

The Authoritative Text: Raymond of Penyafort's editing of the
Decretals of Gregory IX (1234)

Edward Andrew Reno III

Submitted in partial fulfillment of the
requirements for the degree of
Doctor of Philosophy
in the Graduate School of Arts and Sciences

COLUMBIA UNIVERSITY

2011

© 2011
Edward Andrew Reno III
All rights reserved

Abstract

The Authoritative Text: Raymond of Penyafort's editing of the *Decretals of Gregory IX* (1234)

Edward Andrew Reno III

The *Decretals of Gregory IX*, promulgated in 1234, was the first collection of canon law for the Catholic Church invested with universal and exclusive authority, and was the culmination of a century and a half process by which the a now papal-led Church came to be the leading institution within medieval European society. The *Decretals*, also known as the *Liber extra* – a compilation of 1971 papal letters, constitutions and conciliar canons drawn principally from the century prior to its issuance – has long been understood as a key text for the study of the medieval papacy, the rise of scholasticism within the universities, and the extension of the Church's jurisdiction into almost every area of medieval life. The degree to which the man commissioned to edit the collection, the Dominican Raymond of Penyafort (1175-1275), actively shaped the legal content of the *Decretals* through eliminating, rewording, or supplementing the individual texts has remained elusive, in part because of the complicated manuscript tradition and in part because of our ignorance of all his sources. This dissertation examines Raymond's editing of the most recent material within the collection, the 195 capitula attributed to the commissioning pope Gregory IX (1227-1241), which in many cases provide definitive statements of the law.

This study has determined that Raymond used Gregory IX's papal registers – the official record of papal correspondence and administration – as a source for roughly half of the capitula attributed to this pope in the *Decretals*. A collation of these capitula with

the register originals has been produced, allowing one to see directly how Raymond shaped the material at his disposal into a universal legal framework for the Church. While the collation will serve as the basis for future analyses of the changes Raymond and Gregory introduced into the law, a case study has been conducted for the Gregorian legislation related to the religious orders. The results of this study show the dynamic and contingent nature of papal legislation – how the law at times was crafted in response to specific difficulties faced by legal commentators, but also how certain decisions with a narrow scope were given broad and universal application by Raymond, sometimes with unintended consequences down the road. Such was the case with Gregory’s decision to allow women in a southern German province – who had been abandoned by their husbands for having committed adultery – to enter convents set up for former prostitutes (X 3.32.19, *Gaudemus in Domino*). In Raymond’s hands this became a general recommendation that all women convicted of adultery should enter into convents to perform lifetime penance.

Aside from legal content, Raymond’s editing for the entire collection has been examined from the standpoint of legal rhetoric, and the particular language of law that emerged in the thirteenth century. It is demonstrated how Raymond consistently eliminated references to the counsel given the pope by the cardinals during legal decision making, with the effect of representing the law as a more direct expression of the papal will. Moreover, the ubiquitous invocations of additional sources of authority normally found in papal correspondence to back up pronouncements of the law – whether they be previous legal decisions, scripture, or the holy fathers – were regularly omitted. This

suggests an emerging conception of the law, as well as the institutional framework of the papacy, as self-sufficient and self-evident in its authority.

As part of examining the papal registers as a source for the Gregorian capitula, a diplomatic study has been produced of the manuscript of the first register volume (Vatican City, ASV, Reg. Vat. 14, covering pontifical years 1-3), which demonstrates how the register functioned as an ongoing and increasingly important administrative record for the Roman Curia. This study contributes to the overall understanding of the place of the written record in medieval administrative practices in the thirteenth century, suggesting that the tools of centralized administration normally associated with the later thirteenth century can be found during Gregory's pontificate. It proposes a new comparative direction for the study of medieval administrative institutions and the tools upon which they were based.

This dissertation also contributes to the ongoing efforts to study and classify the almost 700 surviving manuscripts of the *Decretals* as well as the hundreds of manuscripts of its main sources, the five canon law compilations collectively known as the *Quinque compilationes antiquae*. By examining Raymond's method of organizing his material, and comparing the early manuscripts of the collection, a working list of important variants has been developed that may be employed going forward to test and categorize manuscripts of the *Decretals* and the *Quinque compilationes*.

Although the collection was intended to become the exclusive source for decretal law prior to 1234, with Gregory IX banning the use of all former compilations, a careful study of thirteenth century commentators such as Hostiensis, Sinebaldus Fieschi (Innocent IV) and Bernard of Parma shows that commentators continued to refer back to

the earlier sources of the *Decretals* when doubtful questions about Raymond's editing arose. While an awareness of the historically-embedded nature of the law is normally associated with the Renaissance and Early-Modern periods, this dissertation proposes a reevaluation of medieval canonists as sensitive to the historical and textual-critical dimensions of the legal tradition.

Table of Contents

Introduction	1
Chapter 1: The <i>Decretals</i> in their canonistic context	20
1.1 Papal Decretals and Decretal Collections up through Gratian's <i>Decretum</i>	20
1.2 Decretal collections prior to <i>Compilatio prima</i>	26
1.3 Decretal collections from <i>Compilatio prima</i> through the reign of Innocent III	30
1.3.1 <i>Compilatio Prima</i>	31
1.3.2 Rainerius of Pomposa and the collections of Gilbertus and Alanus	33
1.3.3 The <i>Compilatio Romana</i> and <i>Compilatio Tertia</i>	35
1.3.4 <i>Compilatio secunda</i> and <i>Compilatio quarta</i>	40
1.4 <i>Compilatio quinta</i> and <i>Novae Causarum</i>	43
1.5 The Decretals of Gregory IX and <i>Rex Pacificus</i>	48
1.6 Raymond of Penyafort	50
1.7 The Sources and Structure of the <i>Decretals</i>	52
1.7.1 The nine capitula outside the <i>Quinque Compilationes Antiquae</i>	58
1.7.2 The <i>Collectio Bambergensis secunda</i> as a source for the <i>Decretals</i>	62
1.8 The Gregorian material	64
1.9 Raymond as editor	65
1.9.1 <i>Prolixitas</i>	66
1.9.2 <i>Similitudo</i>	68
1.9.3 <i>Contraritas</i>	71
1.9.4 <i>Additiones Raymundi</i>	73
1.10 Bernardus Compostellanus as possible source for Raymond's editing	78
1.11 The Language of Law	84
1.11.1 Reflecting the Deliberative Processes	86
1.11.2 Corroborative sources of authority	95
1.11.3 Embodied Law	99
1.11.4 The Language of Affection	105
1.12 Conclusion	108
Chapter 2: The Transmission of the <i>Decretals</i> in Manuscript and Print	118
2.1 Introduction	118
2.2 Transmission of the <i>Decretals</i> in Print	122

2.2.1 Early editions up through the <i>Editio Romana</i>	122
2.2.2 The <i>Editio Romana</i> and its aftermath	127
2.2.3 Eighteenth- and Nineteenth-Century Editions	135
2.3 Transmission of the <i>Decretals</i> in Manuscript	138
2.4 Parameters for evaluating early <i>Decretals</i> manuscripts	142
Chapter 3: Textual Analysis of the <i>Decretals</i>	146
3.1 Introduction	146
3.2 Methodology	148
3.3 The Inscriptions as Sources for Variants	153
3.3.1 Summary of the results of the collation	157
3.4 The Organization of Capitula in the <i>Decretals</i>	161
3.5 Organization and anomaly in the title structure: X 3.30 <i>De decimis</i>	166
3.5.1 The Source for X 3.30.25 <i>Tua</i>	168
3.6 Organization and anomaly in the order of canons: X 3.3.8 <i>Cum decorem</i> , X 5.6.5 <i>Iudaei sive Sarraceni</i> and X 1.11.14 <i>Vel non est</i>	177
3.6.1 Multiple title placement of X 3.3.8 <i>Cum decorem</i>	178
3.6.2 The rearrangement and absence of X 5.6.5 <i>Iudaei sive Sarraceni</i>	183
3.6.3 The possible rearrangement of X 1.11.14 <i>Vel non est</i>	187
3.7 Divergent inscriptions in 1-2Comp	188
3.7.1 Variants in 1-2Comp manuscripts as source for divergent inscriptions	190
3.7.2 Transmission errors and copyists' insertions in the <i>Decretals</i> as cause for divergent 1-2Comp inscriptions	196
3.7.2.1 The reinsertion of formal source inscriptions by later copyists of the <i>Decretals</i>	198
3.7.2.2 Transmission errors in <i>Decretals</i> manuscripts as source for divergent 1-2Comp inscriptions	209
3.7.3 Divergent 1-2Comp inscriptions with uncertain source	215
3.8 Divergent inscriptions in 3-4Comp	222
3.9 Divergent inscriptions in 5Comp	230
3.9.1 Partial Divergence from 5Comp inscriptions	231
3.9.2 Complete Divergence from 5Comp inscriptions	232
3.10 Conclusion	237
Chapter 3 Appendix: Discordant inscriptions between the <i>Decretals</i> and the <i>Quinque Compilationes Antiquae</i>	240
Appendix A: <i>Compilatio prima</i>	241
Appendix B: <i>Compilatio secunda</i>	247

Appendix CD: Compilatio teritia and quarta	251
Appendix E: Compilatio Quinta	256
Chapter 4: Thirteenth-Century Textual Criticism of the Decretals	258
4.1 Introduction	258
4.2 Codification vs. Compilation	
Error! Bookmark not defined.	
4.3 The critical mode in Hostiensis and Sinebaldus Fieschi (Innocent IV)	264
4.4 The use of textual and source criticism in the commentary on X 1.6.23 <i>Bonae memoriae</i>	276
4.4.1 The text of X 1.6.23, <i>Bonae memoriae</i> , and the problems of interpretation	277
4.5 Variants in the body of the <i>Decretals</i> : The transmission of a fuller forms of X 2.26.18 and X 2.27.22 in Florence, Laurenziana, S. Croce III sin.9	307
4.5.1 The reappearance of <i>partes decisae</i> in the <i>Decretals</i> : X 2.26.18 and X 2.27.22 in Florence, Laurenziana, S. Croce III sin.9	309
Chapter 5: The Registers of Gregory IX as source for the Decretals	314
5.1 Introduction	314
5.2 The Registers of Gregory IX as source for the <i>Decretals</i>	316
5.3 Scholarship on the thirteenth-century Papal Registers	320
5.3.1 Friedrich Bock and later registration	321
5.3.2 Registration under Innocent III	322
5.3.3 Registration under Honorius III	324
5.4 The Registers of Gregory IX	327
5.4.1 Overview of Reg. Vat. 14-17	327
5.4.2 Contents and character of the registers	330
5.4.3 Structure and paleography of the registers	334
5.4.4 Location of the registers	339
5.4.5 Ordering of letters	341
5.4.6 Anomalies in chronological ordering	350
5.4.7 Registration from the original	353
5.4.8 Gaps in the register	355
5.4.9 Corrections to the register	360
5.5 <i>Ecce venit deus</i> and early papal deployment of the Dominican Order	366
5.6 Summary of evidence for ongoing registration	373

5.7 Dating the <i>Decretals</i>	375
5.8 Character and content of the Gregorian capitula	382
5.8.1 Legislation by constitution or statute? X 3.31.23, <i>Statuimus novitios</i> and X 3.31.24, <i>Ne religiosi</i>	384
5.8.2 Gregorian texts related to the religious orders	392
5.8.2.1 The Legal construction of the Mendicant Orders: X 5.31.16-7, <i>Nimis iniqua</i> and <i>Nimis prava</i>	393
5.8.2.2 Monasteries as site for lay penance: X 5.32.19, <i>Gaudemus in Domino</i>	395
Chapter 5 Appendix A: Numerical Breakdown of Gregory's Correspondence	421
Chapter 5 Appendix B: Collation of the registers of Gregory IX with the Gregorian texts of the <i>Decretals</i>	425
Conclusion	513
6.1 Pre-Gregorian Sources	513
6.2 The Gregorian Capitula	519
6.3 Compilation or Codification?	524
Bibliography	530
Manuscripts	530
Primary Sources	531
Printed Editions of the <i>Decretals</i>	531
Registers and Calendars	532
Individual Sources	533
Secondary Sources	537

List of tables and figures

Table 1.1. Sources of the <i>Decretals</i>	54
Table 1.2. Overview of Gregorian texts in the <i>Decretals</i>	65
Table 1.3. Instances of consultation with the cardinals in the <i>Decretals</i>	91
Table 3.1. The organization of capitula in X 2.20 <i>De testibus et attestationibus</i>	164
Table 3.2. Anomalies in title organization: X 3.30 <i>De decimis</i>	166
Table 3.3. The position of X 3.3.8 <i>Cum decorem</i>	179
Table 3.4. The possible positioning of <i>Cum decorem</i> at X 3.4.13	180
Table 3.5. Sources and inscriptions for X 5.6.4-7	183
Table 3.6. Varying Position of <i>Iudaei et Sarraceni</i> (X 5.6.5) in early manuscripts	184
Table 3.7. Discrepancies between the <i>Decretals</i> and formal source inscriptions	189
Table 3.8. Potential sources for X 1.3.30 inscription	234
Table 3.9. Potential sources for X 1.16.2 and X 1.8.7 inscriptions	235
Table 4.1. The symbolism of intellectual pursuit from Hostiensis' <i>Summa Aurea</i>	267
Table 5.1. Gregorian Capitula taken from the Registers	317
Table 5.2. Overview of Reg. Vat. 14	334
Table 5.3. Quire Structure of Reg. Vat. 14	336
Table 5.4. Quire Signatures and Catch Words of Reg. Vat. 14	337
Table 5.5. Registration practice in Year 1, Reg. Vat. 14	342
Table 5.6 Irregular registration at the end of Year 1, Reg. Vat. 14	350
Table 5.7 Total Registration for Reg. Vat. 15-17	375
Table 5.8. List of Gregorian capitula not found in the registers	383
Table 5.9. Registered letters for the first eight pontifical years contained in Reg. Vat. 14-17	421
Table 5.10. Unregistered letters for the first eight pontifical years	422
Table 5.11. Comparison of average number of registered and unregistered letters issued each per month	423
Table 5.12. Graph comparing number of registered and unregistered decretals per month for the first eight years of Gregory's pontificate	424

Enrico
primo magistro meo

Acknowledgments

I would like to thank first of all my advisor Robert Somerville of the Columbia University Department of Religion, out of whose medieval canon law seminar this project originally arose. More than anything else, it has been his guidance, encouragement and patience over the years that allowed me to bring the dissertation to a successful completion. I have ever looked to his careful scholarship as a model, and will consider myself fortunate should I ever get the opportunity to pass along the craft learned under his tutelage.

The shape of this project is equally due to the influence of Adam Kosto of the Columbia University Department of History, whose mentoring at the early stages of my graduate career helped form the character of my scholarship. From Adam I have learned to read legal and diplomatic sources as living, breathing documents that must be creatively and mercilessly interrogated to give up their secrets.

This dissertation would not have been possible without the kindness, trust and guidance of Martin Bertram of the Deutsches Historisches Institut in Rome, into whose office I stepped quite unannounced back in 2003 to ask him whether he was himself thinking of working on the Gregorian capitula in the *Decretals*. His *imprimatur* allowed the original project to go forth, and I am forever grateful for the many times he shared his scholarship in-progress with me that related to my own research.

I would like to express my gratitude as well to Peter Landau and the other scholars at the Stephan Kuttner Institute in Munich, at whose facilities I conducted the initial background research. Having immediate access to the entire breadth of early modern legal scholarship in a single room, not to mention the welcoming personalities of

Prof. Landau, Jörg Müller and others, made an indelible impression on me as a young scholar.

This dissertation has been enriched by consultation with many other scholars, and I would like to thank especially Prof. Neslihan Senocak and Dr. Consuelo Dutschke at Columbia and Prof. Anders Winroth at Yale for the feedback they gave at various stages of the project.

As a young scholar I remember reading in the preface to the second edition of Beryl Smalley's *The Study of the Bible in the Middle Ages* about the immense service proffered her by the manuscript keepers in the Bodleian, who uncovered for her all manner of treasures to which only they had privileged access. I imagined them as high priests of the Holy of Holies, and I felt bitter that I was not favored to have been born into such an age of Titans. That was until I met Bob Scott at the Columbia Libraries Electronic Text Service. Bob is a high priest of information for the electronic age, and over the years has provided me with both general and specific assistance in the area of digital resources related to this project and others, not to mention gainful employment at the ETS [now Digital Humanities Center]. I owe him more than he realizes.

To my parents, Christine and Edward Reno Jr., must go perhaps the deepest expression of my gratitude. I would not be where I am without their sacrifice and encouragement over the years. I am especially grateful for my mother's help during the latter stages of the project, when she took time out of her own research to do copy editing on the final manuscript. I will cherish the memory of weekends spent among stacks of papers and take-out Indian food containers for the rest of my life.

I owe too many thanks to friends to give just mention here, but I would like to single out Zane Mackin of Columbia University, Dr. Stefan Pedatella of Barnard College and Manhattan School of Music, Prof. Karina Attar of Brooklyn College, Uwe Michael Dietz at the University of Florida Gainesville Libraries, Saleem Dhamee at the University of Chicago Press, Prof. Rebecca Field of University of Virginia, Justin Lowe, Jay Reed, and Prof. Seth Sanders at Trinity College.

To my cat Eve, who even now is trying to block my hands from typing out this last bit, perhaps because she senses the stacks of papers and books that have long provided her a nesting place will soon disappear, I am grateful for the company during many long days and nights.

I hope that I will be able to spend the rest of my life paying back the forbearance and love displayed throughout this process by my companion Lily Mackin.

Introduction

On September 5th, 1234, 700 years after the Emperor Justinian had unveiled his restructuring of Roman Law with the promulgation of the *Codex*, Pope Gregory IX (1227-1240) issued *Rex pacificus*, heralding his new collection of canon law.¹ Gregory addressed the bull of promulgation for the untitled collection – known later as the *Liber extra* or simply *Decretals* – to the legal scholars of Bologna and Paris, following the

¹ Potthast 9694 (Augustus Potthast, *Regesta Pontificum Romanorum inde ab anno post Christum natum MCXCVIII ad annum MCCIV*, 2 vols. (Berlin, 1874-5; repr., Graz, 1957): "Gregory bishop, servant of the servants of God, to his beloved sons, all the doctors and scholars residing at Bologna, greetings and apostolic benediction. The peaceful king arranged with tender compassion for those subject to him to be virtuous, peaceful, and honorable. But unrestrained greed, profligate of its own substance, the rival of peace, the mother of lawsuits, the source of quarrels, daily generates so many new disputes that unless justice by its own virtue restrained its [greed's] efforts and unraveled its tangled questions, abuse by litigants would destroy the basis of the human covenant, and a writ of divorce having been issued, concord would be exiled beyond the boundaries of the world. Therefore written law is produced, so that harmful desire can be limited under a rule of law through which the human race is instructed that it should live honorably, should not injure another, and should accord to each person his own rights. But various constitutions and decretal letters of our predecessors, dispersed in diverse volumes, have seemed to induce confusion, some because of excessive similarity, some because of contradiction, some even because of prolixity; others have been wandering around outside of the aforementioned volumes and as uncertain texts frequently tottered in judgments. [Thus] for the common utility and especially for those studying, we have taken care, superfluous things having been cut out, that these should be collected into one volume through our beloved son Brother Raymond, our chaplain and penitentiary, and we are adding our constitutions and decretal letters through which some matters are settled which in earlier ones were uncertain. Intending, therefore, that everyone use only this compilation in judgments and the schools, we firmly prohibit that anyone presume to make another without the express authority of the apostolic see," trans. in: Robert Somerville and Bruce Brasington, *Prefaces to Canon Law books in Latin Christianity : selected translations, 500-1245*, (New Haven, 1998). The Latin reads: "Rex pacificus pia miseratione disposuit sibi subditos fore pudicos, pacificos et honestos. Sed effrenata cupiditas, sui prodiga pacis aemula, mater litium, materia iurgiorum, tot quotidie nova litigia generat, ut, nisi iustitia conatus eius sua virtute reprimeret, et quaestiones ipsius implicitas explicaret, ius humani foederis litigatorum abusus exstingueret, et dato libello repudii concordia extra mundi terminos exsularet. Ideoque lex proditur, ut appetitus noxius sub iuris regula limitetur, per quam genus humanum, ut honeste vivat, alterum non laedat, ius suum unicuique tribuat, informatur. Sane diversas constitutiones et decretales epistolas praedecessorum nostrorum, in diversa dispersas volumina, quarum aliquae propter nimiam similitudinem, et quaedam propter contrarietatem, nonnullae etiam propter sui prolixitatem, confusionem inducere videbantur, aliquae vero vagabantur extra volumina supradicta, quae tanquam incertae frequenter in iudiciis vacillabant, ad communem, et maxime studentium, utilitatem per dilectum filium fratrem Raymundum, capellanum et poenitentiarum nostrum, illas in unum volumen resecatis superfluis providimus redigendas, adiicientes constitutiones nostras et decretales epistolas, per quas nonnulla quae in prioribus erant dubia declarantur. Volentes igitur, ut hac tantum compilatione universi utantur in iudiciis et in scholis, districtius prohibemus, ne quis praesumat aliam facere absque auctoritate sedis apostolicae speciali." Translations of Latin passages will be given when feasible.

recently established precedent of using the university as the forum of promulgation for new canon law collections.² Whereas previous collections had relied largely on the consensus of scholars and church officials for acceptance, Gregory declared from the outset that the *Decretals* would be the universally binding and exclusive compilation of decretal law within the Church. Gregory's establishment of consensus by papal *fiat* was remarkably successful, and was part of a general trend by thirteenth-century European rulers of expanding their legislative role.³ The *Decretals* became the exclusive source for decretal law covering the period between 1140 and 1234, and served as a model for the exercise of papal control over the organization of the law during the rest of the Middle Ages.

The *Decretals* was the culmination of developments within the Church and society of Western Europe going back to the eleventh century. The Gregorian Reform had given birth to the idea of the Church as a separate, purified, and leading force in the society, with the Bishop of Rome at its head.⁴ The Church's system of governance and

² The version of the bull in Gregory's registers (Rome, AS, Reg. Vat. 17, fol. 206v; Auvray 2083) is addressed to the students and doctors in Paris. Following normal chancery practices, the clerk who enregistered the bull noted that other copies were sent to various other places: "in e[odem] m[odo] scriptum e[st] multis aliis," Rome, AS, Reg. Vat. 17, fol. 206v. The printed edition of the registered copy of *Rex pacificus* can be found in: *Les Registres de Grégoire IX*, ed. Lucien Auvray, 4 vols. (Paris, 1896-1952), vol. 1, no. 2083, coll. 1125-6 (hereafter citations of Gregory's register will be rendered: Auvray #). Although not called out by name in the register, Bologna's receipt of the bull/collection is inferred by common sense, as well as the fact that most manuscripts of the *Decretals* transmit the bull identifying Bologna as the addressee. For the issues surrounding *Rex pacificus*, see: P. Pellegrino, "La editio legis e la publica promulgatio nelle Decretali di Gregorio IX," *Ius Canonicum* 22 (1982) pp. 285-342.

³ Other examples of universally binding law codes include the Holy Roman Emperor Frederick II's *Liber Augustalis* in 1231 (*The Liber Augustalis; or, Constitutions of Melfi, promulgated by the Emperor Frederick II for the Kingdom of Sicily in 1231*, trans. James Powell (Syracuse, N. Y., 1971)); and Alfonso X (el Sabio) of Castille's *Las Siete Partidas* in 1271 (*The Text and Concordance of Las Siete Partidas de Alfonso X*, ed., Jerry R. Craddock, John J. Nitti and Juan C. Temprano (Hispanic Seminary of Medieval Studies 60; Madison, 1990)).

⁴ Uta-Renate Blumenthal, *The Investiture Controversy: Church and Monarchy from the Ninth to the Twelfth Century* (Philadelphia, 1988); Yves Congar, "Der Platz des Papstums in der Kirchenfrömmigkeit der Reformer des 11. Jahrhunderts," in *Sentire Ecclesiam: Festschrift Hugo Rahner*, ed., Jean Daniélou

judicial administration grew increasingly complex as subsequent popes successfully extended the Church's independence from secular control, continued the reform of the clergy, and pushed the reorientation of local episcopal power toward the Apostolic See.⁵ Running parallel to this was the explosion of religious movements and new monastic orders in the twelfth and early-thirteenth centuries.⁶ These new movements quickly came into conflict with other long-standing ecclesiastical institutions, whether in advancing claims of independence from local episcopal control, or in performing pastoral functions that had traditionally been restricted to the clergy. The papacy was increasingly called upon to sort out these conflicts. It did so primarily through the vehicle of law, promulgated in the form of conciliar canons and as letters responding to specific legal inquiries, known as papal decretals.⁷ The development of canon law was not strictly a response to the growing complexity of Church institutions, however. It was also an outgrowth of the extension of church jurisdiction into almost every aspect of the life of the laity, whether individual (mandatory confession and penance),⁸ familial (the

and Herbert Vorgrimler (Freiburg, 1961); Ian S. Robinson, *The Papacy, 1073-1198: Continuity and Continuation* (Cambridge, 1990).

⁵ Gabriel le Bras, Charles Lefebvre and J. Rambaud, *L'Âge Classique, 1140-1378: Sources et Théorie du Droit* (Histoire du Droit et des Institutions de l'Église en Occident 7; Paris, 1965).

⁶ Giles Constable, *The Reformation of the Twelfth Century* (Cambridge, 1996); Herbert Grundmann, *Religious Movements in the Middle Ages*, trans. Steven Rowan (Notre Dame, 1994); R. I. Moore, *The Origins of European Dissent* (Medieval Academy reprints foreaching 30: Toronto, 1994).

⁷ Contemporaries were already complaining by the middle of the twelfth-century that Rome had been debased into a court of law, with all the worldly compromises which that entailed. See the opening plaint in Bernard of Clairvaux's letter of advice to Pope Eugenius III: *Five Books on Consideration*, trans. John Anderson and Elizabeth Kennan (Cistercian Fathers Series 37: Kalamazoo, 1976).

⁸ Amédée Teetaert, *La confession aux laïques dans l'Église latine depuis le VIIIe jusqu'au XIVe siècle* (Bruges, 1926).

sacramentalization of marriage,⁹ competence over issues of inheritance),¹⁰ or social (regulation of armed conflicts,¹¹ bans on certain types of commercial activity).¹²

Giving form to the legal substance of these developments was the rise of canonical jurisprudence in the cathedral schools and nascent universities of Europe.¹³ On the basis of the reintroduction of Roman law,¹⁴ as well as the demarcation of the study of canon law from academic theology,¹⁵ by the early thirteenth century canonists had developed a distinct system for organizing and interpreting the law emanating from Rome.¹⁶ By the pontificate of Innocent III, the papacy had recognized the value of these jurists for amplifying and disseminating the laws of the Church, and sought their participation and cooperation in framing further developments in canon law. Gregory IX's decision to reorganize and limit the sources of law through the *Decretals* was in part a response to the needs of canonists to have a defined set of norms upon which to base their jurisprudence. More practically, it did for the ever-increasing stream of procedure-oriented decretal law – issued by judges-delegate, ordinaries as well as the pope – what

⁹ James Brundage, *Law, Sex, and Society in Medieval Europe* (Chicago, 1987); Richard Helmholz, *Marriage Litigation in Medieval England* (Cambridge Studies in English Legal History: Cambridge, 1974).

¹⁰ Michael Sheehan, *The Will in Medieval England: From the Conversion of the Anglo-Saxons to the End of the Thirteenth Century* (Studies and Texts 6: Toronto, 1963).

¹¹ Hartmut Hoffmann, *Gottesfriede und Treuga Dei* (Schriften der Monumenta Germaniae Historicae 20: Stuttgart, 1964); Jonathan Riley-Smith, *The Crusades: A History*, 2nd ed. (New York, 2005).

¹² John Gilchrist, *The Church and Economic Activity in the Middle Ages* (New York, 1969); Jacques Le Goff, *Your Money or Your Life: Economy and Religion in the Middle Ages* (New York, 1990).

¹³ R. W. Southern, *Scholastic Humanism and the Unification of Europe*, 2 vols. (Oxford, 1995).

¹⁴ R. Feenstra, R. *Droit romain au moyen âge (1100-1500)* (Introduction bibliographique à l'histoire du droit et à l'ethnologie juridique, vol. 10: Brussels, 1979).

¹⁵ Stephan Kuttner, *Harmony from Dissonance: An Interpretation of Medieval Canon Law* (Wimmer Lecture 10 (Latrobe, PA, 1960); repr. in idem, *The History of Ideas and Doctrines in the Middle Ages* (Variorum Collected Studies Series, CS 113: London, 1980) I.

¹⁶ James Brundage, *Medieval Canon Law* (New York, 1994); Le Bras, et al., *L'Âge classique*.

the *Decretum* had done for the *Ius antiquum*: provided a constitutional framework *cum* textbook for applying and practicing the law.

In *Rex pacificus*, Gregory justifies the need for a new collection by pointing out the disconnect between the prevailing state of confusion in contemporary canon law and the divinely ordained function of that law, viz., to promote social concord and to bridle human appetites disruptive to the social order. The proliferation of varying and often contradictory decretals – scattered across or even wandering outside the multitude of available canon law collections – had bred uncertainty in the courts and among legal scholars. In order to eliminate the repetition, contradiction, and prolixity that had crept into the law (*similitudo, contraritas, prolixitas*) and that was the main source of this confusion, Gregory had ordered his papal chaplain and penitentiary, Raymond of Penyafort, to collect the decretals and constitutions of his predecessors into a single volume, excising all that was superfluous (*resecatis superfluis*). Raymond was also charged with integrating Gregory's own decretals and constitutions into the collection, in an effort to clear up certain matters that had previously stood in doubt (*adiicientes constitutiones nostras et decretales epistolas, per quas nonnulla quae in prioribus erant dubia declarantur*).

How did Raymond of Penyafort go about the work of compilation? Even though the authority claims for the *Decretals* were novel, Raymond still had to confront the traditional problems faced by earlier compilers. The main issue was the selection and treatment of sources. Raymond followed the example of his predecessors by gathering the majority of his material from previous canon law collections. For material for the pontificates prior to Gregory's, Raymond used the five collections known now as the

Quinque Compilationes Antiquae [=5C].¹⁷ Compiled by various canonists between 1191 and 1226, the 5C brought together the most significant papal decretals and conciliar canons from the previous 100 years,¹⁸ and collectively they served as the textbook for the study of decretal law at the University of Bologna.¹⁹ Raymond preserved the 5C's method of organizing the individual capitula into a five-book-and-title structure, but he did not just pour the contents of these collections unaltered into the *Decretals*. He filtered out roughly one-fifth of the total number of capitula found in the 5C,²⁰ and subjected the remaining ones to a further process of editing, excerption, and reorganization. Although many of the specific cases remain to be worked out, it has long been generally understood that Raymond's editing introduced substantive changes into the law. In addition, Raymond added 195 of Gregory's own decretals and constitutions, or roughly 10% of the total number of texts in the *Decretals*. While much of the Gregorian material was taken directly from Gregory's papal register, some of the items appear to have been composed specifically for the *Decretals*. This would mark the first

¹⁷ The *antiquae* sobriquet was bestowed later in light of their having been surpassed by the *Decretals*. The standard edition of these collections is: *Quinque Compilationes Antiquae nec non Collectio Canonum Lipsiensis*, ed. Emil Friedberg (Leipzig, 1882; repr.: Graz, 1956) [=QCA]. Friedberg's work is for all practical purposes more of a calendar than a true edition. Only the text of those decretals not used by Raymond is printed in full. For everything else Friedberg's edition of the *Decretals* must be consulted, using the editorial information distinguishing Raymond's words from the text of his sources.

¹⁸ *Compilatio prima* (= 1Comp), the first of the 5C, was intended by its compiler, Bernard of Pavia, to serve as a supplement to Gratian's *Decretum*. 1Comp is not, then, strictly a collection of papal decretals, as it brought together the new decretal law with older texts that Gratian had passed over in the *Decretum*. This explains why there are a few older, non-decretal capitula in the *Decretals*, which Raymond took over from 1Comp.

¹⁹ The practice of using the collected 5C as an amalgamated textbook can be seen in the surviving manuscripts of these collections, the majority of which transmit them *en bloc*. For a working list of the manuscripts, see the website maintained by Kenneth Pennington, under the section "Bio-bibliographical Guide to Canonists, 1140-1500": <http://faculty.cua.edu/Pennington/>.

²⁰ Raymond used 1756 of the 2139 capitula found in the 5C. See chapter one, table 1.1 for a chart detailing the reception of the 5C into the *Decretals*.

time that a canon law collection was used as a vehicle to promulgate wholly new legislation.

The *Decretals* is thus rightly recognized as a turning point in the history of canon law, and by extension the reformed, Romanocentric Church's claims to be the leading institution within medieval life. Collecting and filtering the jurisdictional and legal developments within the Church over the previous century, the *Decretals* fashioned a rationalized framework for the interpretation and application of current law, as well as for the integration of future legislation.

The core problem with which any scholarship on the *Decretals* must engage – no matter whether one is examining the collection from the standpoint of a single legal tradition, or evaluating its significance as a whole – is how to determine where Raymond acted as a neutral conduit for his material, and where his editing had the effect of altering the law.²¹ The study of the legal content of the collection is, thus, inextricably bound up with its form and the process that shaped it. While it is true that any historical investigation begins with the study of the text (howsoever defined), it is doubly true, one might say, in the case of the *Decretals*.

On balance there is a much clearer understanding today of the composition and transmission of the *Decretals*. The material basis for determining the general outlines of Raymond's treatment of the pre-Gregorian material (i.e., the 5C) has been well-established by over four centuries of patient reconstruction of these sources.²² The same has not been the case for the Gregory-IX material, since the papal registers only became

²¹ There is, of course, nothing neutral about the process of rationalization and system-building, whether in law or in other disciplines. The new, ordered context, together with the ideal of non-contradiction, cannot help but shape the interpretation of individual texts/laws.

generally available two years after the last and best practitioner of the source-critical approach to the *Decretals* published the fruits of his research in 1881.²³ In other ways, however, our better knowledge of the collection, and the hands through which it had to pass to reach us, has made the possibility of recovering the exact form of the promulgated text seem much more daunting. It is true that the gap between a fourteenth-century manuscript of the collection and one produced in the previous century is orders of magnitude smaller than that found over a similar chronological expanse for Gratian's *Decretum*, to take a collection of comparable significance.²⁴ The differences are measured in increments of words rather than whole canons, but cumulatively they work to place the reader at some distance from the collection that Raymond completed in 1234. Mistaken attributions,²⁵ additional phrasing (whether of a copyist's own invention or reinserted from material that Raymond had excised),²⁶ and the rearrangement of certain canons from their original order comprise just some of the many types of smaller alterations to which the *Decretals* was subject over centuries of copying.²⁷ To try to catch a glimpse of the 1234 original one must first choose among the 700 surviving *Decretals* manuscripts; read it through a nineteenth-century printed edition – itself based upon a late-sixteenth-century version pulled together from earlier printed and late-medieval manuscript versions – and then triangulate the results with any of the dozens of

²² For the background, see chapter two § 2.2: The *Decretals* in Print.

²³ Emil Friedberg, *Corpus Iuris Canonici*, vol. 2 (Leipzig, 1881; repr. Union, N.J., 2000). On the opening of the repository for the papal registers, the Vatican Secret Archives, and its importance for canon law scholarship, see chapter 5, notes 609 and 610.

²⁴ The *Decretum* underwent revision and expansion, both by Gratian and by the scores of later canonists who used it: Anders Winroth, *The Making of Gratian's Decretum* (Cambridge, 2000).

²⁵ See the introduction to chapter 3.

²⁶ See the discussion of X 2.26.18 and X 2.27.22 in chapter 4.

complete *5C* manuscripts whose text may approximate what Raymond used to compile the collection. It can be a vertiginous exercise.

Even setting aside the goal of reproducing the original version promulgated alongside of *Rex pacificus*, the provisional state of knowledge about the text of the collection – especially at the earliest stages of transmission – has impeded other valuable research. *Decretals* manuscripts contain a trove of paleographic, codicological and art-historical data, whose value cannot be fully exploited without also understanding the stages by which the text of the collection progressed.²⁸ In addition, the evolution of the commentary literature directly tied to the *Decretals* – the *Glossa Ordinaria* and *Casus longi* of Bernard of Parma, which transmit the heart of the jurisprudence required of all medieval students of decretal law – remains known in thumbnail sketch only, partly because of the lack of basic criteria for distinguishing between *Decretals* manuscripts copied in the first four decades after promulgation.²⁹

The lack of a true critical edition has fortunately not rendered the *Decretals* useless as a general source for medieval history or the history of the Church. It is perhaps even ironic that the best attempt at such an edition, that included in Emil Friedberg's *Corpus iuris canonici*, has actually made the text more opaque to the casual user.³⁰ The

²⁷ See the discussion of X 1.11.14, X 3.3.8 and X 5.6.5 in chapter 3, §6.

²⁸ See the introduction to chapter 3 for scholarship based on the physical characteristics of *Decretals* manuscripts.

²⁹ Our understanding of the gloss has barely progressed beyond where it was when Kuttner discussed it in 1981, which was itself only a small step forward from his and Beryl Smalley's research on the topic almost four decades prior: Stephan Kuttner, "Notes on the Glossa Ordinaria of Bernard of Parma" *Bulletin of Medieval Canon Law* [= *BMCL*] 11 (1981) pp. 86-93; Idem and Beryl Smalley, "The 'Glossa ordinaria' to the Gregorian decretals," *The English Historical Review* 60 (1945) pp. 97-105; both reprinted in: Kuttner, *Studies in the History of Medieval Canon Law* (Variorum Collected Studies Series CS 325: Aldershot, 1990) XIV, XIII.

³⁰ Friedberg provides a composite text of each canon, showing the final form it took in the *Decretals* as well as the fuller, unedited version in prior decretal collections. Readers not prepared to wade through a

provisional state of the received text, and the lack of source criticism for the Gregory IX extracts included in the collection, has meant that those not acquainted with the intricacies of legal scholarship can only use the *Decretals* two-dimensionally, and that conclusions about Raymond's role in shaping the law are only arrived at haphazardly.

This dissertation is an attempt to deal with the text of the *Decretals* on a number of different fronts, with an eye toward making the collection more responsive to the critical methods developed for other canon law collections over the previous century, and of rendering it more serviceable as a general source for the history of the period.

Chapter one maps out the legal context in which the *Decretals* was produced, tracing the evolution of the canon-law collections immediately preceding it as well as the distinctive characteristics of Raymond's editing. Such a massive and total reorganization of the elements of law was not just a whim, but was undertaken to meet the demands of scholars and officials within the Church for a discrete compilation of the law that was available, particularly in the area of judicial procedure. Placed in context, Gregory's commission demonstrates a continuation and culmination of previous legal trends. There is a straight line of development from Innocent III (1198-1216) and Honorius III (1216-27) to Gregory IX in the assertion of papal prerogative in legal codification – i.e., the determination of which laws were worthy of collection and of serving as precedents – as opposed to simple legislation and adjudication through individual decretals. However, if the project itself was not without precedent, the nature of Raymond's editing certainly

fifty-column editor's introduction in Latin, whose reward for persistence is the neo-Latin tidbit that *unci quadrati* means square brackets [], can easily confuse the text of the original source with what Raymond preserved of it in the *Decretals*. Canon law as a source for medieval history is not dissimilar, then, from the history of the Bible in this period. One wants the text in the actual form in which it was encountered, rather than just the archetype. In this respect UCLA has provided an invaluable service in making available

was, and he went well beyond Gregory's directive to target for excision those passages and whole decretals displaying excessive *similitudo*, *prolixitas*, and *contraritas*. Editorial practices for refining, condensing and generalizing the individual decretal letters were inconsistent prior to Raymond. Most of the texts he inherited from the *5C* still bore the basic form in which they were first issued by various popes as letters responding to particular legal inquiries or cases.

Gregory's directive to excise *similitudo*, *prolixitas* and *contraritas* from the collection does not begin to exhaust the severity of the editing in the *Decretals*. Raymond targeted three basic features of the letters. First were the narrative portions detailing the basic facts or the procedural history behind a given case. Second was the ecclesiological, tropological and moral language ballooning the protocol in many of the decretals, where the papal scribe might meditate on the relationship between the papacy and the rest of the Church,³¹ the figurative depiction of the body of the faithful and its functions,³² or the traditions and authorities that sanctioned or prohibited a given practice

online a digital facsimile of the 1582 *Editio Romana*, the version that best approximates what a late-medieval law student or judge would have held in his hands: <http://digital.library.ucla.edu/canonlaw/>.

