11] For revision of Gratian, see below, at n.18; for disagreement with Pope Alexander III, ibid. at nn.26-31.

[12] *Die Register Innocenz' III. 2, Pontificatsjahr, 1199/1200,* edd. Othmar Hageneder, Werner Maleczek, A. A. Strnad (Rome-Vienna 1979) 246-60 no.124 (133) at 256: PL 214.680-688 (2.133) at 686-687.

If the 'old law' had indeed been downgraded, it is hard to see how Gratian's 'corpus decretorum/canonum' could have been the runaway success that it was. Indeed, 'old' authorities from its 'Recension II' (in Pennington's designation) had been used in the papal chancery since the days of Celestine II (1143–1144),[13] and twenty-four of them, mostly quoted verbatim, were deployed in Alexander III's 2000-word response to Archbishop Stephen of Uppsala in 1171-1172.[14]

The true 'telos' of Bernard's work was emphatically practical (although Summerlin scrupulously omitted the clauses expressing purpose from her summaries[15]). Its purpose was to provide students and practitioners of canon law with a well-designed compendium of the kind of materials already being used to gloss copies of Gratian's *Decretum*. The terms 'new law', 'decretal', and 'extravagantes/extravagantia' were already well established in the canonical lexicon. Simon of Bisignano's *Summa*, for example, which had been composed some ten years earlier (1179),[16] had

[13]Peter Landau, 'Papst Cölestin II. und die Anfänge des kanonischen Eheprozessrechts', *De processibus matrimonialibus: Fachzeiten zu Fragen des Kanonischen Ehe- und Prozeßrechtes*, ed. Elmar Güthoff and Karl-Heinz Selge (Vol. 13 Frankfurt am Main-Berlin 2006) 57-71, at 70-71.

[14]*Constituti a Domino*, Tusculum, 10 Sept. (1171-1172), PL 200.854-860 no. 979 (JL 12117): D.19 c.7; D.83 c.3, C.16 q.7 c.23, C.16 q.7 c.24, C.16 q.7 c.25, C.16 q.7 c.18, C.16 q.7 c.20, C.16 q.7 c.16, C.16 q.7 c.17, C.1 q.1 c.3, C.1 q.3 c.1, C.1 q.3 c.2, C.1 q.1 c.114 (not identified by Pacaut), D.71 c.7, D.72 c.2, D.71 c.8, C.11 q.1 c.1, C.11 q.1 c.14, C.2 q.5 c.20, C.2 q.5 c.22, *omitting the palea*, C.16 q.7 c.6, C.16 q.7 c.5, C.17 q.4 c.3, C.13 q.2 c.11, and a summary of C.17 q.4 c.29, *Si quis suadente*, Lateran II, c.15.

[15] Summerlin, 'Using the "Old Law",' 157.

[16] *Summa in Decretum Simonis Bisinianensis*, ed. Pier V. Aimone Braida (MIC, Series A, Corpus Glossatorum 8; Città del Vaticano 2014). Its place of composition remains contested. Orazio Condorelli, 'A Proposito della Summa in Decretum di Simone da Bisignano edita da Pier V. Aimone Braida', BMCL 32 (2015) 37-56, at 43-48 argues for Bologna; Peter Landau, 'Simon von Bisignano, Sikard von Cremona und die mainzer Kanonistik der Barbarossazeit: Zur Biographie des Simon von Bisignano und zur Forschungsgeschichte', BMCL 28 (2008) 119-144, at 136-138; John C. Wei, 'The Later Development of Gratian's Decretum', *Proceedings Toronto 2012* 149-161 at 155, and Anne Teillard-Lefebvre, 'L'école de droit parisienne (fin XII^{e}-début XIII^{e} siécle)',

used at least 205 citations from 93 papal letters,[17] not only to interpret, expand, or revise passages in the *Decretum*, but also to comment on, resolve contradictions in, or even dissent from recent papal rulings. Simon's comment on Gratian, D.56 c.13 s.v. *Cenomanensem* usque *assumatur* is a good example of revision:

> Hodie tamen **nouo iure** filius sacerdotis genitus [in sacerdotio?] promoueri non poterit nisi in monasterio uel canonica regulari fuerit conuersatus *ut in **extra**[uagantibus], c. Quod super his de quibus*.

Here he cited by *incipit* Alexander III's reply to Hugh of Durham, recorded its source, 'among the extravagantia',[18] and summarized its core decision, that sons of priests could not be promoted to the diaconate or priesthood, unless they had been 'proven' in a monastery or house of canons regular.[19]

Simon's discussion of appeal, related to Gratian, C.2 q.6 c.19, highlights a contradiction between it and another canon in the *Decretum* (C.2 q.6 c.34), noting that a text in Burchard agreed with the first.[20] Danica Summerlin misidentifies the Burchardian

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L'insegnamento del diritto (secoli XII-XX), ed. M. Cavina (Studi e ricerche sull'università; Bologna 2019) 79-87, at 83 n.23, argue for somewhere north of the Alps, possibly Mainz, but its accurate Bolognese references confirm a connection with the schools in Bologna, where he probably taught. For his later career in England (canon of York by 1186, chancellor 1190, dean 1193-1214, and bishop of Exeter 1214-1223), see Martin Bertram, 'Simon of Apulia: Randbemerkungen zu der Edition der Dekretsumme des Simon von Bisignano', *Mittelalter: Interdisziplinäre Forschung und Rezeptionsgeschichte, 18. Mai 2017*, online: https://mittelalter.hypotheses.org/10240.

[17] Listed according to place in the *Summa* ed. Aimone, clxxxv-ccvi; alphabetical list of 93 letters: ccvii-ccxvii.

[18] Landau, 'Simon of Bisignano' 136-138, concludes that Cusana and Florianensis, now re-classified as 'French', not 'Italian', provided Simon's extravagantia. For these collections, see Holtzmann's analyses Christopher R. Cheney and Mary G. Cheney, edd. *Studies in the Collections of Twelfth-Century Decretals from the Papers of the late Walther Holtzmann* (MIC, Series B: Corpus collectionum, 3; Città del Vaticano 1979) 66-74 and 43-63.

[19] *Summa* ed. Aimone 50: WH 823. Simon's citation proves that it was issued by 1179. WH = Walther Holtzmann number for 'decretales extravagantes'; see http://www.kuttner-institute.jura.uni-muenchen.de/

[20] Ibid. 133-134

source,[21] says that it was used as 'a foil(!) to Gratian', and ignored the fact that Simon resolved the contradiction between Gratian's two authorities by summarizing three Alexandrine 'responsa', identified by incipit, found *in Extrav[agantibus]*. These happen to be among the most widely circulated decretals of the period. *Super eo quod* came from *Meminimus,* obtained by Roger of Worcester between 1167 and 1169, nine of whose eleven segments reached Gregory IX's *Liber extra*;[22] *Cum sacrosancta*, § a, sent to Henry of Reims in 1172,[23] and one of the only two such consultations that survive both in the monumental collection of mostly papal letters compiled from archival sources in Henry's household (Arras 964) and in the *Collectio Brugensis*, assembled independently under the auspices of the English master, Ralph of Sarre, dean of Reims;[24] and *Sicut Romana ecclesia,* sent to William of Sens in 1173–1174.[25] Although Summerlin lists them, she says nothing about their recipients, dates, or function in Simon's argument, and entirely ignores their long-term influence in the later history of canon law.

The comment on Gratian, C.16 q.1 c.46 provides a striking example of the way in which Simon criticized Alexander III's reestablishment of full monastic exemption from paying tithes to

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[21] Summerlin, 'Using the "Old Law",' 158. The Burchard source is 1.146 (identified in Aimone, 133 n.99) not 1.68

[22] WH 649 § f, X 2.28.10.

[23] Brother of Louis VII of France, Henry was bishop of Beauvais 1140-61 and archbishop of Reims 1162-75.

[24] WH 299 § a, *Brug*. 45.2. All six segments reached X, distributed through three *capitula*: 2.28.5 (a-c), 2.28.6 (d), 2.28.7 (e-f). The second letter which occurs in both Arras and *Brug*. is *Quanto ecclesia Gallicana*, WH 766, to the French bishops, 1170-72: *Brug.* 20.2, where addressed to the the archbishop of Reims and the bishop of Paris. Summerlin's assertion ('Using the "Old Law",' 151) that 'a number of [letters in Arras 694] found their way into later collections such as *Brugensis*' is certainly wrong. Ludwig Falkenstein, 'Zu Entstehungsort und Redaktor der Collectio Brugensis', *Proceedings San Diego 1988* 117-162, at 125 n. 125, found that only WH 299 and 766 were in both MSS, and, furthermore, that they were derived independently from different sources.

[25] WH 944 § a, X 1.3.1. Five segments reached X, distributed through four capitula*:* 1.3.1 (a), 2.28.12 (b-c), 1.29.5 (d), 2.24.8 (e).

local parish churches, and he did so while the pope was still 'in eminenti specula . . . constitutus'. After referring to the 'perplexing contradictions found in the 'canons' (intricata contrarietas in canonibus inuenitur) on the matter of tithe payment by religious orders and the consequent disputes between the 'gramatici' (teachers of law), he cited Adrian IV's *Nobis in eminenti* (illo Extra[vaganti]. Nobis in eminenti specula), which had restricted the exemption to 'novalia', that is, to lands newly brought into cultivation,[26] and followed it with verbatim quotations from Alexander III's *Fraternitatem tuam*, which had refused to allow Archbishop Roger of York to compel religious to pay tithes on lands which they leased.[27] This 'responsum' had overturned Adrian's earlier ruling, which Alexander claimed had been made on Adrian's own authority (uoluntate sua), implying that he had acted without consulting the cardinals (and he would have known, since he, as Cardinal Roland, had been cancellarius throughout Adrian's pontificate).[28] At this point, Simon hesitated. 'You

[26] *Summa* ed. Aimone 303-304. In *Nobis in eminenti specula* (WH 664, 3 November 1155), Adrian had ordered the monks of Pontida (not Pontigny, as Summerlin believes, 'Using the "Old Law",' 158) to pay the tithes anciently paid to the canons of Pontirolo, 'since we have resolved that men of religion should be granted only those tithes which are known to derive from newly cultivated lands'. Walther Holtzmann, *Kanonistische Ergänzungen zur Italia pontificia* (QF 37-38; Tübingen 1959) 88 no. 90, refers to its wide dissemination through monastic houses from Ghent to Montecassino.

[27] This letter was music to the ears of the great Cistercian houses in Yorkshire, and it is likely that they ensured that it was as widely publicized as possible. It appears twice in the Fountains Collection, for example, *Fontanensis* 1.9 and 3.14: Cheney-Cheney, *Papers of the late Walther Holtzmann* 100-115, at 104 no. 9; and Abbot Gerard of Clairvaux quoted it in full, including its address, in a letter to Bishop Didier of Thérouanne between 1169 and 1181, on behalf of the monastery of Clairmarais: *Thesaurus novus anecdotorum* I, edd. Edmond Martène and Ursin Durand (Paris 1717) 599–600.

[28] *Summa* ed. Aimone, 303-304 (WH 518); 1 Comp. 3.26.8: 'Pie recordationis papa Adrianus predecessor noster in novalia labores pro sua voluntate convertit'. Summerlin's earlier citation of 'the fragment of a tithe privilege' as an example of a section of a letter 'that may have possessed no great legal innovation' ('Using the "Old Law",' 151), is particularly ill-chosen, since the

should note', he wrote, using the confidential second person singular, 'that we have placed this at the end, because it is pretty difficult and dangerous to kick against the spur of an apostolic constitution, especially since only he who has power to make canons, is permitted to interpret them', citing Gratian, 'C.i. q.v. c.i.' (= d.p. C.3 q.1 c.31).[29] He then described the greatly changed circumstances of the privileged orders, which implied that the basis (causa) of Alexander's constitution 'has no standing today nor will it in the future, since "their vine-shoots have spread from sea to sea".'[30] In other words, they had outgrown their earlier poverty, which had been the basis of their exemption in the first place. The baleful consequences for poor clerics and churches, he said, 'can be deduced from c.Ad nostras in Extra[vagantibus]'.[31] Evidence like this, and the commentaries are full of it, reveals the lively world of the schools, where 'old' and 'new' law were together subjected to scrutiny. It was Simon, not Bernard of Pavia, who 'avait ouvert la voie' to citing papal decretals 'extra decretum' in his *Summa.*[32]

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fragment in question is the *Sane laborum* clause, which Alexander III had restored to Cistercian tithe privileges in November 1160, thus overriding Adrian IV's restriction to 'novalia'. It could hardly have had greater legal significance, and its restoration was the target of Simon of Bisignano's criticism in this passage. For the 'November privileges' for Rievaulx, Rufford, and Sibton, see William Dugdale, *Monasticon Anglicanum* (6 vols. London 1846) 5.283-284, no. 9; Walther Holtzmann, *Papsturkunden in England, 1: Bibliotheken und Archive in London* (Abh. Gesellschaft Göttingen 25; Berlin 1930) 340-343, nos. 80 and 81; Charles Duggan, 'Decretals of Alexander III to England', 119-151, at 120 n. Rufford's original privilege still survives as London, BL Harley Charter 111 A. 5.

[29] *Summa* ed. Aimone, 304, 'ultimo loco posuimus, quoniam durum satis et asperum est contra stimulum calcitrare apostolice constitutionis, maxime cum ei soli sit licitum interpretari canones penes quem est et potestas condendi, ut supra C.i. q.v. c.i.'

[30] Ps. 71(2):8.

