

Chapter 6b

Canon Law in a Time of Renewal, 1130-1234

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The century between c. 1130 and 1234 was a time of great renewal and transformation in canon law when much of the foundation was laid that would define the legal structure of not only the church but also of secular society well into modern times (see Chapter 31).¹ At this time, papal legislation found its stride, in the form of papal decretals and conciliar decrees (notably from the four Lateran councils 1123-1215). The Christians of Europe sought out the pope's judicial decisions in unprecedented masses, creating a rich body of papal case law. At the same time, legal study grew exponentially at the law schools, particularly at Bologna, where an expanding and often innovative tradition of analysis and commentary brought canon law to new levels of complexity, sophistication, and precision, which were also inspired by the recently rediscovered Roman law of Emperor Justinian.

The period is bookended by two great canonical works that would be included in the *Corpus iuris canonici* and thus remain in formal validity until 1917: the Decretum of Gratian (c. 1140) and the Liber extra (1234) promulgated by Pope Gregory IX. Gratian was the first canonist known to have taught canon law in an academic setting, almost certainly in Bologna. The schools that he stimulated produced the doctrinal and jurisprudential work that inspired papal and conciliar legislation. The reciprocal influence between the schools and legislation characterized the period. Emperor Justinian's (d. 565) Roman law had begun to be studied in earnest early in the twelfth century at some of the same schools as taught canon law, and its legal sophistication and technical precision strongly shaped the form of canon law (see Chapter 12).

<a>Gratian's Decretum

Gratian is often considered “the Father (of the scientific study) of canon law,” since he compiled the earliest academically useful textbook of canon law. His Decretum became

¹ Generally, see Stephan Kuttner, Repertorium der Kanonistik (1140-1234): I. Prodrömus corporis glossarum, *Studi e testi* (Vatican City, 1937); Wilfried Hartmann and Kenneth Pennington, The History of Medieval Canon Law in the Classical Period, 1140-1234: From Gratian to the Decretals of Pope Gregory IX, HMCL (Washington, D.C., 2008).

de facto the first part of the *Corpus iuris canonici*, although the Church never officially accepted it as such. It was theoretically valid until the promulgation of the Code of Canon Law in 1917, although much of its contents had become outdated already in the thirteenth century. Gratian programmatically called his book Concordia discordantium canonum (“Harmony of discordant canons”), but later generations would simply refer to it as the Decretum.² Gratian was most likely active as a teacher in Bologna around 1140, when he produced the first recension of the work, including some 1,860 chapters. He appeared together with two other Bologna jurists at a judicial decision in Venice 1143, when a cardinal restored the possession of tithes to the monastery of St. Ilario.³ Gratian almost certainly ended his days on 10 August in an unknown year as bishop of Chiusi in Tuscany, perhaps as early as 1144 or 1145.⁴ He left his work unfinished when he moved to Chiusi, having for instance not yet treated the law of baptism, confirmation, and the consecration of churches. His successors found the Decretum inadequately documented also in other respects, for example in containing very little Roman law at an age when that legal system was rapidly attracting attention. Consequently, they added many more authorities to the Decretum, addressing topics that Gratian had not treated and also including excerpts from Justinian’s Roman law.⁵ The resulting second recension, including some 3,800 chapters, was produced in Bologna before 1150, probably by other scholars, and this version underwent some further, more minor revision later in the twelfth century before becoming the standard version.⁶ A notable addition was the entire third part of the Decretum, a treatise on some of the sacraments of the Church, known as the de consecratione, which appears to have

² Stephan Kuttner, Harmony from dissonance: An interpretation of medieval canon law, Wimmer Lecture 10 (Latrobe, Penn., 1960), repr. in Stephan Kuttner, History of Ideas and Doctrines of Canon Law in the Middle Ages (1st ed.; London, 1980), I.

³ Luigi Lanfranchi and Bianca Strina, eds., Ss. Ilario e Benedetto e S. Gregorio, Fonti per la storia di Venezia, sez. II, Archivi ecclesiastici, Diocesi Castellana (Venice, 1965), 74-75.