³¹ Following the conventions used in Friedberg's edition of the *Decretals*, italic typeface is employed to indicate those elements that Raymond excised, while regular font denotes the text that was preserved and that appears in the *Decretals*. In contrast, perhaps, to the strong assertion of papal authority represented by the issuance of the collection, Raymond had no problem with eliminating forceful statements of papal prerogative, as seen in this letter from Innocent III (Potthast 273) placed at X 5.1.14: "Although through Blessed Peter, the Prince of the Apostles, the Lord has granted us the power of binding and loosing, which we ought to exercise freely over our subordinates according to their merits; nevertheless according to the example of he who saves all, and who wishes none to perish, we more happily strive to loose rather than to bind, even if there might be some sins, for which it is itself a sin to mitigate punishment." Orig.: "Licet in beato Petro, Apostolorum principe ligandi atque solvendi nobis a Domino sit attributa facultas, quam in subditos iuxta suorum exigentiam meritorum exercere libere debeamus: exemplo tamem illius, qui omnes salvat, et neminem vult perire, libentius ad solvendum intendimus quam ligandum, etsi nonnullae sint culpa, in quibus est culpa relaxare vindictam."

³² The following letter from Gregory IX (Potthast 9566; Auvray 646; Reg. Vat. 15, fols. 92v-93r) is a good example of how Raymond removed metaphorical descriptions of the Church from the texts of the *Decretals*. X 1.33.15 relayed Gregory IX's disapproval of a custom at a local Roman church where distributions of benefices and other appurtenances of church office were made according to who had come

or ruling,³³ to cite just a few examples. Last of all, there was a whole class of formulaic language that marked the decretal as a product of the papal chancery, which framed papal responses according to an established (but evolving) set of literary conventions and formulae.³⁴

At one level this language served a verificative role, where deviations from standard usage would help identify a letter as a forgery – a persistent problem in an age still adjusting to the regular use of documents to conduct centralized administration.³⁵ From an historian’s perspective, this language is also an invaluable window onto the ideology of the papal curia and the way that written statements of law reflected the

to occupy these offices first, rather than according to the rank they held in the church (priest, deacon, etc.). Raymond excised the entire first half of the letter, which went as follows: “*in order that the beauty of the universal church might not simply be preserved – a beauty fashioned from its separate members, which while not all performing the same action, nevertheless serve one another with harmonious charity – but also function more dutifully according to the image of the court of the heavenly kingdom, it has been separated into an assortment of different orders and embellished with office titles, with which men of worth may be appropriately awarded according to their different God-given abilities, so they might endeavor to serve in the vocation to which they have been called. So lest one member appear to cause offense to the entire body, it is appropriate that those who occupy a lower order should never refuse to come after their superiors [in regards to the distribution of benefices or other privileges], since otherwise it would seem ridiculous if those promoted to higher orders were to occupy an inferior position.*” Orig: “*Ut universalis ecclesie pulchritudo menbris effigiata distinctis, que non eundem actum habentia, invicem sibi unanimi caritate ministrent, non solum servetur integrus, verumetiam officiosius operetur instar curie Regni celestis, ordinum varietate distinguitur et insignitur titulis dignitatum, quibus viri digni decorati decenter secundum differentes datas a Domino gratias, [ut] in ea qua vocantur vocatione digne studeant famulari. Unde ne membrum in corpore scandalum facere videatur, expedit ut qui minores sunt ordine, nequaquam postponi maioribus dedignentur, cum alias ridiculum videretur, si proveci ad ordines altiores in locis inferioribus remanent.*”

³³ The following Innocent-III letter (Potthast 1944) at X 3.3.5 is an example of how Raymond eliminated what one might otherwise regard as solid appeals to bedrock authority, in the case of the gospel warning about being a servant of two masters: “*With all sorts of trickery men try to serve both God and Mammon, but nevertheless, according to the truth of the Gospel, no man is able to serve two masters, because when he delights in the first, he will despise the second; and when he relies on the second he will hold the first in contempt.*” Orig.: “*Diversis fallaciis circumventi Deo et Mammonae famulari conantur, cum tamen secundum evangelicam veritatem nemo possit duobus dominis deservire, quoniam si dilexerit, alium habebit exosum aut uno contemptum alium sustinebit.*”

³⁴ For bibliography on the diplomatics of the papal chancery, see below, note 202. The best overall analysis of the formulae of papal decretals is the first volume in: Peter Herde, *Audientia litterarum contradictarum*, 2 vols., (Bibliothek des Deutschen Historischen Instituts in Rom 31-2: Tübingen, 1970).

institutional processes that gave birth to it. So, for example, decretals deciding particularly important or complex cases invariably reference with a brief formulaic statement the deliberative process by which the pope arrived at a decision in consultation with his cardinals: “consilio fratrum nostrorum mandamus (through the advice of our brothers (i.e., cardinals) we order.” Elsewhere, papal decretals made frequent stock appeals to corroborate their prohibition of certain actions or to justify a certain ruling, announcing, for example, that a practice is contrary to law (*contra ius*), or that a particular ruling is in consonance with civil and canonical ordinances (*iuxta legitimas et canonicas sanctiones*).³⁶ The formulae also called attention to the physical means by which or the location where a law or a decision was transmitted, indicating that a particular case was argued in the pope’s presence (*constitutus in praesentia nostra, quidam clericus asserevit quod* (standing in our presence, a certain cleric argued that), or that the decision has been committed to apostolic letters (*per apostolica scripta mandamus* (through these apostolic letters we order)).

It is in the selective elimination of this last class of formulaic usage that Raymond’s editing is most interesting and most distinctive from that of his predecessors. The examples used above – a decretal’s referencing of a deliberative process preceding the papal decision, invocations of corroborative authorities, and the habit of calling attention to the physical embodiment of law and justice – are exactly the type of language that Raymond targeted for excision. The investigation of these eliminations has been

³⁵ The *Decretals* contained a whole title on that very topic, X 2.24 *De fide instrumentorum* (On the credibility of documents), where Raymond collected a variety of papal statements on how papal letters could be tested for authenticity.

³⁶ This is a shorter, more formulaic variation of the longer meditations presented in the decretal’s protocol on the traditions and authorities for or against the issues addressed in the letter. See above, note 33.

largely passed over by scholarship on the *Decretals* in favor of examining the legal content of Raymond's editing. They provide, however, an opportunity to evaluate the overall character of the collection, in particular how it helped to shape the language of law and how power within the church was encoded into this language. This type of analysis has already been used to gain valuable insights in the study of Diplomats.³⁷ Applying this type of analytical framework, the first chapter concludes by developing a typology and frequency for these kinds of eliminations, and proposes several ways for thinking about their significance.

Chapters two and three explore the transmission history of the *Decretals* in print and manuscript. Because our knowledge of the *Decretals* is mediated through many layers of text and generations of scholarship, it is helpful to trace the path by which a working edition of the *Decretals* has been created. Recent research on the editorial history of Gratian's *Decretum*, which includes many of the same actors and motivations involved with the *Decretals*, has revealed a story worth telling in its own right.³⁸ Canon law scholarship became embroiled in the religious battles of the sixteenth and seventeenth centuries, as both Protestant and Catholic scholars sought to resurrect and reclaim the records of Church history in line with their confessional aims. Chapter two is, therefore, devoted to reconstructing how the *Decretals* was edited, and the contemporary debates over what was at stake in uncovering the prehistory of the individual sources in the collection. The discussion demonstrates how the editorial

³⁷ M. T. Clanchy, *From Memory to Written Record: England 1066-1307*; Lester Little, *Benedictine Maledictions: Liturgical Cursing in Romanesque France* (Ithaca, NY, 1993); Barbara Rosenwein, *Negotiating Space: Power, Restraint, and Privileges of Immunity in Early Modern Europe* (Ithaca, NY, 1999).

³⁸ Mary E. Sommar, *The Correctores Romani: Gratian's Decretum and the Counter-Reformation Humanists* (Pluralisierung & Autorität 19: Berlin, 2009).

history of the *Decretals* parallels quite closely the growing awareness of the historically-mediated character of religious tradition. It also identifies how the editorial results continue to filter our reading of the text.

If chapter two alerts us to the existence of the filter, chapter three outlines strategies for bypassing it or turning it to our advantage as we seek to discover what Raymond actually produced in 1234, and how far off any particular manuscript is from this original. The problem with reading the *Decretals* through Friedberg's edition (itself based upon the sixteenth-century *Editio Romana*) has always been whether obvious errors in the text are the result of the sources Raymond used, or whether they stem from mistakes made by later copyists. The chapter begins by showing that Raymond employed a consistent method in organizing the material he inherited from previous collections. While Raymond made liberal use of his editorial prerogative in striking passages from his sources, he was actually quite conservative when it came to ordering the texts, and rearranged the position of his material only to preserve an ascending chronological sequence within each title.³⁹ Using the inscriptions (indicating the pope originating the letter plus the recipient) assigned to each of the 1971 capitula in the *Decretals*, one can look for breaks in the chronological order of texts, for example, when a text attributed to a thirteenth-century pope appears among letters attributed to eleventh-century pontiffs. One can then compare the inscription with early *Decretals* codices (pre-1250) as well as manuscripts of Raymond's formal sources (the 5C) to determine

³⁹ The 1971 separate texts of the *Decretals* are arranged in 185 titles (On election, On penance, On the celebration of mass, etc.) distributed among five books. Within each title the texts are arranged from oldest to newest.

whether the anomaly is the result of a preexisting variant reading in Raymond's sources, or whether it was introduced after the collection was promulgated.⁴⁰

Another pathway for this methodology is to look for those texts in the *Decretals* whose inscriptions are markedly different from the reading found in most manuscripts of the *5C*. Altogether, there is a core group of around fifty texts whose inscriptions exhibit significant anomalies, and these texts have been collated with early *Decretals* and *5C* manuscripts. The results of the collation are discussed in depth in the chapter, and summarized in list form in an accompanying appendix, broken down according to the formal source (i.e., which one of the *5C*) from which Raymond derived the text.⁴¹

The main objective has been to develop a short-list of variants that can assist future attempts to classify and relate the 700 surviving manuscripts of the *Decretals*. These variants are of three types. The first include those where the variant reading in the *Decretals* originated from Raymond's formal source. These can thus serve to home in on which particular versions of the *5C* or even which manuscripts Raymond employed in putting together the *Decretals*. In this regard, there is substantial evidence that Raymond was familiar with a version of *Compilatio tertia* [=3Comp] – the first collection of Innocent III's letters specifically approved by that pope – that had some relationship with what is termed the French recension of that collection.⁴² This evidence includes a longer form of one of Innocent III's texts (X 3.30.25) included in the *Decretals*, as well as

⁴⁰ An obvious example would be a text falsely attributed to Gregory IX that appears near the beginning of a title, since Gregory IX's extracts appeared at the end of the title without exception. This is clearly the case of a later transmission error, and so early *Decretals* manuscripts can be collated to see how far back the error goes.

⁴¹ Appendix A = 1Comp; Appendix B = 2Comp; Appendix CD = 3-4Comp; Appendix E = 5Comp.

inscriptions for a select number of letters that only match those given in Innocent's registers and the French recension, rather than most standard versions of 3Comp. The other two types of variants included on the short-list are immediately relevant to sorting out the manuscript tradition of the *Decretals*. The first encompasses a small number of capitula that in early *Decretals* manuscripts (pre-1250) appear in a different order in their respective titles than they do in later codices and the subsequent printed editions.⁴³ The other is a larger group of capitula whose inscriptions have an alternate (and usually more correct) reading in early manuscripts. Armed with this list of significant variants, it will be much easier in the future to establish lines of affiliation between different *Decretals* manuscripts, as well as their proximity or distance from what Raymond produced.

Chapter four explores some interesting anomalies that were detected in one of the earliest known manuscripts of the *Decretals*, Florence, Laurenziana, S. Croce III sin. 9, dated to 1239. These anomalies consist of several canons that are transmitted in a slightly longer form than what appears in most *Decretals* manuscripts, and the source of the additional language appears to be a copyist reinserting small bits of text from the formal source that Raymond had excised (the *partes decisae*).⁴⁴ Since all of the modified texts belong to Innocent III, the chapter will examine the ways in which Innocent III's letters, and particularly his register, continued to serve as a source for canonists even after

⁴² The identification of this collection was first made by Kenneth Pennington, "The French Recension of *Compilatio tertia*," *BMCL* 5 (1975) pp. 53-71; repr. in: idem, *Popes, Canonists and Texts, 1150-1550* (Variorum Collected Studies Series CS 412: Aldershot, 1993) IX.

⁴³ These include: X 3.3.8 *Cum decorem* and X 5.6.5 *Iudaei sive Sarraceni*. There is also evidence for a different ordering of X 1.11.14 *Vel non est*, in Raymond's original, but so far no manuscript corroboration has been found.

⁴⁴ X 2.26.18 and X 2.27.22.

1234. What will emerge is a more complicated picture of how the exclusive authority claims of the *Decretals* were tempered by canonists interested in the historical context and evolution of the law they were studying.

Chapter five investigates the role of Gregory IX's papal registers as a source for the 195 texts attributed to this pope in the *Decretals*.⁴⁵ In the absence of any sustained investigation of these registers, it was found necessary to fill this gap. A substantial portion of the chapter is, therefore, devoted to a thorough paleographic, codicological and diplomatic examination of the first register volume, Reg. Vat. 14 (covering pontifical years 1-3: 1227-1230), and is accompanied by an Appendix containing illustrative images from the register. The investigation will demonstrate the various ways in which the register functioned as a working tool of papal administration, and how changes in papal policy are reflected in its folia. It is hoped that this research will spur further investigations of Gregory's remaining registers, and contribute to a more general history of how the written record was changing the exercise of power in the thirteenth century.

As with any under-scrutinized medieval document, the freshly-examined register has divulged secrets bearing on a number of contemporary topics of interest. The one that will be examined at length concerns Gregory's anti-heresy policy in Lombardy. The register offers evidence for the earliest systematic employment of Dominicans to combat heresy in Northern Italy, and gives a graphic example of the converging interests of

⁴⁵ The registers in question cover the first eight years of Gregory's pontificate: Vatican City, ASV, Reg. Vat. 14-17. This research was begun by Stephan Kuttner in the early 1980s, but was only carried out for the Gregorian texts included in the first of the five books of the *Decretals*: "Raymond of Penyafort as editor: the 'decretales' and 'constitutiones' of Gregory IX," *Bulletin of Medieval Canon Law* 12 (1982) pp. 65-80; repr. in: *Studies in the History of Medieval Canon Law* (Variorum Collected Studies Series CS 325: Aldershot, 1990) XII.

papally-sponsored reform initiatives and the mendicant orders in attacking local control over churches and the popular forms of religiosity it protected.⁴⁶

A thorough examination of Gregory's registers has uncovered 82 register entries that Raymond excerpted to make 88 out of the total 195 Gregorian texts in the *Decretals*.⁴⁷ The pattern of Raymond's usage of the register helps isolate the time period in which he worked on the collection. The chapter proposes that he began drawing from Gregory's register in the summer of 1232, which is likely also the starting-point for his work on the *Decretals* as a whole. The last extract from the register dates from late June of 1234, a little more than two months before the *Decretals* was promulgated, showing that work on the collection remained open right until the end.⁴⁸ The chapter then considers a number of the more interesting examples of how Raymond shaped the Gregorian texts in the *Decretals*. The sheer amount of material involved places outside the scope of the present research a thorough analysis of each text in comparison to its register source. To facilitate their future analysis, the text of the 88 Gregorian extracts has been collated with their original in the register, which can be found in the final appendix. The collation uses Friedberg's edition of the *Decretals* as a model, employing the 1582 *Editio Romana* as the base text; identifying the *partes decisae* (portions of the original deleted by Raymond) in italics; and indicating in a critical apparatus Raymond's additions and alterations from the register source.

⁴⁶ The letter in question is entitled *Ecce venit deus*, dated July 14th, 1227, and found at Reg. Vat. 14, fol. 22r (Auvray 129, cf. Potthast 7963). There are marginal corrections to the text of the letter that the editor of the registers did not note down, which provide the critical information when compared with copies of the letter found in South Tyrolian formularies.

⁴⁷ A complete list of the Gregorian material taken from the registers may be found in table 5.1 towards the beginning of chapter 5.

⁴⁸ X 3.49.10 = Auvray 1987, Reg. Vat. 17, fol. 190v, dated June 26, 1234.

Chapter 1: The Decretals in their canonistic context

1.1 Papal Decretals and Decretal Collections up through Gratian's Decretum

In its technical sense, a papal decretal is a letter emanating from the pope in response to a specific legal inquiry.⁴⁹ This could be a simple request for legal guidance (whether from a local prelate or a *iudex delegatus* designated by the pope to hear a particular case), an appeal of a decision made by a lower authority, or a request for recourse directly to the pope. This narrow definition of a decretal was only adopted in the late-twelfth century, concurrent with the bureaucratization of Church administration and the flourishing of academic institutions, such as the Law Faculty at Bologna, which demanded concrete categorization of the different sources of law.⁵⁰ Prior to this, the term decretal could be used to denote any papal letter that was potentially a source of law broadly defined, which could encompass matters of doctrine, pastoral guidance, ecclesiastical discipline, or cultic practice.⁵¹ The first papal letters treated by contemporaries as decretals were issued by Pope Siricius (384-99). Siricius' letters and other early decretals were modeled in part on imperial rescripts, showing the close relationship between Roman and canon law from the latter's inception.⁵² This

⁴⁹ For a succinct overview of the technical issues with decretals, see : Gérard Fransen, *Les décrétales et les collections de décrétales* (Typologie des Sources du Moyen Âge occidental 2: Turnhout, 1972).

⁵⁰ Even with the more restrictive definition, the taxonomy was fluid enough such that even simple administrative acts, like a benefice provision, could sometimes be considered as decretals.

⁵¹ The meaning of *decretalis* was likely not derived immediately from Roman Law sources, where it occurs once in the *Corpus Iuris Civilis* (Dig. 38.9.1.7: "decretalis bonorum possessio") as the adjectival form of *decretum*, meaning: "depending for validity on the ruling of a magistrate or a judge's decision," *Oxford Latin Dictionary*, fasc. II (Oxford, 1969) p. 493. *Decretalis* as a term referring to letters from the bishop of Rome dates from the mid-fifth century.

⁵² Like a decretal, an imperial rescript was understood to potentially contain matters of legal import to more than just the parties to whom it was addressed. Thus a rescript, like a decretal, could be treated as a source of a law, and not just the application of a particular law.

resemblance is even more pronounced in the letters of Pope Gregory I (590-604). Gregory's letters show the pope in the role of legislator – making unsolicited pronouncements of law – in addition to his *de facto* position as the highest judicial authority in the Western Church as the Bishop of Rome. This expansion of the juridical competence of the Apostolic See, even if it was not upheld by his immediate successors, made Gregory's letters a preeminent source for later canon law collections, and a model for the jurisprudence of the medieval papacy.⁵³

By the sixth century, papal decretals were commonly recognized as important well-springs of canon law and were collected for the legal precedents they provided. While small collections of decretals were in circulation by the end of the fifth century, it was the work of the Scythian monk Dionysius Exiguus that firmly established the authority of these letters, on par with conciliar canons.⁵⁴ Compiled during the first quarter of the sixth century, the *Collectio Dionysiana* brought together the canons of ecumenical and local, Latin councils; writings from the early Church (the so-called Canons of the Apostles); and papal decretals from the fourth and fifth centuries. The collection was designed to offer a universal body of law reflecting the equipollent

⁵³ For the importance of Gregory the Great to the medieval papacy, see: I. S. Robinson, *Papacy 1073-1198: Continuity and Innovation* (Cambridge, 1990).

⁵⁴ The final recension of the collection that would eventually circulate as the *Dionysiana* consisted of three parts: 1) *Codex canonum ecclesiae universae*, being conciliar canons in both Greek and Latin, from Niceae (325) to Chalcedon (451); 2) *Codex canonum ecclesiasticarum*, composed only in Latin, reprising the material of pt. 1, with the exception of the Council of Ephesus (431), which he omits, and adding the canons of the Council of Carthage (419), Sardica, and the so-called *Canons of the Apostles*; 3) *Collectio decretorum pontificum Romanorum*, a collection of 38 decretals from the popes between Siricius (384-99) and Anastasius II (496-8). Dionysius presented the decretals chronologically, placing each under a subject heading, or dividing the longer letters into different sections by topic. The most recent edition of the *Dionysiana* appears in: *Patrologia latina cursus completus [= PL]*, ed. J. P. Migne, vol. 67 (Paris, 1848; repr. Turnhout, 1981) coll. 39-346.

authority of both tradition and ecclesiastical institutions. The categorization of the different sources of canon law was reflected in the *Dionysiana*.⁵⁵

The high regard for the authority of papal decretals in the Early Middle Ages is evidenced in the propagation of forgeries, the most spectacular example being the so-called Pseudo-Isidorian Decretals.⁵⁶ Put together around the middle of the ninth century, Pseudo-Isidore was a complex tapestry of authentic and forged fragments purporting to be decretals stemming from the birth of the Roman papacy up to the pontificate of Pope Miltiades (311-314), the immediate predecessor of Pope Sylvester (314-35) during whose pontificate the Council of Niceae was convened in 325. Pseudo-Isidore was just one of several forgeries that evolved out of the conflict both within the Frankish episcopate and between ecclesiastical and secular rulers during the Carolingian Reform. A significant part of Pseudo-Isidore's success was based upon how it brought together the two streams of authority – that of Patristic tradition and that of the Apostolically-founded institution – which had run concurrently in canon law up to that point. The forgers had infused the *gravitas* of the Holy See with the authenticity of the Ante-Nicene Church. Even contemporaries like Bishop Hincmar of Reims (845-82), who was pitted against the side

⁵⁵ Dionysius' collection was added to significantly over the course of several centuries, and a promulgation of a modified version became one of the signal achievements of the Carolingian reform. This version is known now as the *Dionysio-Hadriana*, after Pope Hadrian I (772-95). Hadrian sent what he thought was the *Dionysiana* in its original form to Charlemagne, but what turned out to be a version encrusted with several centuries of later additions, one of the many "happy accidents" in the history of canon law that enabled the preservation of texts that might otherwise have been lost.

⁵⁶ The modern edition of Pseudo-Isidore is: *Decretales pseudo-Isidorianae et capitula Angilramni*, ed. Paul Hinschius (Leipzig, 1863; repr. Aalen, 1963). For the best critical study of the texts and their influence, see: Horst Fuhrmann, *Einfluss und Verbreitung der pseudoisidorischen Fälschungen*, 3 vols. (Schriften der Monumenta Germaniae Historica 24; Stuttgart, 1973-4). This should be read in light of the codicological work of Klaus Zechiel-Eckes, whose comparison of the Pseudo-Isidore with the manuscripts at Corbie convincingly locates the forgers in the scriptorium of that monastery: "Ein Blick in Pseudoisidors Werkstatt: Studien zum Entstehungsprozeß der falschen Dekretalen. Mit einem exemplarischen editorischen Anhang (Pseudo-Julius an die orientalischen Bischöfe, JK † 196)," *Francia: Forschungen zur westeuropäischen Geschichte* 28 (2001) pp. 37-90.

from whence the forgeries sprang during the conflict, and who openly questioned their veracity, could not resist calling upon evidence with such caché when it supported his own position.

The effect of the Gregorian Reform on the status of papal decretals was complex. On the one hand, there was an intense interest in late-eleventh-century Reformist circles in collecting and renovating the sources of law. This effort led not only to the discovery of forgotten texts, but also to the creation of new canonical collections that filtered the mass of seven centuries of ecclesiastical law in accordance with reformist principles. Guiding the whole project was a distinctly Romanocentric view, that saw the Apostolic See as the *caput et cardo* of the Church from whence all authority derived.⁵⁷ When focused on the role of the Pope, such a view found its grandest expression in the *Dictatus Papae* found in the register of Pope Gregory VII (1073-85), which claimed for the pope absolute legislative and judicial supremacy over the Church.⁵⁸ The survival of Gregory VII's register, only the second original register to come down to us after that of Pope John VIII (872-82), is an indication of the importance assigned to papal correspondence to communicate the ideals and directives of the reformers with the rest of the Church. But the legal expression of reformist principles came just as much, if not more through the vehicle of councils.⁵⁹ The late-eleventh century saw the revival of the papal council both

⁵⁷ For a discussion of the reformers' ecclesiology, see: Yves M-J Congar, "Der Platz des Papstums in der Kirchenfrömmigkeit der Reformer des 11. Jahrhunderts," in *Sentire Ecclesiam* ed. J Daniélou and H. Vorgrimler (Freiburg, 1961), pp. 196-217.

⁵⁸ *Das Register Gregors VII*, ed. Erich Caspar (Monumenta Germaniae Historica, epistolae selectae, vol. 2; Berlin, 1920) pp. 201-8.

⁵⁹ For a study of the survival and impact of conciliar and decretal material during Gregory VII's (1073-85) pontificate in subsequent canon law collections, see: John Gilchrist, "The reception of Pope Gregory VII into the canon law (1073-1141)," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte [=ZSRG]* 90, 97, *Kanonische Abteilung* 59, 66 (1973, 1980). pp. 35-82; 129-229." For a study of Urban's decretals, and a case study of the critical importance of collections in preserving papal legislation as well as traces of the

as a forum for the consideration and pronouncement of new legislation and for the settlement of important judicial cases within the Church. If we look at the transmission of decretals and conciliar canons from the Reform, we find that from the period encompassing the pontificates of Leo IX (1049-1054) through Urban II (1088-1099) there are 50 decretals, compared to 52 conciliar canons and pronouncements that end up in Gratian's *Decretum*.⁶⁰

In the *Decretum*, Gratian assigned an equal authority to papal decretals and conciliar canons, an equivocation that would have resonated with Dionysius Exiguus six hundred years prior.⁶¹ The maintenance of this equilibrium had been anything but static, having passed through both the nadir of the papacy in the tenth and early-eleventh centuries and the boldest assertion up to that point for the scope of papal authority made by Gregory VII's *Dictatus Papae*.⁶² Gratian focused his constitutional discussion on the

lost registers, see: Robert Somerville (in collaboration with Stephan Kuttner), *Pope Urban II, The Collectio Britannica, and the Council of Melfi* (Oxford, 1996) esp. pp. 21-7.

⁶⁰ This tabulation does not count multiple extracts of the same decretal, for example, Ja. 3332, a letter of Nicholas II (1059-61) reporting the decisions of a Lateran Synod held April 13, 1059. Six extracts from this letter, which included important changes to papal election procedure, ultimately made it into the *Decretum*: D. 23, c. 1; D. 79, c. 1, c. 9; C. 1, qu. 1, cc. 107, 9-10. For a discussion of the transmission of this letter, see: Detlev Jasper, *Das Papstwahldekret von 1059* (Beiträge zur Geschichte und Quellenkunde des Mittelalters 12; Sigmaringen, 1986). There are other instances in the material stemming from the Reform papacy where letters are essentially reportage of conciliar decisions rather than decretals in the technical sense, and thus the figures given for the breakdown of Reform sources in Gratian mask an even greater preponderance of conciliar material.

⁶¹ D. 20, pars. I: "Decretales itaque epistolae canonibus conciliorum pari iure exequantur," *Corpus Iuris Canonici* [= *CIC*], ed. Emil Friedberg, vol. 1 (Leipzig, 1879; repr. Graz, 1959). Gratian treats the definition of decretals and their place in the body of ecclesiastical law in Distinctions 19 and 20.

⁶² While Gratian's formulation is laconic, the individual canons in D.19-20 do reflect the dynamism of previous discussions of apostolic authority. Of particular note is D.19, c. 8-9, a decree of Pope Anastasius II (496-8) approving ordinations carried out by Acacius, who as Patriarch of Constantinople (472-89) had been condemned as a heretic for his Monophysite sympathies and ambivalence toward the primacy of the Roman bishop. Gratian used this letter as an example of when a decretal was rendered illegitimate by its transgression of previous decrees and evangelical precepts: "Quod ergo illicite et non canonice, sed contra decreta Dei, predecessorum et successorum suorum hec rescripta dedit, (ut probat Felix et Gelsius, qui Acacium ante Anastasium excommunicaverunt, et Hormisda, qui ab ipso Anastasio tertius eundem Acacium postea dampnavit), ideo ab ecclesia Romana repudiatur, et a Deo percussus fuisse legitur: [c. 9 follows, which is the *Liber Pontificalis* entry for Anastasius II, narrating how he was abandoned by his clergy and

authority of decretals as they existed individually, i.e. standing alone rather than as part of a larger collection of those that has been received by the Church. This is not at all surprising given that there was no officially-sanctioned compilation of ecclesiastical law in his day. In D. 19, pars I, however, Gratian scrutinized the validity of decretals not found in the accepted body of canons (*in corpore canonum non inventae*) showing how in practical terms, Gratian and his contemporaries closely associated individual decretals with their means of transmission.⁶³ These two relationships – between decretals and conciliar canons on the one hand, and between the material and the formal sources of canon law on the other – came under increasing scrutiny following the appearance of the

by God himself for having supported Acacius]" D. 19, dicta post c. 8. This decretal only became problematic during the late-eleventh century controversies between Gregory VII and Urban II on the one hand, and the cardinals who withdrew their obedience and joined with the anti-pope Clement III (Wibert of Ravenna). Up to that point it had served as an important proof-text in Reformist circles for accepting the validity of ordinations carried out by those newly designated as simoniacal. The cardinals who broke away from Gregory and used these pontiffs' approbation of the Anastasian decree, as well as the inclusion of the text in the collections of the pro-Gregorian Deusdedit and Anselm of Lucca, to justify the cardinals' own secession and condemnation of these pontiffs (the writings of the so-called schismatic cardinals was collected in: "Benonis aliorumque cardinalium schismaticorum contra Gregorium VII. et Urbanum II. scripta," ed. Kuno Francke, *Libelli de Lite*, vol. 2 (Monumenta Germaniae Historica; Hannover, 1897) pp. 366-422). Discussions of the decree subsequent to the cardinals' polemics reflected the now-negative valence the cardinals had placed upon the text, as we find, for example, in the writings of Bernold of Constance and Alger of Liège, the latter author being the immediate source whence Gratian derived D. 19, c. 8-9. Thus the backlash against Gregory VII's assertion of papal prerogatives led ultimately to the limitation of the pope's legislative purview in Gratian's constitutional framework of medieval canon law.

⁶³ The full rubric for D. 19, pars. I reads: "De epistolis vero decretalibus queritur, an vim auctoritatis obtineant, cum in corpore canonum non inveniuntur." D. 19, c. 1 is a reply of Nicholas I to a request from Gallican bishops to clarify the status of recently discovered "decretales epistolas priscorum pontificum Romanorum" that put forth novel formulations of law. Nicholas insisted that these decretals, which were none other than the Pseudo-Isidorian forgeries, carried the full weight of apostolic authority, even though they were otherwise unattested, since among them was found a decretal of Leo I that was known to be genuine: "decretales epistolae Romanorum Pontificum sunt recipiendae, etiamsi non sint codici canonum compaginatae, quoniam inter ipsos canones unum B. Leonis capitulum constat esse permixtum, quo ita omnia decretalia constituta sedis apostolicae custodiri mandantur." The cleverness of the forgers in mixing real fragments with forged ones fooled even the papacy. The inclusion of this text in the *Decretum* also shows how important Pseudo-Isidore was for the development of medieval canon law in its constitutional aspects, serving, in the case, as the cornerstone for the independent authority of each individual decretal.

Decretum.⁶⁴ What precipitated this reevaluation was the reality of a Church whose internal structures and pastoral functions were being defined increasingly through the language and concepts of law, newly issuing forth from the papacy at an unprecedented rate in the second half of the twelfth century. That this concurrent reevaluation was even possible was a result of the rational form imposed upon canon law by the *Decretum*, which provided a structure to the *ius antiquum* whereby the growing number of legal scholars and judges in the field could interpret and implement the law on a more or less consistent basis.⁶⁵

1.2 Decretal collections prior to *Compilatio prima*

The history of twelfth-century decretal collections is still in the process of being written.⁶⁶ Offered here are some brief remarks on the transition from the *ius antiquum* of

⁶⁴ Modern scholarship has introduced a distinction between the material sources for canon law on the one hand – the individual letter, conciliar canon, or patristic text – and on the other, the formal sources – the compilation that transmits a group of particular texts excerpted from their original context.

⁶⁵ Medieval canonists referred to all church law up through Gratian as the *ius antiquum*, to distinguish it from the *ius novum*, which comprised the law issued after the compilation of the *Decretum*.

⁶⁶ Nineteenth-century scholarship on the early history of decretal collections culminated in the publication of Emil Friedberg's *Canonessammlungen zwischen Gratian und Bernhard von Pavia* (Leipzig, 1882; repr. Graz, 1956). With a few notable exceptions, such as the *Appendix Concilii Lateranensi*, or the archival efforts of Agustin Theiner and Étienne Baluze, Friedberg's study was the first printed edition of canonical collections from the twelfth century. The edition only gave the full text of canons not otherwise available in print at that time, a justifiable editorial practice common in canon law scholarship that has unfortunately impeded the accessibility of the material to scholars outside the discipline. Twentieth-century scholarship arose out of the *Papsturkunden* project directed by Paul Kehr (*Regesta Romanorum Pontificum. Italia Pontificia*, 9 vols. (Berlin, 1906-62)), which was forced to grapple with the means of transmission in order to carry out its goal of printing all papal letters up to 1198. As a participant in the project, Walther Holtzmann collected a vast amount of data toward a history of twelfth-century decretal collections. The research bearing directly on the *Italia pontificia* was published in: "Kanonistische Ergänzungen zur Italia Pontificia," *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 37-8 (1957-8) pp. 55-102; 67-175. His research devoted specifically to the collections was never completed, however, but was subsequently cobbled together, as is: *Studies in the Collections of Twelfth-Century Decretals: from the Papers of the late Walther Holtzmann*, edd. C. R. Cheney and Mary G. Cheney (Monumenta Iuris Canonici, Series B: Corpus Collectionum, vol. 3; Vatican City, 1979). In addition to his many articles on particular aspects of twelfth-century canon law, Stephan Kuttner has also defined the outlines such a history should take, in: "Notes on a projected history of twelfth-century decretal letters," *Traditio* 6 (1948) pp. 345-51. Aided by the several-decades-old resurgence of interest in and publication of collections and commentaries prior to 1Comp (in the *Monumenta Iuris Canonici* series), a comprehensive historical overview of the canonistic activity between Gratian and the *Decretals* is now thankfully available: *The*

Gratian to the new decretal law – the *ius novum* – and the creation of academic institutions whose interpretive and pedagogical function began to shape the very form in which this law was presented. Following the *Decretum*, the first attempts to collect decretals appear simply as appendices or additions to Gratian, a practice identical, in formal terms, to how canonists continued to integrate pre-Gratian material into the text through the insertion of the *paleae*.⁶⁷ Collections of decretals separate from the *Decretum* first appear in the early 1170s. In a little less than two decades these collections had developed the five-book-and-title form and the editorial practice of excerpting decretals that would be adopted by the *Decretals*.⁶⁸ The new decretal collections were developed both in the court and the classroom, compiled by judges and

History of Medieval Canon Law in the Classical Period, 1140-1234, ed. Wilfried Hartmann and Kenneth Pennington (Washington, D.C., 2008).

⁶⁷ The *paleae* (plural of *palea*, meaning chaff) were canons added to the *Decretum* within the body of the text by the first canonists who used the collection. This material was already designated as such by the end of the 1150s, whence the appellation Paucapaleae, identified by contemporaries as a student of Gratian and the earliest canonist known to have engaged in this practice. There are at least 150 *paleae*, although in light of Anders Winroth's identification of an earlier rescension of the *Decretum* (*The Making of Gratian's Decretum* (Cambridge, 2000) the whole category may have to be revised. For the most recent attempt to set the parameters for a comprehensive list, see: 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* (Studi Gratiani 29; Rome, 1998) pp. 883-99). The basic distinction between the *paleae* and the texts with which we are here concerned, is that the former are pre-Gratian in origin. The first rescension as outlined by Winroth does not, however, contain the only two decretals of Innocent II present in the *Decretum* at C. 2, qu. 5, c. 7 (listed as a *palea*) and C. 35, qu. 6, c. 8 (dated 1142, this text used to serve as the *terminus ante quem* for dating the *Decretum*). That would make C. 35, qu. 6, c. 8 the opening move in the shift toward collections of the *ius novum*. A list of the *Decretum* manuscripts containing *ius novum* additions – sometimes as few as one decretal inserted in the middle of the distinction or causa covering a similar topic – appears in: Kuttner, *Repertorium der Kanonistik* (Studi e Testi 71; Vatican City, 1937) pp. 273-276.

⁶⁸ The most comprehensive list of the 60+ surviving decretal collections from the twelfth century is given in: *Studies in the Collections of Twelfth-Century*, pp. xx-xxxii. The division between systematic and primitive decretal collections introduced by Kuttner has basically held up, with slight modifications (see Jacob Hanenburg, "Decretals and Decretal Collections in the Second Half of the XIIth century," *Tijdschrift voor Rechtsgeschiedenis* 34 (1966), pp. 522-99; Peter Landau, "Die Entstehung der systematischen Dekretalensammlungen und die europäische Kanonistik des 12. Jahrhunderts," *ZSRG* 96, kan. Abt. 65 (1979) pp. 120-48). The dividing line is drawn between those collections that present a chronological ordering of decretals in full (primitive) and those that organize the letters by topic and subject the individual letters to some sort of editing (systematic).

litigants in ecclesiastical cases, as well as law professors and their students training for ecclesiastical careers. Although the majority of the early decretal collections were Northern French or English in origin, the center of gravity for the *ius novum* shifted to Bologna with the appearance of Bernard of Pavia's *Breviarium Extravagantium* around 1191.⁶⁹ That is not to say that Bolognese canonists were idle prior to the 1190 period. Rather, they focused their attention on adding to and glossing the *Decretum*.

The appearance in the early 1190s of the Bolognese master Huguccio's *Summa decretorum* marked a fork in the road for Bologna's jurisprudence.⁷⁰ Summarizing and consolidating the previous commentaries on the *Decretum*, Huguccio's *Summa* established a consensus for the interpretation of the *Ius Antiquum* just as Bernard of Pavia's *Breviarium extravagantium* was opening the way for the shift in Bolognese scholarship toward decretal law. Huguccio's *Summa* also marked a milestone for the attitudes of the Bolognese school vis-à-vis the authority of papal decretals. While there has been some debate over Huguccio's ideas about papal authority, what is not in dispute

⁶⁹ Anglo-Norman bishops and their cathedral circles produced the first collections of the *ius novum*. For the definitive study of the English collections, see: Charles Duggan, *Twelfth Century Decretal Collections and their Importance in English History* (University of London Historical Studies, 1963); with revisions to the interdependence of some of the Northern-European systematic collections by: Landau, "Entstehung der systematischen Dekretalensammlungen." The Anglo-Norman tradition of canonistic jurisprudence developed independently from that of Bologna, though Italian collections did circulate and have some impact (Stephan Kuttner and Eleanor Rathbone, "Anglo-Norman canonists of the twelfth century," *Traditio* 7 (1949-51) pp. 279-358). The Anglo-Norman tradition did not simply disappear with the rise of Bologna. Transalpine collections were copied and circulated well into the 13th century. Increasingly, however, English canonists traveled to Bologna to study, with Insular canonists such as Ricardus Anglicus, Gilbertus, and Johannes Galensis making important contributions to the development of decretal law in the early-thirteenth century.

⁷⁰ The scholarly distinction, long in use, between Decretists (those who glossed the *Decretum*) and Decretalists (those who composed and glossed collections of papal letters) has tended to erect an artificial barrier between these two types of canonistic work. In truth, the *Decretum* exercised a strong influence on both the form and content of twelfth-century decretal collections, even after the latter had developed their distinctive five-book-and-title structure. A collection such as the five-book *Francofurtana*, the largest prior to 1Comp, contained around 40% pre-Gratian material, and was glossed in the *Concordia discordantium* manner through the inclusion of contradictory canons in the apparatus. Bernard of Pavia also gave ample space to pre-Gratian material, as we shall see below.

is that in the realm of law, Huguccio granted a greater degree of authority to papal decretals than had any of his predecessors.⁷¹ Huguccio shifted the balance between decretals and conciliar canons, arguing that in the case where a canon and a decretal conflicted, the sentence of the decretal should prevail. In the presence of a conflict it should be assumed that it was a pope's express desire, based on specific knowledge, to derogate the canon's ruling, a capability well within apostolic authority.⁷² A pope could also reverse the decisions of his predecessors, a constraint that had fettered papal authority in Gratian.

In Huguccio's commentary we can see how far the schools had come to stand in the main currents of contemporary canonistic discussion, becoming responsive to the newest legal precedents issuing from Rome. Whereas Gratian had woven his discussion from texts several centuries removed, Huguccio brought evidence from contemporary decretals to prove the extension of the pope's decision-making into matters of doctrine

⁷¹ In his classic work on constitutional thought among the medieval canonists, Brian Tierney depicted Huguccio as arguing for a division of powers within the Church that foreshadowed the view of limited papal monarchy common among Conciliarists a few centuries later: *Foundations of the Conciliar Theory: The Contribution of the Medieval Canonists from Gratian to the Great Schism* (Cambridge, 1955), esp., pp. 26-43. Charles Duggan, on the other hand, in his work on English decretal collections, saw Huguccio as advocating a position for virtually unlimited papal power, derived – as it was for Gregory VII – from the Petrine foundation of the Apostolic See: *Twelfth-Century Decretal Collections*, pp. 34-9. The middle ground has been staked out more recently by Wolfgang Mueller, who argues that Huguccio's more absolutist legal opinions are tempered by his overarching moral theology: *Huguccio: the Life, Works, and Thought of a Twelfth-Century Jurist* (Studies in medieval and early modern canon law 3; Washington, D.C., 1994). Divergent assessments of where Huguccio stood on papal power frequently depend on which aspect of his thought is brought into focus as well as the more fraught issue of which rescensions of his *Summa* is consulted, some of which should not even be attributed to him, according to Mueller. It can only be hoped that the forthcoming publication of Huguccio's *Summa* will contribute to a more stable interpretation of the most important canonist of the late-twelfth century.