[31] *Summa* ed. Aimone 304, identifies this decretal as WH 31, but it is probably WH 470, *Ex parte fraternitatis,* Alexander III to the bishop of Troyes, which occurs with the incipit, *Ad nostram noveris,* in *Cusana,* no. 31.

[32]Teillard-Lefebvre, 'L'école de droit parisienne' 83; and for the general context, eadem, 'Du Décret aux décrétales: L'enseignement du droit canonique

He was not alone. In 1182, Jean de Breteuil, author of the decretist *Summa, 'Tractaturus magister*', referred to 'the new canon law in Alexander's decretal *Ex publico; Personas earum*', which allowed the judge to decide the date on which an appellant suspected of frustratory tactics should appear before the pope;[33] and he was even more emphatic in his comment on C.2 q.7pr, fol. 39rb: 'Hodie autem totum istud eliminatum est per Alexandrum in illa decretali Licet preter solitum'.[34] Many more similarly emphatic assertions of the authority of Alexander's decretals could be cited.[35] Altogether, Landau identified thirty-seven decretals in Jean de Breteuil's apparatus, some, like *Licet preter* cited more than once.[36] There is also one citation of Lateran III, c. 6 and eight citations of material in Burchard.[37] Slightly later, the Anglo-Norman Rodoicus Modicipassus, author of the *Summa Lipsiensis* (1184 x 86),[38] referred to individual *extravagantia*, as in his

au sein de l'école parisienne (fin XII[e]-début XIII[e] s.)', *Les débuts de l'enseignement universitaire à Paris (1200-1245 environ)* (Studia Artistarum: Études sur la Faculté des arts dans les Universités médiévales 38), edd. Jacques Verger and Olga Weijers (Turnhout 2013) 319-328.

[33] Peter Landau, 'Die Dekretsumme "Tractaturus magister" und die Kanonistik in Reims in der zweiten Hälfte des 12. Jahrhunderts', ZRG Kan. Abt. 100 (2014) 132-152, at 140 no.17, ad C.2 q.6 pr. *(*BNF lat. 15994, fol. 37va). The references to *Ex publico* is probably a mistake for *Ex tenore*, the four-part consultation for Bishop William (de Turba) of Norwich 1160-1174, of which *Personas earum* (recte e*cclesiarum*) is WH 488 § b (*X* 2.28.4). For the letter, see Charles Duggan, '*Improba pestis falsitatis*: Forgeries and the Problem of Forgery in Twelfth-Century Decretal Letters (with special reference to English cases)', *Fälschungen im Mittelalter*, 2: *Gefälschte Rechtstexte der bestrafte Fälscher* (5 vols. Schriften der MGH; Hannover 1988) 2.319-361 at 331-333 no. 5.

[34] WH 620 § e.

[35] Landau, 'Die Dekretsumme 'Tractaturus magister' 138-143 nos. 3, 4, 6, 'Hodie vero per Alexandrum III. determinatum est in illa decretali Cum sacrosancta*'* (WH 299), 7, etc.

[36] Ibid. 137-143.

[37] Ibid. 144-145.

[38] Peter Landau, 'Rodoicus Modicipassus - Verfasser der Summa Lipsiensis?', ZRG Kan. Abt. 92 (2006) 340-354.

disagreement with an opinion of Johannes Faventinus, 'quod tamen falsum esse hodie', on the authority of a verbatim quotation from Alexander III's response to Gerard of Padua (1166-1179), 'ut in extra[uaganti] Sollicitudini, § Illos: 'Illos autem . . . de iure stare'.[39] Aimone catalogues citations from 128 decretals in *Lipsiensis.*[40] On the terminology, it is noticeable that Simon and Rodoicus tended to refer to an 'extravagans' or to a letter 'in extra[vagantibus]', while Jean de Breteuil consistently identified individual 'decretales'.[41] Bernard of Pavia, it seems, followed the former.

Decretales and *decretales epistolae*

These terms were not an invention of the twelfth century nor a product of modern historiography. *Decretalis* was a post-classical adjectival derivation from the standard noun *decretum*, meaning a decree, and it could be applied to any papal declaration or letter which carried legal force. Such usage can be traced to *Quamvis singularum*, Nicholas I's long letter to the archbishops and bishops of France at the end of January 864, which itself quoted a conciliar decree of Gelasius I (495-6):[42]

> papa Gelasius, item inquiens:[43] '**decretales epistolas**, quas beatissimi papae diversis temporibus ab urbe Roma pro diversorum Patrum ***consultatione*** dederunt, venerabiliter suscipiendas'. In quo notandum, quia non dixit **decretales epistolas,** quae inter canones habentur, nec tantum, quas moderni pontifices ediderunt, sed 'quas beatissimi papae diversis temporibus ab urbe Roma dederunt.

Both authorities were already well known in Burchard and Ivo, and Gratian in his turn received the Nicholas letter (D.19 c.1) and

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[39] WH 991 § c = X 4.16.3 § c. Its citation by Simon of Bisignano, *Summa* ed. Aimone 472, establishes the date.

[40] Ibid. ccxviii-ccxxv.

[41] Although he may have been using the *Collectio Cusana:* Cheney-Cheney, *Papers of the late Walther Holtzmann* 66-74.

[42] MGH Epp. 7.392-400 no.71 (Jan. 865), at 395 (PL 119.899-908 no.75, at 903); JL 2785. For the letter, see Horst Fuhrmann, 'The Pseudo-Isidorian Forgeries', in Detlev Jasper and H. Fuhrmann, *Papal Letters in the Early Middle Ages* (SMCL; Washington DC 2001), 135-195, at 189.

[43] Paul Hinschius, *Decretales Pseudo-Isidorianae et Capitula Angilramni* (Leipzig 1863, reprinted Aalen 1963) 635-637, at 636, decrees issued at a Roman council, 495-496; JL 700.

the Gelasian decree (D.15 c.3) from the *Collectio trium partium.* 'Decretalis' was also frequently used as a substantive in its own right to designate papal letters which contained a legal judgment or definition. By the twelfth century this terminology was standard. Holtzmann's restriction of the term to letters 'which happened to attract the interest of a compiler because some principle of law was expressed in it',[44] had the merit of enabling him to establish a workable formula for devising a 'regesta decretalium', which would identify, reconstruct, and ultimately publish complete scholarly texts of the more than a thousand papal letters and extracts which had entered the recorded tradition of the professional canon law in the twelfth century, but that definition would have been incomprehensible to the impetrators and recipients of papal judicial letters, and, *pace* Summerlin, Charles Duggan did not infer that decretals were confined to decretal collections, or that such compilations contained only decretals.[45]

What is missing from the recent studies[46] is any real appreciation of the context or content of the 'new Law'. The three earliest surviving English collections are not merely 'higgledy-piggledy' jumbles.[47] They were assembled in known locations under the auspices of three leading bishops (not just anonymous 'clerics'), and they reflect their professional interest in obtaining and collecting authoritative statements on current judicial problems. Apart from containing some of the most important letters issued by Alexander III, including the three cited by Simon of Bisignano to clarify the law relating to appeals,[48] *Wigorniensis*

[44]Walther Holtzmann and Eric Waldram Kemp, *Papal Decretal Letters Relating to the Diocese of Lincoln in the Twelfth Century* (Hereford 1954) ix.
[45] Summerlin, '"Using the "Old Law",' 150; cf. Charles Duggan, 'Papal Judges Delegate and the Making of the "New Law" in the Twelfth Century', *Cultures of Power: Lordship, Status, and Process in Twelfth-Century Europe*, ed. Thomas N. Bisson (Philadelphia 1995) 172-199, at 173.
[46] Above, n.8.
[47] Summerlin, '"Using the "Old Law",' 161.
[48] Above, nn. **22, 23, 25.**

altera is preceded by Paucapalea's commentary on Gratian's *Decretum* (c.1150),[49] a treatise on marriage by Walter of Mortagne (1136 x 1139),[50] Master Roland of Bologna's *Stroma* on Gratian's marriage 'causae' 27-35;[51] and a collection of 'notabilia', also based on the *Decretum*. Here the 'new law' was engaged with the 'old'. Although now contained in the large collection of Gilbert Foliot's letters, *Belverensis* occupies its own two quires, includes the decrees of Alexander III's council of Tours (1163) and Richard of Canterbury's Westminster council (1175), and was clearly intended as a separate compendium of current legal materials reflecting the interests of the learned bishop of London, who had sent two of his nephews and a clerk to Bologna, the Carihatsepher of his time.[52] And *Cantuariensis* followed a series of legal treatises: *Pseudo-Ulpianus de edendo*, *the Speculum iuris canonici* by Master Peter of Blois (I),[53] and the *Iudicandi formam in utroque*, and was followed by a separate quaternion containing a version of the decrees of Lateran III. Small as they are, they represent the beginning of the processes of consultation and

[49] London, BL Royal 11 B.ii, fols 1ra-46rb, *sine titulo*: *Die Summa des Paucapalea über das Decretum Gratiani*, Johann F. von Schulte (Giessen 1890; reprinted Aalen 1965). José-Miguel Viejo-Ximénez has challenged Paucaplea's authorship: 'The *Summa Quoniam in omnibus* revisited', *Proceedings Paris 2012* 163-178.

[50] Ibid. fols 50rb-56rb. This copy is manuscript Lo in Rudolf Weigand, 'Die Überlieferung des Ehetraktats Walters von Mortagne', *Würzburger Diözesan-geschichtsblätter* 56 (1994) 27-44, at 30.

[51] *Die Summa magistri Rolandi, nachmals Papstes Alexander III*, ed. Friedrich Thaner (Innsbruck 1874; reprinted Aalen 1962); S. Kuttner, 'Did Rolandus of Bologna write a 'Stroma ex Decretorum corpore carptum?' BMCL 20 (1990) 69-70.

[52] *The Letters and Charters of Gilbert Foliot*, edd. Adrian Morey and Christopher N. L. Brooke (Cambridge 1967) 263-264 no.192, at 264.

[53] *Petri Blesensis opusculum de distinctionibus in canonum interpretatione adhibendis, sive ut auctor voluit 'Speculum iuris canonici',* ed. Theophilus A. Reimarus (Berlin 1837).

collection that led within a few years to Bernard's *Breviarium.*[54] As I said at Esztergom in 2008:[55]

> It seems safe to conclude that these three collections, from Worcester, London, and Canterbury, resulted from something more than the haphazard gathering together of papal letters or the recording of judicial commissions. That so many of the letters had been impetrated by their recipients in specific contexts, that many of them were employed in the governance of the English Church, and some even cited in English courts, indicates a deliberate intention to build up local dossiers of new authorities, which augmented or clarified the written law already available to the bishops and their staff, and also to share that material with their colleagues . . . [It also] testifies to a lively traffic in such material between episcopal and academic centres, and one, moreover, which embraced the whole Latin Church.

It was by means of this 'new law', which Summerlin calls 'something that was not yet tangible',[56] that, for example, between 1130 and 1203, the interpretation and application of *Si quis suadente* were progressively refined through papal responses to twenty-four prelates in thirteen countries (Aragon, Castile, Denmark, England, France, Germany, Hungary, Italy, Normandy, Norway, Poland, Sweden, and the Latin kingdom of Jerusalem),[57] and marriage law, including the principle of marital consent, was refined through about one hundred and fifty 'decretales epistolae',

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[54] All discussed in Anne J. Duggan, 'Making Law or Not? The Function of Papal Decretals in the Twelfth Century', *Proceedings Esztergom 2008* 41-70 at 48-60. For the broader context, see eadem, '*De consultationibus tuis*: The Role of Episcopal Consultation in the Shaping of Canon Law in the Twelfth Century', *Bishops, Texts and the Use of Canon Law around 1100. Essays in Honour of Martin Brett,* ed. Bruce C. Brasington and K. G. Cushing (Ashgate 2008) 191-214; and eadem 'The Nature of Alexander III's Contribution to Marriage Law, with Special Reference to *Licet preter solitum*', *Law and Marriage in Medieval and Early Modern Times,* edd. Per Andersen, Kirsi Salonen, et alii (Proceedings of the Eighth Carlsberg Conference on Medieval Legal History; Copenhagen 2012) 43-65, at 43-5, 57-61.

[55] Duggan, 'Making Law or Not?' 56.

[56] '"Using the "Old Law",' 165.

[57] Anne J. Duggan, '*Si quis suadente* (Lateran II, c. 15): contexts and transformations to 1234', *Proceedings Paris 2016* in press.

similarly responding to queries from prelates from Trondheim to Salerno, some of which resolved doubtful definitions in Gratian.[58] It was by means of these same processes that fundamental principles of law or procedure, derived ultimately from Roman law, were established in the canonical *Ius commune*: burden of proof (onus probationis) and the defendant's right to silence, 'fraus et dolus', 'melior est conditio possidentis', 'Quod omnes tangit', 'res inter alios acta' (relating to contract law), and 'res iudicata'.[59] It was the decretals (consultations and judgments) that reified the 'new' law and the specially assembled collections that gave it permanence.

New remedies for new ills

To return to the meaning assigned to 'new'. Innocent II employed the concepts of 'new judgments' and 'new medicines for new ills', ultimately derived from St Benedict's wise physician,[60] in an admonitory letter to Hugh of Amiens, archbishop of Rouen, in July 1131: 'New cases require new judgments and the wise physician will provide new medicine for new ills'.[61] He used the medical metaphor in 1134 in summoning the council to Pisa[62] and again in 1139, when he invoked it to justify his grant to Provost Gerard of Bonn of the right to pronounce excommunication or interdict on those who attacked his church, if the archbishop of Cologne failed

[58] Duggan, 'The Nature of Alexander III's Contribution to Marriage Law' 48-57; eadem, 'The Effect of Alexander III's "Rules on the Formation of Marriage" in Angevin England', *Anglo-Norman Studies*, 33: *Proceedings of the Battle Conference 2010*, ed. Christopher P. Lewis (Woodbridge 2011) 1-22, at 3.