⁴ Anders Winroth, "Where Gratian Slept: The Life and Death of the Father of Canon Law," ZRG: KA 99 (2013).

⁵ Adam Vetulani, "Gratien et le droit romain," Revue historique de droit français et étranger 4:24/25 (1946/1947); Stephan Kuttner, "New Studies on the Roman Law in Gratian's Decretum," Seminar 11 (1953); Anders Winroth, The Making of Gratian's Decretum, Cambridge studies in medieval life and thought, 4th ser., 49 (Cambridge, 2000).

⁶ Gratian’s dates are contested. Winroth, Making, 136-145; Anders Winroth, "Recent work on the Making of Gratian's *Decretum*," BMCL 26 (2004-2006); Winroth, "Where Gratian Slept," argue for the biography outlined here, but cf. Enrique De Leon, "La biografia di Graziano," in La cultura giuridico-canonica medioevale: Premesse per un dialogo ecumenico, ed. Enrique De Leon and Nicholas Álvarez de la Asturias (Milan, 2003); Kenneth Pennington, "Gratian, Causa 19, and the Birth of Canonical Jurisprudence," in Panta rei: Studi dedicati a Manlio Bellomo, ed. Orazio Condorelli (Rome, 2004); Kenneth Pennington, "The Biography of Gratian, the Father of Canon Law," University of Villanova Law Review 59 (2014).

been added later than most of the additions of the second recension, but certainly by 1158.⁷ A sprinkling of new chapters was added across the text later in the twelfth century. At the same time, some duplicates were cancelled. Medieval jurists and modern scholars refer, confusingly, to both the added chapters and those cancelled as “paleae” (“chaff”).⁸

Most of the basic structure of the text was present already in the first recension, although the first part was not yet divided into its 101 distinctions. Gratian organized the second part into thirty-six thematic causae (“cases”), each divided into from two to eleven questions. A treatise on penance, the de penitentia makes up the third question of causa 33; it became divided into seven distinctions, probably at the same time as the first part.⁹ The third part is the de consecratione, which was added only late.

As sources for his chapters, Gratian and his successors mainly used a small number of recent collections from which they extracted legal statements originating in an extremely wide range of conciliar decisions, papal decretals, penitentials, patristic writings, and secular law from the previous eleven centuries, including the second Lateran Council of 1139. Notable among the sources that Gratian and his successors excerpted directly are the collection of Anselm of Lucca, the Panormia, the Collectio Tripartita, the Polycarpus of Gregory of St. Grisogono, and the Collection in Three Books (see Chapter 5). In addition to these constantly recurring sources, Gratian also used some sources in specific parts of his work, for example the De iustitia et misericordia of Alger of Liège (especially in C.1 and 2), Isidore of Seville’s Etymologies (for the beginning of his “Treatise on Laws” in D.1--4 and 7), and various recent theological sentence

⁷ John Wei, Gratian the Theologian, Studies in Medieval and Early Modern Canon Law 13 (Washington, D.C., 2016), 277-280.

⁸ Rudolf Weigand, "Versuch einer neuen, differenzierten Liste der Paleae und Dubletten im Dekret Gratians," in Life, Law and Letters: Historical Studies in Honour of Antonio García y García, ed. Peter Linehan, Studia Gratiana 28-29 (Rome, 1998); Jürgen Buchner, Die Paleae im Dekret Gratians: Untersuchung ihrer Echtheit, Pontificum Athenaeum Antonianum, Theses ad Lauream in Iure Canonico 127 (Rome, 2000) distinguish between additions and removed duplicates.