⁷² "Dicunt quod canon prevalere quia nititur auctoritate pape et totius concilii, sed decretalis sola auctoritate pape. Econtra tamen dico quod potius decretalis preiudicare debet, quia cum apostolicus...decretalem constituit contrariam canonis ex certa scientia videtur velle derogare canonis quia ei licet," quoted in Duggan, *Twelfth-Century Decretal Collections*, p. 35.

and sacramental practice. With Huguccio we see the next stage in the evolving synchronicity of the apostolic see and the schools.

1.3 Decretal collections from *Compilatio prima* through the reign of Innocent III

We have a better understanding of the development of canon law between 1190 and 1234 than for the previous period. Interest in the textual and historical study of the immediate antecedents of the *Decretals* goes back to the early-modern period with the foundational work Antonio Agustín (1516-86), who produced the first and only full-text edition of the first four of the *5C*, the formal sources of the *Decretals*.⁷³ Agustín's sensitivity to the textual work necessary for reconstructing canonistic history remained, with a few exceptions, unparalleled until the maturation of nineteenth-century German scholarship. The outlines of early-thirteenth-century canonistic history became much sharper as a result of the encyclopedic bio-bibliographic studies⁷⁴ and new editions of texts⁷⁵ published in the nineteenth and early-twentieth centuries. Building on a fairly solid foundation of the 'who' and 'what', peri- and post-war twentieth-century scholarship

⁷³ *Antiquae Collectiones Decretalium* (Lérida, 1576); reprinted in his *Opera Omnia*, ed. Giuseppe Rocchi, vol. 4 (Lucca, 1769). A partial new edition of *Compilatio prima*, limited to the first book, was put together by: Joseph Antoine de Riegger, *Bernardi praepositi Papiensis Breviarium extravagantium cum Gregorii IX P. Decretalium collectione ad harmoniam revocatum, varietate lectionum, et variorum notis illustratum* (Freiburg, 1779). *Compilatio quinta*, the fifth of the *5C*, was edited by: Innocentius Ciron, *Quinta compilatio epistolarum decretalium Honorii III* (Toulouse, 1645).

⁷⁴ Friedrich Carl von Savigny, *Die Geschichte des Römischen Rechts im Mittelalter*, 7 vols. (Heidelberg, 1834-51); Friedrich Maassen, *Die Geschichte der Quellen und der Literatur des canonischen Rechts im Abendlande bis zum Ausgang des Mittelalters* (Graz, 1870); Johann Friedrich von Schulte, *Die Geschichte der Quellen und Literatur des canonischen Rechts*, 3 vols. (Stuttgart, 1875-80; repr., Union, N.J., 2000); Stephan Kuttner, *Repertorium* [as n. 18].

⁷⁵ Friedberg, *QCA*; H. Singer, "Die Dekretalensammlung des Bernardus Compostellanus Antiquus," *Sitzungsberichte der kaiserlichen Akademie der Wissenschaften in Wien*, philosophisch-historische Klasse 126, ii (1914) PP. 1-119. The format of Friedberg's edition all five of the *5C* is the same as his *Canonessammlungen zwischen Gratian und Bernhard von Pavia*, listing the decretals according to inscriptions and *incipit...explicit*, and giving the full text only for those decretals not already printed in his *CIC*. The *Papsturkunden* project under the direction of Paul Kehr and the papal registers published by the

was able to give more detailed answers to the 'how' and 'why' of the adolescence of the *ius novum*. The rich, but linear history of canon law characteristic of a J.-F. Schulte is now a multi-dimensional web where we can track canonists' use of the papal registers, the stages of development for collections that went through multiple rescensions, and the reasoning behind certain judgments as to a collection's success or failure along the papacy—university axis, to name a few examples. The history is by no means settled, however, and some of the complexity introduced over the last seventy years has muddied the waters as much as it has filtered them. The following summary stands on the shoulders of this work, and where appropriate, will offer suggestions for lacunae still needing to be filled.

1.3.1 *Compilatio Prima*

Bernard of Pavia's *Breviarium extravagantium*, or *Compilatio prima* as it was later titled (= 1Comp), was the largest canonical collection to appear since the *Decretum*, distributing around 900 capitula over five books and 152 titles. While the reception of 1Comp was similar to that of the *Decretum*, there was an acceleration of the cycle of supplementing, revising, and glossing the collection.⁷⁶ Just as the *Decretum* had filled the void in the classroom, 1Comp quickly became the collection of choice for the teaching of decretal law at Bologna. This is particularly evident from the wealth of *Summae decretalium* and other commentary literature based upon 1Comp produced

Bibliothèque des Écoles françaises d'Athènes et de Rome also greatly expanded the textual base of material sources.

⁷⁶ There are multiple rescensions of 1Comp that came into existence as the collection was supplemented by successive canonists both in Bologna and in Northern Europe. These rescensions were classified by Gerard Fransen in: "Les diverses formes de compilatio prima," *Scrinium Lovanensis: Mélanges historiques Etienne von Cauwenberg* (Recueil de travaux d'histoire et de philologie 24; Louvain, 1961); "La tradition manuscrite de la "Compilatio prima," in *Proceedings of the Second International Congress of Medieval*

during the 1190s.⁷⁷ As was the case with the *Decretum*, the success of 1Comp lay in how it unified contemporary texts and canonistic methods with those of the past. Bernard built a bridge between the *ius antiquum* of the *Decretum* and the *ius novum* by including a significant percentage (around 40%) of pre-Gratian material.⁷⁸ Whether intentionally or not, Bernard also brought decretal law more in line with the organizational structure of Roman Law, drawing upon the latter to supply titles not native to canon law.⁷⁹ With the arrival of 1Comp, the internal forces of canonistic jurisprudence had reached a critical point, solidifying an intellectual and professional framework to support the further, rapid

Canon Law, Boston College, 12-16 August 1963 (Monumenta iuris canonici, Series C: Subsidia, vol. 1; Vatican City, 1965) pp. 55-62.

⁷⁷ It was Bernard of Pavia himself who composed the first titled *Summa decretalium* a year or so after *Comp. 1* in 1192-3, after he had become Bishop of Faenza. Thereafter, the most common genre of commentary literature that circulated separate from the collection it followed was the *Summa titulorum*, which was organized according to the title sequence of the collection. There was a great expansion of the commentary genres after 1Comp, including: *Casus*, *Notabilia*, *Brocarda*, and *Quaestiones*. For the differences between these genres, see: Stephan Kuttner, "The Revival of Jurisprudence," in *Renaissance and Renewal in the Twelfth Century*, edd. Robert L. Benson and Giles Constable (Cambridge, MA, 1982) pp. 299-323.

⁷⁸ Bernard was explicit in his effort to provide a supplement to Gratian. He announces in the preface to his commentary on the collection that he had revisited some of the formal sources used by Gratian (he cites Gregory I's register and Burchard of Worms by name) in order to collect material left out of the *Decretum* and combine it with newer texts: "the subject matter is made up of decretals and certain useful provisions which Gratian left out – saving fruit new and old for us – in the corpus of canons, in the register of Gregory, and in Burchard," trans. in: Somerville and Brasington, *Prefaces*, pp. 231-2; original in: *Bernardi Papiensis Faventini Episcopi Summa decretalium*, ed. Theodore Laspeyres (Regensburg, 1860; repr. Graz, 1956) p. 2. Even the form of the exordium in Bernard's *Summa*, running through the *materia*, *intentio*, *utilitas*, and *ordo agendi* of the collection, is characteristic of an introduction to a *Summa decretorum*.

⁷⁹ Bernard's contributions should be assessed in light of Peter Landau's research, which provides a corrective to previous scholarship that played up the exceptionalism of 1Comp (see, "Die Entsehung der systematischen Dekretalensammlungen,"). 1Comp was not, in fact, Bernard's first compilation. Landau makes a strong argument that he was also the author of the *Collectio Parisiensis II* and the *Collectio Lipsiensis* (derived from a collection in the *Bambergensis* group), both of which are unknown to have been used by any other collection besides 1Comp. Neither was the organization of 1Comp novel. Earlier collections, particularly Anglo-Norman ones, contained a far greater percentage of decretal material, and the five-book-and-title structure had already been utilized by earlier collections, most notably the *Collectio Francofurtana*. The practice of organizing decretal law into books and titles reflects the influence of Roman Law structures, and in this sense, Bernard did bring canon law closer to its Roman predecessor by supplementing the titles he inherited with many drawn directly from Justinian's *Digest*.

development of the discipline. This framework was able to adapt to the deluge of material sources that came during the pontificate of Innocent III (1198-1216).

1.3.2 Rainerius of Pomposa and the collections of Gilbertus and Alanus

Innocent's reign was characterized by a growing symbiosis between the papal curia and canonists. More than just the sheer number of Innocent's decretals, it was also the juridical quality of Innocent's letters that made them of such interest to canonists.⁸⁰ The first compiler to assemble his decretals was Rainerius of Pomposa, who compiled letters directly from the first three years and part of the fourth of Innocent's registers.⁸¹ The collection is dedicated to an otherwise unknown papal chaplain named Johannes, and there is no direct evidence that Innocent was involved in the compilation. Rainerius arranged the selected extracts under a title scheme largely peculiar to his own collection, and is an important witness to the development of canonistic science for the explicit discussion of his editing technique in the preface.⁸² Scholars have generally stressed the uniqueness of Rainerius' collection and its lack of connection to Bolognese jurisprudence.⁸³ Viewed through the prism of older collections like the *Appendix Concilii Lateranensi*, however, Rainerius is well within canonistic precedents for his

⁸⁰ It is perhaps a misnomer to say that Innocent III was the first lawyer-pope, as was argued in the past based upon an incorrect assumption that Innocent had studied under Huguccio. For a review of medieval opinions concerning Innocent's legal acumen as well as the scholarship on the issue, see: Kenneth Pennington, "The Legal Education of Pope Innocent III," *Bulletin of Medieval Canon Law* 4 (1974) pp. 70-7.

⁸¹ The collection can be found in: Migne, *PL*, vol. 216, coll. 1173-1272. Rainerius is an early witness to the respect with which Innocent's contemporaries held his legal learning, who came from all corners of Europe to hear the "sapientia nostri temporis Salomonis."

⁸² In the collection's preface, Rainerius outlines his editorial procedure: "I gathered in this work all the best things, with fullest authority as far as decretal and decrees are concerned. But I decided that some, because they contain various legal issues, should be cut up, so that they could be distributed under the titles appropriate to them. Extracting from the judgments and certain of the letters only those sections which are pertinent for law, I properly arranged the aforementioned," Somerville and Brasington, *Prefaces*, p. 233.

consecration of a collection to a single pontiff, and his content-over-form approach where the decretals themselves drive the title selection and organization of the material.⁸⁴

While there is no direct evidence to suggest that Innocent was involved in the compilatory process, Rainerius' collection does reflect some of the polemical concerns of Innocent's papacy.⁸⁵ Moreover, there is external evidence from Innocent's biographer, writing towards the end of 1203, that Innocent was already involved in commissioning canonistic work, which, if not applicable in reality to Rainerius, may have been an *ex post facto* attribution.⁸⁶

After Rainerius there came a steady flow of new collections. The collections of the English canonists Alanus and Gilbertus drew upon Rainerius but formed the bulk of their collections out of decretals from Innocent's predecessors going all the way back to Alexander III.⁸⁷ Both the *Collectio Alani* and *Collectio Gilberti* went through several

⁸³ See, for example: Stephan Kuttner, "Rénier de Pompose ou Rainerius Pomposanus ou de Pomposa," *Dictionnaire de droit canonique* 7 (Paris, 1965), pp. 83-4.

⁸⁴ Rainerius' titles are not wholly without precedent: XI. *De decimis*, IV. *De electione et qualitate eligendorum*; XXXVIII. *De voto et habitus susceptione*), and others seem to reflect a specificity emanating from the limited number of texts contained in each section more than anything else: XII. *De nuntiis Hospitaliariorum cruce falso signatis, et laicis qui officium praedicationis sibi usurpant*; VII. *Ne simplices sacerdotes quae solis episcopis competunt ex consuetudine sibi usurpent*. Also similar to Bernard of Pavia and later the *Decretals*, Rainerius opens his collection with a theological text: I. *Si personae divinae proprium nomen possint habere*.

⁸⁵ This is seen in titles such as: II. *Quod sacerdotium majus sit regno*; III. *De primatu apostolicae sedis*; V. *Ne translatio electorum in episcopos, post confirmationem, praeter assensum Romani pontificis fiat*

⁸⁶ "Fecit...post pontificatum autem, libros Sermonum, et Postillam super septem psalmos, Epistolarum, Regestorum, et decretalium, quae manifeste declarant quantum fuerit tam in humano quam in divino jure peritus," "Gesta Innocentii PP. III.," *PL*, vol. 214, coll. xvii-xviii. For a discussion of this passage in relation to Innocent's emphasis on the Register as the preeminent source for decretal law, see: Hageneder, "Papstregister und Dekretalenrecht," in: *Recht und Schrift im Mittelalter*, ed. Peter Classen (Vorträge und Forschungen 23: Sigmaringen, 1977) pp. 319-47.

⁸⁷ R. von Heckel, "Die Dekretalensammlungen des Gilbertus und Alanus nach der Weingartner Handschriften," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, kanonistische Abteilung 29 (1940) pp. 116-357.

stages of composition, and circulated in multiple recensions.⁸⁸ Their collections are a reminder that 1Comp in no way closed the door to the assemblage of earlier materials, and that academic jurists remained interested in filling the gaps in their knowledge of the sources.

1.3.3 The *Compilatio Romana* and *Compilatio Tertia*

Another Bolognese jurist, Bernardus Compostellanus antiquus, assembled a collection covering the initial ten years of Innocent's pontificate, the first major collection devoted exclusively to Innocent's letters after that of Rainerius of Pomposa.⁸⁹ Called the *Compilatio Romana* at Bologna, this collection is especially interesting from the point of view of papal involvement, both for its composition and for its eventual demise in the schools. In a brief postscript at the end of the collection, Bernardus felt compelled to report that certain decretals circulating among the schools under Innocent's name were not, in fact, from this pontiff.⁹⁰ Claiming that his information came from a first-hand

⁸⁸ In addition to Heckel's comments on both collections, further research on the compositional stages of the *Collectio Alani* appears in: Stephan Kuttner, "The Collection of Alanus: A concordance of its two recensions," *Rivista di storia del diritto italiano* 26 (1953) pp. 37-53.

⁸⁹ The collection was edited in calendar form by: H. Singer, "Die Dekretalensammlung des Bernardus Compostellanus Antiquus," *Sitzungsberichte der kaiserlichen Akademie der Wissenschaften in Wien, philosophisch-historische Klasse* 126, ii (1914) pp. 1-119. Bernardus chose 277 Innocentine decretals from the collections of Gilbertus and Alanus, and added 154 others that he selected from Innocent's registers, for a total of 431 decretals distributed over 491 capitula. Kuttner showed that Bernardus was influenced by Rainerius' collection in his choice to include a number of texts, although the wording of those capitula does not directly derive from Rainerius: "Bernardus Compostellanus Antiquus: a study in the glossators of the canon law," *Traditio* 1 (1940) p. 328.

⁹⁰ The full epilogue is as follows: "In fine quiddam annectare affectionis ardor scolastice me cogit, ut quasdam decretales, quas sub nomine domini Innocentii III. habent scolastici, tanquam non suas respuastis. Neque enim in registris eius idem continetur, neque ab eo comprobantur, sicut ore ad os ab eo accepti. Quarum una est de servo in subdiaconum ordinato, qui privilegio asseritur eodem gaudere cum diacono. Secunda de subdiacono eligendo, in qua dicitur quod ob hoc non viderimus aliquem reprobatur. Tertia de dote, ubi dicitur: quod de matrimonio cognovistis, et de dote cognoscere valuistis. Quarta de clericis, qui renunt ordinari: ubi dicitur, quod eis beneficia auferantur. Quinta de sacramentis extortis: ubi dicitur quod illi, qui ea prestiterunt, penitus observare tenentur. Sic et de quibusdam aliis accipe. Prima predictarum incipit: Miremur [Coll. Luc. 124; Alan. 1.10.1; Abrinc. II c.9; X 1.18.7], secunda: Ex litteris [Coll. Hal. c.80; Gil. 1.9.7.], tertia: De prudentia [JL 16589; 2Comp 4.14.1; X 4.20.3], quarta: Queris [JL 13785; 2Comp 1.8.1; X 1.14.6], quinta: Super consultatione [Alan. 1.13.8]. Quinta tamen iuri non repugnat,

meeting with the pope himself, Bernardus cites five decretals that were neither in the registers, nor had received approval from Innocent. Bernardus then implies the obverse conclusion for his own collection, *viz.*, that the presence of the decretals in his collection in the first ten years of Innocent's register guarantees their authenticity.⁹¹ The concern with forgeries and false attributions in this period is well known, but we should take a moment to examine Bernardus' comments for what they imply about the role played by Innocent in compiling the collection.

While the registers were the evidence of first resort for testing the authenticity of a decretal – enregistration of a decretal was an immediate vouchsafe for its authenticity – by the early-thirteenth century it was known that the registers were not a complete record of the voluminous papal correspondence, and so there had to be further tests should a decretal not be found therein.⁹² The canonist Laurentius Hispanus, building upon an earlier gloss of Gratian's D. XIX by Huguccio, wrote that common opinion should be sought whether a doubtful decretal was considered authentic, and added a reference to Innocent's recent letter *Pastoralis* on the same subject.⁹³ Among other important topics,

verumtamen sua non est. Omnes autem, que in hoc opere continentur, in registris eiusdem a primo anno usque ad decimum noveritis contineri," Singer, "Die Dekretalensammlung," pp. 114-5. Each of the five appeared in one of the many versions of the collections of Gilbertus and Alanus, some of them going on to appear in 2Comp, and from there the *Decretals*. I have provided references for where these decretals appear in previous collections according to the commentary in: C. R. Cheney, "Three decretal collections before *Compilatio IV*: Pragensis, Palatina I, and Abrincensis," *Traditio* 15 (1959) pp. 481-3. Note that the references to the collections of Gilbertus and Alanus follow the study of the Weingarten manuscript by R. von Heckel ("Die Dekretalensammlungen"), and where a decretal also appears in 2Comp, I have given this citation over that of Gilbertus/Alanus.

⁹¹ All but four of Innocent's 277 letters appear in the registers that have come down to us. As Kuttner showed, however, Bernardus used the register text of a decretal only when it was not available in another formal source, showing the importance of the register for him more as a list of authentic decretals rather than as a repository of the "true" version.

⁹² See Hageneder's study of the register's role in canonical collections: "Papstregister und Dekretalenrecht". I rely heavily on his article to draw the foregoing conclusions.

⁹³ Writing in the *Glossa Palatina* to D. XIX pr. ad v. *De epistolis*: "Ubi autem dubium est, an sit decretalis: recurrendum est ad registrum...si ibi non reperitur: presumptionibus standum est, puta si inter alias habetur

Pastoralis highlighted the problem of inauthentic decretals in the courts and schools, and pointed to a decretal's consonance or dissonance with the *ius commune* as the standard for whether a judge should apply its judgment.⁹⁴ When a decretal was discordant with the *ius commune*, he should consult a higher authority, presumably the pope. Bernardus included *Pastoralis* in his collection (*Bern* 2.12.3), and his method for discounting the authenticity of the above-mentioned five decretals reflects all the stages of verification we have outlined. Not finding those decretals in the registers, which were commonly accepted as Innocent's among scholars (*quasdam decretales, quas sub nomine domini Inn. III habent scholastici*), including one which was not contrary to accepted law (*iuri non repugnat*), Bernardus confirmed the pope's rejection of those letters first-hand (*ore ad os ab eo accepti*). The evidence suggests, therefore, that the only involvement Innocent had in this collection was a consultative one, limited to verifying or disproving the authenticity of certain questionable texts.

This would be the end of it were it not for what we know about the fate of the *Compilatio Romana*. Only a year after the appearance of the Bernardus' collection, a new compilation was put together by the papal notary Petrus Beneventanus covering the first twelve years of Innocent's pontificate. Known subsequently as *Compilatio tertia*

et esse putatur decretalis...Hodie quid tibi sit faciendum, habes extra III, de fide instru[mentor]um], *Pastoralis* [3Comp 2.13.3/X 2.22.8]" quoted in Hageneder, "Papstregister," p. 331, n. 49. Laurentius left out Huguccio's additional standard of *aequitas canonica*, which was a fuzzy combination of an overarching standard of justice and the embodiment of that principle in the body of written law. *Pastoralis* substituted the *ius commune* for *aequitas canonica* as a measure of any particular law, as we shall see below.

⁹⁴ *Pastoralis* also appeared in *Compilatio tertia*, whence it was taken up into the *Decretals* (X 1.22.8): "[c]um aliqua decretalis, de qua iudex merito dubitet, allegatur, si eadem iuri communi sit consona, secundum eam non metuat iudicare, cum non tam ipsius, quam iuris communis auctoritate procedere videatur. Verum si iuri communi sit dissona, secundum ipsam non iudicet, sed superiorem consulat super ea." The *ius commune*, imperfectly translated as the common law because of its Anglo-American associations, was a conceptual formulation used by medieval jurists to denote the accepted legal theory and practice of the time. In concrete terms, it referred to the whole body of Roman and Canon law against which new laws were to be judged.

(hereafter 3Comp), it was accompanied by the bull of promulgation *Devotioni vestrae*, marking the first time a pope had offered official approbation for a particular collection.⁹⁵ Innocent directed *Devotioni vestrae* to the scholars at Bologna, stating that all the decretals in Petrus' collection were contained in the registers and so could be used in the courts and schools without any cause for doubting their authenticity. Petrus included many of the same texts as Bernardus, and employed roughly the same compilatory method, deriving the majority of his material from other formal sources and only a small portion directly from the register. Why, then, the need for a new collection? We possess a contemporary account by Tancred of Bologna, in his commentary on 3Comp, which reports that Bernardus' collection was deemed unacceptable at Rome because it contained decretals that were rejected by the Curia.⁹⁶ Early scholarship on this problem claimed that the *Compilatio Romana* contained forged or doubtful decretals, a suggestion that Singer, the collection's editor, held to be influenced by the previous mistaken attribution of Bernardus' epilogue to 3Comp.⁹⁷ Tancred's words are critical here: he states that the

⁹⁵ "By notification of the present letter let it be known that the decretal letters faithfully compiled by our beloved son Master Peter, subdeacon and notary, and collected under appropriate titles, are contained in our registers up to the twelfth year. We decided that as a precaution they ought to be sent to you under our seal, so that you can use the same without any scruple of doubt, when it is necessary, both in judgments and in the schools," in Somerville and Brasington, *Prefaces*, p. 234.

⁹⁶ "[M]agister Bernardus Compostellanus, archidiaconus in Romana curia, in qua moram faciens aliquantum, de regeſtis domini Innocentii papae unam fecit decretalium compilationem, quam Bononiae ſtudentes Romanam compilationem aliquanto tempore vocaverunt. Verum quia in ipſa compilatione quaedam reperiebantur decretales, quas Romana curia refutabat, ſicut hodie quaedam ſunt in ſecundis, quas curia ipſa non recipit, idcirco felicis recordationis dominus Innocentius papa III. ſuas decretales uſque ad annum XII. editas per magiſtrum P. Beneventanum notarium ſuum in praesenti opere compilatas Bononiae ſtudentes deſtinavit." The full prologue to Tancred's *Apparatus ad compilationem tertiam* is printed in: Schulte, *Die Geſchichte der Quellen*, vol. 1, p. 244. The meaning of "ſicut hodie quaedam [decretales] ſunt in ſecundis" is clarified in the paſſage that immediately follows this one, which refers to the decretals compiled in 2Comp, which were taken from the collections of Gilbertus and Alanus, as: "mediae ſive ſecundae decretales." The phrase appears at the end of the prologue as well, contrasting the decretals of Innocent with thoſe of his predecessors: "primas et ſecundas decretales, prout melius potui gloſulavi," *ibid.*, p. 244.

⁹⁷ Singer, "Die Dekretalensammlung," p. 32.

Curia rejected certain decretals in the *Compilatio Romana*, just as it now rejects certain decretals from previous pontiffs (*mediae sive secundae decretales*). The issue was not authenticity, as *Devotioni vestrae*'s stress on enregistration might lead us to suppose, so much as juridical value. What were the grounds for this rejection? If it was based on the decretals *per se*, one would have to examine the texts in the *Compilatio Romana* left out of 3Comp, an examination well beyond the scope of this introduction. Others have suggested that Bernardus' heavy editing of his texts was a factor. That Bernardus' editing was perhaps deemed excessive may be seen by comparing certain decretals common to the *Compilatio Romana* and 3Comp, where Petrus actually went back to the registers in order to include a fuller version of the text.⁹⁸

The reasons for the failure of *Compilatio Romana* go to the heart of the evolving relationship between the schools and the papacy. A rejection based upon the Curia's dislike of some of the texts included in the collection shows a papacy seeking a more active role in the formation of the law. It understood that the ultimate shape of the law now depended on an additional process of selection and filtration through the interpretive apparatus of the schools. That is not to say that Innocent thereafter took charge of the process of compilation, as nineteenth century canon law scholarship asserted.⁹⁹ Kenneth Pennington demonstrated in an important article on 3Comp that *Devotioni vestrae* should be taken at face value, being nothing more than a seal of approval attached to a collection of private initiative.¹⁰⁰ We know, however, that during the remainder of Innocent's pontificate there was a regular, in-house production at the papal chancery of small

⁹⁸ For examples, see: *ibid.*, pp. 27-8.

⁹⁹ Cf., Schulte, *Die Geschichte der Quellen*, vol. 1, pp.

¹⁰⁰ Pennington "Making of a Decretal Collection."

compilations of Innocent's later decretals, which would form the basis for other collections of wider circulation, including 4Comp.¹⁰¹ But the schools were simultaneously expanding their role as well. The initiative undertaken by Petrus Beneventanus, both in compiling the collection and seeking Innocent's approval, demonstrates a desire at the universities to have an agreed-upon set of texts whose authenticity was above reproach. Additionally, Petrus' own editing reveals that he did not hesitate to change key phrases and passages to bring some of Innocent's letters in line with changed circumstances or even more accepted legal practice.¹⁰² The letter of the law was not sacred.

1.3.4 *Compilatio secunda* and *Compilatio quarta*

There were two more significant collections produced in Bologna during Innocent's pontificate, which came to be known as *Compilatio secunda* (= 2Comp) and *Compilatio quarta* (= 4Comp). If Petrus Beneventanus had filled the lacuna for Innocent III's letters left by the demise of the *Compilatio Romana*, then Johannes Galensis did the same for the decretals of pontiffs prior to Innocent with 2Comp. So-called because its material fell chronologically prior to 3Comp, 2Comp drew primarily from the decretals in the collections of Gilbertus and Alanus.¹⁰³ The absence of contemporary, dated material

¹⁰¹ C. R. Cheney, "Three decretal collections." The genesis of these collections within the Curia is shown in their reliance on chancery copies for some of the letters rather than the registers, the sort of access only a papal notary would have. The letters in these small collections begin immediately after the period covered by 3Comp, which led Cheney to surmise that they were designed as an appendix to that collection. The beginning of this process is perhaps reflected in the registers themselves, where there appears in year eleven a group of decretals out of the normal chronological order, an anomaly to which Baluze first drew attention; cf.: Hageneder, "Papstregister," pp. 340-1.

¹⁰² Kenneth Pennington demonstrated this for several decretals in 3Comp, most forcefully for *Pastoralis*, where we can see Petrus artfully choosing and combining different versions of the text that had come to him from previous collections: "Making of a decretal collection," pp. 81-92.

¹⁰³ 2Comp does contain seven decretals ascribed to Innocent III, as well (see table in: Friedberg, *QCA*, p. xxviii). Kuttner's call in the 1930s for further investigation of these texts has not been answered, to my

prevents a more precise dating of 2Comp than to the period between 1210-5.¹⁰⁴ This lack of precision is regrettable, as it was during these five years that there coalesced at Bologna a collective sense of the shape and continuity of their canonistic endeavors dating back to the 1190s. This is evident first and foremost in the common parlance of glossators by which the first three of the 5C were now numbered, i.e. *Compilatio prima, secunda, tertia*, or *extra I, II, III*. The sequential demarcation of the unofficial canon of the *ius novum* focused Bolognese activity on a now-limited number of collections.¹⁰⁵

Johannes Teutonicus compiled *Compilatio quarta* (hereafter = 4Comp) soon after the Fourth Lateran Council in November 1215, combining the decrees of this council with 118 of Innocent's decretals.¹⁰⁶ A curious anecdote about the reception of 4Comp appears in the mid-thirteenth century text known as the *Principium decretalium*, a

knowledge, and 2Comp remains perhaps the least studied of the 5C. In addition to the status of the seven Innocent decretals, there are also a number of texts in 2Comp for which no formal source has yet been identified (for examples see Friedberg's provenance table indicating the appearance of 2Comp decretals in previous collections: *QCA*, pp. xxviii-xxxii).

¹⁰⁴ Attention should be drawn to the relatively recent identification of a portion of an earlier recension of 2Comp in a Brussels manuscript (which Kuttner had previously thought an abridgment of Johannes Galensis' work): Peter Clarke, "The Collection of Gilbertus and the French glosses in Brussels," *ZSRG*, kan. Abt. 86 (2000) pp. 132-45.

¹⁰⁵ One of the earliest attempts to draw a line from Bernard of Pavia up through the present was made in a gloss to the *Compilatio Romana*, which actually designated Gilbertus' collection as *Compilatio secunda*. see: Stephan Kuttner, "Bernardus Compostellanus antiquus: a study in the glossators of the canon law," *Traditio* 1 (1940) pp. 277-340. The four known manuscripts of the *Compilatio Romana* are interesting as well in how they reflect resistance to the narrowing of the academic scope to the 5C. The Modena manuscript (Biblioteca Estense, MS a. R. 4. 16) has a corrected version of the collection: the excised portions of those letters that also appeared in 3Comp have been added in the margins. The British Library manuscript (Cod. Harley 3834) copied *Compilatio Romana* as the third work preceded by 1-2Comp. Nevertheless, the manuscript tradition of the first three of the 5C shows how quickly they came to be so closely associated. Manuscripts that contain one or more of these collections in numerical order greatly outnumber manuscripts of just a single one of the five, or of one of the first three *Compilationes Antiquae* copied with another, unnamed collection. More research is needed to illuminate the development of the linkages between the different collections in the manuscript tradition.

¹⁰⁶ A total of 189 texts are arranged under 69 titles, making 4Comp the slimmest of the 5C. The letters are derived mainly from the latter part of Innocent's pontificate, though the collection also includes some letters from the period already covered by 3Comp, all but five of which appeared in the collections of Gilbert, Alanus, and the *Compilatio Romana*. Johannes relied on a number of intermediate collections whose genesis can be traced back to compilatory activity in the papal chancery itself. For the

thumbnail sketch of the history of canon law from the Garden of Eden to the Council of Lyons (1245) attributed to the jurist Johannes de Deo.¹⁰⁷ The *Principium* relates that Johannes Teutonicus, presumably after traveling to see the pope to get approval for his compilation, stormed out of the Curia when Innocent refused to authenticate the collection.¹⁰⁸ The *Principium* is the unique witness for this story, which sounds like the sort of university gossip that occasionally found its way into canon law commentaries of the day. Whether or not the story is true,¹⁰⁹ the anecdote does accord with some peculiar facts about 4Comp. The collection appears to have been only grudgingly accepted at the schools. In the preface to his 3Comp apparatus, Tancred of Bologna does not even mention 4Comp, a curious oversight given that the apparatus itself does cite 4Comp.¹¹⁰ Nor was 4Comp subject to the same glossing and interpretive work as the other collections; the only known apparatus to the collection was written by Johannes himself.

The circumstantial evidence therefore suggests that canonists recognized the importance of papal approval if their collections were going to circulate widely. It is not known why Johannes had been denied approval. Kuttner suggested that numerous textual errors, perhaps due to the haste with which the collection appears to have been

¹⁰⁷ The text was first discovered in a Paris manuscript (Paris, BNF lat. 4489, fol. 104-05) and printed by H. Kantorowicz in: "Das *Principium Decretalium* des Johannes de Deo," *ZSRG*, Kan. Abt. 12 (1922) pp. 418-444. Two additional copies of the *Principium* have since come to light (Rome, Cod. Vat. Borgh. 45, fol. 23^{r-v}; and the now lost Breslau Univ. I Q 102 201^v - 202^r) containing fuller versions of the text. The Borghese version was printed in: Stephan Kuttner, "Johannes Teutonicus, das vierte Laterankonzil und die *Compilatio quarta*," *Miscellanea Giovanni Mercati V*, Studi e Testi 125 (Vatican City: 1946) pp. 632-3.

¹⁰⁸ "Processu temporis magister Johannes Theutonicus accepit constitutiones concilii Innocentii et quasdam decretales quas Innocentius sexto anno sui regiminis usque ad concilium fecit, compillavit et glossavit, et vocatur quartus liber decretalium. Set quia dominus Innocentius noluit actenticare ["Set dominus papa illam conpillationem noluit approbare" in Borghese MS], ira succensus recessit de curia," from the Breslau MS quoted in Pennington, "Making of a decretal collection," p. 76, n. 23.

¹⁰⁹ Kuttner used this story to revise his dating of 4Comp ("Johannes Teutonicus," p. 627, n. 21), which he had originally ascribed to after Innocent's death in the *Repertorium*.

compiled, combined with its overlap with the period covered by 3Comp, may have turned Innocent against it. The resurrection of certain texts in the *Compilatio Romana* excluded by 3Comp may have been particularly prejudicial, and future research to identify and analyze these texts may provide some insight. Innocent died soon after, however, and 4Comp remained the only collection accepted within the schools to represent the latter part of his pontificate.

1.4 *Compilatio quinta* and *Novae Causarum*

Following the death of Innocent III, canonistic activity went into a period of digesting the abundance of material inherited from this pontiff. No major decretal collections have survived from the period between 4Comp and the appearance of 5Comp in 1226, although there was an explosion of glosses and other commentary literature during this time. The few collections that surfaced prior to 5Comp were comprised of older material and did not attempt to integrate the newer legislation of Innocent's successor, Honorius III. The absence of any new collection is striking, given the pace of compilatory activity up to that point. There is a possibility that Honorius already had in mind the sort of official collection that he would commission in 5Comp. Perhaps he announced his intentions to the universities, which thereby held back from compiling a collection that would lack his authentication. It may not have been a reflection on Honorius III, whose production of decretals was not significantly lower than that of his predecessor, so much as a testament to the long shadow cast by Innocent III. Canonistic jurisprudence seemed to return to a familiar tangled nodal point that required the work of consolidation rather than expansion. Tancred's stated reasons for composing his

¹¹⁰ The final version of Tancred's apparatus was completed around 1220, though it was begun several years

apparatus on the first three *Compilationes* sounded a familiar refrain, expressing a desire to bring order to the confusing multitude of interpretations, something which would have found resonance with Huguccio or Bernard of Pavia.¹¹¹

5Comp (sometimes called the *Honoriana* by contemporaries) was the first collection of the *ius novum* that was explicitly commissioned by a pope, thus making Honorius the first pontiff to have unambiguously had a direct hand in shaping both the form and content of how his legal decisions were received into the schools and courts. The collection was announced with the publication bull *Novae causarum*, dated May 2, 1226¹¹² and addressed to Master Tancred of Bologna, who is now accepted as the compiler of the collection.¹¹³ 5Comp is a relatively slim five-book collection arranged in

earlier.

¹¹¹ "[P]ures doctores Bononiae studentes glosas plurimas, varias et diversas posuerunt et apparatus super eis scripserunt. Et quia de dictis apparatus opinioniones studentium erant diversae, sententiaeque confusae: idcirco ego Tancredus Bononiensis canonicus qualiscunque decretorum magister ad multam instantiam sociorum meorum meliora et utiliora de dictis apparatus colligens, et ex ingenio meo quaedam interserendo, sicut ex signis glosularum singularum demonstratur, primas et secundas decretales, prout melius potui glosulavi," quoted in: Schulte, *Geschichte der Quellen*, vol. 1, p. 224.

¹¹² "New questions of emerging cases need to be resolved by new decisions so that proper remedies having been chosen for individual illnesses, each person in a healthful manner is accorded his own rights. Although through those cases which were decided in their own times procedure for future cases was carefully given by some of our predecessors, nevertheless because the profligate nature of things accompanying a great variety of legal problems daily produces new cases, we arranged for certain

decretal letters to be collected about these which, having arisen in our time, we settled through ourselves or our brothers, [or on our brothers' advice delegated to others to be settled], and we decided that they ought to be sent to you under our seal. Wherefore through apostolic script we command you, a careful man, that without any scruple of doubt you use these, having formally been published, and that you arrange for them to be received by others both in judgments and in the schools," Somerville and Brasington, *Prefaces*, pp. 234-5. Orig.: "Novae causarum emergentium questiones novis exigunt decisionibus terminari, ut singulis morbis, competentibus remediis deputatis, ius suum cuique salubriter tribuatur. Licet igitur a quibusdam predecessoribus nostris per ea, que suis temporibus sunt decisa, forma futuris negotiis provide sit relicta, quia tamen prodiga rerum natura secundum varietates multiplicium casuum parit cottidie novas causas, nos quasdam epistolas decretales super his, que nostris suborta temporibus, per nos vel fratres nostros decidimus, vel etiam aliis de ipsorum consilio commissimus decidenda, compilari fecimus, et tibi sub bulla nostra duximus destinandas. Quocirca discretioni tuae per apostolica scripta mandamus, quatinus eis solempniter publicatis absque ullo scrupulo dubitationis utaris et ab aliis recipi facias tam in iudiciis quam in scholis," quoted in: Friedberg, *QCA*, p. 151.

¹¹³ The *Principium decretalium* was the first independent witness for Tancred's authorship, an attribution otherwise attested to in only a couple of manuscripts containing 5Comp.

94 titles, containing 223 letters derived almost exclusively from Honorius' register. Among these letters is Frederick II's constitution *Hac edictali lege*, which was issued the day Frederick was crowned Holy Roman Emperor on November 22, 1220. The inclusion of a contemporary imperial constitution in a collection of papal decretals is less surprising when it is realized that it was probably Honorius himself who was responsible for the text, which Frederick II then published under his own name as a *quid pro quo* for his coronation.

As Leonard Boyle showed, Tancred worked directly with the papal registers. The register manuscripts still contain "X"s in the margins to designate what portions of which decretals were to be excerpted, forming an original pool of 570 decretals that was later winnowed down to the 200+ that ended up in the collection.¹¹⁴ There are only six letters that Boyle could not find in the registers, which suggests either that Tancred used notarial copies or that these letters stem from one of the lost register volumes. This appears to be too small a number to posit an intermediary formal source. It has often been remarked that Tancred subjected the decretals in the 5Comp to extensive and even rash editing. This judgment, similar to that rendered against Bernardus Compostellanus, has remained impressionistic given the lack of a detailed comparison of 5Comp with the registers with an eye toward editorial practice.¹¹⁵ This suspicion is perhaps rooted in the hesitation shown toward the *Honoriana* by medieval commentators, who according to the early-

¹¹⁴ Leonard Boyle, "The 'Compilatio Quinta' and the registers of Honorius III," *Bulletin of Medieval Canon Law* 8, (1978) p. 9-19; repr. in *Pastoral Care, Clerical Education and Canon Law, 1200-1400* (Variorum Collected Studies Series 135: London, 1981) XI. We do not possess the intermediary rough draft containing the portions of the 570 decretals marked in the register. According to Boyle, this intermediary form is the only explanation for the otherwise unexplainable variants between the text of 5Comp and the registers. The register provided all but six of the 210 individual Honorian decretals in 5Comp.