[59] Anne J. Duggan, 'On re-reading van Caenegem: Romano-Canonical Influence on the Formation of the Common Law 1070-1300', *Culture judicaire anglaise du Moyen* Âge, II, ed. Yves Mausen (Paris) in press.

[60] *Regula Benedicti*, c. 27. Unsurprisingly, the medicinal concept was employed by Bernard of Clairvaux in a letter to Innocent II: PL 182.320-321 no. 161, at 321, 'Novis morbis novis obviandum est medicamentis'.

[61] PL 179. 99-101 no. 51, at 99, 'Novae siquidem causae nova debetur sententia, et novis morbis novam discretus medicus adhibet medicinam'.

[62] Ibid. 210-211 no. 160, at 210: 'ut novis morbis nova medicamenta possint commodius adhiberi'.

to act.[63] The theme was continued by Celestine III in 1191-1192, who concluded a very important series of responses addressed to Archbishop Eirik of Nidaros/Trondheim with the words:[64]

> Undoubtedly, if anyone carefully scrutinizes the statutes of the holy fathers, he will find that in all these [matters] we have not decided anything new, but we have, with what one might call a careful hand, brought what is ancient up to date.

A similar argument, with slight echoes of Innocent II, appears in Honorius III's bull promulgating *Compilatio quinta* in 1226:[65]

> New questions about new situations require resolution by new decisions, as they arise, so that, when appropriate remedies have been assigned to every ill, everyone may profitably be granted his/her right.

As I concluded in a lecture delivered in Budapest in 2005:[66]

> That concept, of cautious bringing up-to-date, of making adjustments in the context of more complicated circumstances than the earlier legislation had envisaged, might be taken to describe the whole development of the formal law from the Frankish reception of *Dionysius Exiguus* in 774 to the publication of the *Decretales* in 1234.

King's College London.

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[63] Ibid. 495-497 no. 430, at 496: 'quia novis morbis nova est adhibenda medicina'.

[64] Anne J. Duggan, 'Manu sollicitudinis. Celestine III and Canon Law', *Pope Celestine III (1191-1198)*: *Diplomat and Pastor*, edd. John Doran and Damian J. Smith (Farnham 2008) 188-235, at 233 and 235.

[65]Friedberg, *Quinque compilationes antiquae* 151: 'Novae causarum emergentium questiones nouis exigunt decisionibus terminari, ut singulis morbis, competentibus remediis deputatis, ius suum cuique salubriter tribuatur.'

[66] 'Making the Old Law 'New', II: Canon Law in New Environments: Norway and the Latin Kingdom of Jerusalem', *Medieval Canon Law Collections and European Ius commune (Középkori kánonjogi gyűjtemények és az európai ius commune)*, ed. Szabolcs A. Szuromi (Budapest 2006) 236-262 at 262.

What Could You Do With a Law Degree in Fourteenth-Century England?[1] Archbishop Winchelsey's Statutes and the Advocates of the Court of Arches

Charles Donahue Jr.

Peter Landau was, in many ways, my first teacher of canon law. I took the Stephan Kuttner's year-long seminar in medieval canon law in my last year in law school. Kuttner got sick that year; Peter taught most of the classes. In offering this essay in Peter's memory, I am also trying to illustrate the topic of the essay: what can one do with solid training in medieval canon law?

As part of the preparation for the fourteenth-century volume in the *Oxford History of the Laws of England*, I created a prosopographical database of the lawyers in that century who rose to the very top of the profession. For the English 'common lawyers', the task was relatively easy. The serjeants of the Common Bench pretty clearly defined who was at the top of that profession. Finding who all of them were was not that hard. (There are some ambiguities in the early part of the century.) To these I added the very few justices of the central royal courts who had not been serjeants. Defining a 'top' of the canon-law profession proved more difficult. In 2005, F. Donald Logan published a list of all the men who are known to have been admitted in the fourteenth century to practice as advocates of the Court of Arches,

[1] The beginnings of this paper were given at the Toronto Congress. Portions of that paper appeared in 'The Legal Professions of Fourteenth-Century England', in 'The Legal Professions of Fourteenth-Century England', *Lawyers and Texts: Studies in Medieval Legal History in Honour of Paul Brand*, Susanne Jenks, Jonathan Rose and Christopher Whittick ed. (Medieval Law and Its Practice 13; Leiden 2012) 227-251. That paper gave the biographical details about four of the better-known advocates of the Arches, Gilbert de Middleton, Adam Murimuth, John Lydford, and Adam Usk. This paper seeks to support the generalizations in that paper with an attempt at a collective biography.

the appellate court for the province of Canterbury.[2] That group parallels, if it does not quite match, the serjeants of the Common Bench, and that was the group that I chose for the database.

A word is in order about why the match is not perfect. The nature of our sources for the two groups is very different. In the case of the serjeants we know a great deal about them because the Year Books of the common-law courts record what purports to be their arguments in actual cases. The database of Year Book cases compiled by David Seipp lists a staggering 13,385 cases dating from 1307 through 1399.[3] In back of these reports are records of virtually every case that was litigated in the central royal courts of common law in the century. No one has ever counted the number of such cases; it is certainly in six figures, perhaps even in seven. By dramatic contrast, there are, for all practical purposes, no reports or records of the Court of Arches that survive from the fourteenth century. That means that we know a great deal about what the serjeants did as practicing lawyers in court; we know almost nothing about what the advo-cates of the Court of Arches did as practicing lawyers in court.

There are also reasons to doubt that selecting those who were admitted to practice in the Court of Arches quite captures the 'top' of the canonical legal profession in the fourteenth century. Perhaps the best-known English canonist of the fourteenth century is John Aton (Ayton, Acton) (d. 1349).[4] He compiled an apparatus of glosses on the provincial constitutions of the thirteenth-century papal legates Otto and Ottobuono, a work that would probably appear at the top of anyone's list of works of English canonists of the century. Aton was never, so as we can tell, an advocate of the Court of Arches. He was the official of the Court of York, which was, among other things, the appellate court for the northern English province.

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[2] F. Donald Logan, ed., *The Medieval Court of Arches* (Canterbury and York Society 95; Woodbridge 2005) 210-13.

[3] David Seipp, Legal History: The Year Books, http://www.bu.edu/law/seipp/.

[4] F. Donald Logan, in *Oxford Dictionary of National Biography* (ODNB), s.n.

One could probably do a better job answering the question posed in the title of this paper by compiling a database of the men listed Emden's biographical dictionaries of Oxford and Cambridge as having received doctorates in canon or civil law or both.[5] That is very large task, and even that would miss those who obtained doctorates in law from universities on the Continent. That is not what has been done. Let us see what we can learn from what has been done.

Logan's list of men who are known to have been admitted as advocates of the Court of Arches in the period from 1300 to 1399 furnished 85 names for the database.[6] Adding those who are known to have served in a judicial capacity (official, dean of Arches, examiner general) but not as advocates brings the number up to 102. The corresponding number for the serjeants of the Common Bench is 174.

The requirements for admission as an advocate of the Arches are set out in a statute of Archbishop Robert Winchelsey in 1295.[7] This statute was not changed over the course of the fourteenth century, though the statutes for the court of Archbishop Thomas Arundel at the end of the century and the beginning of the fifteenth suggest that Winchelsey's statutes for the court had not always been followed.[8]

The statute about advocates is quoted in full in the margin.[9] Some of its provisions are clear; some less so. It limits the number

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[5] Alfred B. Emden, *A Biographical Register of the University of Oxford to A. D. 1500* (3 vols. Oxford 1957-1959) (=BRUO). A. B. Emden, *A Biographical Register of the University of Cambridge to 1500* (Cambridge 1963) (=BRUC).

[6] Logan, *Arches* 210-213.

[7] Ibid. 7-8 [8].

[8] Ibid. 50-53.

[9] Ibid. 7-8: '[8a] Statuimus insuper ut sexdecim aduocati et decem procura-tores dumtaxat in consistorio ipso iurati existent eidem consistorio totaliter intendentes. [8b] Qui nec alia consistoria postulando seu procuratoris officium exercendo sine presidenti eidem consistorio licencia speciali eis ex causa dumtaxat legitima concedenda frequentent, illis, videlicet, horis quibus cause et negocia solent in in eodem consistorio uentilari. [8c] Nec alicuius seruicio tanquam familiares specialiter astringantur. [8d] Nec etiam sacerdotes, aduocati uel procuratores, de numero predictorum, ut supra iurati, existant. [8e] Nec

of advocates to sixteen. They are to be sworn to the court and, apparently, to remain among that number only so long as they are sworn, devoting themselves entirely to the court.[10] What this last requirement might mean is spelled out in the next sentence, which tells us that advocates and proctors of the court are not to attend another court during times in which the Court of Arches is in session without the special license of the presiding officer of the court.[11] They are not to be familiars of any man.[12] Priests (sacerdotes) are not to be included in the number of sworn advocates or proctors.[13] Priests (presbyteri) are not to serve as advocates or proctors in the court except for themselves, their churches, their lords of whom they are familiars or domestics, or for the poor (miserabiles personae), and this without salary or gift.[14] In order to qualify as one of the sixteen sworn advocates,

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presbyteri, si in eodem consistorio quandoque postulare uoluerint uel eciam procurare nisi pro seipsis aut in causis ecclesiarum suarm uel pro suis dominis quorum sunt familiares et domestici aut pro miserabilibus personis et hoc gratis sine salario et dono quocumque in predicto consistorio publice postulent uel officium procuratoris assumant. [8f] Nec quisquam in dictorum aduocatorum numerorum nisi iura ciuilia et canonica per quinquennium uel quadriennium ad minus in scholis alicuius uniuersitatis uel municipii publice prius audierit et per unum annum ad minus in eodem consistorio steterit'. Footnotes omitted and bracketed numbering added for reference.

[10] Ibid. 7, [8a]. That is not the only thing that this sentence could mean, but it seems likely that that is what is meant. For the oath, see ibid. 6 [2].

[11] Ibid. [8b]. In a later period, the schedules of the courts in London before which the civilians practiced were arranged in such a way that they could attend all of the courts. Christopher R. Cheney, *Handbook of Dates for Students of English History* (Royal Historical Society Guides and Handbooks 4; London 1945) 74. There is no evidence that this practice dates back to our period, but the wording of the statute is a clue to the origins of it.

[12] Logan, *Arches* 7 [8c].

[13] Ibid. [8d]. That is not the only possible interpretation of this somewhat awkwardly worded sentence, but it makes sense in the context.

[14] Ibid. [8e]. The prohibition goes back to canonical discussion in the twelfth century and to 3 Lateran c. 12 (= X 1.37.1; X 3.50.4) (1179), where we find three of the four exceptions (omitting *pro suis dominis*), but the Lateran provision only applied to clergy in higher orders or beneficed clergy in minor orders advocating in secular courts. Canonical discussion continued, including questioning whether clergy in higher orders or at least beneficed clergy in

one had to have heard public lectures on civil and canon law for at least four years and have served an apprenticeship in the court for at least a year.[15]

Let us see what these requirements might mean both for the nature of the 'bar' of the Court of Arches and for the nature of our list of Arches advocates. The purpose of these requirements seems to have been to create a limited group of public advocates and proctors in the court. One could not be a member of the group once one became a priest. This group did not have an exclusive right of audience before the court. The fact that priests could appear before the court in either capacity, although in limited circumstances, means that the twenty-six (the advocates plus the proctors) were not the only persons who could represent clients in these capacities. We probably should imagine that others, who were not priests and not members of the twenty-six, occasionally did so too.[16]

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higher orders could, or should, take compensation for so acting even in ecclesiastical courts. Winchelsey's prohibition may be regarded as one possible interpretation of that discussion. See James A. Brundage, *The Medieval Origins of the Legal Profession* (Chicago 2008) 39, 74-79, 194-98, 208-9, 321, 469-71, with references. (As an aside, it is unclear, at least to me, whether the 'sacerdotes' of [8d] and the 'presbyteri' of [8e] are intended to be the same or somehow different.)

[15] Logan, *Arches* 7 [8f]. 'Apprenticeship' may be too strong a term for the requirement that an advocate must have 'stood in the same consistory' for at least a year. There was nothing that prevented him from being a proctor during that period. This was also a requirement that seems to have been frequently dispensed in the archiepiscopal records. The educational requirement is that the advocate must have 'heard the canon and civil laws in the schools of some university or public municipality', the latter, perhaps, with the Italian law schools in mind.

[16] A parallel occurs in the consistory court of Ely in the fourteenth century, when a reform was introduced that required that the regular proctors of the court be sworn to the court, but others did represent clients before the court who were not sworn general proctors 'of the court'. See *The Register of the Official of the Bishop of Ely: 21 March 1374 - 28 February 1382*, ed. Marcia Stentz and Charles Donahue, Jr. forthcoming, final proofs:

http://amesfoundation.law.harvard.edu/ElyAB/ElyAB_AFinal-7.pdf p. xxxiii-xlii.