⁹ Atria A. 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, D.C., 2014); John C. Wei, "Law and Religion in Gratian's Decretum" (PhD thesis, Yale University, 2008). A new edition: Atria A. Larson, Gratian's Tractatus de penitentia: A New Latin Edition with English Translation, Studies in Medieval and Early Modern Canon Law 14 (Washington, D.C., 2016).

collections (notably in the de penitentia).¹⁰ He often quoted and alluded to the Bible and its Ordinary Gloss, which sometimes provided the framework for his discussions.¹¹

The original title of Gratian's work implied a program: he meant to synthesize a millennium of law and customs, which often appear contradictory. Gratian's discussion of the law is found in his several hundred comments ("dicta") in his own voice. They vary greatly in length from a few to several hundred words. The dicta serve to introduce and interpret the law, as well as point out and reconcile contradictory statements. Gratian's preferred method for reconciling disagreements in his sources was to distinguish among different senses of the same word. Similar methods were employed also in the contemporary study of Roman law and of theology, all inspired by the methods of the liberal arts as studied within the trivium of medieval education.¹² Some aspects of the method had been outlined theoretically by Ivo of Chartres in his Prologue (which Gratian certainly knew) and also by Peter Abelard in the preface to his Sic et non (which Gratian cannot be shown to have known). A few previous canonical and theological treatises that Gratian knew had already applied similar methods.¹³ Gratian's method stands in contrast to those of, e.g., Burchard of Worms over a century earlier, who instead changed the actual wording of his sources to reconcile conflicting authorities (see Chapter 4).

Gratian's Decretum was one of the most often copied medieval works, with more than 600 manuscript copies still surviving, small fragments uncounted. The first recension survives in four copies, a fragment and a few derivatives.¹⁴ It was printed for the first time in Strasbourg in 1471 and has essentially remained in print since. Emil Friedberg produced the most complete

¹⁰ Robert Kretzschmar, Alger von Lüttichs Traktat "De misericordia et iustitia": Ein kanonistischer Konkordanzversuch aus der Zeit des Investiturstreits: Untersuchungen und Edition, Quellen und Forschungen zum Recht im Mittelalter (Sigmaringen, 1985); Wei, Gratian the Theologian.

¹¹ Titus Lenherr, "Die 'Glossa ordinaria' zur Bibel als Quelle von Gratians Dekret: Ein (neuer) Anfang," BMCL 24 (2000-2001).

¹² Christoph H. F. Meyer, Die Distinktionstechnik in der Kanonistik des 12. Jahrhunderts: Ein Beitrag zur Wissenschaftsgeschichte des Hochmittelalters (Leuven, 2000); Alex J. Novikoff, The Medieval Culture of Disputation: Pedagogy, Practice, and Performance, The Middle Ages Series (Philadelphia, 2013).

¹³ Wei, "Law and Religion,"

¹⁴ Winroth, Making, 23-33; Atria A. Larson, "An Abbreviatio of the First Recension of Gratian's Decretum in Munich?," BMCL 29 (2011-2012); Giovanna Murano, "Graziano e il Decretum nel secolo XII," Rivista internazionale di diritto comune 26 (2015); John Burden, "Gratian North of the Alps: New Evidence of the First Recension in the Archdiocese of Salzburg," Bulletin of Medieval Canon Law 34 (2017).

critical edition in 1879, while recent years have seen many partial efforts to supplement and replace that edition.¹⁵

<a>The Decretists

Gratian's expanded work was the basic school text for the teaching of canon law in Bologna and elsewhere. As such, it quickly became the object of scholarly attention by the generations after Gratian, known as the decretists. Among the earliest testimonies to this attention are the several abbreviated versions of the Decretum, which clearly was felt to be too voluminous and too expensive. This is spelled out in the preface to the abbreviation known by its first words as Quoniam egestas, which is preserved in seven manuscripts: "Since poverty often used to oppress our shoulders to such a degree that I on no account could have that book of decrees, which Gratian redacted into a single volume..., I have collected in these quires the general and most important contents."¹⁶ A form letter in the abbreviation is dated to 1150, so several scholars have suggested that the abbreviation was produced in that year; it cannot at any rate be much later.¹⁷ Several of the manuscripts of Quoniam egestas contain glosses, bearing witness to teaching on the basis of this abbreviation, certainly at a law school in southern France.¹⁸ When referring to Roman law, the glosses do not refer to the usual *Corpus iuris civilis*,