¹¹⁵ For an edition of the surviving registers, see: *Regesta Honorii papae III*, Ed. Pietro Pressutti, 2 vols. (Rome: 1888-95).

fourteenth-century canonist Johannes Andreae, held back from glossing the text because of its significant omissions.¹¹⁶

Novae causarum is a fascinating document for the history of canon law. It offers a careful construction of the pope's role as lawgiver, and weaves together both canonistic and Roman Law traditions. The opening statement compares the pope's obligation to render justice in specific cases to that of a doctor applying the appropriate remedy for a given disease. An important distinction is made between the cases themselves (*causarum emergentium*), and the new questions that arise from them. Honorius acknowledges here the need to address and formulate new legal principles beyond merely rendering justice in any particular case. This is an explicit distillation of one aspect of the decretalist project: sorting through the daily-increasing mountain of papal decretals to locate and extract the juridically important elements. Justice is defined in its classical sense, that of rendering to each one his due share, a definition taken directly from Roman Law.¹¹⁷ There are other echoes of Roman Law that show Honorius adopting the Justinianic mantle. A comparison of Justinian's constitution *Cordi nobis*, which heralded the emended version of the *Codex*, shows a direct appropriation of certain key vocabulary.¹¹⁸

¹¹⁶ "Est autem sciendum quod Gregorius IX successit immediate Honorio III., quo creato statim fuit fama, quod compilationem qua utimur, facere intendebat: itaque praedicti antiqui non curarunt honorianas glossare; et merito quia multae ex illis omissae vel recusatae fuerunt," *Additiones ad Speculum Guillelmo Durandi*; quoted in Agustin Theiner, *Disquisitiones criticae* (Rome, 1836) p. 33.

¹¹⁷ Ulpian's specific formulation of this Aristotelian definition of justice appeared in the Digest (1.1.10) from whence it was adopted as the opening line of Justinian's Institutes (1.1.1): "Iustitia est constans et perpetua voluntas *ius suum cuique tribuens*."

¹¹⁸ "Sed cum *novellae nostrae tam decisiones* quam constitutiones, quae post nostri codicis confectionem latae sunt, extra corpus eiusdem codicis divagabantur et *nostram providentiam nostrumque consilium exigere videbantur*, quippe cum earum quaedam *ex emersis postea factis* aliquam meliore consilio permutationem vel emendationem desiderabant, necessarium nobis visum est per Tribonianum...[et] viros eloquentissimos togatos fori amplissimae sedis easdem constitutiones nostras decerpere et in singula discretas capitula ad perfectarum constitutionum soliditatem competentibus supponere titulis et prioribus constitutionibus eas adgregare." These three highlighted passages are echoed in the first sentence of *Novae causarum*: "Novae causarum emergentium questiones novis exigunt decisionibus terminari."

Honorius is careful to situate himself in the tradition of his predecessors as well. Perhaps in deference to the long shadow cast by Innocent III, he acknowledges the legal inheritance of his predecessors, which has provided a model for the resolution of future affairs (*forma futuris negotiis provide sit relicta*). Almost apologetically, he cites the inherent prodigal nature of things that gives rise to new cases (*quia tamen prodiga rerum natura secundum varietates multiplicium casuum parit cottidie novas causas*), a situation which has forced him to compile his decretals to address the concerns of his day. These decretals represent his own decisions, those made in conference with his cardinals, and those cases he has committed to the decision of others, presumably judges delegate, upon the advice of his cardinals (*per nos vel fratres nostros decidimus, vel etiam aliis de ipsorum consilio commissimus decidenda*). This is a rare summary description by a pope of the different layers involved in how judicial decisions were rendered at the Curia. While it was no mystery to contemporaries that the decision-making procedures at the papal court were multifaceted, involving the participation of both cardinals and lower judges, it is unusual to find such a direct exposition of the process by the pope himself.¹¹⁹

At first glance, it might seem odd that Honorius did not guarantee the authenticity of the decretals by assuring that they had derived from his registers, a linkage which during the pontificate of Innocent III was the accepted primary means of verification. He did, however, repeat Innocent's phrase from *Devotioni vestrae*, that the decretals contained in 5Comp could be used without any scruple of doubt in the schools and courts

¹¹⁹ In his *Summa de Iure Canonico* (I.7.2), Raymond of Penyafort indicated that a decretal could reflect the decision of a pope acting alone or with the advice of his cardinals, or what he had committed to the decision of a judge to be decided: “rescriptum est quod Papa, vel solus, vel cum cardinalibus ad consultationem alicuius concedit. Tales videntur esse litterae quibus causa committitur iudicibus sub certa forma,” *Summa de Iure Canonico*, edd. Xaveri Ochoa et Aloisio Diez (Universa bibliotheca iuris, vol. 1; Rome: 1975) col. 12.

(*eis solempniter publicatis absque ullo scrupulo dubitationis utaris*). The guarantee of authenticity seems to reside, therefore, in the very fact of Honorius' commission of the compilation.¹²⁰

1.5 The Decretals of Gregory IX and Rex Pacificus

The lack of any private collections devoted to Honorius III's decretals or the early years of Gregory IX's pontificate is a startling fact given the prolific canonistic output during Innocent's reign. By itself it indicates a widespread acknowledgment of the pope's newly preeminent position as the compiler of the law, over and above his already acknowledged supreme legislative and judicial functions. Whether Gregory actively pursued this role of his own initiative, or whether he was simply acceding to the demands for greater rationalization put forth by the judges and scholars who were the main consumers of collections, the actual genesis of the *Decretals* will probably never be known. In the generations that followed, the collective memory coalesced around the narrative that the *Decretals* had been a response to Gregory's own experience of the extremely disordered state of the law when he took office. A little less than a century after *Rex pacificus*, Johannes Andreae reported that a new compilation was in the works immediately after Gregory ascended the papal throne.¹²¹ Closer to the event, a more detailed anecdote of the pope's motivations was recorded by the mid-thirteenth century canonist Johannes de Deo. In his *Principium decretalium*, he wrote that one day while Gregory was hearing a case in consistory, a decretal was alleged that could not be found

¹²⁰ Othmar Hageneder sums the transition marked by Honorius this way: "damit war eine Periode in der Entwicklung des Dekretalenrechts zu Ende gegangen: nicht mehr die Papstregister gewährleisteten gegenüber der Schule die Authentizität der Texte, wie sich das ein Innocenz III., vielleicht unter dem Einfluss des Huguccio von Pisa, vorgestellt hatte, sondern der Wille des Papstes, dass sie als solche zu gelten hätten," Hageneder, "Papstregister," p. 343.

¹²¹ For the text of his comments, see note 116.

in the collection they had at hand.¹²² Gregory was overtaken with anger and ordered the curial compilation destroyed. Thereafter, the cardinals purportedly warned their nephews and friends at Bologna that they should focus their studies solely on Roman Law and the *Decretum* rather than decretal law, until such time as the Pope had devised a new collection.

Regardless of the factual basis of the story, Gregory's frustration with the contemporary state of ecclesiastical law is evident in *Rex pacificus*, as is his concern to ease the burden of students forced to wade through so many different sources to retrieve the law.¹²³ Like *Novae causarum*, the language and images of *Rex pacificus* harken back to Roman Law precedents, reinforced by the deliberate promulgation of the text on the 700th anniversary of Justinian's issuance of the Digest.¹²⁴ And just as Justinian had

¹²² "Tempore procedente, cum allegaretur quadam die illa decretalis 'Coram' de elect. [X 1.6.35] coram domino Gregorio VIII que vagabatur extra compilationes predictas, idem dominus G. ira commotus dixit quia destruerunt librum decretalium, et ex tunc mandaverunt domini cardinales nepotibus et amicis eorum bononie, ut non deberent studere in decretalibus, set tantum in legibus vel decretis quousque ipse idem dominus greg. disponeret de compilatione ipsius libri," ed. in: Kuttner, "Johannes Teutonicus," p. 633-4. Kuttner's text of the *Principium* is slightly more substantial than the one originally uncovered and published by Kantorowicz in: "Das Principium Decretalium des Johannes de Deo," *ZSRG*, kan. Abt. 12 (1922) pp. 418-44. The decretal cited by Johannes de Deo originally derived from 4Comp 1.3.1. Is it possible that Innocent's refusal to authenticate Johannes Teutonicus' collection meant that no copy of 4Comp was available at the Curia? That seems unlikely, but there is otherwise no good explanation for why a decretal that was part of the 5C wasn't readily available.

¹²³ For the full text and translation, see above, p. 1, note 1.

¹²⁴ *Rex pacificus* echoes Justinian's promulgation letter *Deo auctore nostrum*, and especially the later bull of confirmation *Tanta circa*, with the ideal of non-contradiction expressed in much the same terminology (highlighted in **bold**) as Gregory later used: "so great is the providence of the Divine Humanity toward us that it ever deigns to sustain us with acts of eternal generosity.... Indeed, when Roman jurisprudence had lasted for nearly fourteen hundred years from the foundation of the city to the period of our own rule, wavering this way and that in strife within itself and spreading the same inconsistency into the imperial *constitutiones*, **it was a marvelous feat to reduce it to a single harmonious whole, so that nothing should be found in it which was contradictory or identical or repetitious, and that two different laws on a particular matter should nowhere appear**... We have entrusted the entire task to Tribonian, a most eminent man, (master of the offices) *magister officiorum*, ex-quaestor of our sacred palace and ex-consul, and on him we have imposed the whole execution of the aforesaid enterprise, so that he himself, with other illustrious and most learned men, might fulfill our desire. **Moreover, our majesty, ever investigating and scrutinizing what these men were drafting, amended, in reliance on the Heavenly Divinity, anything that was found to be dubious or uncertain, and reduced it to a proper form**" *The Digest of Justinian*, vol. 1, trans. Alan Watson (Philadelphia, 1998) pp. lv. Original text of *Tanta*: "tanta circa nos divinae

entrusted the collection and streamlining of Roman jurisprudence to Tribonian, so Gregory handed over the task of compilation to an individual who had only recently come to the papal curia, the Dominican Raymond of Penyafort.

1.6 Raymond of Penyafort

Gregory's choice of Raymond to compile his collection was based upon an already full life of service and literary activity. Raymond was born to the noble family of Penyafort in 1175 in Villafranca de Penades, a Catalonian village close to Barcelona.¹²⁵ Raymond was educated at the cathedral school of Barcelona, and remained there to teach rhetoric and logic after receiving his diploma. He embarked upon his legal studies at a relatively late age, setting off for Bologna in 1210. He is known to have studied with Tancred of Bologna, who composed the ordinary glosses to 1-3Comp and was commissioned by Honorius III to put together 5Comp. Raymond received his *licentia ubique docendi* in 1216, and thereafter taught at the university until 1219. In that year, he returned to Barcelona at the behest of the city's bishop, Berenguer IV de Palou. The bishop was seeking to recruit masters to teach at a new school designed to fulfill the Lateran-IV directive of improving clerical education. It was here that Raymond

humanitatis est providentia, ut semper aeternis liberalitatibus nos sustentare dignetur...Erat enim mirabile Romanam sanctionem ab urbe condita usque ad nostri imperii tempora, quae paene in mille et quadringentos annos concurrunt, intestinis proeliis vacillantem hocque et in **imperiales constitutiones extendentem in unam reducere consonantiam, ut nihil neque contrarium neque idem neque simile in ea inveniatur et ne geminae leges pro rebus singulis positae usquam appareant...**[O]mne studium Triboniano viro excelso magistro officiorum et ex quaestore sacri nostri palatii et ex consule credidimus eique omne ministerium huiusmodi ordinationis imposuimus, ut ipse una cum aliis illustribus et prudentissimis viris nostrum desiderium adimpleret. **Nostra quoque maiestas semper investigando et perscrutando ea quae ab his componebantur, quidquid dubium et incertum inveniebatur, hoc numine caelesti erecta emendabat et in competentem formam redigebat,**" *Corpus iuris civilis*, vol. 1, edd. Theodor Mommsen and Paul Krueger (Berlin, 1905) p. 13.

¹²⁵ For a survey of the bio-bibliographical material on Raymond, see: L. Galmes Mas, "Biobibliografia de San Ramón de Penyafort," in *Magister Raimundus: Atti del convegno per il IV centenario della canonizzazione di San Raimondo de Penyafort (1601-2001)*, ed. Carlo Longo (Institutum Historicum Fratrum Praedicatorum: Dissertationes Historicae 27; Rome, 2002) pp. 11-34.

composed his first known work, the *Summa de Iure Canonico*.¹²⁶ Raymond became a canon of the Barcelona cathedral while teaching at the school, but gave up his benefice in 1222 to enter the Dominican Order at the age of 47.¹²⁷ Sometime in the mid-1220s, Raymond composed the work that would have been considered the highlight of anyone else's career, the treatise on penance known alternately as the *Summa de casibus* or *Summa de paenitentia*,¹²⁸ which became the Dominican Order's standard confessor's manual for a good portion of the thirteenth century.

Like other Dominicans, Raymond found a calling in ecclesiastical administration. In 1229, he accompanied John of Abbeville as penitentiary and advisor on the papal legate's important tour of the Iberian peninsula aimed at bringing Lateran IV reforms to the Iberian church and at preaching another crusade against the Saracens.¹²⁹ Raymond's service on Abbeville's legation apparently brought him to the attention of the Curia, for he was summoned to Rome by Gregory to become a papal penitentiary. Although we do not possess records for when Raymond was first commissioned to work on bringing together a new compilation, the evidence points to mid-1232 as the period when he began

¹²⁶ The text survives in one manuscript, Rome, BAV, cod. Borgh. 261, fol. 91-102v, which was only brought to light in the 1880s by Heinrich Denifle. The first edition was executed by José Rius Serra, published in Barcelona in 1946. Rius Serra's edition fell far short of acceptable editing standards, however (critically reviewed by, S. Kuttner, "The Barcelona edition of St. Raymond's first treatise of canon law," *Seminar* 8 (1950), pp. 52-67; repr., idem, *Studies in the History of Medieval Canon Law* (Variorum collected studies series, CS325; Aldershot, 1990) X), and a new edition was prepared as part of the publication of the saint's works for the seventh centenary of his death: Javier Ochoa and Aloysius Diez, *Summa de iure canonico* (Universa bibliotheca iuris, vol. 1., pt. A; Rome, 1975). This edition was also criticized by Kuttner, notably for the separation of Raymond's legal citations from the main body of the text; see the review in: *The Jurist* 37 (1977), pp. 385-6.

¹²⁷ Raymond had actually encountered Dominic on his way back to Barcelona with Bishop Berenguer in 1219, the brief details of which are recorded in his various *Vitae* in: *Acta Sanctorum*, ed. Iohannes Bollandus and Godefriedus Henschenius, January: vol. 1 (Antwerp, 1643), pp. 404-29.

¹²⁸ *Summa de paenitentia*, Ed. Xavier Ochoa Sanz and Alfonso Diez (Universa Bibliotheca Iuris, Vol. 1, Pt. B; Rome, 1976).

¹²⁹ For Abbeville's legation, see: Peter Linehan, *The Spanish Church and the Papacy in the Thirteenth Century* (Cambridge, 1971), pp. 29-36.

to work on the *Decretals*.¹³⁰ Raymond's life immediately after completing the commission was just as active, if not more so. His literary activities continued with a revision of the *Summa de casibus* to reflect the changes introduced by the *Decretals*, and he also produced an abbreviation consisting of sixty-one Gregory IX texts from the collection.¹³¹ His expertise in law was also called upon by Jaime I to introduce the inquisition into the Kingdom of Aragon in 1235. In 1238 he was elected *in absentia* Master General of the Dominican Order. He held office for only two years, after forcing the General Chapter to allow him to resign voluntarily, though in that time he oversaw the revision of the order's constitutions.¹³²

1.7 The Sources and Structure of the Decretals

The two principal well-springs from which Raymond drew his material were the five collections cumulatively bundled together as the 5C and the papal registers covering the first seven and a half years of Gregory IX's pontificate. The pre-Gregorian texts form the vast bulk of the material, with 1767 capitula out of the 1971 total deriving from the 5C. There are an additional nine pre-Gregorian texts for which no definite formal source has been identified, leading to the assumption that these were placed individually into the collection by Raymond. Seven of these belong to Innocent III, one to Alexander III, and

¹³⁰ For a discussion of the evidence isolating a date, see the final section of the chapter five on Raymond's use of the register.

¹³¹ Helmut Boese, "Über die kleine Sammlung Gregorianischer Dekretalen des Raymundus de Penyafort O. P.," *Archivum Fratrum Praedicatorum* 42 (1972), pp. 69-80. Boese hypothesizes that the abbreviation was meant as a supplement to the second rescension of the *Summa de casibus*.

¹³² Raymond's revisions remained the foundation of the order's constitutions up until 1924. They are printed in Heinrich Denifle, "Die Constitutionen des Predigerordens in der Redaction Raymunds von Peñafort," *Archiv für Literatur- und Kirchengeschichte des Mittelalters* 5 (1889), pp. 530-64. For contemporary accounts of the order and the general chapters during Raymond's tenure, see Benedict Maria Reichert, *Acta capitulorum generalium ordinis praedicatorum ab anno 1220 usque ad annum 1303* (Monumenta ordinis fratrum praedicatorum historica, vol. 3, pt. 1; Rome, 1898); idem, *Chronica et*

the last is the final portion of c. 71 of the Fourth Lateran Council (1215), which had not formed part of the canon as it had circulated in 4Comp manuscripts.¹³³ The remaining 195 texts belong to Gregory, slightly less than half of which were derived from the papal registers. The following table gives a breakdown of the formal sources, indicating the total number of capitula and titles taken into the *Decretals*, the percentage of the source this represents, as well as the percentage of the *Decretals* made up by the capitula from that source:

chronicorum excerpta historiam ordinis praedicatorum illustrantia (Monumenta ordinis fratrum praedicatorum historica, vol. 7, pt. 1; Rome, 1904).

¹³³ X 1.18.7 *Miramur* (Inn. 3); X 1.21.7 *A nobis* (Inn. 3); X 3.34.10 *Per tuas nobis literas* (Inn. 3); X 4.14.6 *Quia circa* (Inn. 3); X 5.6.14 *Postulasti* (Inn. 3); X 5.6.17 *Ad liberandam* (Lat. 4); X 5.33.9 *Sane* (Alex. 3); X 5.34.16 *Accepimus* (Inn. 3); X 5.39.45 *Contigit interdum* (Inn. 3).

Table 1.1. Sources of the *Decretals*

Source	Total capitula	Taken In X	Perc. of Comp.	Perc. in X	Title names taken in X
1Comp	912	743	81.47%	37.70%	151
2Comp	332	243	73.19%	12.33%	12
3Comp	483	464	96.07%	23.54%	16
4Comp	189	174	92.06%	8.83%	1
5Comp	223	132	59.19%	6.70%	0
Total from 5C	2139	1756		82.09%	180
		1767	<i>owing to sub-division of capitula in X</i>		
New titles					5
New capitula (pre-Gregorian)		9		0.46%	
Gregory IX capitula		195		9.89%	
	Total Capitula	1971		Total titles	185

Raymond adopted the structure developed so successfully by Bernard of Pavia and continued by intervening decretal collections up through the *Decretals*. The capitula are divided by topic under 185 titles, which in turn are arranged into five separate books. The 5C provided the majority of the titles – 151 came from 1Comp alone. The five titles in the *Decretals* that have no precedent in other canonical collections were drawn from Justinian's *Digest*.¹³⁴ As in previous collections, each book of the *Decretals* was organized loosely around the general subjects of 1) the constitutional framework of law; 2) judicial procedure; 3) clerical organization and discipline; 4) marriage law; and 5) criminal law – traditionally designated through the mnemonic: I(udex) I(udicium),

¹³⁴ The titles taken from the *Digest* are: I.32 *De officio iudicis*; II.5 *De litis contestatione*; III.44 *De custodia eucharistae, chrismatis et aliorum sacrorum*; V.2 *De calumnatoribus*; V.11 *De infantibus et languidis expositis*.

C(lerus) C(onnubium) C(rimen). Within each title, the texts are arranged chronologically by pontificate. To achieve this chronological ordering, Raymond rearranged the sequence of his formal sources when necessary, even intermixing the decretals from 1-2Comp (the only two collections of the 5C containing material from multiple pontificates) so that all of the texts from Alexander III, to take just one example, were grouped in a single block within the title. The older, non-papal material inherited from 1Comp – which Bernard of Pavia had originally included as a supplement to Gratian – was generally placed at the front of each title. Outside of chronological necessity, Raymond was otherwise conservative in reordering the texts. Thus, it is often the case that the sequence of capitula in the *Decretals* is the same as it was in the respective titles of the 5C.¹³⁵ When a title includes one or more of Gregory IX's own capitula, these, without exception, appear at the end of the title. There are occasions where Raymond has shifted some of the capitula around, transposing a decretal to a title in the *Decretals* different from the one under which it appeared in the 5C.¹³⁶ This transposition occurs with some frequency, averaging between 5-10% of the capitula in each book, for a total of 134 out of 1971 capitula, or around 7%. Studying the pattern of transposition will help illuminate the process Raymond used in compiling the *Decretals*, as will become evident in chapter 3.

¹³⁵ For more on the ordering of texts in the *Decretals*, and its relevance for studying the manuscript transmission of the collection, see chapter three, § 3.4: The Organization of Capitula in the *Decretals*.

¹³⁶ Friedberg compiled a table (*CIC*, coll. xxxv-xl) showing which canons of the 5C were either used or left out. The table also indicates which titles contain capitula that have been transposed from other sections. As with all the references in Friedberg's edition, one needs to exercise caution. The errors in this table begin in the first line, under the rubric *Numerus capitum ex aliis titulis transpositorum*, where the actual source of the two transpositions in this title is 3Comp (C) rather than 2Comp (B).

Despite the tremendous advances made in uncovering the sources that Raymond employed, there remain several outstanding questions:

1. The origin of the nine pre-Gregorian capitula not otherwise known from 5C manuscripts, and whether these were taken from another collection, from the papal registers, or from augmented versions of the 5C that have yet to come to light.¹³⁷
2. The additional text appended at the end of X 3.50.10, *Super specula*, an Honorius III decretal which extended a ban on the study of civil law and medicine – originally applied by Alexander III at the Council of Tours to cloistered religious¹³⁸ – to cover the entire clergy. The concluding passage was part of the original letter recorded in Honorius’ register, but was not included by the compiler Tancred in the formal source at 5Comp 3.27.1.¹³⁹
3. The version of *Tua nobis* found at X 3.30.25, which presents a fuller text than that found in what has usually been taken to be Raymond’s source for the text, 4Comp 3.9.4.¹⁴⁰

¹³⁷ For the list of capitula see above, note 133. A tentative solution has been proposed by previous scholarship that Raymond derived two of them (X 1.18.7 and X 1.21.7) from the expanded recension of Alanus Anglicus’ collection. This proposal, as well as the source for the remaining seven capitula, will be discussed presently.

¹³⁸ Council of Tours, c. 8; see: Robert Somerville, *Pope Alexander III and the Council of Tours* (Publications of the Center for Medieval and Renaissance Studies 12: Berkeley, 1977) p. 50, and *passim*.

¹³⁹ *Super specula* had been severed by Tancred into several parts, with the section in book 3 containing the prohibition on Roman Law study: X 3.50.10 (5Comp 3.27.1), X 5.5.5 (5Comp 5.2.1), X 5.33.28 (5Comp 5.12.3). The extra passage in *Super specula* (X 3.50.10) appears at the end: *Quia vero...firmiter observari*. Although the extension of the prohibition was seen as problematic by thirteenth-century canonists (how could anyone acquire a proper legal education without knowledge of civil law?), none of them noted the difference between the *Decretals* and 5Comp. The first individual to point it out appears to have been the mid-seventeenth-century Salamanca jurist Manuel Gonzalez Tellez (d. 1649), in his posthumously-published *Commentaria perpetua in singulos textus quinque librorum Decretalium Gregorii IX* (Venice, 1756) vol. 3, p. 664, note c (*Editio princeps*: Lyons, 1763). Around the same time, however, Innocent Ciron published his edition of 5Comp, wherein he noted the same textual problem: *Quinta compilatio epistolarum decretalium Honorii III P.M.* (Toulouse, 1645); repr. in: Horoy, C [ed.], *Honorii III Romani Pontificis Opera Omnia*, vol. 1 (Bibliotheca Patristica Medii Aevi 1: Paris, 1879) coll. 95-418. Ciron’s note on the discrepancy between 5Comp and the *Decretals* appears in the reprint edition in col. 332, note c. More recently, Kuttner devoted an entire article to the historical background of Honorius’ ban, in which he proposed Raymond’s consultation of Honorius’ register: “Papst Honorius III und das Studium des Zivilrechts,” *Festschrift für Martin Wolff*, ed. E. von Caemmerer, et al. (Tübingen, 1952) pp. 79-101; repr. in: Idem, *Gratian and the Schools of Law, 1140-1234* (Variorum Collected Studies Series CS185: London, 1983) X.

¹⁴⁰ The discovery that the text of X 3.30.25 did not match the alleged source at 4Comp 3.9.4 was made by Steven Horwitz, “Reshaping a decretal chapter: *Tua nobis* and the canonists,” in: *Law, Church and Society: Essays in Honor of Stephan Kuttner*, edd. Kenneth Pennington and Robert Somerville (Philadelphia, 1977) pp. 207-21.

4. The possible influence on Raymond's editing of Bernardus Compostellanus' *Compilatio Romana*, the private collection of Innocent III's decretals that was soon superseded by 3Comp, which transmitted many of the same texts but in an expanded form. This possibility has been suggested in two areas. First, there are a number of 3Comp-derived, Innocent III letters that Raymond edited in a manner similar to their more truncated form in the *Compilatio Romana*. Secondly, the *Compilatio Romana* preserves the enregistered reading of the inscriptions (papal attribution and letter recipient) for several letters that matches what is given in the *Editio Romana* of the *Decretals*, rather than in 3Comp.¹⁴¹

5. With regard to the 195 Gregorian texts, the identification of those that were taken directly from Gregory IX's register, or another intervening source, and those that were composed specifically for promulgation in the collection.¹⁴²

6. The attribution of X 3.5.38, *Cum olim* to Gregory IX, when it actually is found on the final folium of Honorius III's register. Along with the expanded form of X 3.49.10, *Super specula*, the presence of this letter suggests that Raymond may have consulted Honorius' registers.¹⁴³

Solutions will be offered for all of these outstanding questions, with the exception of the second item, the source for the additional text in X 3.49.10, *Super specula*. The meagre amount of text in question does not support a source analysis, and Raymond could just as well have used a full copy of this famous letter as consult Honorius' register. As for the other problems, given their overall complexity, they will be discussed

¹⁴¹ The correspondence in editing was noted first by Singer (*Dekretalensammlung*, pp. 27-8), who gave the following examples: X 2.20.32 (3Comp 2.12.5, Bern. 2.11.6), X 3.24.5 (3Comp 3.18.2, Bern. 3.19.2), X 5.20.6 (3Comp 5.11.3, Bern. 5.13.5), X 5.40.18 (3Comp 5.23.2, Bern. 5.24.2). Most scholars have repeated Singer's claims, sometimes with additional examples (e.g., Pennington, "Making of a decretal collection," pp. 83-4). See below in this chapter for a discussion of the parallels between their editing. The case of register inscriptions is a rather more complicated one, and will be dealt with in full in chapter three.

¹⁴² A project begun by Kuttner, as remarked above, note 45.

¹⁴³ Reg. Vat. 13, fol. 178r, no. 578; *Dat. Lat[eran.] xiii Kal. Martii, anno xi* (Feb. 17, 1227). The letter concerns the limits of papal provisions of benefices in local churches. The pope had issued a letter on behalf of a cleric to be provided with a benefice in one of the churches of Lucca. The individual selected to carry out the provision, however, had gone ahead and appointed the cleric to a position as rector in one of the churches, violating that church's right to select their own officials. Jane Sayers was the first to point out the source discrepancy: *Papal Government and England During the Pontificate of Honorius III, 1216-27* (Cambridge Studies in Medieval Life and Thought, ed. Walter Ullmann, 3rd ser., vol. 21: Cambridge, 1984).

in their appropriate context throughout the coming chapters.¹⁴⁴ There is one issue, however, that can be addressed here immediately in the context of Raymond's formal sources: the origin of the nine capitula not otherwise found in the *5C*. It will be argued that all but one of them can be accounted for by intervening sources. This provides further proof of just how dependent Raymond was on prior canonistic work to derive the pre-Gregorian material. Although he presumably had access to the registers of prior pontiffs, he instead chose to rely on the selections made by previous compilers.

1.7.1 The nine capitula outside the *Quinque Compilationes Antiquae*

The first question to ask in regards to the nine additional capitula is whether they could have been derived from an expanded manuscript of the *5C*. Because of the way Raymond usually ordered the texts within each title – grouped into discrete blocks according to pontificate and/or formal source – the positioning of these extra capitula in their respective titles at the seams between different text blocks is good evidence for their provenance from outside the *5C*.¹⁴⁵ If the *5C* may be excluded, do the capitula themselves provide any clues as to their possible origin?

X 5.33.9 is the only text among the nine unsourced capitula that does not date from Innocent III's pontificate. It is attributed to Alexander III, and at least in form it wears the clothes of a decretal, insofar as it is presented with a one word incipit, followed by the editorial marker indicating that text has been excised: *Sane (et infra)*. Whatever

¹⁴⁴ On the origin of the nine, unattested pre-Gregorian capitula, see below; on X 3.30.25, *Tua nobis*, see chapter three § 3.5.1 The Source for X 3.30.25 *Tua*. On the influence of Bernardus Compostellanus, see below, § 1.10 Bernardus Compostellanus as possible source for Raymond's editing. On the 195 Gregorian capitula, see below, § 1.8 The Gregorian Material, and chapter five; on the attribution of X 3.5.38, see chapter five, § 5.8 Aspects of Raymond's editing of the Gregorian decretals.

¹⁴⁵ For a longer discussion of Raymond's method of organization, which has particular relevance for picking out useful variants, see chapter 3.4: The Organization of Capitula in the *Decretals*.

the subject matter of the original, it has been reduced (by Raymond? by another source?) to a succinct general statement regarding the non-transferability of papal privileges.¹⁴⁶ It is unknown from any other source, and the complete lack of identifying information like names or churches means that only the chance discovery of another exemplar (either in a collection or the original letters) will lift the veil on its origin.

The situation is somewhat better for the eight Innocent III texts (counting Lat. IV, c. 71), which provide more detail to go on. They may be divided into two groups: those that predate the issuance of 3Comp (pre-1209/10) and those that come from the latter part of Innocent's pontificate. In the first group are X 1.21.7, *A nobis fuit*, and X 1.18.7, *Miramur*. There is a thematic unity that binds the two, insofar as they both extend certain general provisions regulating clerical behavior to the office of subdeacon. In X 1.21.7, included in the title on the prohibition against the ordination of bigamists (X 1.21, *De bigamis non ordinandis*), Innocent addressed the problem of how to handle subdeacons who had married widows while in orders and whether they were truly bigamists according to the law, even though it technically denied legal standing to any clerical marriage.¹⁴⁷ X 1.18.7, *Miramur*, played the functionally equivalent role in its title (X 1.18, *De servis non ordinandis et eorum manumissione* (On not ordaining slaves and their manumission)) as had X 1.21.7. *Miramur* noted that even though the office of subdeacon was a more recent invention, that did not mean that ancient prohibitions on slaves

¹⁴⁶ The full text of the short X 5.33.8 is as follows: "Sane, *et infra*, Temerarium est et indignum esse, aliquem sibi sua auctoritate praesumere, quod Romana ecclesia alicui, certa ratione inspecta, singularibus voluit beneficiis indulgere." There is a listing for *Sane* in Jaffé-Löwenfeld, but it merely reprises the information from the *Decretals* (and incorrectly substitutes *voluerit* for the original *voluit*): JL 14205.

¹⁴⁷ Even for those who had contracted the marriage prior to receiving holy orders, marrying a widow was classified as an impediment to ordination, and was thus classified as bigamy: X 1.21.5, *Debitum pastoralis officii*; D. 32, c. 2, *Maritum*. Innocent's resolution in X 1.21.7 was still to treat these clerics as bigamists

becoming deacons should not also be extended to cover subdeacons.¹⁴⁸ The fact that the only non-5C, pre-Gregorian capitula added to the first book of the *Decretals* dealt with the subdiaconate shows perhaps a special solicitude for this office on Raymond's part.

The only collection that contains both X 1.21.7 and X 1.18.7 is the augmented recension of Alanus Anglicus, which is, moreover, the one place where X 1.21.7, *A nobis fuit*, is found other than in the *Decretals*.¹⁴⁹ The strong presumption should be, therefore, that Raymond derived both texts from Alanus. As to why – given the expansion of his source-base to include non-5C collections – Raymond confined himself to these two items, one can only conjecture that it was a case-specific borrowing limited in scope to the office of the subdeacon.¹⁵⁰ The inclusion of X 1.18.7, *Miramur*, in particular, is a rather strange choice, given that the decretal's authenticity was disputed, most notably by Bernardus Compostellanus. In his epilogue to the *Compilatio Romana* Bernardus listed *Miramur* (rendered *Miremur*) as the first of five decretals that circulated under Innocent's

with respect to the ecclesiastical penalties incurred, because marriages are created as a consequence of the intentions of the couple rather than the letter of the law.

¹⁴⁸ The rubric eventually assigned to X 1.18.7, *Miramur*, made it even more clear that any law restricting slaves from the diaconate was automatically applied to subdeacons: “ius quod est de servo facto diacono, etiam de subdiacono debet intelligi.”

¹⁴⁹ X 1.21.7 = Alan auct., no. 43 (*De clerico non ordinato ministrante*); X 1.18.7 = Alan auct., no. 73 (*De officio iudicis delegati*). In Alanus, *A nobis fuit* is addressed to the bishop of Limoges. Although it constitutes a single decretal, *A nobis fuit* is divided into two parts, with the second part comprising *Ille autem...opere subsecuto*, precisely the section that Raymond included under X 1.21.7 after the opening incipit (von Heckel, “Dekretalensammlungen des Gilbertus und Alanus,” pp. 316-7). X 1.18.7, *Miramur*, was also transmitted in the first recension of Alanus (Alan 1.10.1), the Gilbertus/Alanus derivative *Collectio Fuldensis* (von Heckel, “Die Dekretalensammlungen Gilbertus und Alanus,” pp. 165-70) and the so-called *Collectio Lucensis*, first discovered in a manuscript from Lucca and edited by Baluze: *Miscellanea nova ordine digesta*, vol. 3 (Paris, 1763) p. 391.

¹⁵⁰ Von Heckel's speculation about the indirect influence of the collections of Alanus and Gilbertus on Raymond should also be mentioned here (“Dekretalensammlungen des Gilbertus und Alanus,” pp. 175-6). There are several Innocent III decretals common to both Alanus/Gilbertus and 3Comp that Raymond included in the *Decretals* under the titles in which they appeared in the former rather than the latter: X 1.29.34 (3Comp 3.22.1, Gilb auct. 2), X 2.24.27 (3Comp 1.1.3, Alan auct. 81), X 3.19.8 (3Comp 3.5.2, Gilb 3.12.3) and X 5.3.36 (3Comp 5.14.1, Alan 5.2.3). Although it is unlikely, it may be worth it – if a

name, but which were not to command authority, as Bernardus himself heard from the mouth of the pope (*ad os ex eo accepti*).¹⁵¹ The language Bernardus uses is somewhat oblique, suggesting perhaps that what he might be referring to are authentic decretals that nevertheless were not deemed worthy by the pope to establish precedent, or that they were decretals of other popes that somehow became associated with his name. In any case, Raymond clearly ignored what Bernardus had to say about *Miramur*, and went on to include two of the other decretals that Bernardus mentioned, though under the names of the previous popes to whom they were attributed in 2Comp rather than of Innocent III.¹⁵² Perhaps Raymond had a dual purpose in choosing *Miramur*: to add its legal reasoning to the tradition and to establish the decretal's validity.

The other six texts are drawn from the final years of Innocent's pontificate, including five decretals (X 3.34.10, *Per tuas nobis*; X 4.14.6, *Quia circa*; X 5.6.14, *Postulasti*; X 5.34.16 *Accepimus*; X 5.39.45, *Contigit interdum*) and Lateran IV, c. 71, *Ad abolendam*. The inclusion of these texts from outside the 5C has usually been taken as evidence that Raymond consulted Innocent's registers. As will be shown below,

better text of the *Decretals* is ever established – to go back and compare the text of these decretals to see whether their readings can be traced to Gilbertus/Alanus rather than 3Comp.

¹⁵¹ “Last of all, the flames of scholarly passion compel me to make an additional comment, that certain decretals, which scholars have received under the name of lord Innocent III, you should reject just as if they were not his (*tanquam non suas* respuatis: or “as not belonging to him”). Neither are [these letters contained] in his registers, nor have they been approved by him, according to what I heard from him face to face. One of them concerns slaves ordained as subdeacons [X 1.18.7, *Miramur*], who are said [in the letter] to enjoy the same privileges as deacons.” For the full Latin text (from: Singer, *Dektrealensammlung*, pp. 114-5), see note 90. The five decretals Bernardus calls into question are as follows (with most recent pre-1234 compilation as well as *Decretals* appearance indicated where appropriate): *Miramur* (Alan. 1.10.1 ; X 1.18.7), *Ex litteris* (Gilb. 1.9.7), *De prudentia* (2Comp 4.14.1; X 4.20.3), *Queris* (2Comp 1.8.1; X 1.14.6), *Super consultatione* (Alan. 1.13.8). Notably, both *Miramur* and the second decretal that Bernardus would cite, *Ex litteris* (transmitted in Gilb auct. and the *Coll. Fuldensis*), deal with the subdiaconate.

¹⁵² Raymond kept the attribution of X 4.20.3, *De prudentia* (2Comp 4.14.1) to Clement III, and that of X 1.14.6, *Queris* (2Comp 1.8.1) to Alexander III, rather than accept the Innocent III attributions in Gilbertus for *De prudentia* (Gilb. 4.13.4) and in Alanus for *Queris* (Alan. auct. 62) – though it is unclear whether he was even aware of the discrepancy.

however, there is good reason to believe that Raymond based his selection of this post-3Comp material on an intermediate source. Establishing this fact shows once again how dependent Raymond was on the work of prior canonists to derive his pre-Gregorian material.

1.7.2 The *Collectio Bambergensis secunda* as a source for the Decretals

Some years ago Stephan Kuttner produced a study of a short, chronological collection of letters from the final years of Innocent III's pontificate, the so-called *Collectio Bambergensis secunda* [=Bamb II].¹⁵³ Bamb II was just one of several quasi-official, "supplementary" collections produced by the Curia in the years after 3Comp to meet the demand for up-to-date records of Innocent's more important decisions.¹⁵⁴ It collected twenty decretals covering Innocent's 13th through 18th pontifical years (1210-15), arranged in chronological order with little or no editing of their contents. Bamb II was incorporated into a thirteenth-century manuscript (Bamberg, Staatsbibliothek, MS Patr. 132), which among other canonistic material also transmitted the entire run of Lateran IV decrees, including the final Crusade provision *Ad liberandam* (c. 71).¹⁵⁵

¹⁵³ Kuttner, "A Collection of Decretal Letters of Innocent III in Bamberg." *Medievalia et Humanistica*, new series 1 (1970) pp. 41-56; repr. in: *Medieval Councils, Decretals and Collections of Canon Law* (Variorum Collected Studies Series CS 126: London, 1980) VIII. The collection that Kuttner describes is not to be confused with the class of pre-1Comp collections designated collectively as the *Bambergensis* group.

¹⁵⁴ That is, the class of collections identified in C. R. Cheney: "Three decretal collections." See above, note 101.

¹⁵⁵ The contents of the manuscript, originally part of the Bamberg cathedral library collection (Q.VI.42), are as follows: Robert of Flamborough, *Liber Poenitentialis* (fol. 1r-64v); penitential canons drawn from Burchard of Worms' *Decretum* (fol. 65r-80v); Lateran IV canons and documents (fol. 81r-110r); *Collectio Bambergensis II* (fol. 110r-118r); notes on the conciliar controversies of the fifteenth century (fol. 119). For the full description, see: Hans Fischer, *Katalog der Handschriften der königlichen Bibliothek zu Bamberg*, vol. 1 (Bamberg, 1906) p. 519-20. This manuscript was also used by García y García in his edition of the Lateran IV canons under the siglum *B*: Antonio García y García [ed.], *Constitutiones Concilii quarti Lateranensis una cum Commentariis Glossatorum* (Monumenta Iuris Canonici, series A: Corpus Glossatorum, vol. 2: Vatican City, 1981).

Kuttner's main interest in Bamb II was for its role as an intervening source for Johannes Teutonicus' 4Comp, but he noted in passing that among the decretals it contained that Johannes Teutonicus had rejected could be found three of the eight Innocent III texts that Raymond had added to the *Decretals*.¹⁵⁶

It turns out that this number is five, accounting for all of the post-3Comp decretals (after 1208/9) that Raymond added:¹⁵⁷

1. X 3.34.10, *Per tuas nobis* = Bamb II, no. 12 (Potthast 4789; 1213, yr. 16)
2. X 4.14.6, *Quia circa* = Bamb II, no. 13f (Potthast 4820; 1213, yr. 16)
3. X 5.6.14, *Postulasti* = Bamb II, no. 5a (Potthast 4523; 1212, yr. 15)
4. X 5.34.16 *Accepimus* = Bamb II, no. 14 (Potthast 4869; 1214, yr. 16)
5. X 5.39.45, *Contigit interdum* = Bamb II, no. 9 (Potthast 4641; 1213, yr.15)

If one adds to this group c. 71 (*Ad liberandam*) of the Fourth Lateran Council, which appears at X 5.6.17, then the manuscript as a whole contains all of the unaccounted post-3Comp material in the *Decretals*.¹⁵⁸ While the provenance of the manuscript is unknown, an interesting feature is that the Lateran IV canons and the decretal collection were written by the same hand, suggesting that the scribe's exemplar also included both sets of material. It seems probable, therefore, that Raymond derived the post-3Comp texts from a similar, if not identical collection – probably one that had been produced directly by the Curia to circulate the Lateran IV decrees along with Innocent's more recent decisions.