The way in which members of the clergy, particularly those whose education included at least four years of studying law, obtained a good, even an extravagant, income in the fourteenth century was by obtaining a benefice, more than one if the benefice could be, or was allowed to be, held plurally. Many, indeed most, of such benefices required that the incumbent be ordained a priest. If every advocate of the Arches had held the position for only a year before moving on to a benefice that required priestly ordination and the sixteen positions were always filled, there would have been 1,472 advocates of the Arches over the course of the century. What we have been able to tell from the biographies that we have, the first of these conditions was not precisely fulfilled, though there few men who seem to have remained practicing advocates of the Arches for very long, and there is no reason to believe the other condition was always met either, but the number that we do have, 85, is lower by considerably more than an order of magnitude than the potential number. Thus, it is highly likely that our list does not contain all of the Arches advocates of the period and may contain only a relatively small sample.

Not only may it be a relatively small sample, it is likely to be a quite biased sample. Nine of the men on our list became bishops, four of them archbishops of Canterbury.[17] Others are known because they achieved prominence in other ways, including at least three who wrote books.[18] Some are known because they served the king in various capacities. None of them is known solely because he was a well-known advocate of the Court of Arches, though a few are known because they moved on from

[17] John Stratford (Canterbury), Simon de Islip (Canterbury), Michael de Northburgh (London), Gilbert de Welton (Carlisle), William de Whittlesey (Canterbury), Adam de Houghton (St. David's), Robert de Wykford (Dublin), Ralph Ergum (Salisbury, Bath and Wells), Henry Chichele (Canterbury). To save space, we list only the names in the notes here. Much of the support for what we say can be found in BRUO and BRUC, and, in some cases, ODNB. I hope eventually to publish the database online. In the meantime, I would be happy to answer email questions about particular individuals (rspang@law.harvard.edu).

[18] Adam Murimuth, John Lydford, Adam Usk.

being an advocate of the Arches to serving in some judicial capacity in the ecclesiastical courts. More are known not because of judicial positions but because of positions that they held in diocesan administration, such as vicar general or chancellor. The vast majority are known because of benefices that they later held, archdeaconries, canonries, rectories of particularly well-endowed churches.

This vast majority held positions that required priestly ordination. That would have meant, if Winchelsey's statute was being followed, that they were no longer members of the group of sixteen; yet they sometimes were called 'advocates of the Arches' in the records even after they were ordained as priests. It is possible that Winchelsey's statute was being ignored, at least in some cases. I think it unlikely, however, that it was as a general matter. In most of the cases where we have a record of the man's priestly ordination or his obtaining a benefice that required such ordination, we also know that he was doing something that would have made it impossible for him to have been in attendance at the court during its regular sessions. 'Advocate of the Arches' may have been a kind of honorific that sometimes was applied to men's names, like an academic degree, indicating that they had once been admitted to the group of sixteen, not that they were currently active members.

The fact that they were no longer members of the sixteen did not mean that they could not occasionally have appeared in the Arches representing clients. In the Middle Ages, and even today, lawyers could be compensated either by a fee for specific services or by regular compensation, today a salary or a 'retainer fee'. In the Middle Ages, such regular compensation would come in the form of a pension, from a corporate body, such as a religious house, or a great man, a secular lord or a bishop, even the king. If we are reading Winchelsey's prohibition on members of the sixteen being 'familiars of any man' correctly, compensation in the form of pensions was prohibited for members of the sixteen. They were public advocates who should not have obvious conflicts of interest. That does not mean, however, that advocates who were receiving pensions could not appear in the Arches.

Indeed, Winchelsey's statute specifically authorizes priests who were 'familiars or domestics' of a lord to advocate for their lords in the Arches. They were not to receive compensation for doing so, but the pension itself may not have been regarded as such. After all, it was paid whether the recipient actually appeared in the Arches or not. And many of the institutions and men who gave such pensions needed advice in canon law not in order to litigate but in order to avoid litigation.

Let us take a look at what we know that advocates did other than being advocates in the Arches, beginning with what we know about their university degrees. We have information about the degrees of 65 of our 85 advocates. Forty-one of them are described as doctors of civil law, six as doctors of canon and civil law, two as doctors of canon law, and one as a doctor of either canon or civil law, the description being ambiguous. Thus, a substantial majority of the degree-holders (77%) are described as holding doctor's degrees in law. Five of this group are not described as having any degree higher than bachelor of civil law; three, license in civil law (roughly equivalent to the modern master's degree); two, bachelor of canon and civil law, and one, license in canon and civil law. Winchelsey's statute for the Court of Arches did not require that an advocate hold a doctorate, simply that he had 'heard the canon and civil laws' for a minimum of four years.[19] These men may have fulfilled the requirements of Winchelsey's statute without taking the doctorate, and they bring the total of those whom we can be reasonably certain had law degrees to ninety-four percent. That leaves four men who are not known to have had a law degree.[20] Two are described as having the degree of master of arts (as are three of those who also held law degrees); two are described simply with the vague title of *magister*. These men are clustered toward the beginning of the century; the one who appears

[19] Above, note 15.

[20] Henry de Idsworth MA, first occurrence (1stOcc) 1300, advocate, dean of Arches, official; Gilbert de Middleton *magister*, 1stOcc 1301, advocate, dean of Arches, official; Peter Scolaclif MA, 1st occ 1313, advocate; Adam Davenport *magister*, 1stOcc 1372, advocate, but largely involved in foreign service.

in the second half of the century does not seem to have been an active practitioner, and, of course, granted the vagaries of our data, they all could have had university legal training about which no record has yet been found. The evidence is consistent with the proposition that after some hesitancy at the beginning (which may have been the product of some notion of entitlement, 'grandfathering', for men whose competence was unquestioned and whose university careers lay sometime in the past) Winchelsey's statute was being followed so far as the academic training of advocates was concerned. Of course, that conclusion could be upset if it turned out that the twenty about whom we know nothing about their degrees did not have one. That, however, seems unlikely. We know nothing about these men's degrees largely because we know very little about them; with few exceptions they are mentioned once or twice as advocates, and that is all that is recorded.

That this doctorate tended to be in civil law rather than in canon law or both laws puzzled students in the past, and unwarranted assumptions about 'secularization' in the later middle ages were drawn from it. The reason for the imbalance between doctorates in civil and doctorates in canon law (or both) seems to have been that licenses to study while holding a benefice normally gave the recipient enough time to complete the requirements for a doctorate in civil law but not that in canon. What that means so far as the formation of our group is concerned is hard to know. We have reports of 'repetitiones' on civil-law topics by men who appear in our group, but the six men in our group whose lectures on canon-law topics are reported in London, BL Royal 9.E.viii all received doctorates in civil law.[21]

We know a considerable amount about some of these men's professional activities other than their collecting of benefices, in which virtually all of them engaged. As already mentioned, nine of them became bishops.[22] In most cases, there is evidence that

[21] See Christine Lutgens, 'The Canonists of BL Ms. Royal 9.E.viii and Canon L**aw** in England in the Fourteenth Century' (Ph.D. dissertation, University of Toronto, 1979).

[22] Above, n. 17.

they were resident bishops, at least part of the time. Eighteen of them became archdeacons, at least for part of their careers.[23] How much time they devoted to this office is more problematic. Unlike non-residentiary canons, who simply collected the income from the benefice, an archdeacon was supposed to visit his archdeaconry. Dispensations from this obligation could be obtained (and all, or most, archdeacons in this period had officials), but we have not systematically searched for records of such dispensations.[24] Suffice it to say here that there is some evidence in the case of some of them that they did function in the office.

A number of them served in some sort of judicial capacity at various times in their careers. Eighteen so served in the Canterbury courts: six as officials of the of the Arches,[25] five as deans of Arches (the deputy official),[26] four as examiners general of the court,[27] two as commissaries of the Prerogative Court of Canterbury,[28] one as auditor of causes of the archbishop's Court

[23] Gilbert de Middleton (Northampton), Henry de Idsworth (Middlesex), Henry de Chaddesdene (Leicester), Richard Drax (Totnes), Richard de Plessis (Colchester), William de Thinghull (Taunton), Reginald de Irtlingburgh (Bedford), William de Whittlesey (Huntingdon), John Godeford (Wiltshire), Thomas de Shirford (Suffolk), Nicholas de Chaddesden (Lincoln), Thomas de Baketon (London), Michael Cergeaux (Dorset), John Welbourne (Huntingdon), Thomas Stowe (Bedford), John Barnet (Essex), John Lydford (Totnes), William Rocoumbe (Worcester).

[24] William Rocoumbe was dispensed to visit his archdeaconry of Worcester by deputy in 1401. *Calendar of Entries in the Papal Registers Relating to Great Britain and Ireland. 5: Papal Letters. A.D. 1396-1404* (London 1904) 408.

[25] Adam de Murimuth, Henry de Idsworth, Gilbert de Middleton, Simon de Islip, Thomas Yonge, William de Whittlesey.

[26] John Stratford, Nicholas de Chaddesden, Thomas de Baketon, Michael Cergeaux, Roger Page.

[27] Thomas de Clipston, John de Langeden, William Lorying, John Godeford.

[28] Nicholas de Chaddesden, Thomas de Baketon.

of Audience.[29] Ten served as officials of diocesan courts.[30] Three of them served as officials of archdeacons.[31]

Few of these men served in a judicial capacity for very long. Indeed, the more we know about them, the more we are struck by the variety of positions that they held, most of which did not require that they be lawyers but where their legal training apparently proved useful. Nineteen of them held diocesan administrative positions, fifteen of them as vicars general of a diocese,[32] six as chancellors,[33] one as secretary of a bishop,[34] and one as clerk of a bishop.[35] In England, the vicar general had an administrative position, not a judicial one. It was sometimes combined with the position of official,[36] but normally was not.

Nine of our advocates, served as officers of cathedral chapters.[37] These appointments were sinecures in the technical

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[29] Laurence Fastolf.

[30] Adam de Murimuth (London, Exeter), John Stratford (Lincoln), William de Weston (Lichfield), Gilbert de Welton (York), John Sheppey (Winchester), William Bryde (Salisbury, Exeter), John Lydford (Winchester), Roger Page (Exeter ['president'], Bath and Wells), John de Elmer (Winchester), William Steucle (London).

[31] William Mennass (Canterbury), William Hunte (Buckingham), John Snappe (London).

[32] Michael Cergeaux (Salisbury), Thomas Baketon (London, Canterbury), Simon de Islip (Lincoln), Adam Murimuth (London, Winchester), John de Elmer (Winchester), William de Sardinia (Canterbury), Henry de Idsworth (Canterbury), Philip Godeford (London), Thomas Stow (London), John Godeford (Hereford, London), Thomas Yonge (London), Nicholas de Chaddesden (Canterbury, Coventry and Lichfield), Thomas Spert (Bath and Wells), Ralph Tregrigion (Exeter), Gilbert de Middleton (Winchester).

[33] Thomas de Plymstoke (London), Wilbert Littleton (Winchester, Canterbury), Michael Cergeaux (Canterbury), Thomas Baketon (London), Simon de Islip (Lincoln), John Carleton (Canterbury).

[34] John Carleton (Lincoln).

[35] Stephen de Kettlebury (Rochester, Worcester).

[36] E.g., Simon de Islip (Lincoln), Adam de Murimuth (London), John de Elmer (Winchester).

[37] Adam de Murimuth (precentor, Exeter), Wilbert Littleton (dean, Wells), Stephen de Kettlebury (treasurer, Chichester), William de Worstone (precentor, London), Thomas Yonge (chancellor, London), Philip Godeford (precentor,

sense, and we know that some of the men who held them were occupied with other things far from the cathedrals of which they were officers.[38] Some, however, were not, so that it is at least possible that they functioned in these positions.[39]

Forty-two of our advocates, including all nine who became bishops, served the king in some capacity during their careers. For our purposes the difficulty, in some cases, is in figuring out the nature of this service—whether it was basically legal or more administrative or political—and in figuring out how extensive the service was. We are better informed about some of them than we are about others. In the last twenty years of the century, fourteen of them were commissioned to hear appeals from the Admiralty Court and/or the military courts. These courts applied the civil law, so the advocates' training was obviously relevant, and the job basically legal. In a couple of cases, an advocate was commissioned many times; in most cases we only know of one or two such commissions.[40] Nineteen were involved in what we would call diplomatic missions, either to the papal curia or to a foreign secular prince or as royal proctor in the papal curia.[41] A

Salisbury), Adam de Houghton (precentor, St. David's), Roger de Freton (dean, Chichester), Thomas Spert (chancellor, Wells), John Sheppey (dean, Lincoln), John Shillyngford (chancellor, Chichester), Ralph Tregrigion (dean, Exeter), Thomas Stowe (dean, London).

[38] E.g., Wilbert Littleton, Philip Godeford, John Shillyngford.

[39] E.g., Thomas Spert, Ralph Tregrigion, Thomas Stowe.

[40] William Byde, Thomas de Shirford, William Loryng, Ralph Treggrigion, John Shillyngford, Thomas Stowe (many commissions), Robert Weston, Michael Cergeaux (many commissions), William Rocounbe (many commissions), John Snappe (appeals from Gascony rather than from the English civilian courts), William Steucle, John de Elmer (many commissions), Ralph Ergum (pre-1380). Other royal commissioners include Henry de Idsworth, Robert Sustede, Thomas de Baketon, John Sheppey, Adam Usk.