¹⁵ Titus Lenherr, Die Exkommunikations- und Depositionsgewalt der Häretiker bei Gratian und den Dekretisten bis zur Glossa ordinaria des Johannes Teutonicus, Münchener theologische Studien III, Kanonistische Abteilung 42 (St. Ottilien, 1987) (C.24 q.1); Enrique De Leon, La "cognatio spiritualis" según Graciano (Milan, 1996) (C.30, q.1, 3, and 4); Regula Gujer, Concordia discordantium codicum manuscriptorum? Die Textentwicklung von 18 Handschriften anhand der D.16 des Decretum Gratiani, Forschungen zur kirchlichen Rechtsgeschichte und zum Kirchenrecht 23 (Cologne, 2004) (D.16); Tatsushi Genka, "'Hierarchie der Texte, Hierarchie der Autoritäten: Zur Hierarchie der Rechtsquellen bei Gratian," Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung 90 (2009) (D.20); Jean Werckmeister, ed., Le mariage: Décret de Gratien, causes 27 à 36, Sources canoniques (Paris, 2011) (C.27-C.36, excluding the De penitentia); Larson, Tractatus de penitentia; gratian.org (aims for editions of the two recensions; a beginning has been made with the first).

¹⁶ Anders Winroth, "St. Gallen 673 in Context: Twelfth-Century Transformations and Abbreviations of Gratian's Decretum," in Generating and Transferring Legal Knowledge in the 12th Century: The Manuscript Saint Gall, Stiftsbibliothek 673, ed. Stephan Dusil and Andreas Thier (Leiden, 2020).

¹⁷ This is the same form letter (in C.2 q.6 d.p.c.31) which in the first and second recension of Gratian's Decretum carries the date 1105, which no scholar thinks is the date when Gratian composed that part of his text. Such dates do not reliably suggest the date of composition, just like the initial of the letter writer is not a secure indication of the author's or the scribe's name.

¹⁸ André Gouron has unconvincingly identified the author of Quoniam egestas as Elzéar of Avignon, and the author of the Exceptiones Petri as Pierre de Cabannes, see André Gouron, "Le manuscrit de Prague, Metr. Knih. J. 74: à la recherche du plus ancien décrétiste à l'Ouest des Alpes," ZRG KA 83 (1997) and André Gouron, "'Petrus' démasqué," Revue historique de droit français et étranger 82 (2004).

which was used in the Bologna law school at the time, but to an abbreviated treatment known as the Exceptiones Petri.¹⁹ One of the preserved manuscripts of that text also contains the Quoniam egestas.²⁰

Notable among other abbreviations are that composed by Omnibene (9 manuscripts), who taught at Bologna until becoming bishop of Verona in 1157, and another known by its incipit as the Exceptiones ecclesiasticarum (9 manuscripts).²¹ Many other abbreviations survive from the twelfth and later centuries, each in few manuscript copies, and some contain glosses and other hints that they were used in teaching.²²

An abbreviation preserved in a unique manuscript, Sankt Gallen, Stiftsbibliothek 673, probably written in the cathedral scriptorium of Modena has attracted much attention, since it contains a remarkably large proportion of material from the first recension. A suggestion that it represents an even earlier recension of Gratian's work than the first has been ruled out, but it is clearly an independent if indirect witness to the first recension.²³

If abbreviations represent one method for approaching Gratian's large text, perhaps primarily employed outside Bologna at minor law schools, another method was to gloss and comment on the text. Many of the earliest glosses were simple cross-references referring to other relevant places within the Decretum. Such glossing began even before the creation of the second

¹⁹ Carlo Guido Mor, Scritti giuridici preirneriani (Milan, 1935-1938).

²⁰ Prague, Knihovna metropolitni Kapituli J.74.