¹⁵⁶ Kuttner, "Collection of Decretal Letters," p. 42.

¹⁵⁷ Kuttner took note of the presence of X 3.34.10 (Bamb II, no. 12), X 5.34.16 (Bamb II, no. 14) and X 5.39.45 (Bamb II, no. 9). He may have missed the others because smaller sections of them were included in 4Comp – and later the *Decretals* – under the same incipits. Raymond, thus, subsequently went back to this earlier collection to derive the missing portions of *Quia circa* (X 4.14.4, Bamb II, no. 13f) and *Postulasti* (X 5.6.14, Bamb II, no. 5a).

¹⁵⁸ For the transmission issues surrounding *Ad liberandam*, which went through two stages of composition, and was not included in all manuscripts of the Lateran IV canons, see: García y García, *Constitutiones*, pp. 15-7.

1.8 The Gregorian material

There are 195 Gregorian texts in the *Decretals*, or 10% of the total number of capitula, making Gregory the third most represented pontiff behind Innocent III (646 cc.: 33%) and Alexander III (470 cc.: 24%). This material is comprised of letters that had been issued during the first seven years of Gregory's pontificate, as well as unsolicited pronouncements on particular matters of law, what Gregory refers to in *Rex pacificus* as *constitutiones*. Friedberg published his edition before Gregory's registers had been edited by Lucien Auvray,¹⁵⁹ and he reproduced a number of Potthast's oversights in the *Regesta Pontificum* for the Gregorian letters.¹⁶⁰ This gave Friedberg limited resources to call upon in expanding and contextualizing the Gregorian texts as he did for the material from the 5C. As a consequence, it is not always clear whether a particular Gregorian text is a decretal or a constitution. With the benefit of Auvray's edition and the better accessibility of the Vatican papal registers it has become possible to compare the Gregorian capitula in the *Decretals* with the letters in the registers, and collate those that are found therein. The following table shows the breakdown for the Gregorian material in the *Decretals*, including the number of letters in the papal registers.

¹⁵⁹ *Les Registres de Grégoire IX*, 4 vols (Paris, 1898-1955).

¹⁶⁰ *Regesta Pontificum Romanorum inde ab anno post Christum natum MCXCVIII*, 2 vols. (Berlin, 1872-5). Stephan Kuttner has catalogued the specific deficiencies in Potthast and Friedberg in this regard: "Raymond as editor."

Table 1.2. Overview of Gregorian texts in the *Decretals*

	Gregorian capitula	Total capitula In Book	Percentage	Constitutions	Rescripts	Ratio	In Register
Book I	65	439	15%	21	44	1 : 2.1	33
Book II	45	418	11%	19	26	1 : 1.4	16
Book III	39	493	8%	14	25	1 : 1.8	20*
Book IV	10	165	6%	4	6	1 : 1.5	4
Book V	35	456	8%	14	21	1 : 1.5	15
Total	195	1971	10%	72	122	1 : 1.7	89

* includes X 3.5.38, the source for which is found in Honrius III's register (Pressutti 6244)

1.9 Raymond as editor

One of the central questions in medieval and early-modern discussions of the *Decretals* has been the degree to which Raymond adhered to the commission spelled out in *Rex Pacificus*. Gregory designated three types of editorial interventions in *Rex Pacificus*. Under the heading of *resecatis superfluis*, Gregory referred to 1) *prolixitas*: excessive length; 2) *similitudo*: repetition or similarity between different capitula; and 3) *contraritas*: obsolete, superseded or contradictory judgments. *Prolixitas* can be understood as a criterion for whittling away material internal to the individual capitula, while *similitudo* is largely a guide for eliminating whole texts. *Contraritas*, on the other hand, covers both aspects – eliminating decretals whose decisions were no longer in accordance with contemporary practice, or editing out now irrelevant portions of otherwise acceptable texts. Raymond's source material was a varied lot, covering, for example, decretals that communicated a pope's settlement of a case that had been conducted by a previously-appointed judge-delegate; those where the pope was acting as a court of first instance; and more generalized responsa offering the pope's advice on a range of legal inquiries put to him by local church officials. Coupled with the chronological variation of the letters, this formal diversity meant that there was no

universal method of editing that could be applied to fulfill the *resecatis superfluis* commission. Nevertheless, there are some common features in the ways Raymond streamlined his texts.

1.9.1 *Prolixitas*

The easiest targets for elimination were the opening sections in a decretal's protocol: the *arenga*, which typically contained a metaphorical mediation on an ecclesiological or moral subject; and the *narratio*, the narrative section laying out the facts of the case and the record of judicial action up to that point.¹⁶¹ Broadly speaking, there was a tendency among compilers stretching from Bernard of Pavia's 1Comp to Tancred's 5Comp towards greater elimination of the background material in the decretals not immediately relevant to the judgment being proffered – though the distinction between what was and was not relevant could obviously be a fine one. Twelfth-century collections generally display a minimum of editing, beyond the division of capitula into multiple pieces under different titles.¹⁶² Decretals in this period were usually shorter, however, without extensive narrative portions.¹⁶³ Innocent III's pontificate is a turning point in this respect. His letters contain detailed summaries of what initiated the legal

¹⁶¹ In the late twelfth and early-thirteenth centuries, curial diplomatic practices were evolving to reflect the centralization of executive and judicial functions in Rome, culminating in Innocent III's reorganization of the papal chancery (see: Herde, *Audientia litterarum contradictarum*, pp. 20ff; Sayers, *Papal Government*, pp. 15ff.) The flux in practice and the multiplication in types of letters being issued by the chancery means that one encounters a variety of contemporary terminologies for papal diplomatics. Perhaps the most representative description of the parts of a papal letter was described by the papal *dictator*, the cardinal-priest of S. Sabina Thomas of Capua in his *Summa dictaminis*, edited in: *Die Ars Dictandi des Thomas von Capua*, ed. Emmy Heller (Sitzungsberichte der heidelberger Akademie der Wissenschaften, phil-hist. Klasse 19, Abh. 4: Heidelberg, 1929).

¹⁶² There is, to my knowledge, no general study of the editorial techniques of compilers in the late-twelfth and early-thirteenth centuries.

¹⁶³ See, for example, a long series of Alexander's decretals under X 1.17 (*De fillis presbyterorum ordinandis vel non*), cc. 2-11. The summaries of the case histories in these decretals are limited to a few sentences, which did not, it seems, make them a candidate for either Bernard's or Raymond's editorial pen.

action, as well as a full account of the back and forth between the parties as the case moved through the courts. The compilers of 2Comp and 4Comp dealt with this greatly increased prolixity by paring back the narrative portions of the decretals considerably, though their methods were inconsistent and the texts could still be of considerable length. Tancred's editing methods are even more intrusive, with a liberal use of the *et infra* to skip over large sections that he deemed not relevant to establishing the statement of the law.¹⁶⁴ Of all his predecessors, Raymond appears closest in his editorial methods to Tancred; Honorius' decretals suffered the least number of further excisions by Raymond's hand.

Raymond continued the excision of the narrative portions of decretals, transmuting additional blocks of eliminated text into *partes decisae*. While not always consistent, Raymond usually signaled the elimination of these narrative blocks by adding an *et infra* in place of the missing text.¹⁶⁵ Raymond's hand is most heavy on Innocent III's decretals, perhaps because of their sheer length. He built upon the already extensive editorial work of the compilers of 3-4Comp. An Innocent III decretal that the 5C

¹⁶⁴ Unlike for Innocent's decretals, Friedberg did not have access to a printed edition of Honorius' register to restore the *partes decisae* eliminated by Tancred. It would be worthwhile at some future point to produce a study of Tancred's editing, so that it could be compared with Raymond's.

¹⁶⁵ In *Quanto Gallicana ecclesia.*, X 5.5.3 (De magistris), we have a good example of how Raymond did and did not use the *Et infra.*, inserting it to signal the elimination of a block of text following the incipit, but excising a later portion without indication (*italics* indicate excised text; † indicates an *et infra* inserted by Raymond): "quanto Gallicana ecclesia † *maiorum personarum scientia et honestate praefulget, et cautius nititur evitare quae confundere videantur ecclesiasticam honestatem, tanto vehementiori Dignos eos esse animadversione censemus, qui nomen magistris scholarum et dignitatem assumunt in ecclesiis vestris, et sine certo pretio ecclesiasticis viris docendi alios licentiam non impendunt. Cum autem haec prava et enormis consuetudo a cupiditatis radice processerit, et decorem admodum ecclesiasticae honestatis confundat, providendum vobis est summopere satagendum, ut consuetudo ipsa de ecclesiis vestris [penitus] extirpetur, cum vobis praecipue et specialiter adscribatur, si quid in ecclesiis eisdem laude dignum inveniatur vel reprehensione notandum. [Nos quoque, qui, licet immeriti, dispensante clementia conditoris suprema fungimur potestate, tantae cupiditatis et rapacitatis vilium nolentes inemendatum relinqui, fraternitati vestrae per apostolica scripta] mandamus, quatenus, consuetudine ipsa de vestris ecclesiis extirpata, sub anathematis interminatione hoc inhibere curetis, districte praecipientes..."*

transmitted at around half its original size of a column and a half in the Friedberg edition could be cut down to two dozen lines, or roughly a quarter of its original size.¹⁶⁶ The only texts that Raymond seems to have left virtually untouched are the canons of the Fourth Lateran Council (1215).¹⁶⁷ Far from indicating a sense of humility when approaching conciliar legislation, the preservation of the text of the Lateran IV canons stands in marked contrast to Raymond's aggressive editing of the material from other councils. Raymond did not shrink from paring back the text of the Lateran III (1179) decrees, for example, whose form and substance were fairly close to those of Lateran IV.¹⁶⁸

1.9.2 *Similitudo*

Repetition and redundancy were part of the character of early-medieval canon law. The legislative processes of the pre-Gregorian Reform Church were dominated by local and provincial councils, with occasional contributions from secular rulers like the Carolingian kings, who also organized regional assemblies. Frequently ineffective conciliar legislation sounded the same notes to address the same, persistent problems, whether clerical celibacy, alienation of church property, or simony. The similarity and repetition of the sources of law were compounded by the vehicles used to collect the law. The collections of Burchard of Worms and Ivo of Chartres, animated by an encyclopedic spirit, are swollen with canons giving identical takes on a variety of similar issues. A

¹⁶⁶ See, for example, X 1.29.29 (*De officio iudicis delegati*) [Potthast 3251], a decretal concerning the subdelegation of authority by those with direct commissions from the Pope.

¹⁶⁷ There are six Lateran IV canons in the *Decretals* where Friedberg notes a missing word or phrase, which in every case is inessential to the overall meaning: X 3.44.2 (c.19): *et*; X 3.5.28 (c.29): *ex eo*; X 2.28.59 (c.35): *etiam*; X 2.19.11 (c.38): *et*; X 2.13.18 (c.39): *iniuste*; X 3.45.2 (c.62): *de cetero*. In another two canons, Raymond has added a clarifying phrase: X 5.5.4 (c.11): *pro theologo*; X 3.22.4 (c.59): *religiosus*.

¹⁶⁸ See for example, the heavy editing in X 5.8.1 (c.3); X 3.39.6 (c.4); and X 2.28.26 (c.6).

charge of similarity could be leveled against the *Ius novum* as well, as papal decretals and the canons of general councils sounded off on the same themes in pursuit of a reform program. The compilation process, however, focused on the distillation of a few representative examples, rather than the accumulation of as many instances as possible.

Raymond faced a more formidable challenge than had the compilers of the 5C. The individual capitula he inherited were now subject to a long tradition of commentary, which served both as a pedagogical and judicial aid. Seemingly similar capitula were often tied to very different streams of interpretation.¹⁶⁹ The category of repetition is, therefore, perhaps the most obscure among the reasons why Raymond discarded certain material. One can never be sure whether something was rejected because it was repetitious, or because it had become attached to a line of interpretation that was rejected, or simply because it was deemed not sufficiently representative to include in the *Decretals*. There are certainly some clear examples of repetitious material being eliminated, but the more frequent impression is that the *Decretals* still contains much that is duplicative.¹⁷⁰

The overlap between texts within certain titles was evident even to the earliest commentators, such as Hostiensis, who called attention to the gap between the ideal of

¹⁶⁹ In addition, critical discussions of issues of fundamental importance to the organization and structure of the Church could often pop up in strange and unexpected places. Such was the case, for example, with Hostiensis' most important examination of the constitutional framework of papal power, not in Book 1, but in his gloss on a capitulum placed in fourth book in the title on the legitimation of children (*Qui filli sint legitimi*), X 4.17.13, *Per venerabilem*; cf., J. A. Watt, "Hostiensis on *Per venerabilem*," in: *Authority and Power: Studies on Medieval Law and Government Presented to Walter Ullmann on his Seventieth Birthday*, edd. Brian Tierney and Peter Linehan (Cambridge, 1980) pp. 99-114.

¹⁷⁰ See the discussion below of X 3.26.13 and X 5.40.18, both from the letter *Cum tibi* (Potthast 1796), p. 82.

Raymond's commission and the obvious persistence of *similitudo* in the *Decretals*.¹⁷¹ A good example of the retention of multiple capitula striking the same basic chord comes from the title *De Iudaeis, Sarracenis, et eorum servis* (X 5.6). The title consists of nineteen capitula: seventeen from the 5C and two Gregorian texts.¹⁷² Raymond used seventeen out of the available nineteen capitula from the 5C, leaving out one capitula from 1Comp and 5Comp, respectively.¹⁷³ The similarities between the various capitula are immense. There are two that forbid Christians from trading with Sarracens (c. 6 and c. 11). Five capitula lay out a blanket provision forbidding Jews from holding Christian slaves (c. 1, 2, 5, 8, and 13), albeit with slight differences in remedies (c. 1 mandates a redemption price of 12 solidi, while c. 2 stipulates automatic liberty) and in foci (c. 8 specifically includes *nutrices* (wet-nurses) as a subset of *servi*, while c. 13 goes into detail about the mistreatment of Christian wet-nurses by their Jewish masters). The Gregorian constitution that ends the title, c. 19, is almost an exact restatement of c. 1, specifying that

¹⁷¹ "[I]n praeo Gregoriano nihil debet esse spinosum vel contrarium vel similitudinarium...sed certe multa similia remansuerunt, sine quibus poterat coena duci," quoted in Theiner, *Disquisitiones*, p. 33. Here Hostiensis is doubtless echoing Justinian's words in the constitution *Deo auctore nostrum*, which describes the compilation process of the *Digest*: "sed et similitudinem (secundum quod dictum est) ab huiusmodi consummatione volumus exulare: et ea, quae sacratissimis constitutionibus quas in codicem nostrum redeimus cauta sunt, iterum poni ex veteri iure non concedimus, cum divalium constitutionum sanctio sufficit ad eorum auctoritatem: nisi forte vel propter divisionem vel propter repletionem vel propter pleniorum indaginem hoc contigerit: et hoc tamen perraro, ne ex continuatione huiusmodi lapsus oriatur aliquid **in tali praeo spinosum**," *Corpus Iuris Civilis*, vol. 1, p. xiv. Watson translation: "repetition, too, as already said, we wish to exclude from a composition such as this. Seeing that the sanction of imperial *constitutiones* (enactments) is enough to give them their own authority, we do not with those things which have been provided by the most sacred *constitutiones* (enactments) inserted in our *Codex* to be set out again from the old law, unless perhaps this should happen by way of logical distinction or supplementation or in an effort toward greater completeness; but even then this must be done very rarely, lest, by extension of this sort of failing, some thorny growth may arise in such a meadow," *Digest*, vol. 1, p. xlvi.

¹⁷² The first, X 5.6.18 (Potthast 9673), is a letter to the King of Portugal. The second, X 5.6.19 (Potthast 9674), has the appearance of a Gregorian *constitution*, being a brief, two-sentence enunciation of policy that does not refer to any previous case or circumstance, the way a rescript normally would.

¹⁷³ The excluded capitula are 1Comp 5.5.2, a passage from the life of Zachary I in the *Gesta Romanorum Pontificum*, and 5Comp 5.3.1, a letter from Honorius III to the prelates of Hungary (Potthast 7835) that is the sole capitula under this title in 5Comp. Friedberg's table on xxxix-xl of the prolegomena to the *CIC* is

Christian slaves may be redeemed from their Jewish owners for twelve solidi, or automatically if the owner has not accepted the redemption payment after three months.

1.9.3 *Contraritas*

The compilers of the *5C* and their commentators acted as a *de facto* filter for contradictory material. Given the small geographical range where most canonistic activity took place, as well as the common academic and institutional environment, these compilers produced collections that were by and large complementary to one another. A significant break had occurred, however, with the Fourth Lateran Council (1215).

Lateran IV was the first medieval council to explicitly articulate changes in the law for what they were, rather than the wrapping innovations in the cloak of Apostolic and Patristic practice. One major area in which Raymond's editing for contradiction operated was in harmonizing the new standards of Lateran IV with the older material. It was a task to which he was well suited, having spent almost two years accompanying John D'Abbeville around the Iberian peninsula, convening local councils to bring Lateran IV reforms to the Spanish Church.

Sometimes the contradictions affected Raymond's decision to keep whole titles and texts. One such example is the title concerning the ability of children from second marriages to marry relatives from the first, non-blood-related spouse's family, appearing in 1Comp 4.15 as *De sobole suscepta ex secundis nuptiis* and as a combined title in 4Comp 5.3 as *De consanguinitate et affinitate et sobolo ex secundo matrimonio*.¹⁷⁴ In c.

incorrect when it shows that there were two capitula (instead of only one) left over in the *De Iudaeis* title of 1Comp (5.5) that Raymond did not include in the *Decretals*.

¹⁷⁴ For a discussion of the Lateran IV changes and the way in which they affected marriage law, particularly in the *Decretals*, see chapter 8, "Marriage and Sex in Canon law, from Alexander III to the *Liber extra*," in: Brundage, *Law, Sex, and Society*, pp. 325-416.

50 of the Fourth Lateran Council, Innocent III had changed the law to allow the child of a second marriage to marry a relative of the previous spouse, removing the practical difficulty this prohibition had created for contracting legitimate marriages. Raymond eliminated the title from his collection as it had appeared in 1Comp, choosing instead to create a title comprehending the first part of 4Comp 5.3, which he rendered as *De consanguinitate et affinitate* (X. 4.14). Raymond then eliminated the three capitula that had covered the topic of children in second marriages in 1Comp 4.15.1-2 and 4Comp 5.3.1. Lateran IV c. 50 had also lowered the restriction on marriages from seven to four degrees of consanguinity and affinity.¹⁷⁵ In order to harmonize this provision with the older material, Raymond removed references to the older restriction of seven degrees from X 4.14.1¹⁷⁶ and X 4.14.5.¹⁷⁷ In both cases, Raymond kept the term *consanguinitas* as is, rather than simply modifying the older qualifier *usque ad septimum gradum* to something like *usque ad quartum gradum*. This presumed that the provisions of the recent Lateran decree, which he inserted as in X 4.14.8, would be understood in the unqualified usage of *consanguinitas* in these and other capitula in the title. This is a small but significant case where Raymond presented the individual capitula of a title as interdependent and mutually explanatory.

¹⁷⁵ Cf., F. Laurin, *Introductio in Corpus Iuris Canonici* (Freiburg, 1889) p. 137.

¹⁷⁶ "Ex literis tuis...Aeque enim, ut canones dicunt, abstinendum est a consanguineis uxoris, ut propriis, *usque ad septimum gradum*. Ceterum tuam prudentiam volumus non latere, quod *personae idoneae nominandae sunt et gradus distinguendi ab utroque latere [et] computandi*; non sunt causae matrimonii tractandae per quoslibet, sed per iudices discretos, qui potestatem habeant iudicandi, et statuta canonum *super his* non ignorent."

¹⁷⁷ "Quod super his...*Quidam praeterea tuae diocesis infra tertium et septimum gradum consanguinitatis se contingentes, adinvicem matrimonium contrahunt, hoc sibi licere de antiqua consuetudine asserentes. [(Et infra:)]...*"

Enforcing consistency in the wake of Lateran IV by no means exhausts the examples where Raymond exercised his editorial prerogative to exclude texts and passages from the *Decretals*. In some cases, Raymond's editorial decisions can be linked to the debates of contemporary canonists over the proper interpretation of the law, thus demonstrating that the process of codification was a dynamic one rather than a simple imposition of norms.¹⁷⁸ Exploring these in their various guises will be an ongoing project, particularly now that the Gregorian material may be analyzed in the context of its sources.

1.9.4 *Additiones Raymundi*

Unmentioned in *Rex pacificus* but an omnipresent – if juridically modest – feature of Raymond's editing is the interjection of additional language into the decretals. These additions number in the hundreds, and range in length from a single word or phrase to entire sentences.¹⁷⁹ The vast majority are merely explanatory, adding in words and phrases to make the capitula more intelligible. Sometimes this need was created by Raymond's editing itself, when he eliminated a passage containing information crucial for the decretal's interpretation. He would then typically summarize or distill the excised

¹⁷⁸ The best examples were produced by Steven Horwitz, who linked Raymond's treatment of two groups of canons to contemporary canonistic debates. The first group concerned marriage impediments created through supervenient affinity, i.e., the spiritual ties that bound a husband or wife to the family of their spouse, and made a second marriage to anyone on that side of the family subject to the same degrees of prohibition that applied to one's biological family. The second group covered the burial of excommunicants: "Magistri and magisterium: Saint Raymond of Peñafort and the Gregoriana," *Escritos del Vedat* 7 (1977) pp. 209-38.

¹⁷⁹ Given the lack of a critical edition, an exact accounting of Raymond's additions is, obviously, impossible, and short of finding an autograph copy of the *Decretals* it will probably remain so. Nevertheless, one can form a rough estimate of around 300 based upon Friedberg's apparatus, where he notes phrases that were not otherwise present in the formal source manuscripts of the 5C. Having collected and evaluated all of the additions indicated by Friedberg's apparatus, it is the author's opinion that there is no need for a comprehensive, dedicated study. The majority involve clarification of the text rather than alteration of content. The major exceptions will be noted below.

section and add it to the retained portions of the text.¹⁸⁰ Going beyond mere summary, Raymond occasionally also inserted a much stronger statement of the legal principles at stake in the text.¹⁸¹ These sorts of insertions, which extend even to the Gregorian texts drawn from the registers, highlight the codifying impulse of the *Decretals*, and demonstrate a clear desire to shape subsequent interpretation.¹⁸² The liberty that Raymond took with the language of the *Decretals* is a salutary reminder that papal

¹⁸⁰ For example, Raymond made significant excisions in the narrative of the past judicial record for the case recorded in X 2.17.1 (3Comp 2.9.1), a property dispute between the Archbishop of Milan and the monastery of Scozula (Potthast 31). After the judge-delegate ruled against him (or at least not to his liking), the archbishop tried to challenge the ruling on the basis that the original mandate given by the pope had called for the judge to decide on the question of who was in possession of the property (*causa possessionis*), not of who actually owned it (*causa proprietatis*). The pope replied that the judge had interpreted the rescript properly, and that the two issues were not, in fact, separable. Since Raymond had deleted much of the judicial record narrated in the beginning, he reinserted the inseparability claim later on in the decretal (added text underlined): “sic suum interpretatus fuit rescriptum, quod tam causa possessionis quam proprietatis fuerat iudici delegata, cum absolute et indistincte commissa fuerit, et eius continentia dividi non deberet.”

¹⁸¹ X 3.38.19 (1Comp 3.33.23) offers a good example of Raymond’s use of additions to clarify the general legal principles at stake. This Alexander III decretal addressed whether a cleric, who was installed in a proprietary church by someone whose patronage rights were later challenged in court, should be automatically removed when the judge granted the right of the plaintiff to challenge. Alexander cautioned against immediate removal, since the rightful patron might still turn out to be the person who first presented the cleric. Raymond sharpened the decision by adding a general statement saying that a judgment granting action in a case should not damage the exercise of someone’s rights, which would manifestly be the case if the mere start of a suit caused the removal of the cleric. The underlined text in the following passage indicates the text added by Raymond: “If a cleric was installed in a church by the ordinary based upon that cleric being presented by the person who was believed to have been the patron of that church [but was actually not], and afterwards another challenges [*evicerit*] his patronage rights in court, the installed cleric should not automatically be removed, just in case at the time of his presentation the one who presented him did in fact hold the right of patronage, for no disadvantage should subsequently be incurred by him who lawfully holds this right.” Orig.: “Si aliquis clericus ab ordinario iudice in ecclesia fuerit institutus ad praesentationem illius, qui eiusdem ecclesiae credebatur esse patronus, et postea ius patronatus alius evicerit in iudicio, institutus non debet ab ipsa propter hoc removeri, si tempore praesentationis suae ille, qui eum praesentavit, ius patronatus ecclesiae possidebat, cum ex hoc ei, qui de iure debet habere, nullum in posterum praeiudicium generetur.”

¹⁸² Kuttner (“Raymond of Penyafort as editor”) analyzed Raymond’s reshaping of X 1.2.13, *Quoniam constitutio apostolicae*, which was derived from a register text dealing with the distribution of revenue in the local Roman church of S. Maria Maggiore (Auvray 670; Reg. Vat. 15, fol. 103v; Potthast 9526). The decretal was attempting to clarify an earlier response by Gregory that had caused some confusion as to its proper interpretation, and so Raymond composed a new opening for the version included at X 1.2.13 that proffered a strong assertion of the mutual interdependence of the universality and clarity of papal pronouncements: “seeing as a constitution of the Apostolic See binds all and ought not to contain anything that is obscure or ambiguous...” Orig.: “quoniam constitutio apostolicae sedis omnes adstringit, et nihil debet obscurum vel ambiguum continere.” More examples of Raymond’s shaping of the Gregorian material in this way will be analyzed in the final chapter on the Gregorian texts.

rescripts were not sacred scripture, and were viewed more as transparent conduits for the legal ideas they contained.

The banality of most of these additions can mask the small number where Raymond did, in fact, introduce language of legal significance. Among the most prominent examples is X 3.19.1 *Si princeps* (1Comp 3.16.1), a piece of early medieval conciliar legislation that regulated the exchange of property between secular rulers and the Church. In the canon law tradition *Si princeps* ultimately went back to a Carolingian capitulary, but the council itself pulled the canon verbatim from the *Epitome Iuliani*, the Latin summary of Justinian's *Novellae* created by the Byzantine legal scholar Julianus.¹⁸³ Here is the text of X 3.19.1 in the *Decretals*, with Raymond's additions underlined:

If a ruler should wish to present a piece of immovable property to the holy places, and to receive from them another piece in return, and thus by common consent contract an exchange, it shall be permissible for him to do so, provided it is necessitated by a reasonable cause, and the property that he will have offered in exchange is greater or equal in value, with an imperial decree having been issued to that effect.

Si princeps voluerit rem immobilem sanctis locis praestare, et accipere ab eis aliam immobilem, eoque modo de communi voluntate permutationem contrahere, liceat ei hoc facere, si causa rationabilis id exposcat, et res, quam praestiterit, maior fuerit vel aequalis, pragmatica sanctione super hoc promulgata.¹⁸⁴

One can see immediately the effect of the alterations. To begin with, Raymond inserted a qualifier on the exchange contract to the effect that it had to be done by the

¹⁸³ Bernard of Pavia (1Comp 3.16.1) had derived the text from Burchard's *Decretum* (III.165), which in turn had pulled it from Regino of Prüm (I.373), who ultimately drew it from the Capitulary of Ansegisus (II.30). Ansegisus had simply copied it from the *Epitome Iuliani*, VII.2, which was itself a summary of Auth. 7 (Coll. II.1) in Justinian's *Novellae*.

¹⁸⁴ Raymond essentially preserved the text without further excision. The one exception, other than a redundant noun and prepositional construction, was his elimination of the adjective "divine" to describe the imperial decree, as in, *divina pragmatica sanctione*. Along with Raymond's elimination of every trace of Frederick II's, 5Comp-transmitted *Hac edictali lege*, this may be an instance of ideological editing, where the pretensions of civil law to operate on equal footing in the canonistic sphere are shot down.

common consent of the parties involved (*de communi voluntate*). The consent demanded fell not so much on the royal side, as on that of the ecclesiastical community in question. *Communis voluntas* was shorthand for ensuring that all members of the church or monastic community making the property exchange had agreed to it, and that it was not simply a transaction between a secular ruler and the presiding prelate (bishop, abbot, etc.).¹⁸⁵

The effect of the second, longer addition is twofold. It demands that there be a good reason for the property exchange (*rationabilis causa*), and it places a floor on its value such that the ecclesiastical party at minimum breaks even (*aequalis*), or at best comes out ahead (*maior*). The obvious question is what constitutes a “good reason.” The way Raymond set up the canon was to implicitly place the church in the position of judging whether the ruler had just cause. The potential disadvantage in which this put secular rulers would become a flashpoint of contention among later canonists. The late-thirteenth century canonist Hostiensis, for example, expressed a palpable discomfort with placing the church in such a commanding position to judge what were and what were not appropriate types of property acquisition on the part of secular rulers. He noted the innumerable benefits that the church had received at the hands of princes, and suggested that the mere fact that they thought the exchange to be in their interests should be sufficient reason for the church, provided the other conditions of the canon had been

¹⁸⁵ The phrase *de communi voluntate* or *consensu* frequently appears in discussions of benefices or other internal church revenues, as in X 3.5.11, for example: “significatum est nobis, quod cuidam sacerdoti praebendam unam in ecclesia vestra communi voluntate dedistis.” That Raymond’s addition of the phrase to X 3.19.1 was interpreted as a requirement to have the property exchange approved by all members of the community can be seen in the early-fourteenth-century commentary of Johannes Andreae: “[*communi*] scilicet principis et ecclesie, vel alterius pii locii, et per consensum ecclesie vel loci intelligas consensum prelati et clericorum, *De his quae fiunt a praelati sine consensu capituli*, c. 1 [X 3.10.1] et c. *Tua* [X

met.¹⁸⁶ Hostiensis' attempt to give the benefit of the doubt to the ruler was the grounds on which subsequent canonistic discussions of X 3.19.1 took place.¹⁸⁷

The irony of Raymond's addition specifying an equal or greater value for the property exchanged to the church is that he drew its substance from the original *novella* on which the epitome, which ultimately served as the source for the canon, was based.¹⁸⁸ Despite the contemporary suspicion voiced against Roman Law in some quarters of the Church, its use by canonists was practical rather than ideological.¹⁸⁹ Whether adopting its organizational methods (the five additional titles in the *Decretals*), or transposing streamlined statements of law (as above), Raymond, like canonists before and after, used Roman Law as the medieval equivalent of open source software, selectively picking and choosing to supplement and strengthen canonistic thought. Roman law precedents would

3.10.8], *De rebus ecclesiae non alienandis*, c. 1 [X 3.13.1],” *Novella Commentaria in Decretales*, vol. 3 (Venice, 1581) fol. 85rb.

¹⁸⁶ “*Rationabilis*] Si causa rationabilis sit, id est, si expedire principi, evidens sit, dummodo ecclesia non damnificetur. Hoc enim privilegium principis est, et debet sufficere ecclesie, quod tantumdem habeat aliunde, ut expresse dicitur hic in fine. Et certe, cum ecclesia sit in infinitis privilegiata per principes et imperatores, ut patet in his, quae nota supra, *De rebus ecclesiasticis non alienandis*, cum laicis [X 3.13.12]. Non video rationem, quare tam amara interpretatio contra hunc textum, et naturalem rationem per magistros fuerit attentata, sicut et alias dicit lex, ff. *De donationibus inter virum et uxorem*, si id quod donatum § si quas servi operas [Dig 24.1.28.2],” Hostiensis, *Lectura sive apparatus domini Hostiensis super quinque libris decretalium*, vol. 3 (Venice, 1581; repr: Turin, 1965) fol. 61rb.

¹⁸⁷ See, for example, Johannes Andreae on X 3.19.1: *Novella*, vol. 3, fol. 85rb-va.

¹⁸⁸ Auth. VII.2.1 (parallel section highlighted in **bold**): “Sinimus igitur imperio, si qua communis commoditas est et ad utilitatem reipublicae respiciens causa et possessionem exigens talis alicuius immobilis rei qualem proposuimus, hoc ei a sanctissimis ecclesiis et reliquis venerabilibus domibus et collegiis percipere licere, undique sacris domibus indemnitate servata et **recomponsanda re eis ab eo qui percepit aequa aut etiam maiore, quam data est**. Quid enim causetur imperator, ne meliora det? Cui plurima Deus dedit habere et multorum dominum esse et facile dare, et maxime in sanctissimis ecclesiis, in quibus optima mensura est donatarum eis rerum immensitas,” *Corpus iuris civilis*, vol. 3, p. 53.

¹⁸⁹ See, for example, *Super specula*, Honorius III's attempt to ban the study of civil law on the part of the clergy, included at X 3.49.10 and discussed above, note 139.

also provide Raymond with the language for more than one of the Gregorian constitutions that were composed specifically for the *Decretals*.¹⁹⁰

For the most part, Raymond's use of additions as an editorial strategy seem to have been within the bounds of his commission in *Rex pacificus* to harmonize the sources of law. The number of places where these additions alter the legal valence of the texts is relatively small. Each of them, however, warrants a separate investigation that will explore the changes in their full canonistic context.¹⁹¹

1.10 Bernardus Compostellanus as possible source for Raymond's editing

Ever since Heinrich Singer made the observation in his edition of Bernardus Compostellanus' *Compilatio Romana*, it has been customary to cite Bernard as an influence on Raymond's editing.¹⁹² Bernard, it will be recalled, was one of the more heavy-handed editors of canonistic material, pruning back the non-juridical elements to a far greater extent than his predecessors. It may have been this perceived license that was responsible for the compilation and ready acceptance at the curia of 3Comp, which in terms of its form was more often than not just a reprise of Bernard's work, though

¹⁹⁰ See, for example, the Gregorian constitution on the proper place of custom with respect to positive law, X 1.4.11, *Cum tanto sit*, which borrows directly from Cod. 8.52.2, a passage also picked up by Gratian, D 11, c. 4. An even more incredible example is X 3.26.17, *Tua nobis*, a text granting episcopal oversight of pious bequests committed by wills into the hands of the clergy for later distribution. Raymond excised the original language suggesting papal responsibility for overseeing the fulfillment of the bequests, and instead substituted a line taken verbatim from Justinian's *Novellae* that placed oversight in the hands of bishops: Nov 131.9 (*De ecclesiasticis titulis*: Auth. 119, Coll. 9.6). Both examples will be discussed at greater length in the last chapter.

¹⁹¹ The following is a list of canons with legally significant additions, with the note under which they are indicated in Friedberg's apparatus: X 1.6.2 (1Comp 1.4.2), note 10; X 2.7.5 (1Comp 1.34.6), note 11; X 2.13.15 (3Comp 2.7.5), note 26; X 2.20.43 (3Comp 3.14.2), note 6; X 3.24.4 (1Comp 3.33.23), note 16; X 3.35.3 (1Comp 3.30.2), note 4; X 3.38.2 (1Comp 3.32.2), note 4; X 5.25.3 (1Comp 5.21.3), note 5. This list is by no means exhaustive, and more will no doubt come to light.

¹⁹² On the *Compilatio Romana*, see above, § 1.3.3. Singer summarizes the evidence in his introduction: *Dekretalensammlung*, pp. 27-8. Examples of later, concurring opinions include: Kuttner, "Bernardus Compostellanus," p. 333; Pennington, "Making of a decretal collection," pp. 83-4.

collated with compilers like Alanus and Gilbertus, who had preserved fuller versions of the texts than Bernard.¹⁹³ What Singer found was that there were a number of capitula where Raymond's more stringent editing matched that of the *Compilatio Romana*: X 2.20.32 (3Comp 2.12.5, Bern. 2.11.6); X 3.24.5 (3Comp 3.18.2, Bern. 3.19.2); X 5.20.6 (3Comp 5.11.3, Bern. 5.13.5); and X 5.40.18 (3Comp 5.23.2, Bern. 5.24.2).

The simplest answer to Singer would be to note the much greater preponderance, by orders of magnitude, where Raymond followed 3Comp rather than the *Compilatio Romana*. It is more likely that what is happening in the examples of correspondence cited by Singer is nothing more than a case of coincidence between two editors who had adopted a similar, aggressive approach to their material. However, in order to rule out definitively the possibility of influence, Singer's examples will be analyzed systematically. This analysis will show that the types of editorial changes in question were commonplace throughout the *Decretals*, and that there is, therefore, no need to invoke anything beyond Raymond's own editorial habits to explain them.

The first example is X 2.20.32, *In nostra praesentia* (3Comp 2.12.5, Bern. 2.11.6) a decretal dealing with how to decide between conflicting plaintiff and defense witness testimony. Like Bernard, Raymond removed all of the narrative material in the decretal appearing after the opening words of the incipit, jumping right into the dispositive portion following the customary *et infra* that signaled a gap in the text, thus giving it the structure: *In nostra praesentia (et infra) Cum igitur...absolvatis eosdem*.¹⁹⁴ This type of editing – preserving only the incipit and the dispositive section – is one of Raymond's

¹⁹³ Petrus' dependence on Bernard's collection extends all the way down to the ordering of the material.

¹⁹⁴ 3Comp had also cut a significant portion of the narrative, but had left intact most of the opening sentence following the incipit.

most oft-used methods for paring back his texts, particularly those like Innocent III's that frequently included extensive case summaries. One can immediately point to two other 3Comp-derived decretals in this title where Raymond did the exact same thing without prior precedent in the *Compilatio Romana*, X 2.20.29 (3Comp 2.12.2, Bern 2.11.2) and X 2.20.36 (3Comp 2.12.9, Bern 2.11.11), and it would become tedious to cite all of the examples from elsewhere in the collection, including the decretals of Innocent III as well as those of other pontiffs.

The second example, X 3.24.5 (3Comp 3.18.2, Bern. 3.19.2), *Per tuas litteras*, comes from the title on gifts (*De donationibus*), and involved a bishop's enfiefment of property where he had deceived the lay vassal about the actual measure of the land, and whether the aggrieved party could sue to be granted the full amount promised.¹⁹⁵ The texts in 3Comp and the *Compilatio Romana* were exactly the same except for Bernard's elimination of the final eight-word passage, an excision also made by Raymond in the *Decretals*. The decretal had ended with the pope deciding in favor of the plaintiff's demand of enfiefment for the entire measure of land originally specified, citing as his reasons the fact that the terms of the agreement specified this as the amount that should have been allotted to them, and that the bishop had promised it to them.¹⁹⁶ One could

¹⁹⁵ The critical background for the case was the *iuramentum de non infeudando*, the oath instituted by the Reform papacy that no church property should be given away in fief without first consulting the pope (see, for example: X 3.20.2, *Ex parte tua*). The bishop of Florence who had begun the inquiry to which X 3.24.5 was a response was uncertain whether the disputed enfiefment made by his predecessor was valid, since there was a question whether he had first consulted the pope before proceeding.

¹⁹⁶ The final sentence is as follows, worded according to the *Decretals*, with the excised material appearing in italics: "being mindful that the Church should never practice any kind of deception in its dealings, we respond to you as follows, that you may safely renew the fief for those noblemen, since the land that should have been allotted to [those vassals] was in the amount of four measures [those vassals], and the aforementioned bishop had promised that he would give them the four measures." Orig.: "nos igitur attendentes, quod ecclesia in actibus suis fraudem non debet aliquam adhibere, *fraternitati tuae taliter* respondemus, quod feudum ipsum secure poteris *eisdem nobilibus* integrare, cum terra illa *nomine* quatuor modiorum ipsis fuerit assignata, *et iam dictus episcopus quatuor promiserit se daturum.*" Raymond made

read Raymond's elimination of the final clause as a reprise of Bernard, or simply as an elimination of juridically irrelevant material, since the idea of the bishop's promise adds no more justification for the decision than does the pope's recalling that this was the original terms of the deal. Given the relative infrequency with which Raymond's editing matched the *Compilatio Romana*, the latter option seems more likely.