[41] Adam de Murimuth (extensive), William de Weston (extensive), Henry de Idsworth, Gilbert de Middleton, John de Shordich (extensive, eventually renounced his clergy and became a knight), Philip Godeford, John Carleton, Roger de Freton, William de Loryng, John Godeford, John Sheppey, Thomas Stowe, Adam Davenport (principal service abroad to John of Gaunt), Michael Cergeaux, Simon de Islip, Gilbert de Welton, William Whittlesey, Adam de Houghton, Robert Wykford (extensive), Henry Chichele.

few took up an important secular position in the royal government.[42] A few are described as 'king's clerk' or 'king's councillor', without our being clear quite what that might have entailed.[43]

Some of the men who served the king also served others abroad.[44] We list in the margin those who are not known to have served the king at any time, but are known to have gone abroad, all to the Roman curia at Avignon.[45]

With all due caution because of the spotty nature of the records, what is striking about our group is that almost all of them were involved in administration, episcopal or royal, or both. The relationship between training in canon law and episcopal administration is fairly obvious. Much of canon law deals with the administrative apparatus of the church. A canon lawyer serving as a chancellor or vicar general of a diocese could do much that avoided litigation. The relationship between training in canon law and royal administration is less obvious. The bureaucratic routines of the monarchy were not those of the church, and considerable retraining would have been necessary before a man trained in canon law could be safely trusted to be a competent Lord Chancellor or keeper of the Privy Seal. The fact, however, that canon law contains a large element of administrative law may have given these men the ability to learn how things were done in the

[42] Philip Godeford (keeper of the Privy Seal), John Stratford (chancellor of England), Simon de Islip (keeper of the Privy Seal), Michael Northburgh (king's secretary and keeper of the Privy Seal), Robert Wykford (constable of Bordeaux, chancellor of Ireland), William Loryng (constable of Bordeaux).

[43] E.g., Stephen de Kettlebury, Laurence Fastolf.

[44] E.g., Adam de Murimuth was proctor of the archbishop of Canterbury and of the bishop of Hereford in the Roman curia, as well as of the king. Adam Usk served his own interests in the Roman curia and got into considerable trouble for doing so.

[45] Proctors in the Roman curia: Brice de Sharsted (for bishop of Rochester), Robert Norton (for archbishop of Canterbury), Robert de Worcester (for St. Augustine's Abbey, Canterbury), John Lydford (for bishop of Hereford, bishop of Winchester, and the Arundel family). Thomas Clipston (died in the Roman curia, but we do not know why he was there), Richard Drax (advocate in the Roman curia), Roger Sutton (on staff of bishop of Norwich in the Roman curia).

royal bureaucracy, even though they were not career royal clerks. Because, however, retraining was necessary, it seems safe to assume that those who went into royal service (all the bishops, it would seem, except Whittlesey)[46] would have had to put to one side a career as a practicing canon lawyer to do so. Finally, as already noted, many of these men saw service outside of England. The service ranged from work in the papal curia, for which training in canon law provided an obvious advantage, to what a later age would call colonial administration (Wykford is particularly notable here), to service for which we have no better term than diplomatic. In this last their training enabled these men to converse with others who were trained in the *Ius commune*, to learn, if they had not already learned, the rather elaborate rules of war that were being developed in the period, and, perhaps, to think in terms of what today we would call public policy.

The end result seems to have been a very different profession from that of the serjeants of the common law and justices of the central royal courts. While some of the latter turned to administration, to politics, even to diplomacy, the majority of them, certainly most of the more successful of them, remained focused on litigation in the central royal courts. Their success was not only the success that comes from rising to the top of one's profession, it was also financial success. Most of the canonists whom we have just examined also died as rich men. But their wealth did not come from the practice of law or from the emoluments attached to judicial office. It came from benefices. We do not know what the rewards were of being a practicing canon lawyer. They probably were not so great as those that could come from the better benefices, even if that benefice was not a bishopric. They were certainly not so secure. Hence, it is relatively easy to see why they sought benefices, even if we ignore, as perhaps we should not, the pressures produced by a clerical culture that regarded a benefice as the ultimate goal of an ecclesiastical career. Benefices were in the control of many different people and entities, but a large number of them were at the disposition of the

[46] Even Whittlesey saw some royal diplomatic service.

bishops, the king, and the pope. How these three institutions interacted has been the subject of a number of studies.[47] The system was complicated indeed. We can, however, account for the phenomenon that we are seeking to explain if we posit that what the bishops, the king, perhaps even the pope, wanted from their canon lawyers was not so much litigating canon lawyers as administrative canon lawyers, and that is what they got.

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[47] See Guillaume Mollat, *La collation des bénéfices ecclésiastiques à l'époque des papes d'Avignon, 1305-1378* (Paris 1921); *id*. *Les papes d'Avignon*, 10th ed. (Paris 1964); William Pantin, *The English Church in the Fourteenth Century* (Cambridge 1955) 47-75 .

NOTE

A New Letter of Pope Urban II (?)

Robert Somerville

In a short note published in the Proceedings of the Canon Law Congress held in Toronto in 2012, I spoke about my longstanding relationship with Peter Landau.[1] Our relationship spanned half a century, and I was and am proud to have been, as he sometimes would say, his "oldest American friend". It is a sad honor to offer this very small contribution in this volume in memory of my oldest German friend. There were not many areas of the history of medieval canon law in which Peter Landau did not publish textual and interpretative studies. The important pontificate of Urban II thus did not escape his attention. In *Officium und Libertas Christiana,* for example, Peter turned his attention to the enigmatic text ascribed to Urban II, *Duae leges*, which deals with *lex publica* and *lex privata* (JL 5760).[2] The fact that we disagreed about whether or not it was genuine was never important.[3]

It is not impossible that Peter Landau studied the *Collectio Sinemuriensis* at some point, although I have no evidence that he published anything about it. This well-known late eleventh-century collection (earlier called the *Collectio Remensis* because the work was compiled at Reims), survives in several recensions and in several complete or fragmentary manuscripts. The *Sinemuriensis* is now properly named for the Burgundian town of Semur-en-Auxois, where manuscript 13 of the Bibliothèque municipale contains an early if not the earliest version of the compilation, and is the manuscript which brought the collection to prominence.[4]

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[1] Robert Somerville, 'Peter Landau at Yale', *Proceedings Toronto 2012* 1169-1173.

[2] Peter Landau, *Officium und Libertas Christiana*, *Sb. Akad. München* (1991) 3.55-96.

[3] Robert Somerville, 'Canon Law, Inspired Law, and Papal Authority', *Neti LeDavid: Jubilee Volume for David Weiss Halivni* (Jerusalem 2004) 119-134.

[4] See Franck Roumy, 'A New Manuscript of the *Collectio Sinemuriensis* (New York, Columbia University, Western MS 82)', *Canon Law, Religion, and Politics: Liber Amicorum Robert Somerville*, edd. Uta-Renata Blumenthal,

This version of the collection is contained in a codex written c.1100, and in three books. The manuscript ends with a final text which fills half of fol. 84r. The last folios of the book are damaged and in places illegible, thus it is difficult to identify just where the canonical collection proper concludes. The manuscript includes a set of texts which were additions to the *Sinemuriensis*, and which were written by at least two hands. The last item in the book (fol.84r), is a segment of the well-know decretal of Pope Siricius to Himerius of Tarragona (JK 385).[5] This is preceded by the Eucharistic abjuration forced on Berengar of Tours at Pope Gregory VII's Lenten Synod of 1079 (83r-84r). This text is found in Pope Gregory's register, and circulated widely.[6] The Berengarian oath in turn is preceded by a few lines of a papal letter which is attributed to a Pope Urban (83v). This item then is preceded by a part of the famous and long letter from Pope Gregory I to Augustine of Canterbury (JE 1843). That Gregorian excerpt also turns up in the mid-twelfth century in Gratian, C.25 q.2 c.3. Its content treats the situation of late sixth-century bishops in Gaul. Gratian's source for the canon is unclear, and it occurs only rarely in the canonical tradition.

Anders Winroth, & Peter Landau (Washington 2012) 56-74, where earlier literature is listed. Attention particularly should be given to the works of Linda Fowler-Magerl: see n.2 etc.

[5] This is complicated and cannot be discussed in detail. The portion of JK 385 at issue,'Sequitur de diversis—poterunt per etatem', deals with baptism (see Pierre Coustant, *Epistolae Romanorum pontificum* [Paris 1721] 626-627, cap.3; repr. Farnborough 1967). A shorter excerpt is found in various canonical collections, for example, in Burchard of Worms' *Decretum* 4.5 (PL 140.729), and Ivo's *Decretum* 1.200 (PL 161.111; 'Pentecoste defendat'.) But a preliminary investigation has not revealed any collection which has the full excerpt.

[6] See Robert Somerville, 'The Case against Berengar of Tours: A New Text', *Studi Gregoriani* 9 (1972)55-75 (repr. *Papacy, Councils and Canon Law in the 11th-12th Centuries* [Aldershot 1990] VII), for details and references. In the Semur book, however, the oath is followed by an additional line*:* 'Factum est hoc Rome in plenaria sinodo—dictus est Heldebrannus'. This coda has not been found elsewhere. (I am grateful to my doctoral student at Columbia University, Yanchen Liu, for the information in this and the previous footnote.)

There appear to be two more texts on fol.83v, but I have not tried to identify them. It is noteworthy that both the excerpt from Gregory I and the Urban text are prefaced by rubrics, and the same is true of the abjuration of Berengar and the text from Siricius. Unfortunately, the state of the manuscript coupled with an old microfilm did not allow me to read them. With better reproduction, or also from examining the Semur codex itself, these headings could be read.

The Urban text is given below, followed by an English translation, with editorial capitalization and punctuation.

> Urbanus episcopus servus servorum Dei dilecto fratri et coepiscopo G[?] salutem et apostoloicam benedictionem. Uxorem viro non discedere preceptum Domini habemus, excepta fornicationis causa. Quam eiusmodi intelligimus quando duo facti sunt in carne una. Si quid tamen extra ordinarie actum est gravi plectendum est penitentia. Res vero adeo occulta evidentiori rimanda est diligentia. Data XIIII kal. Decembris
>
> Urban bishop servant of the servants of God to beloved brother and co-bishop G[?] greetings and apostolic benediction. We have a precept of the Lord that a wife is not to leave her husband except because of fornication. [Matthew 19:9; cf. Matthew 5:32] Which [fornication] we understand to be of this sort: when two people come together in one body. If, however, something is done extraordinary it ought to be punished by serious penance. But a matter up to this point hidden should be investigated with more searching diligence. Issued on November 18.

This text is interesting for several reasons, but a full analysis must be deferred for a future time.[7] Several comments, nonetheless, are possible. In the first place, the text presents itself as a fragment of a letter of a Pope Urban to a bishop. Pope Urban II is the only feasible candidate as author. Is the fragment authentic? Without developing a context it is not possible to say for certain. On the face of it, however, nothing seems to argue against authenticity. Urban II in his correspondence dealt with issues involving marriage, for example, in JL 5382 (CB 29), JL 5388 (CB 33), JL 5399 (CB 41), JL 5404 (CB 42), and JL 5405 (CB 43).[8]

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[7] The author plans to deal in more detail with this text in a paper on Pope Urban II and canon law, to be delivered at the Sixteenth Congress of Medieval Canon Law in St. Louis in July, 2020.

[8] For these texts, cited here according to the *Collectio Britannica* although some had a wider circulation, see Robert Somerville (in collaboration with Stephan

The text is addressed to a bishop whose name seems to begin with the letter 'G', although the poor state of the manuscript at that point makes this identification less than certain. But if the recipient's name did start with that letter, this does not narrow in a meaningful way the field of possible recipients in Western Europe in the last decade of the eleventh century. Urban II was pope from March, 1088-July, 1099. Alone in the single ecclesiastical province of Reims, for example, there were two bishops with 'G' names who were present at Urban II's Council of Clermont in 1095, i.e., Gervin of Amiens, and Gerard of Thérouanne.[9]

The date at the end of the fragment, 'Data XVIII Kal. Decembris', is 'November 18'. Papal 'littere' did not include a pontifical year of issue until the reign of Pope Clement III, thus we are left with a day and month. That information is useful, but exists more or less in a vacuum. Its value is limited. According to JL, there are no letters of Pope Urban II which were issued on November 18, but the pope's Council of Clermont opened on November, 18, 1095.[10]

Aside from the difficulty of trying to situate the text within a historical framework, what is Pope Urban saying? As already noted, the fragment concerns marriage, with a reference to Matthew 19:9, which presents the teaching that a wife should not leave her husband except because of his 'fornication'. This much seems clear, although fornication is not defined. But the final two sentences are less obvious. The unusual word 'extraordinarie', here separated into two words, 'extra ordinarie', 'out of the ordinary', is employed to characterize an action which ought to be punished by serious penance. But what is such an extraordinary action, and how much penance is serious penance? The last

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Kuttner), *Pope Urban II, The Collectio Britannica, and the Council of Melfi (1089)* (Oxford 1996).

[9] Robert Somerville, 'The Council of Clermont (1095) and Latin Christian Society', AHP 12 (1974) 73 (repr. in *Papacy, Council and Canon Law*, VII).

[10] JL contains the most extensive register of Urban's correspondence, but some more recent texts are known through the Göttingen Papsturkunden – Pontificia projects. For the dates of Clermont see the reference in the previous note, p.59.

sentence states that something which had been concealed ought to be investigated with special care. Does that mean that whatever was going on 'extraordinarily' was being done in secret? These questions have no clear answers. It can be noted that the well-known short text of Urban II which occurs in Gratian's *Decretum*, at C.35, q.2, c.3, and which seemingly derives from a papal letter (JL 5730), begins with the words *Extraordinaria pollutio*, and concerns eligibility for marriage.[11] It might be interesting to probe all known uses of this word.