²¹ Kenneth C. Pennington, *Bio-bibliographical Guide to Medieval and Early Modern Jurists*, http://amesfoundation.law.harvard.edu/BioBibCanonists/Report_Biobib2.php?record_id=a363 and http://amesfoundation.law.harvard.edu/BioBibCanonists/Report_Biobib2.php?record_id=a004.

²² Listed in Kuttner, Repertorium xx-xx and in Pennington, *Bio-bibliographical Guide*. See also Alfred Beyer, Lokale Abbreviationen des Decretum Gratiani: Analyse und Vergleich der Dekretabbreviationen "Omnes leges aut divine" (Bamberg), "Humanum genus duobus regitur" (Pommersfelden) und "De his qui intra claustra monasterii consistunt" (Lichtenthal, Baden-Baden), Bamberger theologische Studien 6 (Frankfurt am Main, 1998).

²³ Carlos Larrainzar, "El borrador de la Concordia de Graciano: Sankt Gallen, Stiftsbibliothek MS 673 (=Sg)," Ius ecclesiae 11 (1999); Pennington, "Gratian, Causa 19, and the Birth of Canonical Jurisprudence," argued that this manuscript was a copy of Gratian's first draft, but see Titus Lenherr, "Die vier Fassungen von C.3 q.1 d. p. c.6 im Decretum Gratiani: Zugleich ein Einblick in die neueste Diskussion um das Werden von Gratians Dekret," AKKR 169 (2000); Winroth, "Recent Work,"; John Wei, "A Reconsideration of St. Gall, Stiftsbibliothek 673 (Sg) in Light of the Sources of Distinctions 5-7 of De Poenitentia," BMCL 27 (2007); Jean Werckmeister, "Le manuscrit 673 de Saint-Gall: Un Décret de Gratien primitif?," Revue de droit canonique 60 (2010); Anders Winroth, "St. Gall 673 in Context: Twelfth-Century Transformations and Abbreviations of Gratian's Decretum," in Generating and Transferring Legal Knowledge in the 12th Century: The Manuscript Saint Gall, Stiftsbibliothek 673, ed. Stephan Dusil and Andreas Thier (Leiden, 2020). For the origin of the manuscript, see Marina Bernasconi Reusser, "Considerazioni sulla datazione e attribuzione del Decretum Gratiani Cod. Sang. 673: un manoscritto di origine italiana in terra nordalpina," in Schaukasten Stiftsbibliothek St. Gallen: Abschiedsgabe für Stiftsbibliothekar Ernst Tresp, ed. Franziska Schnoor, Karl Schmuki, and Silvio Frigg (St. Gallen, 2013).

recension.²⁴ Scholarship has given more attention to discursive glosses that discuss the law as presented in the Decretum. A number of gloss compositions and apparatus have been identified that appear to reflect the teaching of sometimes identifiable teachers of canon law in Bologna and elsewhere.²⁵ This tradition led to the Ordinary Gloss of Johannes Teutonicus, completed in c. 1215 and revised after 1234 by Bartholemew of Brescia, mainly to take account of the publication of the Liber extra (see below). Most manuscripts of the Decretum from after 1215 and most early modern printed editions contain the Ordinary Gloss.

While the glosses appear in the margins of Decretum manuscripts, they also led to the creation of several other genres of interpretative works which in the manuscripts typically appear on their own and not accompanied by the text of the Decretum. Beyond commentaries, lecturae, and other genres, the numerous summae attract the greatest interest. The earliest summa is that usually attributed to Paucapalea, which must have been composed around 1150.²⁶ Stephen of Tournai (c. 1164--1169) was the first of the decretists to introduce into his summa a substantial body of doctrines drawn from Roman law. The voluminous, but incomplete summa that Huguccio compiled before he became bishop of Ferrara in 1190 is probably the most famous and became an important source of the Ordinary Gloss.²⁷ Many further summae are found in manuscript, and several have been published in print.²⁸ Notable decretists in addition to those mentioned above were Rufinus (c. 1164), Johannes Faventinus (c. 1171), and Simon of Bisignano (c. 1174-1179), to which should be added several anonymous works such as the Summa Parisiensis, Coloniensis, and Lipsiensis.²⁹

²⁴ Philipp Lenz, "Die Glossierung und die Glossen in den frühesten Handschriften des Decretum Gratiani," Bulletin of Medieval Canon Law 35 (2018).