The third example of correspondence, X 5.20.6, *Quam gravi poenae* (3Comp 5.11.3, Bern. 5.13.5), is similar in form to the first, involving a type of editorial excision that Raymond made with relative frequency. The letter addressed the perennial problem of the forgery of papal letters, and specified a number of formal errors by which a forgery could be detected. Like Bernard, Raymond focused exclusively on the latter half of the letter where the tell-tale indications of a forgery were listed, choosing to ignore the initial discussion of the circumstances under which the forgery was detected and the deleterious effects it had caused. After the opening words, both Raymond and Bernard eliminated the entire narrative, picking up only where the pope began his recommendations, thus giving the decretal the following structure: *Quam gravi poenae subiaceant (et infra) Nos vero...non admittas*. This was hardly an idiosyncratic editorial break. It was well-attested chancery form to pivot from the narrative to dispositive sections of a decretal using a sentence led by *Nos vero*, or *Nos igitur*.¹⁹⁷ As Raymond elsewhere demonstrated a penchant for eliminating the whole or a significant part of the narrative up to the *Nos vero* clause, the correspondence between X 5.20.6 and Bern 5.13.5 seems due rather to

one change that muddied the interpretation somewhat. The reading in 3Comp had been: "cum terra illa nomine quatuor modiorum," which made it clear that settlement was merely to fulfill the original terms that had been represented by the bishop. By removing the *nomine*, however, Raymond forces one to read *fuert assignata* as a true subjunctive (rather than just *cum*-dependent) in order for the clause to make sense.

¹⁹⁷ Of the many examples provided in the *Audientia litterarum contradictarum* formulary, see K 57h, K 201, K 225e, K 236: Herde, *Audientia litterarum contradictarum*, vol. 2, pp. 192, 347, 377, 390.

both editors following the internal logic of the decretal than to Raymond's dependence on Bernard.¹⁹⁸

Singer's final attempt to make Raymond's editing dependent upon Bernard, X 5.40.18, *Cum tibi* (3Comp 5.23.2, Bern. 5.24.2), is also the most tenuous. The letter from which it derived was a follow-up to an earlier grant by Innocent III to the bishop of Auxerre of the right of disposing the property of those clergy under his charge who had died intestate.¹⁹⁹ In response to the bishop's request for clarification of the privilege, including whether it was meant to include the cathedral canons as well as secular clergy, and how exactly one should define intestate, Innocent issued *Cum tibi*. Canonists saw in the letter two juridically important statements. The first was Innocent's declaration that

¹⁹⁸ Among the Innocent III texts – not found in the *Compilatio Romana* – where Raymond breaks at the *Nos vero* clause, one can cite: X 1.6.32, X 2.23.14, X 2.28.19, X 5.11.20 and X 5.13.2.

¹⁹⁹ The purpose of *Cum tibi*, or at least the portion included at X 5.40.18, was the cause of some confusion among later commentators on the *Decretals* (there is no indication of any problems prior to 1234). The common understanding – what canonists called the *ius commune* – stated that the goods of intestate clergy should go to their church (cf., Gratian C. 12, q. 3, c. 2). In the case of *Cum tibi*, which was directed to the diocesan church, this meant the bishop. So why the need for this text, and why did Innocent use the language of privilege (*indultum est*) to grant something that was already the bishop's responsibility by law? Several different theories were proposed, most of them revolving around the idea that the diocese in question had a custom whereby someone other than the bishop was to be granted charge of the goods of an intestate cleric. The expanded version of the ordinary gloss records the opinion (ca. 1266) of Bernardus de Montemirato (Abbas Antiquus), who posited the existence of a custom in certain parts of France that the relatives of those clerics would gain the right of disposing of the deceased person's goods. Although Bernard was based in the south of France, it seems possible that his comments reflect direct knowledge of some such arrangement in the regions around Auxerre: "*Cum tibi*] Propone sic casum secundum intellectum Abbatis Antiqui. In quibusdam partibus Franciae erat consuetudo, quod propinqui succederent clericis intestatis, etiam in bonis acquisitis intuitu ecclesiae. Contra hanc consuetudinem Papa concessit privilegium cuidam episcopo, quod ordinatio rerum clericorum ab intestato decedentium esset in sua dispositione," *ER*, vol. 2, col. 1941. Hostiensis imagined that the background might refer to a custom granting the disposition of goods to a lower ecclesiastical official at the cathedral, such as the archdeacon. He speculated further that maybe the church was in debt, and so *Cum tibi* was a special grant in the same way that churches were sometimes allowed to use the revenue of benefices to pay off their obligations: "*Rerum clericorum*]... Sed quae est haec indulgentia, cum iure communi hoc competat episcopo, ut praemissum est? Responsum potest intelligi, quod in hac ecclesia talia ad archidiaconum, vel alium de consuetudine pertinebant, arg. supra, *De excessibus praelatorum*, cap. ii [X 5.31.2], et sic gratiam continet specialem, vel dicit, ut in sequenti glossa. *Dispositione*] Ita quod exinde possit solvere debita, pro quibus tua ecclesia tenetur obligata, arg. infra, *eodem*, Tua nobis [X 5.40.32], et ita non est superfluum hoc indultum," *Lectura*, vol.4, fol. 126va. In any case, X 5.40.18 is a nice example of how commentators could fashion an historical context for their material when a straightforward legal justification was lacking.

those who died without having drawn up a formal will, but who nevertheless had committed their last wishes to a third party, should be considered as having functionally left a will. This brief section of the letter appeared at 3Comp 3.19.1 (Bern 3.20.3) and was taken over by Raymond at X 3.26.13. The second, longer portion contained Innocent's broad definition of the clergy to whom it applied, including canons (*canonici*) as well as the rest of the cathedral clergy. Because it was at root a definitional text, *Cum tibi* had been placed in both the *Compilatio Romana* and 3Comp in the title on the meaning of words (*De verborum significatione*), where it would remain when Raymond drew it into the *Decretals* at X 5.40.18.

Cum tibi was divided into two extracts in 3Comp. The text of the letter was given in full at 3Comp 5.23.2 (*Cum tibi...decedere intestatus*), while the shorter extract at 3Comp 3.19.1 simply repeated the brief, final section of the letter (*Cum tibi (et infra) In secunda...decedere intestatus*). Bernard, on the other hand, tried to avoid repetition and simply struck from his version at Bern 5.24.2 the section that was duplicated by the earlier Bern 3.20.3 (*In secunda...intestatus*). This same method of avoiding repetition was then employed by Raymond, whose text at X 5.40.18 corresponded with Bern 5.24.2 in ending at *...canonicos comprehendit*.²⁰⁰ Given the *Rex pacificus* mandate to remove *similitudo*, there is no need to invoke the influence of the *Compilatio Romana* to explain the elimination of such an obvious target.

To summarize the argument thus far: there is no compelling evidence to suggest that Raymond was influenced by the *Compilatio Romana* in terms of how he approached

²⁰⁰ Raymond went further and eliminated all mention from X 5.40.18 of who should be considered intestate, leaving that definition entirely to the brief excerpt from *Cum tibi* included at X 3.26.13. This is a good example of how Raymond controlled for repetition within his texts.

the job of editing his texts. The rare occasions of correspondence can be just as easily attributed to the editorial habits regularly practiced by Raymond throughout the rest of the *Decretals*. Given the aggressive approach that both compilers took to their texts, it is a wonder that there are not more coincidental similarities between the two. While there is one further class of evidence that Singer cited to argue for some kind of dependence by Raymond on the *Compilatio Romana*, this has to do with the inscriptions rather than the style of editing, and will be addressed in the third chapter.²⁰¹

1.11 The Language of Law

As the foregoing analysis has made clear, there have been traditionally two broad categories employed to analyze Raymond's editorial changes: 1) those with legal significance, which alter some aspect of the law; and 2) those that are non-judicial, designed to target excess verbiage or language that is unnecessary to the overall legal character of the text. There is no reason to abandon these categories, as they have a good deal of explanatory value. The juridical/non-judicial spectrum has been an effective way of contrasting Raymond's editorial strategy with that of earlier canonists, making differences between them largely a question of degree rather than kind. Raymond simply excluded, suppressed and added more than had any previous compiler, though owing to the official nature of the *Decretals* his editing could, at times, be qualitatively distinct from that of his predecessors, particularly through the more radical changes introduced into the text.

²⁰¹ This concerns the fact that for several of Innocent III's letters, the *Decretals* has an inscription that matches the register – as well as the text of the canon in the *Compilatio Romana* – rather than what is given in 3Comp. This is, indeed, a significant issue, but as will be shown in chapter three (§ 3.8 Divergent inscriptions in 3-4Comp), it has nothing to do with the *Compilatio Romana*, and depends rather on the version of 3Comp that Raymond employed.

There is an important way, however, in which this analysis has passed over a curious and largely unexplored feature of Raymond's editing. This feature has to do with how Raymond handled the formulaic elements of the papal decretals that made up the bulk of the material included in the collection. By analyzing Raymond's treatment of these elements, one can detect how a distinct legal language was beginning to take shape. This language was distinguished from that of the individual decretals not so much by the technical vocabulary employed, but by the way it constructed legal authority through the deliberation, mediation and communication of the law.

With the bureaucratization of justice and administration that developed in the wake of the Reform papacy, the papal chancery was forced to develop new protocols and types of documents to meet the ever-increasing demand for written, legal instruments.²⁰² Although the papal chancery was the oldest such institution in Europe, the characteristic form of the majority of letters ending up in the *Decretals* really only went back to the previous century. From about the third quarter of the twelfth century on one finds the gradual enumeration and refinement of the legal formulae, clauses and stock language

²⁰² There are many excellent works covering the diplomatics of the papal chancery. Among the general treatments one may mention: Paulius Rabikauskas, *Diplomatica Pontificia: praelectionum lineamenta*, 6th ed. (Rome, 1998); C. R. Cheney, *The Study of the Medieval Papal Chancery* (Glasgow, 1966); and Henry Bresslau, *Handbuch der Urkundenlehren für Deutschland und Italien*, 3rd ed., 2 vols. (Berlin, 1958). Perhaps the best treatment of the chancery close to the time when the *Decretals* was promulgated is Jane Sayers' previously mentioned (note 143) study of papal government under Honorius III: *Papal Government and England*; as well as her more general treatment of chancery practice in the introduction to her calendar of surviving papal letters in England: *Original Papal documents in England and Wales from the accession of Pope Innocent III to the death of Pope Benedict XI, 1198-1304* (Oxford, 1999). Of great value as well are several narrower studies of particular types of documents or divisions of the chancery that overlap with the sort of material found in the *Decretals*: Geoffrey Barraclough, *Papal Provisions: Aspects of Church History, Constitutional, Legal and Administrative in the Later Middle Ages*, (Oxford, 1935); and, of course, the seminal study of the *Audientia litterarum cointradictarum* by Peter Herde (as in note 34), which provides the best treatment of the formulae used in papal decretals.

that would enable the annual production of thousands of documents and provide some measure of standardization and protection against forgery.²⁰³

As Raymond was editing the texts of the *Decretals*, he focused on the elimination of four broad categories of formulaic language:

- 1) Language describing the deliberative process by which a pope came to the decision rendered in the decretal, and whether he consulted with the cardinals (*fratres nostri*) or other individuals versed in the law (*iurisperiti*).
- 2) Language appealing to additional sources of authority outside of the papal mandate.
- 3) Language describing how the law itself is mediated and communicated, whether physically, through the decretal itself (*per apostolica scripta*), or locally, specifying the forum where the case was heard (*in audientia/praesentia nostra, apud sedem apostolicam*).
- 4) Language of affection by which the pope addressed various members within the Church, using terms like *venerabilis frater* or *dilectus filius* according to their position within the hierarchy.

1.11.1 Reflecting the Deliberative Processes

Raymond consistently eliminated language that described the pope having come to a decision as a result of a prior deliberative process, usually with the cardinals. The most frequent expression used to denote papal deliberation with the cardinals was the formula *de consilio fratrum nostrorum*, “on the advice of our brothers,” i.e., the cardinals, as in *de consilio fratrum nostrorum mandamus quatenus*, “we order on the advice of our brothers that...”²⁰⁴ Although the formula could appear at any point in the decretal where

²⁰³ For a case study of the development of the *non-obstantibus*, one of the most important formulae that invested a decretal with the ability to supersede contrary customs or previous papal privileges, see: Brigitte Meduna, *Studien zum Formular der päpstlichen Justizbriefe von Alexander III. bis Innocenz III. (1159-1216): Die non-obstantibus Formel* (Sitzungsberichte der kaiserlichen Akademie der Wissenschaften in Wien, philosophisch-historische Klasse 436: Vienna, 1989).

²⁰⁴ Sometimes also *de fratrum nostrorum consilio*; see below for the diplomatic history of the formula.

the pope discussed his previous deliberations and decisions on a given case,²⁰⁵ it normally was placed right in front of the verb (*mandamus, statuimus, declaramus, decernimus, decrevimus*) inaugurating the final settlement. Notably, however, the elimination of deliberative language was not restricted to the *de consilio* formula. All of the possible variations, such as *habito/a cum fratribus nostris diligenti tractatu/deliberatione; cum fratribus nostris deliberare*; or invocations of the cardinals' consent (over and above their counsel), as in *de consensu fratrum nostrorum*, were targeted by Raymond for elimination.²⁰⁶ Before attempting to quantify the frequency of this kind of elimination, it may be helpful to say a few words about the use of deliberative language in papal decretals.

The formula *de fratrum nostrorum consilio* first came into widespread use in papal documents during the pontificate of Innocent II.²⁰⁷ It wasn't until the second half

²⁰⁵ For example, X 1.6.23, *Bonae memoriae M.*, which concerned the disputed election of the archbishop of Mainz during Innocent's pontificate (see chapter four for a longer discussion of X 1.6.23 and its importance for source-critical discussions by thirteenth-century commentators). The first part of this long decretal was devoted to Innocent III's reciting the record of his previous interventions in the case, including his initial appointment, after hearing from both sides and consulting with the cardinals, of the Cardinal Bishop of Palestrina to adjudicate the case. Note in the following passage the elimination of the *de consilio* formula and the other references to both sides having presented their case (italicized portions represent language removed by Raymond): "*Partibus igitur in nostra praesentia constitutis, et eis in consistorio nostro diligenter et sufficienter auditis, de fratrum nostrorum consilio venerabili fratri nostro Praenestino episcopo, a sede apostolica legato, dedimus in mandatis, ut...*"

²⁰⁶ In another decretal from the title on elections (X 1.6.54, *Dudum ecclesia R.*), this time from Pope Gregory IX himself, Raymond eliminated more casual deliberative language in the context of prior papal action in the case (italics indicate the *partes decisaes*): "*Hiis igitur et aliis coram nobis hinc inde propositis plene ac diligenter auditis, et deliberatione cum fratribus nostris habita diligenti, tandem, cum iam ex hiis que acta fuerant non restaret, nisi proferenda sententia, idem decanus in presentia nostra et fratrum nostrorum tam iuri, si quod ei competere videbatur, quam liti cessit spontanea voluntate, cuius cessionem nos duximus admittendam,*" Auvray 655; Reg. 15, fol. 95r; Potthast 8306. For the full collation of the *Decretals'* version of the letter with the enregistered original, see the final appendix, no. 20.

²⁰⁷ For the use of this formula prior to the 1234 see: Werner Maleczek, *Papst und Kardinalskolleg von 1191 bis 1216* (Publikationen des historischen Instituts beim österreichischen Kulturinstitut in Rom, edd. Otto Kresten and Adam Wandruszka, Abhandlungen, vol. 6: Vienna, 1984) pp. 307ff. For later thirteenth-century usage see: Agostino Paravicini Bagliani, "*De fratrum nostrorum consilio: La plenitudo potestatis del Papa ha bisogno di consigli?*," *Consilium: Teorie e pratiche del consigliare nella cultura medievale*, edd. Carla Casagrande, et al. (Micrologus Library 10: Florence, 2004) pp. 181-94; and: Norman Zacour,

of the twelfth century, however, that the phrase meant consultation with the cardinals exclusively, rather than a more diverse group of prelates that might also include archbishops, bishops and abbots. The types of documents in which this expression appeared were extremely varied and cannot be reduced to a discrete set, though generally consultation with the cardinals was invoked for the more weighty curial decisions, and in decretals that dealt with cases deemed important, either because of the persons involved, or because of the difficulty of the legal issues. In terms of frequency, Maleczek's research, for example, has found the *de consilio* formula and its derivatives in slightly more than 10% of Innocent III's registered letters.²⁰⁸

The obligation to consult with the stakeholders as a collective by the head of any ecclesiastical institution was a deeply embedded principle within the Church, going back to the earliest stages of institutional development in Antiquity. Like its secular analogue, *consilium et auxilium*, the principle of consultation persisted with the coevolution of the Church alongside feudal structures.²⁰⁹ Although Roman Law was constitutionally less amenable to the idea of limits upon a legislator's authority, canonical jurists were able to bring together disparate strands to stitch at least a bias toward seeking the advice of those

"The cardinals' view of the papacy," in: *The Religious Roles of the Papacy: Ideals and Realities, 1150-1300*, ed. Christopher Ryan (Papers in Medieval Studies 8: Toronto, 1989) pp. 413-38, esp. 421-30.

²⁰⁸ Maleczek, *Papst und Kardinalskolleg*, pp. 315-6. Since there was a bias towards registration of significant documents, one imagines the overall percentage across all papal letters would be lower. Notably, Maleczek points out that the annual frequency of the formula's appearance varied significantly over the course of Innocent's pontificate, with upwards of 15% of the documents in the early years containing the formula, while the percentage from letters towards the end of his reign dropped to as low as 4.5%. The pattern of variation suggests there might have been an inverse correlation between papal power and recourse to deliberation (on the assumption that Innocent was strongest near the end of his reign, which seems like a safe one).

²⁰⁹ The literature on advice and consent in the medieval Church is vast. For a general overview of the broader constitutional questions involved, see the previously (n. 70) cited: Tierney, *Foundations of the Conciliar Theory*; and: Pierre Michaud-Quentin, *Universitas: expressions du mouvement communautaire dans le Moyen-Âge latin* (L'Église et l'État au Moyen Âge 13: Paris, 1970).

whom legislation concerned. The now well-known dictum “quod omnes tangit ab omnibus approbari (what touches all should be approved all),” had been drawn from a completely unrelated law on the obligation of guardians to look after the interests of their charges, and was transformed by canonists into a *regula iuris*.²¹⁰

Consultation was taken as a given for bishops and abbots – indeed, there was a whole title in the *Decretals* devoted to censuring actions carried out by prelates without the consent of their chapters (X 3.10, *De his quae fiunt sine consensu capituli*). As seen in the above discussion of the *de consilio* formula, the principle was also firmly established at the curia, though prior to 1234 there was a good deal of ambiguity concerning its scope and necessity. Not surprisingly, papal pronouncements about the cardinals’ role tended to dwell upon the propriety of consulting them rather than an outright obligation. The only self-professed restraint on papal actions without the participation of the cardinals was the alienation of property from the Roman patrimony, a limitation agreed to by none other than Gregory IX.²¹¹

Similarly, canonists writing before the *Decretals* assigned the cardinals some participation in creating the sources of law, although their exact role – particularly when it came to the decisions embodied in decretals – was not spelled out in any great detail. In his *Summa de iure canonico*, Raymond made distinctions between the different sources of canon law in part based upon whether the cardinals had participated in their formulation, though he also allowed for some decretals having been decided by the pope

²¹⁰ Cod 5.59.5. On the medieval use of this phrase, see: Gaines Post, “*Plena potestas* and consent in medieval assemblies,” *Traditio* 1 (1943) pp. 355-408; idem, “A Romano-canonical maxim *quod omnes tangit* in Bracton,” *Traditio* 4 (1946) pp. 197-251.

²¹¹ *Rex excelsus*, Auvray 1715; Potthast 9368. A large portion of the cardinals’ income was derived from the Patrimony of St. Peter. See: Zacour, “The Cardinals’ view of the papacy,” p. 428.

alone.²¹² In a sign of the evolving conception of papal monarchy, the decretists began to debate whether or not the pope was able to establish a general law for the whole Church without input from the cardinals.²¹³ Although it became established by the end of the thirteenth century that the cardinals had to be consulted in *magnis et arduis causis*, at the time Raymond was compiling the *Decretals* the doctrine had not yet been set.

There are around 140 instances of the *de consilio* clause or related deliberative language that Raymond had an opportunity to eliminate.²¹⁴ Of these, he got rid of around 85%, producing a rough ratio of about 7:1 between eliminated and preserved instances of deliberative language. This is a remarkable difference, one that signals a clear intent on Raymond's part to suppress this language. The following chart gives a complete breakdown based upon source, type of deliberative language, and the legal action to which the deliberation was tied as indicated by the dispositive verb that follows each instance of consultation.

²¹² “Nota quod constitutio ecclesiastica variis nominibus appellatur: quandoque canon, quandoque decretum, quandoque decretalis epistula. *Canon* dicitur id quod constituitur in concilio universali; *decretum* quod Papa statuit de consilio cardinalium ad nullius consultationem. *Decretalis* epistula quam Papa vel solus vel cum cardinalibus ad consultationem alicuius concedit,” *Summa der Iure canonico*, col. 10.

²¹³ The arguments of Laurentius Hispanus and others in the early-thirteenth century were later summarized by the canonist Guido de Baysio, in his *Rosarium* on the *Decretum* (C. 25, q. 1, c. 6): “dicit Laurentius quod generalem legem de universali statu ecclesie condere non potest papa sine cardinalibus, sed particularem sic, ar. x i . di. Catholica [D. 11 c. 8]; sed videtur quod solus papa possit condere canones, ar. xcvi. di. Constantinus, palea est [D. 96 c. 14], licet sit argumentum contra, C. de le., Si imperialis et lex humanum,” quoted in: J. A. Watt, “Hostriensis on *Per venerabilem*,” p. 107, note 24.

²¹⁴ This quantification does not count instances of the *de consilio* formula or any other deliberative language that is buried in the middle of a large block of excised text. Only those instances are counted where there is no mistaking the deliberate choice to keep or suppress the language, like in the following example from X 1.4.8 (*italics indicate* excised text): “Quia nobis constitit, electionem ipsam a suspensis, et de suspenso etiam celebratam, eam *de consilio fratrum nostrorum* iustitia cassavimus exigente.” The totals are approximate owing to some marginal cases, but this does not materially affect the overall ratio of eliminated to preserved instances of deliberative language.

Table 1.3. Instances of consultation with the cardinals in the *Decretals*

Key word = Type of consultation (*consilium, tractatus, consensus, deliberatio*).
 Status = “pd” (eliminated as a *pars decisa*), or “txt” (retained in text).
 Dispositive verb = The wording of the papal action/decision for which counsel was sought. So the full phrase used in no. 1, for example (X 1.4.8), is (*italics* indicating excision): “*de consilio fratrum nostrorum iustitia cassavimus exigente.*” For no. 2 (X 1.5.1): “*habito super hoc cum fratribus nostris diligenti tractatu,*” where there is no dispositive but simply mention of deliberation. For no. 8 (X 1.6.19): “*de communi fratrum nostrorum consensu vobis in procuratorem concedimus.*”; and so on.

NB: eliminations listed first (nos. 1- 119) followed by those retained (120-139)

No.	X	Key Word	Formal Source	Pope	Status	Dispositive Verb
1	1.04.08	consilio	3Comp 1.03.07	Inn. 3	pd	cassavimus
2	1.05.01	tractatu	3Comp 1.04.01	Inn. 3	pd	habito
3	1.05.04	tractatu	3Comp 1.04.04	Inn. 3	pd	habito
4	1.06.10	consilio	1Comp 1.04.22	Alex. 3	pd	cassamus
5	1.06.16	consilio	3Comp 1.06.01	Inn. 3	pd	dicimus non legitimam
6	1.06.17	consilio	3Comp 1.06.02	Inn. 3	pd	irritandam duximus
7	1.06.19	tractatu	3Comp 1.06.04	Inn. 3	pd	habito
8	1.06.19	consensu	3Comp 1.06.04	Inn. 3	pd	concedimus
9	1.06.20	tractatu	3Comp 1.06.05	Inn. 3	pd	habito
10	1.06.23	consilio	3Comp 1.06.08	Inn. 3	pd	dedimus in mandatis
11	1.06.23	tractatu	3Comp 1.06.08	Inn. 3	pd	habito
12	1.06.23	consilio	3Comp 1.06.08	Inn. 3	pd	habemus ratam
13	1.06.24	consilio	3Comp 1.06.09	Inn. 3	pd	absolvimus
14	1.06.25	consilio	3Comp 1.06.10	Inn. 3	pd	confirmandam duximus
15	1.06.29	consilio	3Comp 1.06.14	Inn. 3	pd	irritandam duximus
16	1.06.30	consilio	3Comp 1.06.15	Inn. 3	pd	irritandam decernimus
17	1.06.31	consilio	3Comp 1.06.16	Inn. 3	pd	mandamus
18	1.06.32	consilio	3Comp 1.06.17	Inn. 3	pd	providendum duximus
19	1.06.37	consensu	4Comp 1.03.03	Inn. 3	pd	irritare curavimus
20	1.06.47	consilio	5Comp 1.05.05	Hon. 3	pd	silentium imponimus
21	1.06.48	consilio	5Comp 1.05.06	Hon. 3	pd	cassavimus
22	1.06.50	consilio	Auvray 184	Greg. 9	pd	providendum duximus
23	1.06.53	consilio	Auvray 454	Greg. 9	pd	mandamus
24	1.06.54	consilio	Auvray 655	Greg. 9	pd	admittentes nullatenus
25	1.06.54	deliberatione	Auvray 655	Greg. 9	pd	habita
26	1.06.56	consilio	Auvray 695	Greg. 9	pd	irritamus
27	1.07.03	consilio	3Comp 1.05.03	Inn. 3	pd	praecipimus
28	1.09.06	consilio	2Comp 1.05.04	Clem. 3	pd	silentium imponendum duximus
29	1.11.11	consilio	3Comp 1.09.03	Inn. 3	pd	ordinare
30	1.11.15	consilio	4Comp 1.07.01	Inn. 3	pd	suspendimus
31	1.14.15	consilio	5Comp 1.08.01	Hon. 3	pd	amovendum duximus
32	1.29.28	consilio	3Comp 1.18.07	Inn. 3	pd	respondendum duximus
33	1.31.09	consilio	3Comp 1.20.03	Inn. 3	pd	respondemus
34	1.33.14	consilio	Auvray 668	Greg. 9	pd	observari decrevimus

35	1.33.15	consilio	Auvray 645	Greg. 9	pd	statuimus presenti decreto
36	1.38.04	consilio	3Comp 1.22.01	Inn. 3	pd	irritandum duximus
37	1.38.08	consensu	5Comp 1.22.01	Hon. 3	pd	irrita iudicasse
38	1.40.06	consilio	3Comp 1.23.03	Inn. 3	pd	silentium imponendum duximus
39	1.41.06	consilio	4Comp 1.17.01	Inn. 3	pd	condemnavimus
40	1.41.07	consilio	5Comp 1.23.01	Hon. 3	pd	indulgendum duximus
41	1.43.05	consilio	3Comp 1.25.02	Inn. 3	pd	observendam decernimus
42	2.06.01	consilio	3Comp 2.03.01	Inn. 3	pd	respondemus
43	2.06.02	consilio	3Comp 2.03.02	Inn. 3	pd	cassavimus
44	2.07.01	consilio	1Comp 1.34.02	Hon. 2	pd	decidimus
45	2.10.02	consilio	3Comp 2.04.01	Inn. 3	pd	pronunciavimus
46	2.12.03	consilio	3Comp 2.05.01	Inn. 3	pd	irritandam decrevimus
47	2.12.04	consilio	3Comp 2.05.02	Inn. 3	pd	restituendum decrevimus
48	2.12.08	consilio	5Comp 2.06.01	Hon. 3	pd	liberum decernimus
49	2.13.12	consilio	3Comp 2.06.02	Inn. 3	pd	absolutum reddimus
50	2.13.15	consilio	3Comp 2.07.05	Inn. 3	pd	pronunciavimus
51	2.14.06	consilio	3Comp 2.07.02	Inn. 3	pd	contumacem reputavimus
52	2.14.07	tractatu	3Comp 2.07.03	Inn. 3	pd	habito
53	2.15.01	consilio	1Comp 2.11.01	Alex. 3	pd	decernimus
54	2.19.09	consilio	3Comp 2.11.04	Inn. 3	pd	condemnamus
55	2.20.16	consilio	1Comp 2.13.16	Alex. 3	pd	decernimus
56	2.20.36	consilio	3Comp 2.12.09	Inn. 3	pd	mandamus
57	2.22.06	consilio	3Comp 2.06.01	Inn. 3	pd	absolvendum duximus
58	2.25.06	deliberatione	4Comp 2.05.01	Inn. 3	pd	habita
59	2.26.12	consilio	3Comp 2.17.02	Inn. 3	pd	mandamus
60	2.26.13	consilio	3Comp 2.17.03	Inn. 3	pd	concessa
61	2.26.13	consilio	3Comp 2.17.03	Inn. 3	pd	condemnavimus
62	2.26.13	consilio	3Comp 2.17.03	Inn. 3	pd	iudicatum
63	2.26.18	consilio	3Comp 2.17.08	Inn. 3	pd	absolvendum duximus
64	2.27.08	consilio	1Comp 2.19.10	Alex. 3	pd	revocavimus
65	2.27.12	consilio	3Comp 2.18.02	Inn. 3	pd	irritum revocavimus
66	2.27.13	consilio	3Comp 2.18.03	Inn. 3	pd	communicato
67	2.27.14	tractatu	3Comp 2.18.03	Inn. 3	pd	habito
68	2.27.14	consilio	3Comp 2.18.04	Inn. 3	pd	confirmare curavimus
69	2.27.17	consilio	3Comp 2.18.07	Inn. 3	pd	confirmandam duximus
70	2.27.20	consilio	3Comp 2.18.10	Inn. 3	pd	ratam habemus
71	2.28.44	consilio	3Comp 2.19.02	Inn. 3	pd	statuimus praesenti decreto
72	2.28.46	consilio	3Comp 2.19.04	Inn. 3	pd	decernimus non impediri
73	2.28.55	consilio	3Comp 2.19.13	Inn. 3	pd	irritam decernimus
74	2.28.68	consilio	Auvray 402	Greg. 9	pd	irritam decrevimus
75	2.28.68	consilio	Auvray 402	Greg. 9	pd	silentium imponendum duximus
76	3.04.16	consilio	Auvray 348	Greg. 9	pd	mandamus
77	3.05.25	consilio	4Comp 3.02.01	Inn. 3	pd	condemnandum duximus
78	3.08.05	consilio	3Comp 3.08.02	Inn. 3	pd	mandamus
79	3.08.08	consilio	3Comp 3.08.02	Inn. 3	pd	ratam habentes
80	3.11.03	consilio	3Comp 3.12.01	Inn. 3	pd	confirmamus
81	3.12.01	deliberatione	3Comp 3.10.01	Inn. 3	pd	deliberavimus in auditorio
82	3.17.03	deliberatione	1Comp 3.15.04	Alex. 3	pd	habita

83	3.21.06	consilio	3Comp 3.17.03	Inn. 3	pd	restituendas decrevimus
84	3.24.08	consilio	3Comp 3.18.05	Inn. 3	pd	adiudicare curavimus
85	3.27.03	deliberatione	3Comp 3.20.01	Inn. 3	pd	habita
86	3.28.10	consilio	3Comp 3.21.1	Inn. 3	pd	sententiam proferedam duximus
87	3.30.31	consilio	4Comp 3.09.03	Inn. 3	pd	prohibemus
88	3.31.23	consilio	Auvray 572	Greg. 9	pd	statuimus presenti decreto
89	3.31.24	consilio	Auvray 1667	Greg. 9	pd	statuendum duximus
90	3.36.07	consilio	4Comp 3.13.01	Inn. 3	pd	adiudicavimus
91	3.37.02	consilio	3Comp 3.39.01	Inn. 3	pd	condemnamus
92	3.39.14	consensu	2Comp 3.25.03	Luc. 3	pd	condemnavimus
93	3.39.14	deliberatione	2Comp 3.25.03	Luc. 3	pd	habita
93	3.39.17	consilio	3Comp 3.37.02	Inn. 3	pd	respondemus
95	3.39.19	consilio	3Comp 3.37.04	Inn. 3	pd	condemnamus
96	3.39.20	consilio	3Comp 3.37.05	Inn. 3	pd	condemnamus
97	3.39.21	consilio	3Comp 3.37.06	Inn. 3	pd	decernimus
98	4.02.13	consilio	3Comp 4.02.01	Inn. 3	pd	pronunciamus
99	4.07.04	consilio	2Comp 4.05.01	Clem. 3	pd	respondemus
100	4.13.04	consilio	2Comp 4.17.03	Coel. 3	pd	respondemus
101	4.17.14	tractatu	3Comp 4.12.03	Inn. 3	pd	habito
102	4.19.07	consilio	3Comp 4.14.01	Inn. 3	pd	respondentes distinguimus
103	5.02.02	consilio	3Comp 5.01.07	Inn. 3	pd	absolvendum decernimus
104	5.05.05	consilio	5Comp 5.02.01	Hon. 3	pd	decernentes et mandantes
105	5.06.12	consilio	2Comp 5.04.06	Clem. 3	pd	excommunicationi supponentes
106	5.07.09	consilio	1Comp 5.06.11	Luc. 3	pd	praesenti decreto condemnamus
107	5.07.10	consilio	3Comp 5.04.01	Inn. 3	pd	inhibemus
108	5.17.02	deliberatione	1Comp 5.14.05	Eug. 3	pd	statutum in concilio
109	5.20.03	consilio	2Comp 5.09.02	Urb. 3	pd	respondemus
110	5.20.04	consilio	3Comp 5.11.01	Inn. 3	pd	statuimus
111	5.27.08	consilio	4Comp 5.06.01	Inn. 3	pd	approbandum duximus
112	5.32.02	consilio	3Comp 5.15.01	Inn. 3	pd	mandamus
113	5.33.12	consilio	3Comp 5.16.02	Inn. 3	pd	decernimus
114	5.33.17	consilio	3Comp 5.16.07	Inn. 3	pd	sententialiter diffinimus
115	5.34.10	consilio	3Comp 5.17.01	Inn. 3	pd	indicendam duximus
116	5.39.28	consilio	3Comp 5.21.02	Inn. 3	pd	respondemus
117	5.39.49	consilio	5Comp 1.01.02	Hon. 3	pd	excommunicamus
118	5.40.15	consilio	2Comp 5.23.01	Coel. 3	pd	interpretamur et diffinimus
119	5.40.25	consilio	3Comp 5.23.10	Inn. 3	pd	adiudicavimus
120	1.04.05	consensu	3Comp 1.03.04	Inn. 3	txt	irritandam duximus
121	1.05.06	consilio	5Comp 1.04.01	Hon. 3	txt	irritandam duximus
122	1.06.06	consilio	1Comp 1.04.15	Conc. Lat III	txt	decrevimus adiugendum
123	1.06.20	tractatu	3Comp 1.06.05	Inn. 3	txt	habito
124	1.06.50	consilio	Auvray 184	Greg. 9	txt	irritandas duximus
125	1.06.54	consilio	Auvray 655	Greg. 9	txt	irritum duximus
126	1.06.54	consilio	Auvray 655	Greg. 9	txt	irritum duximus
127	1.06.55	consilio	Auvray 741	Greg. 9	txt	irritam decernimus
128	1.06.57	consilio	Auvray 192	Greg. 9	txt	irritandam duximus
129	1.29.37	consilio	5Comp 1.15.02	Hon. 3	txt	cassivimus
130	1.30.05	consilio	3Comp 1.19.03	Inn. 3	txt	irritam censuimus

131	2.05.01	consilio	Auvray 669	Greg. 9	txt	irritum duximus
132	2.08.04	consilio	Auvray 488	Greg. 9	txt	indulgendum duximus
133	2.13.19	consilio	Auvray Deest	Greg. 9	txt	irritum iudicamus
134	2.14.08	consilio	4Comp 2.04.01	Inn. 3	txt	suspendentes
135	2.22.10	consilio	4Comp 2.08.01	Inn. 3	txt	pronunciavimus
136	3.32.20	consilio	Auvray 500	Greg. 9	txt	silentium imponentes
137	5.20.07	consilio	3Comp 5.11.04	Inn. 3	txt	statuendum duximus
138	5.33.31	consilio	Auvray 475	Greg. 9	txt	decernimus
139	5.34.05	consilio	3Comp 5.29.04	Inn. 3	txt	iudicamus

There is no discernible thematic pattern for those texts from which Raymond removed deliberative language. Although at first glance there appears to be a disproportionate number of decretals from the title on election (X 1.6 *De electione*) where the deliberative language was retained (7 out of 20), it could be due simply to the overrepresentation in this title among decretals recording consultation with the cardinals (20 out of the 119 eliminations), and not of any statistical significance. Many of the *De electione* decretals arose out of disputed elections for the highest offices within the Church, and were, therefore, of significant enough import to necessitate broad participation by members of the papal curia.

On the other hand, there is a noticeable lack of the *mandamus* form among those instances where Raymond retained consultation with the cardinals, i.e., decretals that gave instructions to a judge delegate on how to proceed with a case. Instead, they cover actions where, among other things, the pope was judging on appeal (X 2.22.10), overturning the actions of another judge (X 1.29.37), or acting as the court of first instance (X 5.34.5). Again, this may be due to the underrepresentation of the simple mandate-form from among the types of texts that warranted consultation with the

cardinals.²¹⁵ However, there are no types of letters in the smaller group, where consultation is retained, that are not also found in one form or another in the larger number where Raymond had removed consultative language. Perhaps more detailed research will uncover the reasons – if there are any – why Raymond chose to retain a small number of instances referring to consultation with the cardinals. Until then what we are left with is the distinct impression that Raymond’s editing deliberately minimized the role that the cardinals played – at least in appearance – in the judicial and legislative procedures of the curia.

Using the frame of internal curial politics to interpret Raymond’s removal of the cardinals from curial deliberations might not be incorrect, but it also might not be the whole story. In the *Decretals* we are dealing with more of a textual phenomenon than a record of political action. That being the case, it may be helpful to ask what exactly the removal of deliberative language accomplishes from the standpoint of legal rhetoric. This question can only be answered, however, after examining the other ways in which Raymond shaped the legal language of the *Decretals*.

1.11.2 Corroborative sources of authority

Going all the way back to the birth of written law in the Ancient Near East, there has been a long-standing tradition of regarding the mere statement of the law as insufficient in and of itself to compel obedience.²¹⁶ Whether it be the invocation of divine retribution, the calling down of curses upon the head of the lawbreaker and his

²¹⁵ One example of a simple mandate that was made *de consilio fratrum nostrorum* is Gregory IX’s X 3.4.16 (see chapter 5, Appdx. B, no. 112). However, only seven out of the 119 cases where Raymond eliminated mention of the cardinals’ participation have the *mandamus* form.

²¹⁶ See, for example, the long list of curses appended to the Code of Hammurabi directed at those daring to violate its ordinances: “The Code of Hammurabi,” trans. Theophile Meek, in: *Ancient Near Eastern Texts Relating to the Old Testament*, 3rd ed., ed. James Pritchard (Princeton, 1969) pp. 163-80.

progeny, or the piling up of additional ancestral ordinances, everyone, from legislators to contract-writers, has sought to bolster newly-passed legislation or recently-signed agreements with supplementary appeals to legal and extralegal authority.²¹⁷ The corroborative adducement of additional authorities is well-attested throughout the individual capitula of the *Decretum*, for example, whether that authority be scripture, the church fathers, or canonical sanctions that kick in upon violation of the ordinance (*anathema sit*).

Among the decretals that Raymond inherited, the tendency to invoke additional authorities outside of that implicit in the papal office was less pronounced than it had been prior to the revolution in Romano-canonical judicial procedure in the late-twelfth century. There were plenty of exceptions, of course. One category of *partes decisae* already discussed was the tropological language in the *arenga*, which in some sense functions as a kind of additional authority, insofar as it established a linkage between papal power and the divine will, or mapped out a correspondence between ecclesiastical institutions and the supernal order.²¹⁸ Raymond did not hesitate to eliminate these, even when they contained strong affirmations of papal authority.

²¹⁷ For a study of the use of sanction clauses in Benedictine charters, which secured the charter agreement with elaborate and often terrifying curses, see: Lester Little, *Benedictine Maledictions* (as in note 37).

²¹⁸ To give yet another example, the following are the opening lines from Innocent III's letter prohibiting ecclesiastical judges from exacting any fee for their services (X 3.1.10), in which the pope makes an appeal to the prophetic roots of his authority. Only the first part of the rather long *pars decisa* is given, which is an adaptation of Jeremiah 1 (*italics* indicate excised language): "Since the Apostle has commanded the avoidance of all appearance of evil, *we, who (although unworthy) have been appointed over the nations and kingdoms, so that, according to the word of the prophet, we may root out and destroy, build up and plant, [and] most of all we should endeavor, that by rooting out vices we may plant virtues, and by destroying iniquity we may build up honesty, and thus by the intervention of our solicitude what is crooked may become straight, and what is rough may be made smooth.*" Orig.: "Cum ab omni specie mali praecipiat Apostolus abstinere (et infra) nos, qui, licet indigni, constituti sumus a Deo super gentes et regna, ut iuxta verbum propheticum evellamus et destruamus, aedificemus et plantemus, summopere debemus satagere, quatenus evellamus vitia et plantemus virtutes, destruamus iniqua et aedificemus honesta, sicque nostra sollicitudine mediante prava transeant in directa, et aspera convertantur in plana."