It is difficult to say much more at this stage, and various questions have been posed in the previous paragraphs. In conclusion, however, a couple of observations are in order. It is difficult for me to believe that, apart from the item ascribed to Pope Urban, the seemingly rare if not new texts on fols.83v and 84r of Semur 13 are not to be found elsewhere.[12] These texts deal with sacraments, i.e., baptism, the Eucharist, and marriage, and also with the situation of clergy in Gaul in the time of Gregory the Great. A pastoral and a 'French' geographical emphases are clear. Would identifying the other texts which supplement the *Coll. Sinemuriensis* on 83v etc. show the same clear patterns? These matters require analysis. Of especial interest would be identifying the recipient of the letter from which this text is an excerpt. That identity could offer a basis for interpreting the seemingly obscure papal directives.[13]

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[11] See the *Wortkonkordanz zum Decretum Gratiani*, edd. Timothy Reuter und Gabriel Silagi (MGH Hifsmittel 10.2; München 1990) 2.1173-1174.

[12] See the list of those texts in notes 5 and 6 above.

[13] The bibliography on marriage and sexuality is vast, and it is possible that immersion in that literature would be rewarding in the present case.

Sol, Thierry. *Droit subjectif ou droit objectif? La notion de* ius *en droit scaramentaire au xii^e^ siècle*. Turnhout: Brepols, 2017. Pp. 331. $104. ISBN: 978-2-503-57602-2

Jason Taliadoros

Thierry Sol's monograph navigates a particularly difficult subject, whose understanding depends on a precise use of language and terms. For this reviewer, who is accustomed to communicating in the English language, the task is therefore doubly difficult. The title, *Droit subjectif ou droit objectif? La notion de* ius *en droit scaramentaire au xxi^e^ siècle*, translates as 'Subjective Right or Objective Right?: The Notion of *Right* in Sacramental Law in the Twelfth Century'. The word *droit* in French, just like the Latin term it translates, 'ius', can mean either 'right' or 'law' in English. Which of these is meant here? The French terms 'droit subjectif' and 'droit objectif' translate as 'subjective right' and 'objective right' respectively, since the term 'droit' here is intended to capture the broader idea of an entitlement, something due to someone, rather than the narrower English term 'law', which more commonly connotes a normative system, usually in a positivist sense. Of course, the other reason for translating 'droit' as 'right' is that Sol clearly situates his book within the scholarly controversy that has influenced political, historical, and legal historical scholarship on the origin of the use of the concept of subjective right (droit subjectif) in the history of Western European thought: the debate between American medievalist and canon lawyer, Brian Tierney, and French legal theorist, legal historian, and Roman lawyer, Michel Villey.

These two men, each of them extremely influential leaders in their respective centres of learning, came up with two very different solutions to this quandary. As to whether they were in fact answering the same question, Sol has something to say on this, of which I will add more below. From Villey's perspective, there was a Copernican-like moment in the fourteenth century in the writings of William Ockham when that author conceived of the novel concept of a subjective right when employing the Latin term

'ius'; this was significant because previously that same Latin term had designated only an objective right. The distinctive quality in Ockham, for Villey, was that when referring to the term 'ius', Ockham meant also 'potestas', a power in the individual.[1] In contrast, Tierney situated this same moment two centuries earlier in the writings of the twelfth-century decretists as they commentated on the swirling meanings of the term *ius* in the text of Gratian's *Decretum*. Villey's works on this topic spanned the period from the mid-1940s to the early 1980s, while Tierney's contributions began in the 1960s and have continued right up to the present day. Tierney's *Liberty and Law*, published in 2014, was the culmination of his 'corpus' on the idea of the subjective, or permissive, right, which I reviewed in a recent volume of this journal.[2] Now Brian Tierney has joined Michel Villey as another master scholar to have passed from us.[3]

Thierry Sol's stated aim in writing this book is not, like Tierney or Villey, to find the historical a priori starting point for 'individual rights' but instead to pursue 'a subjective way of thinking of rights, beginning from faculties and powers that a man can use'.[4] Sol's perspective is that of the theologian and the canonist as his focus is on how this subjective way of thinking manifests itself in the 'munus sanctificandi', one of the offices or duties of the ordained priest, namely that of sanctifying (including the right of celebrating the sacraments and the associated right of

[1] For example, see Michel Villey, 'La genèse du droit subjectif chez Guillaume d'Occam', *Archives de philosophie de droit* 9 (1964) 97-127, 117.

[2] Brian Tierney, *Liberty and Law: The Idea of Permissive Natural Law, 1100-1800* (SMCL 12; Washington D.C. 2014), reviewed in Jason Taliadoros, Review Essay on Brian Tierney, *Liberty and Law: The Idea of Permissive Natural Law, 1100-1800*, BMCL 34 (2017) 259-280, 259. Sol provides an update to this scholarship in Sol, *Droit subjectif ou droit objectif?* 11 n.10. See also Riccardo Saccenti, *Debating Medieval Natural Law: A Survey* (Notre Dame 2016).

[3] https://www.telegraph.co.uk/obituaries/2019/12/31/professor-brian-tierney-catholic-scholar-challenged-church-papal/.

[4] Sol, *Droit subjectif ou droit objectif?* 22. Note that Sol earlier concludes that the decisive outcome of Tierney's work was to recognise that the terms *facultas* and *potestas* were powers that contained within them true rights, or that rights arise only when one personally possesses such a power (ibid. 20).

binding and loosing, excommunicating and deposing). This office of sanctifying, Sol notes, was also a major preoccupation of canon lawyers in the twelfth century, the period to which he confines his study. So centring his study on this essential role of the priest, the central question Sol asks himself is this:[5]

> is the right of celebrating [the sacraments] (ius celebrandi) (and the associated right of 'ius ligandi' and 'ius solvendi') the object of a subjective vision of law? The theme is as well treated by Gratian as by the decretists, and has above all the advantage of presenting limited situations that allow one to ask in what conditions could a faculty no longer be applied. The problems of simony, heresy, or schism have in effect made the question pressing: can a simoniacal, schismatic, or heretical cleric celebrate the sacraments? Are the latter valid or licit? What are the juridical criteria (critères juridiques) that permit us to determine these issues?

In sum, it is Sol's quest to use a subjective vision of law to understand twelfth-century decretist commentary on the capacity of clerics to administer the sacraments, despite irregularities in those clerics such as simony, schism, or heresy.

Two lines of reasoning are possible, Sol explains, to deal with these questions. According to the first, following the model of the subjective right, the 'ius celebrandi' can be treated as the exercise of a 'potestas' (power) that the cleric received by his ordination. This 'facultas' (faculty)—the terms 'facultas' and 'potestas' can be used alternatively here—would then be integrated into the person of the minister. The question would then arise as to whether the 'potestas ordinis' releases the 'ius celebrandi sacramenta', or whether the ius 'celebrandi' was dependent on the 'potestas' of the minister. The second approach, following a 'realist' or an objective conception of right, Sol continues, consists in asking if the celebration of the sacrament (the object) by the cleric will be a 'just' thing in the case of simony, schism, or heresy. In so doing, it characterises the 'ius celebrandi' just or unjust not merely based on the priest's possession of the 'potestas ordinis' but rather on the opportunity to exercise this 'potestas' by the minister.[6] Sol's observations are that the 'ius celebrandi' from the beginning of the

[5] Ibid. 22.
[6] Ibid. 23.

twelfth century onwards finds itself crossing between one or other of these two 'visions of right'—subjective and objective. A juridical distinction therefore emerges from this, between the notions 'potestas' and 'executio potestas'.[7]

It is necessary to turn to the overall structure of Sol's monograph to explain how he goes about this ambitious inquiry into whether a subjective vision of law can be found in canonistic sources of the twelfth century. The book divides itself into eight chapters. I will deal with each of the chapters in turn below. Sol also provides a succinct bibliography of primary and secondary sources, which covers the key works in French, Italian, German, and English. In addition, Sol provides three useful indices that list references to manuscripts, names, and things.

The first chapter is entitled 'Research on the Subjective Right' ('À la recherche du droit subjectif'). Here Sol begins with a synthesis of the scholarship of Villey and Tierney, and ends with the articulation of the latter's project as I have set it out above. Sol's singular contribution here is to provide a lucid and enlightening account of the work of these two well-known scholars and to make clear the considerable differences between them. Villey was concerned with the birth of the subjective right in the context of the development of juridical thought since Antiquity, and saw the passage from a 'realist' conception of law to a subjective one in the fourteenth century.[8] Tierney, on the other hand, was not interested in the history of law generally but only the expression of 'ius naturale' as the history of rights more broadly.[9] The two also differed on their understanding of objective rights. For Villey, the concept of 'droit objectif' designated 'the just object itself not the power that one has over it'.[10] For Tierney, the notion of 'ius naturale' had an objective meaning that could evoke subjective rights (not positivist laws) in certain contexts.[11] For Villey, the 'droit subjectif' is 'a faculty of the individual over

[7] Ibid.
[8] Ibid. 9.
[9] Ibid. 10.
[10] Ibid. 14.
[11] Ibid.

things; it does not have a place in law for it derives law from a power over things since the realist juridical power says exactly the opposite: the power over a thing is the counterpart to the existence of a right'.[12] Tierney's analysis on natural rights, Sol notes, is hermetically different and distinct from the juridical sense of Villey.[13] Despite these differences, Sol suggests that it is still possible to 'conserve' the 'droit objectif' in the realist sense understood by Villey and, at the same time, 'correct' Tierney's over-reliance on a common law positivist notion of law.[14] This involves, Sol suggests, 'detaching' the 'droit objectif' from positive law, then recognising it, per Villey, as the 'just character' that is the ultimate aim of any law, although separate from it.[15] Sol notes, however, Tierney's attempts to use the terms 'potestas, auctoritas', and 'facultas' as evincing the existence of a subjective right.[16] Sol takes up these same terms in his own project to find subjective visions of law, as outlined above. This lucid account of the main lines of controversy in Tierney and Villey's work stands out in a field that more often than not spawns abstruseness rather than clarity.

The second chapter ('Contexts'/'Contextes') outlines the historiographical, historic, theological, and textual contexts that have informed the notion of subjective right. Beginning with the scholarship of Rudolph Sohm, Sol notes that scholar's interest on the origins and nature of the power of jurisdiction. Although best known for this thesis on the turn in the medieval church from a spiritual/sacramental form of jurisdiction to a worldly/secular one, Sohm also understood clearly the distinction between the 'potestas ordinis' and the 'potestas iurisdictionis' that transformed the nature of law.[17] Although Sohm himself did not use the term, Sol concludes that the German scholar's conceptualisation of personally-possessed power of jurisdiction in the minister,

[12] Ibid. 15.
[13] Ibid.
[14] Ibid. 16.
[15] Ibid. 17.
[16] Ibid. 19.
[17] Ibid. 26.

'potestas iurisdictionis', taking the place of the function (ordo) of their office, in the power of order ('potestas ordinis'), implied a concept of subjective right in the former.[18] Sohm placed these developments in the context of the second half of the twelfth century following the Gregorian reform movement and the struggle for liberty of the Church, described as a turn to the rediscovery of Roman law and an 'autonomous' juridical science. Even Alfons Stickler, Sohm's greatest critic, did not deny this distinction, only that it was anything novel; for Stickler, it was merely a juridical adaptation to a preceding reality.[19] Continuing his synthesis of Sohm's contribution, Sol notes that he and others, such as Yves Congar, Gabriel le Bras, and Harold Berman, situated these phenomena in the twelfth-century decretists. But the terms 'ius', 'potestas', and 'facultas' also had an inheritance in theological and ecclesiological debates from the eleventh century onwards; a key issue around this time was whether a simoniacal, heretical, or schismatic bishop lost his power or only his use of that power. The interwoven nature of canon law and theology was illustrated however, by Gratian taking up these controversies, and utilising distinctions between the terms 'potestas', as a notion with a subjective understanding of 'ius' as the power to confer the sacraments, and 'ministerium', as the office.[20] Here Sol takes advantage of the new work by scholars such as Atria Larson, Titus Lenherr, and John Wei, who have emphasised the importance of theology and the 'schools' of theologians in influencing Gratian's work. Sol agrees with Wei that Gratian was a theologian, but not a 'sacramental, liturgical one'.[21] Turning to the 'textual context', Sol acknowledges the polysemic nature of the terms 'ius', 'potestas', 'acutoritas', and 'facultas' in Gratian and the decretists.[22] Accordingly, he reasons that a strict lexicographical study by itself is not entirely useful; it is also necessary, he adds,

[18] Ibid. 26-27.
[19] Ibid. 28.
[20] Ibid. 44.
[21] Ibid. 52.
[22] Ibid. 56.

to look to the process of argument.[23] Once again, Sol's incisive prose synthesises vast swathes of scholarship with forensic precision and lucidity.

The third chapter ('*Potestas, executio potestas*, and the Conception of Right in Gratian'/'*Potestas, executio potestas*, et conception du droit chez Gratian') begins the foray into sources with Gratian's *Decretum*, the chronological starting point for the study. Sol notes that Gratian, in the second part of the *Decretum* in C.1 q.1, distinguishes between what reveals the sacramental power ('potestas', 'officium', or 'potestas officii') and what reveals the *exercise* of that sacramental power (executio potestatis or executio officii).[24] This distinction, Sol notes, could possibly lead one to ascribe a subjective understanding of right in this situation, namely to the faculty possessed by the priest in the 'executio potestatis' as a power residing in the subject priest—a view Sol ascribes to the work of Adam Zirkel.[25] But to do so would be incorrect, Sol continues, since Gratian's introduction of the concept of the 'executio potestatis' was an objective understanding of law. In dealing with the controversies over the re-ordination of priests, Gratian realised the limitations of an approach centred exclusively on the powers of the minister, and thus demonstrated the insufficiency of an analysis conducted in terms of subjective right.[26] Gratian's contribution was instead to reprise St Augustine's notion of the minister as the vehicle of grace, thus placing central importance on the sacrament as the object of right.[27] In this way, the 'angle of juridical analysis found itself considerably enlarged: the minister had, for the role of transmitting, a grace, which he himself did not produce nor possess. The analysis also took into account the finality of the sacrament, which determined the just or unjust character of its

[23] Ibid.
[24] Ibid. 99.
[25] Ibid. 102.
[26] Ibid. 105.
[27] Ibid. 106.

administration'.[28] Gratian's account thus utilised an analysis based on objective right, Sol concludes.