²⁵ Rudolf Weigand, Die Glossen zum Dekret Gratians: Studien zu den frühen Glossen und Glossenkompositionen, Studia Gratiana 25-26 (Rome, 1996); Rudolf Weigand, "The Development of the Glossa ordinaria to Gratian's Decretum," in The History of Medieval Canon Law in the Classical Period, 1140-1234: From Gratian to the Decretals of Pope Gregory IX, ed. Wilfried Hartmann and Kenneth C. Pennington (Washington, D.C., 2008).

²⁶ The most recent scholarship has abandoned the attribution to Paucapalea and instead talks about the Summa "Quoniam in omnibus," see José Miguel Viejo-Ximénez, "La suma Quoniam in omnibus y las primeras summae de la Escuela de Bolonia," BMCL 33 (2016).

²⁷ Only the first twenty distinctions have been edited in Huguccio Pisanus, Summa Decretorum, Tom. 1, Distinctiones I-XX, ed. Oldřich Přerovský, Monumenta iuris canonici A:6 (Vatican City, 2006). Notwithstanding the title page of the edition, there is no evidence securely tying Huguccio to Pisa, see Wolfgang P. Müller, Huguccio: The Life, Works, and Thought of a Twelfth-Century Jurist (Washington, D.C., 1994), esp. p. 60.

²⁸ Kuttner, Repertorium xx-xx; Kenneth C. Pennington, "Bio-Bibliographical Guide to Medieval and Early Modern Jurists," <http://amesfoundation.law.harvard.edu/BioBibCanonists/>.

²⁹ Terence P. McLaughlin, ed., The Summa Parisiensis on the Decretum Gratiani (Toronto, 1952); Gérard Fransen and Stephan Kuttner, eds., Summa 'Elegantius in iure diuino' seu Coloniensis, Monumenta iuris canonici A:1 (1969-

This was also the period when the genre of canonistic monographs began to take off. The most important were certainly the many procedural treatises (see Chapter 18), which reshaped radically the procedure used in European courts. The most important such work before 1234 was the Ordo iudiciarius of Tancred of Bologna (d. after 1226).³⁰

Tancred also authored a summa on marriage law, which became the model for Raymond of Penyaforte's summa on the same topic (see Chapter 25), which he appended to his Summa de casibus as its fourth book.³¹ This latter summa primarily concerned penitential law and became widely influential.

<a>The Decretalists

Early manuscripts of Gratian's Decretum sometimes contain supplementary legal texts, notably papal judicial decisions (known as "decretals") and conciliar legislation that postdate the main work (see Chapter 11). Particularly valuable were papal delegations of justice, through which the pope stated the law to be applied while delegating fact-finding to local prelates.³² Jurists and scholars collected such texts for their value as law and precedent, completing and supplementing the rules contained in the Decretum. Such "extravagantes" soon became collected in separate works known as decretal collections. Their authors and commentators are known as decretalists. The rapidly increasing judicial activity of the popes provided rich materials for the collecting and analysis of the decretalists. Pope Alexander III (1159--1181), in particular, used decretals as a major tool of papal government, thus setting an example for his successors.

1990); Rudolf Weigand, Peter Landau, and Waltraud Kozur, eds., Summa 'Omnis qui iuste iudicat' sive Lipsiensis, Monumenta iuris canonici A:7 (Vatican City, 2007-2019). Further Decretum summae of interest are Rudolf Weigand, Peter Landau, and Waltraud Kozur, eds., Magistri Honorii Summa 'De iure canonico tractaturus', Monumenta iuris canonici A:5 (Vatican City, 2004-2010); and John C. Wei, ed., Summa 'Reverentia sacrorum canonum', Monumenta iuris canonici A:9 (Vatican City, 2018).