On a more limited basis, however, many of the decretals still retained all sorts of casual, formulaic invocations of authority aimed at bolstering whatever was being prohibited, permitted or decided in the text. One regularly finds the church fathers, the holy canons, or even the generic judgment of civil law called upon to corroborate the papal pronouncement delivered in the decretal. The following are a few examples of the types of corroborative authority employed in the *Decretals*, along with how Raymond edited out the language (*italics* indicate *partes decisae*):

1. *Auctoritas sanctorum Patrum*

X 4.2.8, *A nobis tua* (Alexander III to the bishop of Bath)

...Ad quod respondemus, quod pro eo, quod ante nubiles annos coniugalem consensum *de sanctorum Patrum* non habent *auctoritate*, usque ad legitimam aetatem exspectare tenentur, et tunc aut confirmetur matrimonium, aut, si simul esse noluerint, separentur...

To which we reply, on the basis that those who are not yet of marriageable age do not have, *according to the authority of the holy fathers*, the capacity to give conjugal consent, that they should be obligated to wait until they are of legal age, and then either the marriage will be confirmed, or if both of them do not wish that there be a marriage, they may separate.

X 5.9.1, *Praeterea clerici* (Alexander III)

Praeterea clerici, qui, relicto ordine clericali et habitu suo, in apostasia tanquam laici conversantur, si in criminibus comprehensi teneantur, per censuram ecclesiasticam non praecipimus liberari. *Tales enim inter apostatas numerandos sanctorum Patrum statuta declarant...*

Furthermore those clerics, who, having abandoned their order and clerical habit, and are abiding in apostasy as laymen, if they should be arrested for involvement in criminal activity, we shall not enjoin their release through the use of ecclesiastical censure. *That such men are to be numbered among the apostates the ordinances of the holy fathers declare.*

2. *Contra canonicas sanctiones*

X 5.3.36, *In tantum peccatis* (Innocent III to the archbishop of Canterbury)

...Sane pervenit ad audientiam nostram, quod, cum olim quidam suffraganei tui pro chrismate *contra canonicas sanctiones* certam consueverint accipere pecuniae quantitatem, non metuentes poenam canonicam, et correctionem tuam eludere cupientes, tempus faciendae solutionis anticipant, recipientes in media quadragesima quod recipere consuevere post Pascha, et, ut causam recipiendi dissimulent, nomen denariorum variant, denarios, quos prius chrismales, secundo paschales dicebant, consuetudinem mediae quadragesimae nuncupantes...

However, it has come to our attention, that at one time certain of your suffragens were accustomed to receive, *in contravention of canonical ordinances*, a specified sum of money for chrismatic oil, and not fearing canonical punishment, and aiming to skirt your correction, they pushed forward the time of payment, receiving in the middle of Lent what they had been accustomed to get after Easter, and in order to hide the reason behind receiving the money, they changed the name of the payments, saying at first they were “chrismales” and later on “paschales,” calling it the Mid-Lenten custom.

3. *Contra/iuxta canones et legitimas sanctiones*

X 2.19.12, *Ad nostram noveritis* (Honorius III to the archbishop of London [*immo*: Lund] and his suffragens)

Ad nostram noveritis audientiam pervenisse, quod sacerdotes et clerici Daciae legi regni, per quam negativa probatur, *contra canones et legitimas sanctiones* temere innitentes, a criminibus, quae probari testibus fide dignis possunt legitime contra eos, reputantur insontes, si se super his purgare valeant quoquo modo...

You have known that it came to our attention, that the priests and clergy of Dacia, shamefully relying, *in contravention of the canons and civil ordinances*, on the law of the kingdom allowing a negative to be proved,²¹⁹ are reckoned as innocent of the crimes for which there are trustworthy witnesses able to prove their guilt, provided these clergy are able to expurgate themselves in any fashion.

X 1.38.4, *In nostra praesentia* (Innocent III to the bishops of Châlons sur Saone and Châlons sur Marne)

...Quae sunt proposita, plenam fidem, attendentes etiam, quod falsi procuratoris exceptio non solum ante sententiam, verum etiam postea potest obiici *iuxta canonicas et legitimas sanctiones*, utpote qua probata iudicium nullum et nullius

²¹⁹ The explanation for this is alluded to later in the passage. What Honorius is referring to is the practice of allowing someone to establish his innocence by simply swearing an oath to this fact, regardless of whether there are positive forms of proof or witness testimony to establish his guilt. The selection has been placed in the title on forms of proof (X 2.19 *De probationibus*), and was meant to apply to procedures observed in ecclesiastical courts.

momenti controversiae reputantur *de consilio fratrum nostrorum* processum supradictorum iudicum sententialiter duximus irritandum.

Giving credence to what has been put forward, *viz.*, that an objection of fraudulent representation may be alleged, *according to canonical and civil ordinances*, not only prior to the sentence, but also even afterwards, meaning that anything proved should be considered immaterial and not result in a judgment, *we, having taken counsel with our brothers*, have directed that the trial of the abovementioned judges be invalidated.

Raymond removed around half of the roughly 150 occurrences of formulaic corroborative language in the *Decretals*. Even more than with the consultation of the cardinals, there is no discernible pattern that predicts when or why mentions of corroborative authority are retained or removed, which suggests instead a general desire to trim this type of language from the collection. As should be clear from the above examples, Raymond's careful and deliberate subtraction of these phrases does nothing to alter their legal valence.

1.11.3 Embodied Law

Most decretals were the product of individual cases brought to the pope's attention either indirectly, by way of their having been heard in the court of the ordinary, a papal legate, or a prior-appointed judge delegate, or directly when the pope acted as the court of first instance. In addition to their narrative details, they retained all of the linguistic hallmarks of a case-specific rescript, like the fact of their transmission by means of a physical letter, or the record of the locale where the case had been heard. The law was quite literally embodied in the text through the decretal's self-referencing language concerning how and where the law was communicated.

The formulaic language of embodiment took several forms. With respect to the means of transmission, by far the most frequent formula was *per apostolica scripta*,

which was normally only coupled with the mandate-form of the decretal and always directly preceded the dispositive verb (*mandamus*) announcing the pope's decision or set of guidelines for the judge being addressed: *per apostolica scripta mandamus* (*italics indicate partes decisae*):²²⁰

X 3.30.4, *Commissum nobis* (Hadrian IV to Thomas, Archbishop of Canterbury)

...Ea propter frater noster, tibi per apostolica scripta mandamus, et praecipimus quatenus eos, ut ipsas decimas etiam de terris cultis, in quibus olim domus constructae fuerant, praefatae ecclesiae cum ea integritate persolvant qua prius, quam in eadem parochia morarentur, solebant persolvi, sine appellationis obstaculo nostra auctoritate cum omni districtione compellas...

On this account, *our brother*, we order *and direct through apostolic letters that by our authority, with all severity [and] without the hindrance of an appeal*, you bring about that *those tithes even* from the cultivated fields on which formerly houses had been constructed, they pay to the aforementioned church, in the full amount that they were accustomed to pay when they used to reside in that parish.

The phrase *per apostolica scripta mandamus* was so familiar, that when registering decretals the scribe usually employed the simple abbreviation: *p. a. s. m^o*. Given this ubiquity, Raymond's near universal elimination of the *per apostolica scripta* prior to the dispositive verb, which left only 1-2% of the over 400 occurrences of this phrase in the *Decretals* in place, would seem a relatively minor affair. When viewed in context of the other ways in which Raymond handled the self-referential language of the decretals, however, a pattern starts to emerge.

Similar to the *per apostolica scripta* formula was the invocation of the inherent authority of the decretal itself as a license or inducement to carry out the command therein prescribed. This was normally rendered by the simple formula *auctoritate*

²²⁰ Sometimes the word *praecipiendo* would be inserted right before the verb as an intensifier ("by ordering/directing"), making the phrase: *per apostolica scripta praecipiendo mandamus*.

praesentium, which was then placed close to the dispositive verb (*italics indicate partes decisae*):

X 2.20.18, *Intimavit R.* (Alexander III to the bishop of Exeter)

...Ideoque *praesentium auctoritate vobis* iniungimus, ut, si testimonium eorum publicatum non est, nec est abrenunciatum testibus, eos, qui sunt iuramento adstricti, et alios, si necesse fuerit, idoneos, *quos ipse* in testimonium *produxerit*, recipere non postponas.

Therefore, *by the authority of the present [letter]* we enjoin that if their testimony has not yet been heard or renounced, you shall not delay from receiving it from those who had been sworn to silence, or if necessary, from other credible witnesses *whom he [i.e., the cleric in the case] himself will have produced*.

As with most of the earlier formula, there were minor variations in the wording of *auctoritate praesentium*. The fact that Raymond also targeted these variations for elimination demonstrates that he was not simply focused on a single formula describing the physical transmission of the law, but rather a whole category of expression (*italics indicate partes decisae*):

X 5.31.2 *Ad haec* (Alexander III to the archbishop of Canterbury)

Ad haec, quoniam praedictus episcopus, sicut accepimus, plures ecclesias, et praecipue ecclesiam de Nortun., a consuetudine et obsequio archidiaconorum liberas constituit et immunes, per quod redditus diminuit eorundem et attenuavit: nihilominus tibi praesentium significatione mandamus, quatenus, si res ita se habet, factum episcopi super hoc appellatione remota corrigas et emendes...

With regard to this, since the *aforementioned* bishop, *as we have heard*, has made many churches, *and especially the church of Northun.*, exempt and immune from the custom and obedience of the archdeacons, with the result that he has diminished *and weakened* their revenue, *nevertheless by the notification of the present [letters]*, we order that, *if this is indeed the case*, you shall correct and amend the bishop's dealings in this matter, *without possibility of appeal*.

With around three-quarters of such occurrences removed, Raymond did not eliminate these varying formulations of the physical embodiment of the law with quite the same degree of frequency as he did for the omnipresent *per apostolica scripta*. Even

so, this high percentage reveals that language calling attention to the means by which the law was transmitted was viewed as superfluous to the actual statement of the law.

In addition to the self-referential language highlighting the written means of transmission, decretals – as records of judicial proceedings – frequently specified the locale where the cases had been argued and the decisions communicated. While there were instances where this language of localization concerned the argument of a case before a judge-delegate or the ordinary, most of the occurrences have to do with the apostolic see and the pope. Petitioners were identified as having come to the apostolic see to plead their case (*accedentes ad sedem apostolicam*); a case was represented as having been argued in front of the pope (*coram nobis*), in the papal presence (*in nostra praesentia*) or that of the cardinals (*in fratrum nostrorum praesentia*), or at the apostolic see (*apud sedem apostolicam*). Despite the brevity and seeming inconsequence of the language localizing the deliberation and pronouncement of the law, Raymond, nevertheless, took great pains to excise a good portion of it from the collection.

The following are a few representative examples:

1. *Coram nobis*

X 1.4.10, *Ex parte vestra* (Honorius III to the mayor and citizens of Rupella)

Ex parte vestra fuit propositum *coram nobis*, quod cum in patria vestra servatae sint hactenus duae consuetudines abusivae, quod si *forte* indigena vel extraneus prodigalitate vitio, vel incuria, seu quocunque casu alio dissipaverit vel amiserit *omnia* bona sua, bona uxoris suae, *quantumcunque laudabilis et honestae vitae*, tam mobilia quam immobilia, pro suae voluntatis libito alienat...

On your behalf it was proposed *before us*, on the basis of two long-standing abusive customs maintained in your land, that if *by chance* a native or even a foreigner through the vice of prodigality, negligence or for whatever other reason has squandered or lost *all of his* property, he may sell according to his own determination the property of his wife, movable as well as immovable, *regardless of her praiseworthy and honorable character*.

2. *In nostra (et fratrum nostrorum) praesentia*

X 3.37.2, *Dilectus filius M.* (Innocent III to the archpriest and clergy of St. Cecilia)

Dilectus filius M. syndicus ecclesiae vestrae, *in nostra praesentia constitutus*, ab oeconomio sancti Laurentii de Piscinula in scrutiniis, baptismate, *processionibus*, et capitulis et similibus subiectionem postulans, possessorium et petitorium intentabat...

Our beloved son M., the representative of your church, has lodged *in our presence* a possessory and petitory claim, demanding from the steward of St. Laurentius de Piscinula subjection in examinations [of catechumens],²²¹ baptism, *processions* as well as in synods²²² and similar matters.

X 2.22.6, *Inter dilectos filios* (Innocent III to the archbishop of Milan)

...Cum autem super his, *quae praemisimus, in nostra et fratrum nostrorum praesentia* fuisset diutius litigatum, quia legitime probata non fuerant *ea*, quae petebantur ad monasterium pertinere, *de communi fratrum nostrorum consilio* ab impetitione ipsius *praefatum* procuratorem tuum nomine tuo et Mediolanensis ecclesiae sententialiter duximus absolvendum...

After this matter, *which we went over above*, had been litigated at some length *in our presence and that of our brothers*, since what was being claimed as belonging to the monastery had not been proved legally, *by the common counsel of our brothers* we directed that the *aforsaid* procurator acting in your name and that of the Milanese church be freed from the monastery's suit.

3. *Ad/apud sedem apostolicam*

X 2.24.17, *Brevi sciscitatus* (Innocent III to Master Apollinarus)

Brevi sedem apostolicam sciscitatus es quaestione, utrum ille, qui iura alicuius ecclesiae servare, ac pro posse defendere iuramento tenetur, si necessitate imminente super hoc sub iuramenti debito requisitus *fuerit, et nolens hoc facere ad sedem apostolicam* duxerit appellandum, periurii reatum incurrat...

²²¹ *Scrutinium* refers generically to an examination, and is often associated with the interrogation of a newly elected church official by his superior(s). In this context, however, it refers to the preparation for catechumens prior to baptism, as noted by the ordinary gloss on X 3.37.2: "*in scrutiniis*] Sicut supra *De maiori et obedientia*, His quae [X 1.33.11]. *Scrutinium* hic et ibi appellantur catechismi sive excorsismi, qui fiunt baptizandis per xx dies ante baptismum, de quibus legitur, *de consecratione*, dist. 4, Ante baptismum, et c. ante xx [Decr., *De cons.*, D. 4, c. 54-5] et 10. q. 1, *Pervenit* [the gloss may have meant *Pervenit* at C. 11, q. 1, c. 39, since there is none in Causa 10, but this canon says nothing about catechumens]," *ER*, vol. 2, col. 1312.

²²² As with the idiosyncratic usage of *scrutinium*, the *capituli* refer here to some sort of local (non-episcopal) synod or official assembly of clergy. The *Glossa Ordinaria* on X 3.37.2 confirms this definition: "*capitulis*] Id est, synodo sive conventu, ubi vitia corriguntur," *ibid.*, col. 1312.

You have posed *to the apostolic see* a brief question: for a person who has been bound by oath to preserve and defend the rights of some church to the extent of his ability, and when the necessity arises having been called upon to fulfill his oath in this matter he, *not wishing to do so*, lodges an appeal *to the apostolic see* – does this person incur the charge of perjury?

X 5.1.18, *Cum dilecti filli* (Innocent III to the archbishop of Arles and the abbot of Magna Vallis)

...Et si secundum responsionem eorum sub secunda forma iuraverit, aut ipse *coram vobis* sufficienter probaverit, se sub illa forma iurasse, aut per depositiones testium, quos produxit *apud sedem apostolicam constitutus, quas vobis sub bulla nostra mittimus interclusas*, aut etiam aliorum: cum depositiones illae non fuerint publicatae, nec *ipse* productioni testium renunciare curaverit, quoniam secundum eandem non teneretur ex debito iuramenti nisi ad quaesita solummodo respondere, vos excusationes suas, *quas vobis sub bulla nostra mittimus interclusas, diligenter* audire curetis...

And if their response reveals that he took the second form of oath, or if he has proved sufficiently *in your presence* that he had already sworn the oath according to that form, either through the depositions of the witnesses he produced *when present at the apostolic see, which we send to you enclosed under our seal*, or [through the depositions] of others; seeing as those depositions were not made known, nor that he *himself* renounced the right to produce witnesses, and thus that he should not have been bound by oath to respond to anything except to what was asked directly, therefore, you should make sure to give a *careful* hearing to his claimed exemptions, *which we are sending to you enclosed under our seal*.

4. *Auribus nostris*

X 3.38.20, *Suggestum est* (Alexander III to the Archbishop of York)

Suggestum est auribus nostris, quod, cum ecclesiae quaedam de assensu domini fundi *et* auctoritate Eboracensis archiepiscopi ecclesiae beati P. Eboracensis concessae et assignatae sint in praebendam, canonici de Novoburgo concessionem illam *attenuare et* irritare nituntur occasione donationis, quam sibi asserunt prius factam *fuisse*...

It was offered up *to our ears* that when certain churches had been conferred as a prebend to the church of St. P. of York – with the approval of the lord of the estate *and* by the authority of the Archbishop of York – the canons of Newburgh attempted on the occasion of the donation to *weaken and* nullify this grant, which they asserted had previously been made to them.

As a result of the models used by the papal chancery, several formulaic expressions localizing the hearing of a case at the apostolic see, like *in nostra praesentia* and *apud sedem apostolicam*, had a relatively high frequency of occurrence in the incipit or the opening phrase of many decretals.²²³ The elimination of such language when it was situated at the front of the text would thus have required either changing the incipit, or completely restructuring the initial lines of the text. Given the need to maintain continuity with pre-1234 methods of citation, and the fact that Raymond was relatively conservative when it came to adding to or rephrasing (as opposed to eliminating from) his sources, it is understandable why examples of this language near the beginning of the decretal persisted almost unscathed in the collection. Excluding such occurrences from quantitative consideration, one arrives at a rate of elimination anywhere from two-fifths (*auribus nostris*), to one-half (*apud sedem apostolicam*), to two-thirds (*in nostra praesentia* and *coram nobis*) of the various types of expressions localizing the presentation or argument of a case in front of the pope or officials at Rome.

1.11.4 The Language of Affection

The final category of excised formulaic language under analysis is collectively termed the “language of affection,” because it gives expression to a personal, affective connection between the pope – as author of the decretal – and the recipient of the letter or the other parties to the case that prompted its issuance. The papal chancery maintained a consistent and rigid set of protocols that addressed church officials, clergy and laymen

²²³ There are twenty-five decretals alone whose incipits are a variation of the form *Constitutus in praesentia nostra* or *In nostra praesentia*.

according to their relationship to the pope as universal bishop.²²⁴ Patriarchs, archbishops and bishops were spoken to (and of) as *venerabili fratres*, “reverend brothers,” while all other clergy from abbots down to simple clerics were called *dilecti filii*, “beloved sons.” Laymen were similarly addressed as *dilecti filii* without distinction, with the exception of royalty, whose status made them special objects of the pope’s affection as his *carissimi in Christo filii* (“dearest children in Christ”) and *illustres* (“illustrious”).

Instances of such language, whether applied to clergy or laity, were legion in Raymond’s source material, and so their removal involved a great deal of careful sifting. Next to the self-referential language pointing to the physical mode of the decretal’s transmission (*per apostolica scripta*), the language of affection stands as the formulaic terminology that he excised most consistently.²²⁵ Not counting those instances that fell within the incipit, around 90% of such occurrences were eliminated.²²⁶

The first example, X 3.17.3, *Cum dilecti filii*, encompasses several forms of the language of affection assigned to members of the regular clergy, metropolitan officials and bishops. All of them were eliminated except for the one occurrence of *dilecti filii* in the incipit, demonstrating the inviolability of the opening words of Raymond’s sources.

X 3.17.3, *Cum dilecti filii* (Alexander III to the bishop of Arras)

²²⁴ For a representative explication of address formulae, see the *Audientia litterarum contradictarum* formulary (N^a1): Herde, *Audientia litterarum contradictarum*, vol. 2, pp. 16-7. Even though it post-dates the *Decretals*, many of the protocols – like the rules for how to address recipients of papal letters – go back to the time when most of the sources for the *Decretals* were generated. Affectionate forms of address, in particular, are remarkably consistent even going back to the earliest formularies, including the *Liber diurnus*. The language of affection employed in the model *superscriptiones* of the *Liber diurnus* differs only in intensity (*dilectissimus* as opposed to *dilecti*), and the greater number of variations depending upon the rank of the addressee; cf., *Liber diurnus ou recueil des formules usitées par la chancellerie pontificale du Ve au XIe siècle*, ed. Eugène de Rozière (Paris, 1869) §1-12, pp. 1-15.

²²⁵ On *per apostolica scripta* and the other language of embodiment, see above, § 1.11.3, p. 99.

²²⁶ There are close to one-hundred decretals that integrate some form of these address formulae into their incipits, which is one measure of how prevalent such language was in the *Decretals*.

Cum dilecti filii *nostri* Belvacenses canonici contra *religiosos viros* abbatem et fratres Cariloci proponerent querimoniam, quod silvam, quae Nigra vallis dicitur, a quibusdam eorum ignorante capitulo pro X. libris, XL. marchas tunc valentem, comparassent, *post multas commissiones tandem* causam ipsam *venerabili fratri nostro* Morinensi episcopo et *dilecto filio* decano Remensi *sub certa forma* commisimus terminandam...

After *our* beloved sons the canons of Beauvais had set forth a complaint against the abbot and brothers of Charlieu, that some of the canons without the knowledge of the chapter had purchased for ten livres the forest, which is known as Black Valley [Nugerot?] and at the time comprised fifteen marks,²²⁷ *after many commissions* we *finally* committed the settlement of this case *with specific instructions* to *our venerable brother* the bishop of Thérouanne and *the beloved son* the deacon of Reims.

The well-known decretal X 4.17.14, *Per venerabilem*, provides another example of how Raymond dispensed with language establishing an affectionate connection between the pope and the parties to a proceeding.²²⁸ In this case, Raymond removed the *carissimi in Christo filii* honorifics applied to the French King Phillip II and his second, and spurned wife Ingeborg of Denmark (for the sake of clarity and brevity only one half of the relevant sentence from the middle of the decretal is given below).

X 4.17.14, *Per venerabilem* (Innocent III to the nobleman G. of Montpellier)

...*Cum enim carissimus in Christo filius noster Philippus rex Francorum illustris carissimam in Christo filiam nostram I. Francorum reginam illustrem* dimiserit, et ex alia postmodum superducta puerum susceperit et puellam...

Indeed when *our dearest son in Christ Philip*, the *illustrious* King of France, dismissed *our dearest daughter in Christ*, the *illustrious* Queen I., and had begotten from his subsequent wife a son and a daughter...

²²⁷ In French territory *marcha* could mean a unit of measurement as well as currency. Given the context, the fifteen-mark valuation seems to refer to the measurement of land rather than its monetary value.

²²⁸ On the canonistic significance of *Per venerabilem*, see above, note 169. The French royal couple were not direct parties to the case, but the issues of child legitimation arising from their complicated separation and Phillip's subsequent remarriage had been cited as a precedent by the individual to whom Innocent had addressed the letter.

1.12 Conclusion

All of the examples given above – deliberative consultation with the cardinals; appeals to corroborative sources of authority; the embodiment of the law in written instruments and its localization in the papal presence; the language of affection – exist outside the sphere of narrowly-defined, legally-significant language. To put it another way, the presence or absence of any of these elements from an individual capitulum had no effect on its subsequent interpretation and consonance with the existing body of canon law.²²⁹ Raymond's changes in these areas cannot be analyzed, therefore, using methods such as the examination of the pre-existence and after-life of each affected decretal. When viewed as a whole, however, and plotted along the arc of the overall development of canon law, these small editorial interventions acquire meaning.

As has been stated on multiple occasions, the *Decretals* was not simply an assemblage of individual texts, but an effort to form a unified and coherent corpus out of the mass of decretal law built up over the century prior to the collection. Streamlining the legal content and reducing the length of his texts were the most obvious and visible parts of Raymond's editorial practice. Yet the selective excision of certain formulae also demonstrates Raymond's interest in shaping the language that gave expression to the law. It is not clear whether this interest was guided by a fully-articulated image of how the law should be communicated, or, what is more likely, whether Raymond was intuiting concepts emergent from the marriage of canonical and civil jurisprudence. Setting aside

²²⁹ With respect to the individual decretal itself, however, an element like the terms of affection directed towards the recipient of a decretal were, like the papal *cursus*, important markers of authenticity. When a papal letter called a patriarch *dilectus filius* or an abbot *venerabilis frater* it was a dead giveaway that a forger was at work. In a letter included in the *Decretals* (X 5.20.6, *Quam gravi poenae*), Pope Innocent III himself recommended inspecting a decretal for its proper usage of the language of affection to test for forgeries.

for the moment questions of origin, the analysis will focus on the consequences of Raymond's editing of the formulaic material for the communication of the law, in the hope of stimulating further discussion about the conceptualization of the law in the first half of the thirteenth century.

As remarked above, determining the significance of this aspect of Raymond's editing must go beyond considering each individual instance. With a clause like *de fratrum nostrorum consilio*, however, it would be important to know in a general way whether its presence or absence from a decretal maps onto any actual difference in the process by which it was produced, or the relative weight assigned to its authority. There are, unfortunately, no known instances contemporary to the *Decretals* of a dispute over the inclusion or excision of the *de fratrum nostrorum consilio* clause, and so it is difficult to pinpoint the exact legal valence it would have had for Raymond. Forty years later, however, Gregory X (1271-6) would come into conflict with the college over procedures enacted to avoid the three-year vacancy after the death of his predecessor, Clement IV (1265-8), created by wrangling among the cardinals over whom to elect.²³⁰ After consulting with the college, Gregory promulgated *Ubi periculum* as c. 3 among the constitutions of the second council of Lyons (1274). Despite treating a matter of such central importance, the constitution lacked the *de fratrum nostrorum consilio* formula.²³¹ Its absence turns out to have been deliberate, since the provisions in *Ubi periculum* that constrained the power of cardinals during periods of *sede vacante* had been vehemently opposed by them, and they had refused to assent to the text as written. In this case,

²³⁰ For a discussion of the incident in reference to the *de fratrum nostrorum consilio* formula, see: Zacour, "The cardinals' view of the papacy," pp. 430-1.

therefore, the *de fratrum nostrorum consilio* clause carried with it both the idea of consultation and consent, though Gregory X ultimately succeeded in getting through *Ubi periculum* despite their opposition.

In a very basic sense, therefore, Raymond's elimination of the *de fratrum nostrorum consilio* formula ("on the advice of our brothers") along with its variants foregrounds the unaided, juridical authority of the papacy, and its capacity to pronounce the law directly, without recourse to a deliberative process with other members of the papal curia. The resulting construction – if one may speak in a positive sense of something's absence – is of the law as a direct emanation of the papal will, signaled by the various verbal expressions employed according to the class of legal pronouncements involved: *mandamus*, "order"; *declaramus*, "declare"; *(ad)iudicamus*, "(ad)judge"; *excommunicamus*, "excommunicate"; *duximus irritandum*, "consider invalid," and so forth. The image of papal authority thus fashioned in the *Decretals*, at least in its juridical dimensions, approximates more closely the famous interpretation applied by Roman Law jurisprudence to the *lex regia*: "quod principi placuit, legis habet vigorem," i.e., "what pleases the prince has the force of law" (Dig 1.4.1.pr; Inst 1.2.3). The continuation of this passage in the Digest beyond the maxim demonstrates even more clearly the idea that the establishment of law rested solely on its being a communication of the legislator – whether that communication came via rescript, judicial sentence or statute – rather than any attendant process of consultation or formal enactment.

²³¹ The constitution is printed in: Mansi, *Sacrorum conciliorum nova et amplissima collectio*, vol. 24 (Venice, 1780) coll. 81-6. It would later be included by Boniface VIII in the *Liber Sextus* at VI 1.6.3.

Therefore, whatever the emperor has determined by a letter over his signature or has decreed on judicial investigation or has pronounced in an interlocutory matter or has prescribed by an edict is undoubtedly a law.²³²

Whether or not Raymond had the *lex regia* directly in mind when editing the *Decretals*, it is hard not to overlook the similarities produced by his excision of the deliberative role of the cardinals.

It is important to note once more that Raymond's marginalization of the cardinals' consultative role in the *Decretals* appears to be a rhetorical rather than an historical reality. Although specific studies of the college under Gregory's pontificate are lacking, the trajectory of their involvement in the juridical apparatus of the curia in the second half of the thirteenth century only points toward an increased role. Moreover, in the mainstream of canonistic thought they ended up being accorded a constitutional role in deciding the more important matters that were brought to Rome for decision.²³³ These later developments do not absolutely exclude the possibility that Raymond's efforts were connected to a larger effort during Gregory's pontificate of pushing back against the power of the college. That is a question, though, for future research to determine.

The assumptions about papal authority implicit in the language of the law produced by Raymond's editing are only part of the story, however. More broadly, the rhetorical constructions reveal the operation of the law as simultaneously more depersonalized, abstract and direct, i.e., without mediation. The language of affection provides a case in point. The removal of affectionate titles like *dilectus filius* and

²³² *The Digest of Justinian*, rev. English edition, trans. Alan Watson, vol. 1 (Philadelphia, 1998) p. 14. The original is as follows: "Quodcumque igitur imperator per epistulam et subscriptionem statuit vel cognoscens decrevit vel de plano interlocutus est vel edicto praecepit, legem esse constat."

²³³ See: Zacour, "The cardinals' view of the papacy," pp. 424-5; Pennington, *The Prince and the Law, 1200-1600: Sovereignty and Rights in the Western Legal Tradition* (Berkeley, 1993) pp. 72ff.

venerabilis frater is part of a process of rationalization similar to what many case-based legal systems underwent, as jurists and legislators attempted to impose some measure of systematic order on a mass of historically-contingent legislation. In the same way that the abbreviation of names (e.g., from *Iohannes* to *I.*) functioned to efface the individual personality of litigants, so the removal of affectionate forms of address assist in the creation of a purely abstract subject of rights, laws and so forth, concretized only insofar as that subject held ecclesiastical office (bishop, judge, monk), possessed legal standing (plaintiff, defendant, witness), or existed within a social relationship (husband, wife, lord, serf). The language, in this case, was following the law towards the establishment of universally valid norms and procedures.

The removal of the language of familiarity also provides a graphic illustration of the reconfiguration of the relationship between the papacy and other members of the Church, whether clerical or lay, insofar as they were intertwined within the system of canon law. Rather than the pastoral relationship implicit in the affectionate titles, the *Decretals* represents the connection between the pope and the rest of the Church as founded solely on the basis of law, and particularly, the papacy's role as the hub and fount of legal authority within the Church.

The elimination of corroborative sources of authority, as well as language referencing the physical embodiment or localization of the law can be understood in a similar manner. Raymond inherited a body of sources in which legal pronouncements – whether legislative in the proper sense (conciliar canons, statutes), judicial (appeal settlements) or merely administrative (collation of benefices) – frequently reflect the need to justify their own authority through appeals to tradition, other legal precedents, and so

forth. The rhetorical construction of the law created through the elimination of references to corroborative sources of authority thus underscores the idea of the self-sufficiency of the law flowing from papal jurisdiction, understood literally as *iuris dictio* “the pronouncement of the law.” Extra appeals to consonance or discord with canonical tradition (*contra/secundum canones*), conformity with patristic authority (*auctoritate Sanctorum Patrum*), or even agreement with civil law provided no additional weight to the mere statement of the law in each text of the *Decretals*.

Furthermore, the removal of references to the physical aspects of the decretal (*per apostolica scripta; auctoritate praesentium [litterarum]*), as well as language specifying where a case was heard or judgment pronounced (*coram nobis; in nostra praesentia; apud sedem apostolicam*) tend toward the disembodiment of the law and its abstraction from the mode of transmission. This tendency is peculiar, insofar as the thirteenth century is *the* age of written law, whether exemplified through the growth of written administration in most European chanceries, the codification of regional legal traditions (e.g., the *Libri feudorum* and the *Sachsenspiegel*) or the fixing of local and institutional customs into writing.²³⁴ In one sense, Raymond’s removal of the language of embodiment can be taken as a measure of the normalization of legal authority exercised through written instruments. In another, one is witnessing the near-universal tendency of established authority to obscure the mechanisms of its own ascendance.

The course charted by Raymond’s editing can be clearly ascertained among the Gregorian constitutions. Composed specifically for promulgation in the *Decretals*, these constitutions did not contain the formulaic material normally found in other decretals.

Raymond felt no need, however, to replicate even in a functional way the rhetorical elements used by decretals to call attention to and reinforce their own authority. Instead, the Gregorian constitutions offer direct, unmediated statements of the law that are depersonalized – whether in respect to their source or to their intended application. They are, in addition, completely un-self-conscious as to their own authority – that authority is simply assumed.

X 1.6.58, *Publicato scrutinio* (Gregory IX)

Publicato scrutinio variare nequeunt electores, cum sit facienda collatio, et electio celebranda. Ad quod per superiorem, si oportuerit, compellantur.

Once the electoral list has been published, the electors themselves may not be changed, because the assembly needs to be held and the election celebrated; to which the electors may be compelled, if necessary, by a superior.

All of the tendencies identified in Raymond's editing of the formulaic material – as well as his construction of the Gregorian constitutions – would come to dominate the way collections in the later thirteenth century were put together, culminating with Boniface VIII's *Liber sextus*.

A final example drawn from the Gregorian texts may serve as a concluding remark about the significance of Raymond's excision of the formulaic elements from his source material. To fill out the title on heresy, Raymond chose a solemn excommunication decree to place at X 5.6.15, *Excommunicamus et anathematizamus*. X 5.6.15 was directed by Gregory IX against all heretics and their supporters, calling out by

²³⁴ On written administration, see: Clanchy, *From Memory to Written Record*, *passim*; on customaries, see: Le Bras, *L'Âge classique*, pp. 208-12.

name a variety of contemporary heretical movements both famous and obscure.²³⁵

Raymond drew X 5.6.15 wholly from a February, 1231 decree immediately targeting heretical groups that had arisen in Rome during one of Gregory's prolonged absences from the city (Auvray 539). Yet the opening lines were virtually identical to an earlier decree passed in April of 1229, which also leveled a general excommunication against named and unnamed heretical groups before adding more explicit condemnations of the Holy Roman Emperor Frederick II, as well as various other "oppressors" of the Church (Auvray 332). A comparison of the two decrees follows:

Auvray 332, Reg. Vat. 14 (fol. 133v): an. 3, no. 46

Excommunicamus et anathematizamus ex parte Dei Omnipotentis, Patris, et Filii, et Spiritus Sancti, auctoritate quoque beatorum apostolorum Petri et Pauli ac nostra, omnes hereticos Catharos, Paterinos, Pauperes de Lugduno, Arnaldistas, Speronistas et Passaginos, et omnes alios, quocumque nomine censeantur, et omnes fautores, receptatores et defensores eorum...

We excommunicate and anathematize on behalf of God Almighty, the Father, Son and Holy Spirit; and by the authority of the blessed apostles Peter and Paul – as well as by our own – all heretics: Cathars, Paterenes, Poor of Lyons, Arnaldists, Speronists, and Passagini; and all others, by whatever name they may be reckoned, as well as all of their supporters, harborers and defenders.

Auvray 539, Reg. 15 (fol. 49v): an. 4, no. 107 (**Source for X 5.7.15**)²³⁶

Excommunicamus et anathematizamus universos hereticos: Catharos, Patarenos, Pauperes de Lugduno, Passaginos, Ioseppinos, Arnaldistas, Speronistas, et alios, quibuscumque nominibus censeantur, facies quidem habentes diversas, sed caudas adinvicem colligatas, quia de vanitate conveniunt in id ipsum. Dampnati vero per ecclesiam seculari iudicio relinquuntur, animadversione debita puniendi, clericis prius a suis ordinibus degradatis. Si qui autem de predictis, postquam fuerint

²³⁵ The list of heretics almost exactly mirrors that given in Lucius III's *Ad abolendam*, the Council of Verona (1184) decree that inaugurated a more organized effort by the Church to combat heresy. When Raymond included *Ad abolendam* at X 5.6.9, among the several portions excised was the list of named heresies that Gregory's *Excommunicamus et anathematizamus* would duplicate.

²³⁶ See chapter five, appendix B, no. 169 for the full collation of the register text with X 5.6.15.

deprehensi, redire voluerint,²³⁷ ad agendam condignam penitentiam in perpetuo carcere detrudantur. Credentes autem eorum erroribus, hereticos similiter iudicamus.

We excommunicate and anathematize every heretic: Cathars, Patarenes, the Poor of Lyons, Passagini, Joseppini, Arnaldists, Speronists, and all others, by whatever names they may be reckoned. They have different faces indeed but their tales are tied together, inasmuch as they are alike in their pride.²³⁸ We relinquish those condemned by the Church to the secular arm for their deserved punishment, prior to which clerical offenders will have been stripped of their orders. If any of the aforementioned after having been caught wish to repent, they should be kept in perpetual confinement for the performance of a suitable penance. Furthermore, those giving credence to their errors, we adjudge in the same manner.

That Raymond chose the Feb. 1231 decree over the earlier one is likely explained by the former's inclusion of additional provisions for the perpetual confinement of heretics wishing to repent of their beliefs.²³⁹ The close parallels between the opening lines of the two decrees, however, would have made it a fairly simple matter to swap out the opening section of Auvray 539 and replace it with that of Auvray 332. Instead of a bare, unsupported statement of excommunication and anathema, Raymond would have created a decree enjoying the corroborative authority of each person of the Trinity as well as the founding apostles of the Roman church, Peter and Paul. This potent mix of liturgical invocation and legal pronouncement when delivering an excommunication certainly had a venerable tradition within the Church, exemplified perhaps most famously

²³⁷ Both Friedberg and Auvray have a reading of *noluerint*, which would give the text a remarkably different meaning. In Friedberg's case it appears to be nothing more than a typographical error, since the base text of the 1582 *Editio Romana* (as well as most manuscripts of the *Decretals*) have *voluerint*. For Auvray's part it may have been the sin of one of his assistants (perhaps even relying on Friedberg), who in other parts of Gregory's register occasionally resorted to printing the text of a letter as it appeared in one of the major document collections (e.g., *Gallia Christiana*) rather than the enregistered form.

²³⁸ The translation of the passage *quibuscumque nominibus...id ipsum*, which is exactly the same phrasing given in c. 3 of Lateran IV 91215), has been adopted from: Tanner, *Decrees*, vol. 1, p. 233.

²³⁹ The latter's association with Frederick II would not have been an *a priori* reason to exclude it – despite the fact that he had been (temporarily) reconciled with the pope by the time the collection was promulgated – since the section targeting heresy formed a different and separable portion of the decree.

in Gregory VII's excommunication in 1080 of Henry IV.²⁴⁰ There was no need for Raymond to do so, however. The simple, uncorroborated pronouncement of the pope's sentence of excommunication was more than sufficient.

²⁴⁰ Gregory VII gave a long preface to his decree, calling upon the aid of the apostles and faith in God and the Virgin Mary, before finally getting around to the excommunication: "O blessed Peter, chief of the Apostles, and thou, Paul, teacher of the Gentiles, deign, I pray, to incline your ears to me and mercifully hear my prayer. Ye who are disciples and lovers of the truth, aid me to tell the truth to you, freed from all falsehood so hateful to you, that my brethren may be more united with me and may know and understand that through faith in you, next to God and his mother Mary, ever virgin, I resist the wicked and give aid to those who are loyal to you," *The Correspondence of Gregory VII*, ed. Ephraim Emerton (Records of Civilization 14: New York, 1932) pp. 149-50.

Chapter 2: The Transmission of the Decretals in Manuscript and Print

2.1 Introduction

In 1754 the brash, newly-minted, twenty-four year old Protestant Doctor *in utroque* Johann Christoph Wilhelm von Steck delivered that year's inaugural post-academic term lecture to the Leipzig Academy. His subject was Raymond of Penyafort's editing of the *Decretals*. In the lecture – later published as a short *commentariolum*²⁴¹ – Steck mounted a hyperbolic attack on the Dominican compiler's alleged "defilement" (*adulterare*) and "dismemberment" (*discerpere*) of the individual laws assembled within the collection. One has to wonder what those assembled made of accusations delivered in language better suited to a murder trial than the lecture hall, but such heated rhetoric doubtless left them expecting to hear an indictment of Raymond's reputed contravention of established legal principles. Surprisingly, Steck passed over the substantive changes to the law introduced by Raymond's editing. He cites only one instance where the *Decretals* runs afoul of prevailing legal opinion: X 3.26.13 *Cum tibi*, which declared that those, who on their death bed designated a third party to determine their last wishes (*ultima voluntas*) with respect to disposal of their property, should be considered to have left a legally binding testament.²⁴²

²⁴¹ Johann Christoph Wilhelm von Steck, *De Interpolationibus Raymundi de Penna Fortis Commentariolum*, (Leipzig, 1754). There are no independent, published sources that confirm the lecture, which must instead be inferred from the extended title page of Steck's work: "...*Commentariolum, Quo Praelectiones Finitis Nundinis In Academia Lipsiensi Inchoandas Indicit Io. Christ. Wilh. Steck, Iuris Utriusque Doctor, Societatum, Lipsiensis Elegantioribus Litteris Dicatae, Latinae Ienensis Membrum Honorarium.*"

²⁴² "Nonne enim tam crude dicitur is testatus decessisse, qui ultimam voluntatem in tertii arbitrium committit?" Steck, *De interpolationibus*, p. 11.