The fourth chapter ('The Criteria of Analysis of the Sacraments in the Decretists'/'Les critères de l'analyse des sacraments chez les décrétistes') follows a similar analysis, but this time of the decretists, such as Stephen of Tournai, the anonymous *Summa parisiensis*, Rolandus, Rufinus, and the *Ordinary Gloss* attributed to Johannes Teutonicus. Sol notes that, in their commentaries on notions of 'ius', 'potestas', and 'executio potestatis', the decretists, like Gratian, followed 'an objective conception of right, in appreciating the possession of 'executio potestatis' by the celebrant' as the beginning of their analysis.[29] Their analysis, however, went beyond this objective requirement that the celebrant possess the 'executio potestatis'; they also dealt with other matters, such as the form, finality, and nature of the sacrament, and the differing applications between sacraments.

By way of example, Sol analyses Rufinus's *Summa* on the topic of baptism and the notion of the 'ius dandi' as the possible site of a subjective right. Rufinus observes that baptism, as a sacrament of necessity, will always be valid no matter if the minister is a heretic or not or whether that minister is worthy or not of administering it (C.1 q.1 c.30). In the latter case, it will lack sacramental grace. This analysis by Rufinus, Sol notes, shows the privileging of objective criteria regarding the specificity and finality of each sacrament.[30] It is in Rufinus's commentary on St Augustine's position on baptism (C.1 q.1 c.97 and d.p. c.97), however, that the master deals with the notion of the 'ius dandi baptismum', and Sol examines this for its subjective conception of rights. Rufinus's commentary indicates that this 'ius dandi' in the case of baptism only indicates priestly dignity; it does not permit the priest to 'baptise' but merely to carry out that baptism 'sollemniter'. In the case of lay baptism, the 'ius dandi' designates

[28] Ibid.
[29] Ibid. 108.
[30] Ibid. 123.

rather ‘a licence conceded by the Church by reason of the situation of necessity’.[31] Sol concludes that, in Rufinus’s analysis:[32]

> all subjective consideration of right as the exercise of a ‘potestas’ possessed by the minister himself is clearly excluded’; the ‘situation of the subjective power of the minister is only a secondary question.

The next three chapters correspond to particular case studies where a subjective conception of right may be located in the works of these twelfth-century decretists. Chapter 5 (‘The Case of the Sacrament of Holy Orders’/‘Le cas du sacrament de l’ordre’) is the longest chapter of the book. The sacrament of holy orders is chosen by Sol because it is not—unlike baptism, penance, or the Eucharist—a sacrament of necessity or a sacrament that brings salvation; it is a sacrament where ‘the intentions of the minister or the one who receives the sacrament must be taken into account to a greater extent’ and, particularly in the case of heretical or simoniacal ordinations, combines ‘objective and subjective criteria’ in its juridical analysis.[33] Following a detailed analysis of a number of decretists, Sol concludes this chapter as follows:[34]

> the central criterion becomes knowledge of whether one has been ordained. Admittedly, one could say, with reason, that this criterion [knowledge of whether one has been ordained] is found ‘subjectified’, because it is integrated into the subjective knowledge of the faithful who received the sacrament. But it is precisely this subjectification of the criteria that is revealed by an objective conception of law! The just or unjust character of the ordination, which is translated by the fact that the ordained priest will be tolerated or not, depends not on the faculty or power of the minister, but on the ecclesiastical signification that it takes on, through the cognitive mediation of the faithful, this mediation being finally objectified by the injunction that it is done in order to furnish proof.

In chapter 6, ‘Problems in the Ordination of Monks, Absolute Ordination, or Inappropriate Ordination by a Bishop’ (‘Les problématiques de l’ordination des moines, de l’ordination absolue ou de l’ordination par un éveque non approprié’), Sol deals with the debates on issues that did not directly involve simony, schism, or heresy, but nevertheless bring to light other

[31] Ibid. 124.
[32] Ibid. 125.
[33] Ibid. 139.
[34] Ibid. 210.

matters in ordination that may reveal Gratian and the decretists' conception of law. Sol concludes that 'a subjective conception of law would have made insoluble the question of the validity of ordinations effected by another bishop'; instead, the introduction by the decretists of the notion of 'quoad officii executionem' in fact revealed an objective conception of law: it put into a juridical situation a faculty that was personally possessed'.[35] The 'objective right seems to us to be the product of a practical reasoning, a unique way of adapting the rigid structure of the sacramental faculties to the variety of situations'.[36] In short, an objective conception of right provided the decretists with a means of dealing with the problems presented in the texts.

Chapter 7, entitled 'The Power of Binding and Loosing Heretical Prelates' ('Le pouvoir de lier et délier des prélats hérétiques'), deals with the related concepts of the power of excommunication and deposition. These too are informed by the notion of the 'executio potestatis' that could potentially permit the articulation of subjective and objective modes of argumentation.[37] The decretists, Sol concludes, focused on the criteria that determined the juridical and obligatory character of a penal sanction; these mirrored the factors that determined the just or unjust character of the celebration or reception of the sacrament. In both cases, an objective conception of right was used: 'To speak of the subjective right of the minister to celebrate or of the faithful to receive a sacrament did not permit taking account of such things'.[38]

This series of case studies is followed by the eighth and final chapter, 'Conclusions'. Sol effectively provides a death-sentence to the idea that Tierney's conception of subjective rights can be applied to the analyses of the twelfth-century canonists in the context of the 'munus sanctificandi' examined here:[39]

> this notion of the subjective right does not seem really to underpin the juridical analysis of the canonists in the problems studied. In other words,

[35] Ibid. 247-248.
[36] Ibid. 248.
[37] Ibid. 249.
[38] Ibid. 276.
[39] Ibid. 277.

> we do not call into question that one can talk of subjective right in such a period, or indeed beforehand, but we have not found any significant traces of an *exclusive* subjective conception of right in the texts studied [*my emphasis*]'.

Tierney himself would probably brook no issue with this statement by Sol. His thesis never claimed an *exclusive* use of subjective rights language in the works of the canonists, but an occasional unreflexive use that oscillated with an objective conception of rights. Sol concedes this:[40]

> one provides an account that the mechanisms follow the way of the objective rights, even if they sometimes use terms properly belonging to the subjective right.

This indicates that Sol's approach is more concerned with the substance of the argument than just the language employed in it. Moreover, Tierney's *Liberty and Law* saw him retreat somewhat from the notion of 'subjective' right language to one based more on 'permissive' law; this latter phrase is not utilised by Sol in his analysis.

But the larger point here will not be lost on those who have studied Tierney's works. The evidence for the decretists' use of subjective rights language is limited and does not form a part of their juridical conception of right or of law. In respect of the latter, Sol correctly notes in his introduction that it was never Tierney's project to attempt to explain the *nature* of the law in twelfth-century canonistic thought, that is to provide a 'juridical' explanation of law.[41] If instead it was rather Tierney's design to point to the possibility of language that adverted to an understanding of natural rights, understood as a precursor to modern democratic and constitutional principles of individual rights, this is a different matter.[42] Yet, as Nederman has noted of

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[40] Ibid. 279.

[41] Ibid. 15. Tierney concedes that his *Liberty and Law* was 'more descriptive than analytical', with its prime aim being to 'call attention to a persistent but neglected theme that . . . formed a significant part of the whole tradition of natural law thinking' (Tierney, *Liberty and Law* xi).

[42] Sol, *Droit subjectif ou droit objectif?* 10, 277.

Tierney, it is problematic also to identify political notions of rights with his understandings of subjective or permissive rights.[43]

The scope for Tierney's thesis for a twelfth-century origin to rights language, it seems, must be examined anew. Sol is convinced that the locus of the domain of analysis is in objective rights. But he provides an intriguing window into a possible further line of inquiry:[44]

> A subjective treatment of the *potestas ordinis* was altogether possible, indeed prepared by St Augustine, facilitated by the existence of juridical expressions bearing a subjective vision, and, indeed, in the issue concerning the celebration of the sacraments by simoniacs, schismatics, and heretics; this was not the way that the decretists had given priority to.

This provides some hope to the idea of subjective rights in sacramental theology, although Sol himself does not support it. Yet it must be remembered that this context—sacramental theology—is the one in which Sol makes these findings. Tierney's analysis of the decretists was in a different context altogether, namely their commentaries on the first part of Gratian's *Decretum* on the nature of law. So, although Tierney had provocatively gestured towards the possibility of finding subjective rights in theological sources, Sol's monograph has now demonstrated that the canon law sources on sacramental matters would likely make that inquiry a fruitless one. Nevertheless, Tierney's broader observation, of an identity of meaning between 'ius' and 'potestas' in the twelfth-century decretist commentaries of Gratian, which foreshadowed a similar understanding in modern times of a right as equivalent to a power, still has not been definitively displaced.

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[43] Cary J. Nederman, 'Review of Brian Tierney, *The Idea of Natural Rights* and *Rights, Law and Infallibility*', AJLH 42 (1998) 217-219, 218, cited in Taliadoros, 'Review Essay on Brian Tierney' 280.
[44] Sol, *Droit subjectif ou droit objectif?* 10, 277.

Dusil, Stephan. *Wissensordnungen des Rechts im Wandel: Päpstlicher Jurisdiktionsprimat und Zölibat zwischen 1000 und 1215*. Leuven: Leuven University Press, 2018. Pp. 629. ISBN: 978-9-462701-33-5

Reviewed by Kirsi Salonen

This book is a reworked and abbreviated version of his Habilitationsschrift (University of Zürich, Rechtswissenschaftliche Fakultät, 2016). Although an abbreviated version of the original Habilitation, the book still contains a heavy dose of medieval canon law. It deals with an immensely large topic, covers over two centuries, and takes into consideration the legal culture of the whole of western Christendom.

The principal object of investigation is how the knowledge of jurisdiction developed, circulated, and spread from the pre-Gratian compilations until the first official legal compilation, the *Liber Extra*, was issued in 1234. Since studying the large corpus of all possible canon law regulations would have been too large a task, Dusil has limited his analysis to two legal issues: papal jurisdictional primacy and celibacy. Through closer analysis of the development of these two themes, Dusil wants to investigate what the various early compilers of legal collections have argued and upon which sources they have based their argumentation. In his analysis, Dusil discusses the evolution of certain constitutions and also applies manuscript studies.

Since the main question of the study is the legal development in the high Middle Ages, the analysis proceeds in a chronological order. After the introductory first chapter, the book begins with an analysis of the canonical collections of the eleventh and twelfth centuries (chapters 2 and 3), continues with the investigation of Gratian's *Decretum* (chapter 4), and ends with the discussion of some later collections and commentaries to Gratian (chapter 5). The last, concluding chapter (chapter 6) closes the book, after which follows an appendix containing closer studies of the manuscripts used in the investigation, a list of sources and

literature, as well as various useful registers (manuscripts, persons, text collections, and text quotations).

The structure of the book is sensible and clear, although the chronological structure and separate treatment of the two themes in each canonical collection means that the author returns to the two main themes over and over again, because of which the structure of the book feels a bit mechanical. In chapter 2.2., for example, the author discusses first, what the *Decretum* of Burchard of Worms says about the papal jurisdictional primacy and what it says about clerical celibacy. Then he turns his attention to what the *Collectio 74 titulorum* says about the two issues, to what the *Panormia* says about them, and finally to what the *Collectio canonum* of Deusdedit says about the issues. In chapter 2.3., Dusil returns again to each of the collections and investigates how and why the compilers argued for what they have included in their collections. It would have been more reader-friendly to combine these chapters in order to avoid the sense of mechanical analysis of the material. Another possibility would have been to discuss the development of the two themes separately, but a thematic structure would probably have meant repetition in other ways and distracted the readers from the main point of investigation of the study, that is the chronological development.

The first chapter begins—in a typical way for academic dissertations—by defining the main concepts used in the study. Also Dusil begins with discussing how ‘Wissen’ and its sister concepts such as information, data, communication, knowledge, or understanding are defined in different disciplines studying human behavior, in legal studies, sociology, history, as well as cultural studies. This is an interesting and modern discussion but it brings relatively little to the argument in the book, while a more profound discussion of how ‘Wissen’ was defined in the Middle Ages could have brought depth in the analysis. Then follows an in-depth, and for the study a very useful, discussion about the legal knowledge in the tradition of the canon law studies, in which the author uses a lot of examples from medieval sources and their research.

After the definition of concepts, the author explains thoroughly the historical development of the two topics he is using in his analysis, namely papal jurisdictional primacy and celibacy. Somewhat strangely, the discussion starts with the definition of these two topics in the (for this study irrelevant) modern *Codex Iuris Canonici* (1983) and then returns to their development from the early church until the high Middle Ages. The analysis of the development is well done and Dusil shows how he masters both topics. The first chapter closes with a short section presenting relevant research to the topic of the study.