³⁰ Edited in Medicinensis Pillius, Tancred, and Aretinus Gratia, Libri De iudiciorum ordine (Aalen, 1965). See further Linda Fowler-Magerl, Ordines iudicarii and Libelli de ordine iudiciorum : (from the middle of the twelfth to the end of the fifteenth century), Typologie des sources du Moyen Age occidental ; fasc. 63 (Turnhout, Belgium, 1994).

³¹ Tancred of Bologna, Summa de matrimonio, ed. Agathon Wunderlich (Göttingen, 1841); Raymond of Penyaforte, [Opera], ed. by Xavier Ochoa and Aloisius Diez, Universi bibliotheca iuris 5 (Rome, 1975-1978).

³² Jane Sayers, Papal Judges Delegate in the Province of Canterbury, 1198-1254: A Study in Ecclesiastical Jurisdiction and Administration (Oxford, 1971).

The earliest decretal collections were organized in no particular thematic order and are thus (problematically) known as “primitive,” as distinct from the later “systematic” collections. Much of the early work on collecting papal decretals was done in England and in France, leading to the preservation of a large number of decretals directed to recipients in those areas.³³

As the number of decretals grew, the need for systematization became increasingly deeply felt, and many decretalists produced such collections. A breakthrough came with the so-called Breviarium extravagantium canonum (later known as the Compilatio prima) which Bernard of Pavia finished at some point between 1189 and 1191. He included not only decretals and conciliar decisions from the period since Gratian’s work, but also dozens of older items that Gratian had bypassed. In particular, Bernard took many chapters from the Decretum of Burchard of Worms (see Chapter 4), which Gratian did not use as a source. Bernard adapted from an earlier collection a ground-breaking organization for his collection, which was inspired by Roman law. Every collection of decretals published after his followed the same scheme, which organized the chapters under thematic titles (many of which the decretists simply borrowed from Roman law, and they typically organized them in the same order as in Justinian’s books). Bernard then collected the titles into five books organized around more general themes. A mnemonic was created in university circles to help remember the five themes:

Iudex, Iudicium, Clerus, Connubia, Crimen

(Judge, Judgment, Clergy, Marriage, Crime)

Book 1 (Iudex = judge) concerned the hierarchy of the Church (in which all bishops were also judges). Book 2 (Iudicium = judgment) dealt with the procedure of ecclesiastical courts (see Chapter 18). Book 3 contained rules for ordination and for how the clergy should behave, while book 4 was devoted to rules about marriages, a field in which canon law importantly impinged on secular society (see Chapter 25). The final, fifth book focused on sins, excommunication, and the criminal law of the Church (see Chapter 27).

³³ Charles Duggan, “Gratian’s Decretum to the Compilationes antiquae,” in The History of Medieval Canon Law in the Classical Period, 1140-1234: From Gratian to the Decretals of Pope Gregory IX, HMCL (Washington, D.C., 2008), 246-292. Calendar editions of several early collections are found in Emil Friedberg, Die Canones-Sammlungen zwischen Gratian und Bernhard von Pavia (Leipzig, 1897); Peter Landau and Gisela Drossbach, Die Collectio Francofurtana : eine französische Decretalensammlung : Analyse beruhend auf Vorarbeiten von Walther Holtzmann, MIC B 9 (Vatican City, 2007); Gisela Drossbach, Die Collectio Cheltenhamensis: Eine Englische Decretalensammlung; Analyse beruhend auf Vorarbeiten von Walter Holtzmann, MIC B 10 (Vatican City, 2014).