In the second chapter, Dusil turns his attention to the canonical collections of the eleventh and twelfth centuries that were compiled before Gratian's *Decretum*. He opens the chapter by explaining the existing sources and the development of canon law from the early church up to the high Middle Ages and introduces the four collections he is using in his analysis: the *Decretum* of Burchard of Worms, the *Collectio 74 Titulorum*, the *Panormia*, and the *Collectio Canonum* of Deusdedit. The chapter then continues with a presentation and a careful analysis of each collection followed by a discussion about what they say first about papal jurisdictional primacy and then about celibacy. Dusil also includes information about the different manuscript traditions and the preservation of different versions of the collections. Here Dusil's analysis relays greatly on research done by scholars such as Hoffman, Pokorny, Fuhrmann, Rolker, Fournier, Landau, Brett, Brasington, Blumen-thal, and many others.

After this, the author turns his interest towards the juridical knowledge of the authors/compilers of the four collections and investigates from which sources they have drawn the canonical decrees included in their collections and how they are explaining/interpreting the earlier decrees. Since the analysis of all earlier decrees would have been impossible, Dusil concentrates in particular on the use and interpretation of certain central decrees in both themes under investigation. Dusil lists all relevant degrees in both themes (ten in the case of papal jurisdictional primacy and nine in the case of celibacy) but does

not explain why these are central ones or why some others are not included. The following analysis—made collection by collection—of the use and interpretation of the mentioned decrees is very well done and interesting and includes detailed manuscript studies as well.

The chapter ends with an analysis of the prologues of the canonical collections through which Dusil investigates what kinds of roles the authors of the collections have given to themselves. Do they understand their role as collector, as compiler, or as creator of new legal interpretation? This part is one of the most innovative in the book and Dusil concludes the chapter by showing, how the self-understanding of the role of the author of a collection has changed during the period under investigation from collecting to interpreting the decrees—and also how the position and interests of the compiler have affected the interpretations. For example, monks in the German territory have not stressed so much the importance of papal jurisdictional primacy than the compilers close to the papal circles have done.

The third chapter concentrates on the same pre-Gratian period as the second chapter but examines the topic from a different point of view, namely through the study of how the medieval authors have understood and categorized the world. Here the analysis is done through a closer investigation of the texts of Bernold of Constance and the analysis of the texts in respect of medieval ways of arguing (‘inventio’, dialectic and rhetoric, ‘circumstantia’, ‘exempla’, ‘dispensatio’ and ‘necessitas’, as well as ‘auctoritates’). In this chapter, Dusil also takes a closer look at the four chosen collections and studies how and why their authors/compilers have used different techniques of arguing, and he uses manuscript comparison in order to see how certain citations have been modified in different traditions. The analysis is interesting and Dusil’s argumentation clear, except for chapter 3.2.c, in which the analysis is suddenly concentrated on four new texts (why, is not explained): the *Collectio trium librorum*, the *Polycarpus*, the *De vita christiana* of Bonizo of Sutri, as well as the *De misericordia et iustitia* of Alger of Liège.

The fourth chapter then moves forward in the development of the history of canon law and analyses the *Decretum* of Gratian. The chapter begins with presenting the readers the two versions of the *Decretum*—based on the earlier scholarship of Kuttner, Winroth, Landau, and others—and then proceeds to the analysis of what the two versions say about papal jurisdictional primacy and celibacy. Then Dusil analyses the sources to which the two versions of the *Decretum* are based as well as the argumentation. Dusil bases his analysis in this chapter on textual analysis of numerous decrees and their different versions in various manuscripts. The analysis of different versions of the passages in different manuscript traditions and in the two versions of *Decretum* is very detailed—sometimes almost too detailed for scholars who do not know the different passages by heart—and shows that Dusil masters the material. In the last part of the fourth chapter, Dusil turns to investigate how the two versions of *Decretum* are compiled structurally and how the author of the compilation(s) has used different ways or arguing and various sources.

After the detailed analysis of the pre-Gratian collections and the *Decretum*, Dusil steps forward in time and investigates the canonical collections after the great work of Gratian. This chapter is less meticulous than the previous chapters and the author does not give a proper introduction to the sample collections used in the analysis (various ‘summae’ and ‘glossae’) as he did with the earlier collections. It is clear that one cannot do everything in one book, so I do not want to blame Dusil for his choices but this chapter clearly does not reach the same level of analysis as the previous chapters—and one could ask whether this chapter was necessary for the book in this form at all.

In the last chapter, Dusil makes his concluding remarks. He first takes a look back and summarizes the findings of the previous chapters. The conclusions are relevant and indeed include all the important findings about how the collections of canon law have changed from mere collecting and ordering of earlier canonical decisions to a purposeful creating of new law by giving new explanations to the old decrees so that they fit into

and strengthen the aims of the rising papacy and Church. After that, the last chapter continues with summarizing the development of manuscript practices (layout, use of titles, colors, etc.) as well as the self-reflections of the compilers of the canon law collections. Here too, Dusil shows that there has been a clear and intentional development from the first collections to the post-Gratian collections. The author concludes convincingly that there has indeed been a 'Wandel' in the juridical knowledge, in its presentations, and in the thinking of the compilers/authors of the canonical collections in the high Middle Ages. It would have been interesting to deliberate upon these results against the development and changes in the rising papal power and administration.

The book is based on a thorough analysis of a number of medieval collections of ecclesiastical regulations. Chapters 2 and 3 focus on the analysis of the *Decretum* of Burchard of Worms, the *Collectio 74 titulorum*, the *Panormia*, and the *Collectio canonum* of Deusdedit. Chapter 4 analysis the two versions of the *Decretum* of Gratian while chapter 5 investigates closer the different *summae* (the *Quoniam in omnibus*, the *Summa* of Rufinus, the *Summa Parisiensis* and the *Summa Coloniensis*) and *glossae*. These are not the only existing collections of canon law of their time, and therefore it would have been important to explain in detail why exactly these collections were chosen for the analysis. For those, who know well different medieval collections of canon law and their significance, the choice of exactly these collections is probably very obvious, but it would have been helpful for less erudite readers to explain the choice of these ones more carefully. Especially, it would have been useful to include more discussion about other collections that were excluded and why. Such explanation would have been particularly welcome in chapter 5 where the author rightly points out that he is operating only with a small sample of many possible text corpuses.

Similarly, it would have been helpful if the author had given readers a bit more detailed description of the existing manuscripts and manuscript traditions of the above-mentioned

collections—and why some of them are included in the analysis and some not. Such explanations would have been useful, in particular, in those places where the author tries to trace the ways of thinking of the compilers/authors of the collections. At least I began to wonder, for example, whether it really is possible to trace the ideas of Rufinus through the analysis of only one manuscript written by someone else in another context than where the original author has done his work.

Stephan Dusil shows throughout his 'magnum opus' that he has mastered very well the large research tradition his study is related to. He not only discusses with the long and large tradition of study of different canonical collections, but he also knows the discussions regarding various manuscripts and manuscript traditions regarding each of the used collections. Additionally, he is well read in history of law, history of the Catholic Church, as well as medieval society. In addition to the long list of literature, the list of used sources—both in edited and manuscript form—shows that author knows well the medieval source tradition he is trying to explain.

The book with its many-detailed analysis of certain passages or manuscript variants is not an easy read. Therefore I would not recommend the book for students or early career scholars, but the book certainly has a lot to offer for those who are already familiar with the various collections. Other scholars might also follow Dusil's example and make the same kinds of case studies of different legal topics, which would help us to get a more comprehensive picture of the development.

Generally, the book is written and edited carefully, but there were a few misspelled words here and there (for example, p. 482 Strukuränderungen instead of Strukturänderungen or in pp. 415-420 where Rufinus was spelled both in the Latin form Rufinus and German form Rufin). Also some minor misunderstandings have sneaked in, like in p.41, where is claimed that the Apostolic Penitentiary was a tribunal, although it was a papal office. I also paid attention to the slightly confused way to refer to the manuscripts in the Vatican Library throughout the book. The correct way to refer to the manuscripts in the *Vaticanus latinus*

collection is BAV, Vat. lat. and to manuscripts in the *Palatinus latinus* collection BAV, Pal. lat. (not vat. pal. lat.; note also the correct use of capitals).

The study of Dusil is an erudite analysis of a large and difficult topic, the development of legal understanding in the times before the first officially codified codes of canon law. It is therefore almost a pity that the title of the book—especially with the subtitle narrowing the focus down to only papal jurisdictional primacy and celibacy between 1000 and 1215—makes the study sound less ambitious than it actually is. Perhaps Dusil has only tried to be modest when adding the subtitle?

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Bamberg LegIT, https://legit.germ-ling.uni-bamberg.de/pages/21

Collation of vernacular vocabulary in the Germanic legal codes: *Lex Alamannorum*, *Lex Baiuvariorum*, *Lex Francorum Chamavorum*, *Lex Frisionum*, *Lex Langobardorum*, *Lex Ribuaria*, *Lex Salica* and Merovingian capitularies, *Lex Saxonum*, and *Lex Thuringorum*. Vernacular laws are analyzed grammatically. The lemma page provides information on morphological structure, dictionary entries and links to specialized dictionaries, forms of appearance, semantic classification, list of manuscripts with digital versions of the original documents. Major fields include agriculture, everyday life, architecture, craft, warfare, measurement, medicine myths and religion, names, legal vocabulary, social structure, and animals. Subclasses of legal terminology are legal personality, punishments, elements of crime, trial procedure, and legal rituals.

Bio-Bibliographic Guide to Medieval and Early Modern Jurists, edd. Kenneth Pennington and Charles Donahue, Jr., http://amesfoundation.law.harvard.edu/BioBibCanonists/HomePage_biobib2.php

An encyclopedic guide to canonists beginning with Gratian to 1500. The entries are continuously being updated and the guide is being extended to include civilian jurists. Users can search either by author or by work. Each entry begins with a brief description of the jurist or text and will end with a bibliography of relevant secondary literature. Entries include a list of

texts attributed the author (if the author is known), a list of manuscripts, and a list of early and modern editions of each text.

Carolingian Canon Law, https://ccl-beta.as.uky.edu/

A searchable, electronic rendition of works that maps the extent of variation in "standard" legal texts known to Carolingian readers, and identifies particular points of variation. In addition to clarifying the textual history of medieval canon law, the project provides historical and bibliographic annotation of several hundred canons used by jurists before, during, and after the Carolingian period. Features include: a search engine for easy retrieval of unknown orthographical variants in the transcriptions; access to manuscript images with a simple interface for transcription and submission for publication on the CCL; search filters for searching by type of legal authority or genre; displays of multiple representations of the same canon, for easy study of textual variation; interfaces for simple, direct publication of translations and annotations; private, personal workspaces for collecting material from the CCL for individual research

Civil Law, Common Law, Customary Law: Consonance, Divergence and Transformation in Western Europe from the Late Eleventh to the Thirteenth Centuries, https://clicme.wp.st-andrews.ac.uk/?fbclid=IwAR1d-pipiL3LXPU8XuJVV5dVj7CU2jry7L0ZidAk_Ep8uU-TYir-4RAJHgs

Housed at the University of St. Andrews, this project re-evaluates the legal history of Western Europe in the high Middle Ages. It focuses on the similarities, differences, and influences of English Common Law, Continental Civil Law, and customary laws by analyzing the form, functioning, and development of local, national, and supra-national laws from perspectives of longer-term European legal development. At present, the project offers also a legal encyclopedia with useful explanations of terms from the common law tradition as well as transcriptions of a mnemonic poem concerning the contents of the *Decretum*, the *Iudicium est actus trium personarum* (as found in Oxford, St John's College, ms 178), the *Très Ancien Coutumier* of Normandy *(*as found in Vatican, Ott. Lat. 2964), the vulgate version of the *Libri Feudorum*, *Pseudo Revigny's 'Summa feudorum'* (as found in Parma, Biblioteca Palatina, ms. Parm. 1227), and the *'Summula de presumptionibus'* (as found in the Vatican, BAV, Pal. lat. 653).

Decreta Regni Mediaevalis Hungariae: The Laws of the Medieval Kingdom of Hungary (DRMH online), https://digitalcommons.usu.edu/lib_mono/4.

This is the revised and updated edition of the five volumes of DRHM published between 1989 and 2013. It contains the complete corpus of statute law of Hungary from 1000 to 1526 AD, and the collection of customary law of 1517 (*Tripartitum*) in the Latin original with an annotated English translation.

Geschichtsquellen des deutschen Mittelalters, https://www.geschichtsquellen.de

Funded by the Bayerische Akademie der Wissenschaften, this encyclopedia is an updated and expanded version of the *Repertorium Fontium Historiae Medii Aevi* (1962–2007). It focuses specifically on narrative sources written between the reigns of Charlemagne and Maximilian I (c.750 to 1519). Users can search by author or by text. For each entry, the information on the manuscript transmission, printed editions, facsimiles, translations, and research literature is provided. Searches are also possible under key word, place, person, saint, textual tradition, and incipit.

Lexicon of Medieval Nordic Law (LMNL),
https://www.dhi.ac.uk/lmnl/?fbclid=IwAR0AC2OC0jIUCIvYEsyOeT2RlezbnrJ_wEEWBdpG34IwtLR6QyENr0AB5aM

A lexicon of medieval Scandinavian legal language designed to translate and explain difficult terminology used prior to the national laws. The LMNL is built upon twenty-five legal texts comprised principally of provincial laws written in Old Swedish, Old Icelandic, Old Norwegian, Old Danish, Old Gutnish, and Old Faroese. Tabs allow for searches of Nordic headwords or English-Nordic headwords. A Bibliography tab lists important primary and secondary sources. The Appendices tab provides pdfs to administrative subdivisions, agriculture and forestry, borders and boundaries, the monetary system, weights and measures, kingship, and calendar and feast days.