Decretal collections such as the Breviarium were at first private products of teachers of canon law, who used them in their teaching. Their formal authority resided in each individual decretal, which had been issued by a pope. This meant that the papacy controlled imperfectly which recent laws were included in the law school curriculum. Some forged decretals made their way into the collections. The first collection of decretals to receive official papal approval was put together by Petrus of Benevento in 1209. It included decretals issued by Pope Innocent III during the first twelve years of his pontificate. The pope authenticated the collection and ordered its use in law schools and courts through a letter prefacing the collection.³⁴ It became known as the Compilatio tertia. The canonist Tancred of Bologna similarly collected the decretals of Pope Honorius III (1216-1227) on official commission from the pope, producing the Compilatio quinta (1226).³⁵ Two other collections, the Compilatio secunda and the Compilatio quarta collected decretals from late twelfth-century popes and from the last years of Innocent III's papacy, respectively.³⁶ Each of the Compilationes as well as other decretal collections were the subject of glossing and commentary.³⁷

By the beginning of the pontificate of Gregory IX (1227--1241), the law schools used five compilations, which collectively are known as the Quinque compilationes antiquae, to access recent papal legislation, both decretals and the important decisions of the Third (1179) and Fourth (1215) Lateran Councils.³⁸ Gregory commissioned the canonist Raymond of Penyaforte to make a new legal collection on the basis of these five compilations. The new work was finished in 1234 and was then promulgated by the pope.³⁹ It is known as the Liber extra or the Decretals of Gregory IX and contains 1,871 excerpts. 195 of them had been issued by Gregory himself and do not come from the Compilationes antiquae; about a third of these are

³⁴ Robert Somerville and Bruce C. Brasington, Prefaces to Canon Law Books in Latin Christianity: Selected Translations, 500–1245, Studies in Medieval and Early Modern Canon Law 20 (2 ed.; Washington, D.C., 2020), 200.

³⁵ Somerville and Brasington, Prefaces, 200--201.

³⁶ Kenneth Pennington, "Decretal Collections 1190–123," in The History of Medieval Canon Law in the Classical Period, 1140–1234: From Gratian to the Decretals of Pope Gregory IX, ed. Wilfried Hartmann and Kenneth Pennington, History of Medieval Canon Law (Washington, D.C., 2008); Kuttner, Repertorium xx-xx; Pennington, "Bio-Bibliographical Guide" .

³⁷ Kenneth Pennington, ed., Johannis Teutonici Apparatus glossarum in Compilationem tertiam, MIC A:3 (Vatican City, 1981) is the only (partial) modern edition of any apparatus of such glosses.

³⁸ Kenneth Pennington, "Decretal Collections 1190–1234," in History of Medieval Canon Law in the Classical Period, 293-317. Calendar edition in Emil Friedberg, Quinque compilationes antiquae : nec non collectio canonum lipsiensis (Leipzig, 1882).

³⁹ Somerville and Brasington, Prefaces, 203-204.

general statements of law that seemed to have been produced for the Liber extra. The work survives in over 700 medieval manuscript copies and numerous printed editions. The standard edition by Emil Friedberg (1881) is not based on the manuscripts but simply reprints the text of the official Roman edition of 1582. Friedberg, however, restored (in italics) those sections of the decretals that Raymond of Penyafort had cut away. His source were their texts in earlier decretal collections.⁴⁰

The Liber extra became the second part of the *Corpus iuris canonici* and was as such subject to commentaries and glosses in a way similar to Gratian's Decretum and the earlier decretal collections. With its more "modern" legislation, the work quickly overshadowed the Decretum in importance, and most important canonists in the Middle Ages (and beyond) commented on the Liber extra. Bernard of Parma compiled its Ordinary gloss soon after 1234. Notable among commentators on the Liber extra were Goffredus de Trano (d. 1245), Pope Innocent IV (1243-54; Sinibaldo dei Fieschi), Cardinal Henry de Segusio (d. 1271; known as "Hostiensis," since he was the cardinal bishop of Ostia), and Johannes Andreae (d. 1348).⁴¹

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⁴⁰ Stephan Kuttner, "Raymond of Peñafort as Editor: The "decretales" and "constitutiones" of Gregory IX," BMCL 12 (1982); Edward Andrew Reno III, "The Authoritative Text: Raymond of Penyafort's Editing of the "Decretals of Gregory IX" (1234)" (Columbia University, 2011).

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