Instead, Raymond stood in the dock for having eliminated, altered or even fabricated those internal elements of the decretal letters that give them geographic and historical specificity – mainly the inscriptions and narrative portions of the letters.²⁴³ Steck summons his most righteous contempt for those cases where the text obscures or misrepresents the origins of a decretal's recipient. The Duke of Zähringen (*Zaringia*) has become the Duke of the non-existent *Caringia* (X 1.6.34); the abbot of St. Michael's monastery in Halberstadt has been transferred to the imaginary diocese of *Abradensis* (X 1.33.12); and so on goes a long list of examples – notably all selected from Germanic regions – to prove Raymond's corruption of the sources. "It is of utmost interest to us," explained Steck to an audience perhaps puzzled by the bombast brought forth by substituting the letter 'C' for 'Z,' "to which particular nation, region, church or person a decretal letter pertains," because ultimately, the proper interpretation of canon law is intimately bound up with its historical context.²⁴⁴ The modern task, as Steck saw it, was one of reparation and restoration: mining the earlier canonical, historical and geographic literature to correct and reconstitute the body of each decretal.²⁴⁵

²⁴³ Steck makes a striking contrast between the sober language of the *rescatis superfluis* mandate and a long list of Raymond's editorial transgressions described with violent evocative imagery: "Nam dum [Raymundus] rescare superflua, coarctare diffusa, succidere luxuriantia, emendare incongrua, mutare antiquitata et enucleare involuta sategit, adeo temere epistolas Pontificum mutilavit, ut modo earum inscriptiones vitiaret, modo loca et personarum nomina adulteraret," *De interpolationibus*, p. 7.

²⁴⁴ "Plurimi nimirum interest nos, ad quam gentem, regionem, ecclesiam, personamque epistola decretalis pertineat...verum enim vero depravatae et vitiatae a Raymundo sunt decretalium inscriptiones, ex quibus lumen illarum explicatio consequi et sortiri debebat. Quantum igitur abest, ut hisce historiae adminiculis in interpretandis decretalibus absque incommodo et obscuritate carere possumus; tantum quoque abest, ut Raymundi facinus excusari vel defendi queat," *ibid.*, p. 12.

²⁴⁵ "Restant tamen praesentia huius mali remedia. Etenim corruptae I. capitulorum inscriptiones restitui possunt et emendari tum ex anterioribus decretalium Collectionibus, quae cordatorum virorum industria in nostras pervenerunt manus, tum ex historiae et Geographiae medii aevi cumprimis sacrae, nec non Chronologiae subsidiis. Ex hisce fontibus vera locorum, personarumque nomina, verum tempus, veramque decretalium aetatem addiscere valemus. Ex hisce Raymundi hallucinationes corrugendae, eiusque turpissimi errores emendandi sunt," *ibid.*, p. 14.

As a work of textual criticism, Steck's *De Interpolationibus* is essentially useless. He simply assumes that every single misattribution or truncation occurred under Raymond's editorial stewardship, rather than issuing – as was more often the case – from the decades of each text's pre-*Decretals* history, or from the collection's subsequent handling by hundreds of copyists, editors and typesetters. Criticizing the critic here is almost beside the point, however. Steck ultimately seems to have been less concerned about process and the changing shape of the collection, than he was focused on the individual decretals as repositories of historical information. Far from being the main focus of his scholarship, Steck's textual criticism served more as prolegomenon to his subsequent studies reconstructing the legal history of the German church.²⁴⁶

Yet Steck's brief and never-to-be-reprised foray into textual scholarship is a site of convergence for a number of crucial themes in the historical study of canon law. Steck's characterization of the editorial violence done to the law has the bitter aftertaste of the previous centuries' confessional struggles over the nature and documentary basis of authority within the church. As conduit and catena for the ancient ecclesiastical discipline, Gratian's *Decretum* had been the traditional battleground when the contest played out on the field of canon law. The *Decretals* had for the most part been left on the sidelines. It was, for Protestants, irreparably crippled by the papal monarchy that had attended its birth, and for Catholics, it was an integral part of their constitutional framework, though increasingly disconnected from the law as practiced in the Tridentine

²⁴⁶ Steck spent around a decade as a university professor of law before taking a position on the Prussian high court, and devoted a significant portion of his writing to the rights and privileges of the German church, as well as German civil law: *De adiutoribus praesulum Germaniae* (Leipzig, 1755); *Vindicias libertatis Ecclesiae Germanicae circa moliendas in hierarchia novationes proponens* (Halle, 1756); *Abhandlungen aus dem deutschen Staats-und Lehnrecht* (Halle, 1757). For a biographical sketch, see:

Church. Condemnation of Raymond notwithstanding, Steck actually offered a path of redemption for the *Decretals*, if not as an entire collection than at least for certain individual texts restored to their original, pristine condition. The timing of *De interpolationibus* coincides remarkably well with the resurgence of interest in the *Decretals* as an historically mediated document, where questions of form were understood to be inextricably intertwined with, or even prior to, questions of juridical content and historical impact. While certainly not the prime mover behind this turn in *Decretals* scholarship, Steck is emblematic of the new spirit already at work in Böhmer's edition of the *Corpus iuris canonici* (1747), and which would continue in the editions of Richter (1839) and Freidberg (1881).

Continuing in this spirit, this chapter will examine the transmission of the *Decretals* in manuscript and print, a prerequisite to any assessment of the intentions behind or the subsequent impact of the collection. Steck is also an object lesson for the problems encountered by such an examination. The majority of the errors he identified had nothing to do with Raymond, but had been frozen into the text by the late-sixteenth-century, papal-appointed commission of editors charged with producing a revised, official version. While this commission, known as the *Correctores Romani*, succeeded in establishing a workable version, the papal-mandated exclusivity of the edition it produced ended up having a distorting effect on future textual scholarship. Even today, the 1582 *Editio Romana* [=ER], as the *Correctores'* finished product was called, still functions somewhat like a sandblasted windshield when navigating the jungle of the roughly 700 surviving manuscripts of the *Decretals*. It provides an indispensable view of the entire

Allgemeine Deutsche Biographie, vol. 35 (Leipzig, 1893), pp. 541-2. Steck's legal writings are listed in:

collection, but the editorial choices of the *Correctores* can frequently obscure or be mistaken for those of the original compiler. That is why it is best to begin with an account of the printed transmission, in order to understand the frame through which the manuscripts are seen. Far from being a dry narrative of texts, shelfmarks and variants, the account of the *Decretals'* transmission in the age of Gutenberg is worth telling for its own sake.

2.2 Transmission of the Decretals in Print

2.2.1 Early editions up through the Editio Romana

Editions of the *Decretals* are well represented among surviving incunabula. Fifty-three separate printings are recorded before the year 1500, with the total number of surviving copies exceeding 2000.²⁴⁷ The *Editio princeps* of the *Decretals* was printed in Strasbourg by Heinrich Eggestein between 1468 and 1471, with the text accompanied by the ordinary gloss of Bernard of Parma.²⁴⁸ Eggestein followed the procedure used for other early printings of ancient and medieval works, relying on a single manuscript to provide the text and gloss, and correcting only the most obvious errors. Although late-fifteenth-century incunabular editions of the *Decretals* began to outfit the text with tables and learned commentary,²⁴⁹ few made note of what editorial procedures, if any, they had

Schulte, *Geschichte der Quellen*, vol. 3, pp. 150-1.

²⁴⁷ See the entry for Gregor IX., Papst, in: *Gesamtkatalog der Wiegendrucke*, vol. 10 (Stuttgart, 2000) coll. 105-53. The older *Repertorium bibliographicum* lists 45 printings (Hain-Copinger 7996-8040).

²⁴⁸ GW 11450 [Hain –Copinger 7996]: *Decretales cum glossa*: f. 1a rubro: Incipit cōpilatio nova de || cretaliū Gregorii pape. ix.; f. 385b col. 2: Explicūt decretales; 2 col., 75 l., 385 ff.

²⁴⁹ The 1499 Paris edition of Ulrich Gering and Berthold Remboldt (GW 11496) contains tables referencing the parallel passages in the 5C, indicating an interest at this early date in presenting the decretals in context.

employed to arrive at a more accurate version of the text.²⁵⁰ With the growing recognition of the divergence between the readings of different manuscripts, early-sixteenth century editors made greater exertions to return to older manuscript exemplars on the assumption that these contained readings closest to the original.²⁵¹ In the absence of a modern critical edition, there is no way to assess the relative value of the different versions of the *Decretals* over the first hundred years of its printing history. These versions could still prove useful in arriving at a critical edition of the text, however, as some will preserve readings from manuscripts no longer available.

The growing dedication among humanist scholars to returning *ad fontes* took on even greater significance with the religious upheavals of the sixteenth century. Competing narratives of ecclesiastical history, such as the *Centuriae Magdeburgenses* by the Lutheran Matthais Flacius Illyricus (Matija Vlačić Ilir), and Cardinal Baronius' formulation of the Catholic response in his *Annales Ecclesiastici* elevated the importance of the documentary sources of church history. Martin Luther, however, had fed his copy of the *CIC* to the flames in the courtyard at Wittenburg, a gesture foreshadowing the Protestant rejection of the traditional legal institutions of the Church.²⁵² Protestants were soon no longer beholden to canon law as an authoritative, living body of law. Canon law

²⁵⁰ A rare exception comes from the 1491 Venice edition printed by Baptista de Tortis (GW 11482): "Decretaliū hanc Gregorianam compilationem candide lector habes illustram lucubracionibus Clarissimi utriusque iuris doctoris Domini Hieronymi Clarii Brix. cum quibusdam additamentis suis."

²⁵¹ Here is an example from the title page of the 1517 edition printed by Jacob Paucidrapense de Burgofranco in Pavia: *Decretales a Gregorio nono in volumē hoc redactae : variis erroribus quibus prius obsordescebant .. per Jacob Paucidrapense de Burgofranco, 1517*. Another example shows the advertisement of going back to older sources for a cleaner text: *Decretales epistolae Gregorij Noni Pontificis Maximi : quas summa fide & accurata diligētia iam recēns ad veterū codicū fidem repurgauimus & contulimus : cum additionibus Doctiss. virorum, lōgè probatissimis & vtilissimis. Parisiis : ex officina Claudij Cheuallonij, 1537*.

scholarship during the Reformation was not imbued, therefore, with the same kind of polemical necessity that infused theology and ecclesiastical historiography. But the evolving religious conflict left its mark on legal scholarship all the same.²⁵³ This was especially true as Gratian's *Decretum* came to be treated as a conduit for the history and theology of the early Church.²⁵⁴ Ultimately, the Protestant rejection of canon law worked in favor of elucidating the historical dimensions of the tradition. Protestant scholars were able to follow their research into territory that would have been doctrinally risky for Catholics. Subjecting the sources to critical analysis, Protestant scholarship was able to question, for example, the authenticity of spurious texts that had entered the tradition by inclusion in papally-sanctioned collections.²⁵⁵

²⁵² For a summary of the issues concerning Luther's relationship to canon law, see: S. Mühlmann, "Luther und das *Corpus Iuris Canonici* bis zum Jahre 1530: Ein erforschungsgeschichtlicher Überblick," *ZRG*, kan. Abt. 58 (1972) pp. 235-305.

²⁵³ For a discussion of the role of humanism and religious polemics in canon law scholarship in the Early-Modern period, and the limits of the application of Humanist principles to the study of canon law in the face of the post-Tridentine realities of the Catholic Church, see: Peter Landau, "Methoden des kanonischen Rechts in der frühen Neuzeit zwischen Humanismus und Naturrecht," in: *Juristische Methodenlehre zwischen Humanismus und Naturrecht, Beiträge zu einem Symposium vom 19-22 November 1997 Centro Stefano Franscini Monte Verità/Ascona*, ed. Claud Dieter Schott, *Zeitschrift für Neuere Rechtsgeschichte*, Sonderdruck 22 (1999), pp. 7-28.

²⁵⁴ The mining of the *Ius Antiquum* (canon law before 1140) for its theological import paradoxically collapsed the divide between theology and canon law, which had opened up during the High Middle Ages with the professionalization of ecclesiastical jurisprudence on the one hand, and the philosophical turn in scholastic theology on the other. For a meditation on the struggle of medieval canon law to define itself vis-à-vis its origins in theology, see: Stephan Kuttner, *Harmony from dissonance* (Latrobe, PA, 1960); repr. in: idem, *The History of Ideas and Doctrines in The Middle Ages* (Variorum Reprint CS 113: London, 1980).

²⁵⁵ A good example is the status of what is now known as the Pseudo-Isidorian decretals, a diverse collection of mostly Ante-Nicene papal decretals, conciliar canons, and penitential material, now known to have been composed in the ninth century in France (Klaus Zechiel-Eckes, "Auf Pseudoisidors Spur, Fortschritt durch Fälschungen?," *Studien und Texte* 31 (2002) pp. 1-24). In his edition of the *Decretum*, Contius had come to the conclusion, based upon philological and textual-critical work, that the portion of Pseudo-Isidore containing Ante-Nicene papal decretals was a forgery. In his groundbreaking study of the textual problems in Gratian (*De emendatione Gratiani dialogorum, libri duo, cum Stephani Baluzii et Gehr. Mstrichtii notis*, ed. J. A. de Riegger, 2 vols. (Venice, 1777)), Antonio Agustín (1516-86) followed the same trail of evidence, even to the point of severe criticism of the content of the Pseudo-Isidorian decretals, but ultimately yielded to their public authority and backed away from pronouncing the decretals false: "Non audeo ego haec falsa esse dicere, ut in Antonii Contii libris de epistulis ante Silvestrum scriptum legis. Sed hoc defendo, quamvis ea vera essent, scribi non debuisse; cum illis omissis, quae crucem

There was an animating spirit behind this scholarship, shared by Catholic and Protestant alike, which held that resurrecting the ancient discipline of the Church – achieved through the publication and study of the sources of law – was a panacea for the perceived degeneration in piety and morals. This is one of the principal reasons why Gratian's *Decretum* was the subject of much more scholarly attention than the *Decretals*. The predominance of patristic material in the *Decretum* offered an heroic moral universe of unimpeachable character, from a time less burdened by an institutional superstructure that Protestants rejected, and under which even Catholic scholars sometimes chafed. The first attempt at a critical edition of Gratian was published by the French Catholic jurist Antoine de Mouchy (Desmochares) in 1547.²⁵⁶ Demochares' edition was followed by those of the Protestant jurists Charles du Moulin (Molinaeus) in 1561²⁵⁷ and Auguste Le

lectoribus afferunt, ut Maro dicebat, jus pontificium melius traderetur," *De emendatione*, vol. 1, Dialogue I.16, p. 171. Agustín also mentions in this dialogue that he sent a copy of Pseudo-Isidore to the *Correctores Romani*. Etienne Baluze, who edited and annotated a new edition of the *De emendatione Gratiani*, was the first Catholic scholar of some authority to pronounce these decretals a forgery. Baluze took the bulk of the introduction to his edition of Agustín to attack the scoundrel (*nebulo*) who introduced the innovations contained in Pseudo-Isidore into the tradition, a piece of scholarship that landed this work on the *Index librorum prohibitorum* on June 19, 1674.

²⁵⁶ *Gratiani decretum: s. verius Decretorum canonicorum collectanea, ab ipso auctore Gratiano primo inscr.: concordia discordantium canonum* (Paris, 1547). Instead of just printing the *Decretum* from a single manuscript, Demochares collated a variety of different manuscripts both of Gratian and of his sources, providing variant readings and offering emendations for the mangled inscriptions in particular. For Demochares' biography, see: Schulte, *Die Geschichte der Quellen*, pp. 555-6.

²⁵⁷ *Decretum Gratiani* (Lyon, 1561). Molinaeus' life and work are exemplary for how the moral and historical preoccupations of Protestant jurists enriched the study of canon law. On the basis of his new edition of Gratian, Molinaeus was appointed by Phillip II in 1557 to a professorship at the University of Louvain responsible for teaching a *nova lectio decretorum*. The idea behind a chair in canon law at a Protestant university was to use Gratian as a gateway for studying the history and theology of the Antique Church, rather than as a textbook of canonical jurisprudence. Molinaeus' teaching and study of the early Church through the passages of the *Decretum* led him subsequently to edit Ivo of Chartres' *Decretum*, one of Gratian's principal formal sources (*Decretum D. Ivonis episcopi Carnutensis* (Louvain, 1561)). According to Molinaeus, Ivo offered a purer conduit for the ancient discipline of the Church than Gratian, whose interpretation of the material via his various *dicta* and frequent misattribution of inscriptions impeded a direct encounter with the sources. On Molinaeus' career and editorial accomplishments at Louvain, see: Peter Landau, "Das Dekret des Ivo von Chartres," *ZRG*, kan, Abt. 70 (1984) pp. 1-4.

Conte (Contius) in 1556.²⁵⁸ In pursuing their textual criticism of the *Decretum*, both of these scholars concluded that the Pseudo-Isidorian decretals were forgeries (*a monachis et papis confectae* according to Molinaeus).²⁵⁹ As a result, Molinaeus' edition was placed on the *Index librorum prohibitorum*, and the offending portions of Contius' notes were excised from the 1570 Antwerp edition.²⁶⁰

Having published one of the first versions of the *Decretum* to subject the text to the new source-critical approach, Contius went on to edit the remaining texts of the *Corpus Iuris Canonici* [=CIC], producing the first printed edition of the *Decretals* (1560) to include the *partes decisae*.²⁶¹ By providing the whole text (or something close to it), Contius saw himself as offering a remedy for the moral degeneration that was afflicting his times.²⁶² The fuller versions of the decretals were more revelatory of the pristine discipline of the Church, according to Contius, and he criticized Raymond harshly, using

²⁵⁸ *Decretum Gratiani* (Paris, 1556). For Contius' biography, see: Schulte, *Die Geschichte der Quellen*, vol. 2, p. 559.

²⁵⁹ For a discussion of these early editions the *Decretum*, particularly their place in the religious struggles of the sixteenth century, see: Michel Reulos, "Le Décret de Gratien chez les humanistes, les gallicans et les réformés français du xvième siècle," *Studia Gratiana* 2 (1956) pp. 24-53.

²⁶⁰ The French Catholic jurist François Florent discussed the confusion that this censorship created in distinguishing Contius' notes from those of Desmochares in later editions of the *Decretum* that layered in the commentary of previous scholars: *Praefatio de Methodo et auctoritate collectionis Gratiani, et reliquarum Collectionum Decretalium post Gratianum*, in *Opera Juridica*, vol. 1 (Paris, 1679) p. 45.

²⁶¹ *Epistolae decretales summorum pontificum a Gregoriano nono pontifice maximo collectae* (Paris, 1560). Schulte was only acquainted with the 1570 Antwerp edition, which, as noted above (n. 260), was published together with an expurgated version of the *Decretum*. For the *Decretals*, Contius was selective in his choice of which omissions to include, and so did not offer anything close to a full version of every decretal as Raymond would have found it in the 5C.

²⁶² "Ut igitur inde remedium adferatur, unde morbus iam dudum grassari coepit, ex vetustis illis compilationibus, multa temere a Raymundo decisa et expuncta pro iudicii mei arbitrio passim restituti adiutus ad eam rem vetustissimis illarum compilationum membranibus," *Epistolae decretales summorum pontificum a Gregoriano nono pontifice maximo collectae* (Antwerp, 1570) p. 3.

words like *laniare* and *lacere* to describe the latter's editorial techniques.²⁶³ To furnish the *partes decisae*, Contius consulted manuscripts of the *Quinque Compilationes Antiquae* [5C], there being, as yet, no available printed edition.

2.2.2 The Editio Romana and its aftermath

Much as Gregory IX had done through his commissioning of Raymond of Penyafort, in the second half of the sixteenth century the Apostolic See attempted to exert a measure of control over the process of renovating the sources of canon law. It is generally supposed that toward the end of the Council of Trent, Pius III originated the idea for a commission to produce a new, corrected version of the *CIC*.²⁶⁴ Commonly known as the *Correctores Romani*, this commission spent the next fifteen years carrying out their charge, initiating correspondence with some of the leading legal scholars and theologians across Europe in order to obtain reliable copies of both the material and formal sources for the *CIC*.²⁶⁵ The project's completion was finally announced in 1580

²⁶³ "Idem multo iustius de Raymundo isto dici posse quod de Triboniano, multas illum utilissimas constitutiones, dum brevitati studet, misere laniasse et lacerasse, ut plerumque divinare necesse sit, quid esset in controversia positum, quidve iuris rescriptum et responsum," *ibid.*, p. 3.

²⁶⁴ An official decision to form the commission did not leave any traces in the conciliar *acta*. The idea probably originated with the commission that worked on the Bible, since many of these scholars overlapped with those who would work on the *CIC*.

²⁶⁵ Friedberg gives a comprehensive list of 35 members of the commission in his Prolegomenon, *CIC*, vol. 1, coll. lxxvi-lxxvii. A few names were added by Hans Troje in his chapter "Kritik des Corpus Iuris Canonici," in: *Graeca Leguntur* (Forschungen zur neueren Privatsgeschichte, vol. 18: Cologne, 1971). It is likely that we still do not know all the members of the commission. As the scope of its work expanded, so did its membership, and the correspondence of the participants occasionally makes reference to various scholars on their way to Rome to take part in its labors. Iustus Henninger Böhmer says somewhat derisively about the composition of the commission: "Extra urbem non defuerant sine dubio viri eruditione solida praestantes, qui hanc provinciam exornare potuissent; sed quia pontifici Pio IV ceterisque placuit, socios huius laboris ex eruditis in urbe constitutis eligere, extranei in partem huius sollicitudinis non sunt vocati," "Dissertatio de varia decreti Gratiani fortuna," *CIC*, vol. 1 (Halle-Magdeburg, 1747), p. xxvi, nota d. There has been an unfortunate lack of scholarship on the *Correctores*, given the possibilities afforded by the existence of their notes and the records of their deliberations in a number of Vatican manuscripts (see below for full citation). A particularly useful study is: Karl Schiellhass, "Wissenschaftliche Forschungen unter Gregor XIII. für die Neuauflage des Gratianischen Dekrets," in *Papsttum und Kaisertum: Forschungen zur politischen Geschichte und Geisteskultur des Mittelalters, Paul Kehr zum 65. Geburtstag dargebracht*, ed. Albert Brackmann (Munich, 1926), pp. 674-90.

with the issue of Gregory XIII's *Cum pro munere*, and the so-called *Editio Romana* was formally published a few years later in two volumes: volume I containing the *Decretum* in 1582, and volume II containing the *Decretals, Liber Sextus, Clementinae*, and *Extravagantes communes* in 1584.²⁶⁶

We know a great deal about the process the *Correctores* employed to arrive at their final version of the *Decretum*.²⁶⁷ The *Correctores* prefaced the 1582 volume with an *admonitio* that included a discussion of their editorial approach to Gratian.²⁶⁸ Their remarks may be supplemented by the brief selection of letters and minutes from the commission's meetings printed by Augustin Theiner in an appendix to his *Disquisitiones criticae*,²⁶⁹ among which are a set of 14 *leges constitutae et observatae in correctione*

²⁶⁶ The text of the bull appears in: Friedberg, *CIC*, vol. 1, coll. lxxix-lxxxii. Gregory shares the aims that have been discussed above, that the renewal of ecclesiastical discipline in a perilous age could be achieved in large measure through the renovation of the sources of canon law: "Cum pro munere pastorali humeris nostris iniuncto id precipue nobis propositum habemus, ut omni studio diligentiaque omnes Christifideles his presertim tam gravibus calamitosisque temporibus in recta et catholica fide continere curemus, ac propterea id in primis nobis agendum et providendum sit, ut omnem omnibus aberrandi ab ea occasionem subtrahamus: dudum ob huius rei executionem, adhibitis nonnullis ex fratribus nostris sanctae Romanae Ecclesiae Cardinalibus, adiuncto etiam aliquorum doctrina et pietate insignium virorum studio, Decretum Gratiani nuncupatum absque glossis, necnon idem Gratiani Decretum cum decretalibus Gregorii Papae IX. predecessoris nostri, Sexto, Clementinis et Extravagantibus, non modo cum veteribus glossarum auctoribus, (quibus cum viri pii et catholici fuerint, ignoscendum videtur, si quid vel ob errorem in illis, vel quia nondum pleraque a sacris conciliis diffinita fuerant, liberius locuti sunt,) verum etiam cum his, que ab impiis scriptoribus tam extra in marginibus, quam etiam intra aspersa fuerant catholicae veritati contraria, revidendi, corrigenda et expurgandi curam demandavimus."

²⁶⁷ Mary E. Sommar, *The Correctores Romani: Gratian's Decretum and the Counter-Reformation Humanists* (Pluralisierung & Autorität 19: Berlin, 2009).

²⁶⁸ Reprinted in: *CIC*, lxxxiii-lxxxviii.

²⁶⁹ Augustin Theiner, *Disquisitiones criticae in praecipuas canonum et decretalium collectiones seu sylloges gallandianae dissertationum de vetustis canonum collectionibus continuatio* (Rome, 1836) Appendix I. Theiner gave a false citation of BAV Vat. lat. 4911 for the Vatican manuscript containing the *Correctores'* notes and correspondence whence he pulled the documents. Karl Schellhass gave the correct shelfmark of Vat. lat. 4913 in his 1926 study of the *Correctores* referenced above: "Wissenschaftliche Forschungen unter Gregor XIII." A few decades later we learned that the *Correctores'* records were even more substantial, after Stephan Kuttner posted a brief notice of five additional manuscripts containing the commission's reports, viz., Vat. lat 4889-93; "Notes: Antonio Agustín and the Correctores," *Traditio* 25 (1969), p. 505. To this may be added Rome, *Bibliotheca Vallicelliana*, MS C.24, a manuscript of the commission's notes taken by its one-time secretary, Michael Thomasius, who later passed it along to his mentor Antonio Agustín, as Kuttner noted in the article cited above.

Decreti D. Gratiani. Altogether these documents paint a vivid portrait of the importance assigned by the *Correctores* and their correspondents to the task of renovating the sources of canon law,²⁷⁰ as well as the tremendous difficulties – bibliographical,²⁷¹ paleographical,²⁷² and political,²⁷³ – encountered along the way. Previous scholars have argued back and forth about the relative merits of the *Correctores'* version of the *Decretum*. Their aim was not, however, to produce a critical edition by modern standards, as may be seen from the fourteen *Leges constitutae et observatae in Correctione Decreti D. Gratiani* that guided their editing.²⁷⁴ As one scholar has put it,

²⁷⁰ In an undated letter to the commission, Demochares, who had been solicited for help in tracking down texts, wrote eloquently of the desired effect this return to the sources could have: "Quid enim huic saeculo in fide, doctrina et moribus miserrime perinclinanti virilius esse potest, quam prophetas optimos adhibere, qui ab omnibus Syrtibus et Carybdibus ipsum liberent, et ad optatum deducant portum? Porro quod magis praesentes ad animarum corporumque nostrorum remedium, quis dicet, quam qui antiquissima christiana pietatis dogmata adferunt, quique sancta majorum ac patrum nostrorum in sacrosanctis synodis decreta producant, quibus omnium haeresum nebulae dissipantur, et veritatis lumen manifeste refulget. Quamobrem semper antiquorum doctorum lectionibus delectatus sum, studiose libros illos, qui ex forum sententiis, decretis et canonibus collecti veniunt admiratus et amplexus sum," Theiner, *Disquisitiones criticae*, Appdx. I, no. 19, p. 23.

²⁷¹ Surius' collection of general councils had just been published (*Concilia omnia tum generalia tum provincialia atque particularia*, 4 vols. (Cologne, 1567)), filling many important lacunae in the source record. The correspondents made reference to it more than once as a place to find items desired by the commission. Even so, the correspondence as a whole reveals the trouble they encountered merely securing the necessary materials, particularly the material from early provincial councils and pre-Gregorian-Reform decretals.

²⁷² The Spanish scholar Ambrosius Morales complained about the hardship of deciphering a recently discovered decretal collection written in obscure gothic script: "Decreta canonum Praesulem Romanorum, cum epistolis summorum pontificum, qui ante mille annos fuerunt. Hoc plane illud est exemplar, quod me habere Sua Sanctitas in suis litteris scribit. Id vero cum bene magnum sit, et gothicis litteris obscuris valde, et obsoletis perscriptum, per pauci apud nos reperiuntur, qui paulatim et sensim legere, nullus ferme, qui expedite posset perlegere," Theiner, *Disquisitiones criticae*, Appdx. I, no. 26, p. 30.

²⁷³ In a letter to Gregory XIII dated March 9, 1573, Jacobus Amyotus, bishop of Auxerre, wrote at length about the difficulty of procuring the texts placed on a list of desiderata by the *Correctores* due to the religious and political strife of the time. He laments the rampant destruction of books due to the vacating of monastic libraries in his area, and says he will send the list of desiderata on to scholars in other cities not already in the possession of the "heretics," *ibid.*, no. 16, p. 20.

²⁷⁴ The document containing the *leges* was first printed in: Theiner, *Disquisitiones Criticae*, Appdx. I, pp. 4-6; repr. in: Friedberg, *CIC*, vol. I, coll. lxxvii-viii.

the *Correctores'* goal was to offer the edition that Gratian would have produced, given a world without scribal error.²⁷⁵

Nothing like the *Leges* exists for the *Decretals*, nor does any of the correspondence printed by Theiner or mentioned by Schellhass contain discussions of source-critical work for the parts of the *CIC* other than Gratian. It is not clear whether the *Correctores* even sought to do this sort of work for any collection besides Gratian.²⁷⁶ Knowledge of the *Correctores'* editorial process for the *Decretals* must be gleaned, therefore, from a direct examination of the text. Whatever the *Correctores* thought of Contius's version of the *Decretals*, they adopted his method of supplying some of the *partes decisae*. The selected excisions were placed at the end of every decretal, accompanied by a critical apparatus. In *Cum pro munere*, Gregory XIII seems to assign responsibility for the editing of the rest of the *CIC* – outside the initial unglossed version of the *Decretum* overseen by Paulus Constable – to Sixtus Faber, Master of the Sacred Palace.²⁷⁷ Other than Sixtus Faber, the only other name from the commission that is directly associated with the work on the *Decretals* is Francisco Pegna.²⁷⁸ According to

²⁷⁵ Troje, *Graeca Leguntur*, p. 82ff.

²⁷⁶ In one of Jacobus Amyotus' letters to the commission, he includes a list of sources he had found in local libraries. All of the sources are pre-Gratian with one exception: a collection of Clement V's letters, about which Amyotus added this comment: "Invenimus etiam volumen satis magnum epistolarum Clementis V., Si vobis usui esse possit, sed posterior est Gratiano, et omnibus decretorum collectoribus." This comment suggests that there was probably not an open solicitation for the material sources of at least the last two parts of the *CIC*, the *Clementinae* and *Extravagante Communes*.

²⁷⁷ "Cum autem ipsum Decretum absque glossis a prefatis a nobis deputatis iam totum emendatum et correctum ac nonnullis annotationibus illustratum existat, ipsiusque maior pars a dilecto filio Paulo Constabili, tunc sacri nostri Palatii Apostolici Magistro, una cum dictis Decretalibus felicis recordationis Gregorii IX. predecessoris nostri iam impressis, recognita et approbata sit, reliquum vero eiusdem Decreti una cum annotationibus predictis tam absque glossis, quam ipsum totum cum glossis, Sextumque et Clementinas simul et Extravagantes a dilecto filio Sixto Fabri, eiusdem Palatii nostri Apostolici Magistro," Friedberg, "Prolegomena," *CIC*, vol. 2, lxxix-lxxx.

²⁷⁸ Pegna wrote extensively on inquisitorial practice and became an *Auditor Rotae*. For his biography, see: Schulte, *Die Geschichte der Quellen*, vol. 2, p. 734.

Antonio Agustín, it was Pegna who was responsible for the unattributed marginal notes correcting mistakes in personal and place names.²⁷⁹

As intended, *Cum pro munere* effectively closed the book on future editions of the *CIC* by Catholic scholars that did not adhere to the *Editio Romana*.²⁸⁰ This prohibition was taken seriously enough such that the brothers Pierre and François Pithou, who had been preparing a new edition of the *CIC*, elected not to publish their work.²⁸¹ For all its supposed faults, the *Correctores* had produced a text that remained the approved version

²⁷⁹ Agustín's issued an oblique rebuke of Pegna's alleged work on the *Decretals*. In his list of the *Correctores* at the end of book one of *De emendatione Gratiani*, Agustín appends this comment under Pegna's name: "Dianae templum incendisse visus fuerit," *De emendatione Gratiani*, vol. 1, p. 238. This reference to Herostratus, who burned down the temple of Diana in Ephesus in 356 in order to have his name go down in history, is a curious analogy given that the critical notes in the *Editio Romana* were anonymous. It has never been clarified whether Agustín was correct in identifying Pegna as the member of the commission responsible for annotating the *Decretals*, although he would have been in a position to know the division of labor within the commission, having been a frequent correspondent and recipient of an early version of the text of the *Decretum*. Étienne Baluze, who edited and annotated Agustín's *De emendatione Gratiani*, took issue with Agustín on this point: Diu molestum me habuere quae heic dicuntur de Francisco Pegna. Videbam virum fuisse doctissimum et laudatum, non solum ab hominibus qui eodem cum illo tempore vixerunt, sed etiam ab illis qui secuti postea sunt. Ea tamen Antonius Augustinus subindicare videtur aliquid adversum famae viri, dum ait eum templum Dianae incendisse visum esse cum additiones Decretalium componeret, ac si Franciscus, alioqui ignotus, famam sibi compare voluerit hoc labore, non secus ac Herostratus incendendo templum Dianae Ephesiae. Per additiones autem istas intelliguntur Notae marginales Decretalium in editione Gregorii XIII quas nullus ferme scit esse Francisci Pegnae, atque adeo sunt sine nomine," *ibid.*, p. 434.

²⁸⁰ The prohibition against alteration or unlicensed printing of the *Editio Romana* is repeated several times in the bull of promulgation. Here it is in its most elaborated form: "ita quod etiam nulli omnino hominum, tam in Urbe, et tota Italia, quam extra urbibus Terrarum, Regnorum, Regionum, et Provinciarum totius orbis liceat huiusmodi libris dicti Juris Canonici sic, ut praefertur, de mandato nostro recognitis, correctis, et expurgatis quicquam addere, detrahere, vel immutare, aut invertere, nullave interpretamenta adungere, sed prout opus huiusmodi Romae impressum fuit, semper, et perpetuo integrum, et incorruptum conservetur, statuimus, sancimus, et ordinamus," Friedberg, *CIC*, vol. 1, coll. lxxxi-lxxxii.

²⁸¹ The Pithou brothers were actively working on their edition of the *Decretals* when the *Editio Romana* was published, and switched *in medias res* to using the base text of the *Correctores*, similar to what Agustín would do with his study of Gratian (see below). Having already completed their work on the *Decretum*, however, their posthumously-published version of Gratian was for a long time the sole critical alternative to the text of the *Editio Romana*. Their complete edition of the *CIC* was not published until almost a century after their deaths: *Corpus juris canonici Gregorii XIII. Pont. Max. jussu editum a Petro Pithoeo, et Francisco fratre, jurisconsultis, ad veteres codices manuscriptos restitutum, et notis illustratum. Ex Bibliotheca illustrissimi D. D. Claudii le Peletier, regni administri et regii Franciae Aerarii praefecti*, 2 vols. (Paris, 1685-7).

until the promulgation of the new Code in 1917 replaced the decretal collections in the *CIC* as the universal law of the Catholic Church.

Antonio Agustín was a frequent correspondent of the *Correctores*, having been among those who contributed source material for the project and also one of the select recipients of the first version of the *Decretum*.²⁸² While critical of the *Correctores*, he was ultimately a loyal son of the Church, respecting the work of the papal-appointed commission enough to revise his own critical study of Gratian *in medias res* (the *De emendatione Gratiani*), and according to some, deciding ultimately not to publish it out of respect for the exclusivity claimed in *Cum pro munere*.²⁸³ Agustín lodged a complaint against Contius similar to his criticism of the *Correctores*, the pith of which concerned the elevation of the editor's opinions over the original text.²⁸⁴ It was not so much a

²⁸² There is a single letter from Agustín while he was still bishop of Lerida (1561-76) in the documents published by Theiner; it was written as an accompaniment to his transcriptions of a council of John XII and the Salic Law (*Disquisitiones criticae*, Appendix I, doc. 18). Theiner also printed a set of instructions listing letters to be sent to various scholars by the commission, among whom Agustín was to be included for help with securing unspecified texts on the *Correctores* list of desiderata. Agustín is considered the first practitioner of the modern study of canon law, using textual and historical criticism as well as a massive knowledge and understanding of Church history to present and interpret the material. For Agustín's biography see: Schulte, *Die Geschichte der Quellen*, vol. 2, pp. 723-728; Friedrich Maassen, *Geschichte der Quellen und Literatur des canonischen Rechts im Abendlande*, vol. 1 (Graz, 1870; repr. Graz, 1956) pp. xix-xxxiv. Maassen's most treasured work was a handwritten copy of Agustín's *De quibusdam veteribus canonum ecclesiasticorum collectoribus iudicium ac censura*, a posthumously-published survey of canon law collections and compilers up through the *Polycarpus*, printed in: *Opera Omnia*, vol. 3, (Mainz, 1790) pp. 217-44.

²⁸³ *De emendatione Gratiani* was published posthumously in 1587 (Tarragona) a year after Agustín's death. It is, in the words of Schulte, "ein Muster kritischen Scharfsinns und riesigen Fleisses, zumal wenn man bedenkt, dass derselbe keinen Vorgänger hatte," *Die Geschichte der Quellen*, vol. 2, p. 725. Agustín himself mentioned having received an early version of at least some portion of the *Editio Romana* of the *Decretum*: "Laetos nos fecit recens ex Urbe tabellarius, qui attulit aliquot Gratiani pagellas ad te G. missas, tu cognoscere posses qualis esset, quae prope diem finem accipiet, Romana juris pontificii editio," *De emendatione Gratiani*, vol. 2, Dialogue II.14.

²⁸⁴ In the dedicatory preface to Gregory XIII accompanying his edition of the first four of the *5C*, Agustín writes: "Audacious Antonius Contius nuper, et Joannes Quinctinus, qui multa inserere ausi sunt Pontificiis rescriptis. Eorum ego ingenium laudo, atque quod dant minime aspernor; id tamen mihi malo exemplo fieri videtur, si quod publica auctoritate accepimus, liceat nobis privata voluntate interpolare. Illi quidem praeclare notas addunt, quibus sua ab alienis distinguantur: at res est plena periculi; cum facile in his librarii labi soleant, et aliena verba vel longius separata in nostrorum verborum numerum referre," *Antiquae collectiones decretalium* (Lerida, 1570); repr., in: *Opera Omnia* vol. 4 (Lucca, 1769). In his preface to the

disagreement with the editorial decisions of Contius or the *Correctores*. Rather, Agustín claimed that extreme care should be taken lest an editor's personal judgment creep into a text invested with public authority, either by the editor's own recklessness, as was the case with Francisco Pegna, or after the fact, by enabling a future reader or printer to mistake the editor's annotations for the original text. Respectful of the authority invested in the tradition, but possessing an appreciation equal, if not greater than his contemporaries for the salubrity of drinking directly from the sources, Agustín focused his scholarship on excavating the sources for the official canonistic collections.

In addition to his work on the *Ius antiquum*, Agustín made an outstanding contribution to the study of decretal law by producing a critical edition of the first four of the *5C*. He sought to continue the work begun by Contius of presenting the individual decretals *in integro*, but in a manner that would not challenge the exclusivity of the *Decretals*.²⁸⁵ Agustín controlled his edition of 1-4Comp with Contius, and with other unnamed exemplars of the *Decretals* in manuscript. Later scholars have judged his manuscript base to have been inadequate, but his extensive notes in the critical apparatus for each decretal remain highly useful.²⁸⁶ It should also be noted that throughout his

Decretals (1570 Antwerp ed., p. 3), Contius had identified Quinctius (Jean Quintin: 1500-61) as his chief collaborator in assembling and restoring the *partes decisae*. For Quinctius' biography, see: Schulte, *Die Geschichte der Quellen*, vol. 2, p. 556.

²⁸⁵ Agustín noted that Contius and his collaborator Quinctius had not been thorough in collecting Raymond's omissions, and whether by accident or design, had failed to include material that was just as valuable as that which they had elected to supply: "Hic accedit, quod illi [Contius et Quinctius] permulta aut dedita opera, aut alia quacumque de causa ommittunt; quae non minus utilia sunt, quam ea, quae adscribunt," *Antiquae collectiones decretalium*, p. 7. Justifying the utility of his project in the dedicatory epistle to Gregory XIII, Agustín writes: "Maximam inde utilitatem adferri posse, facile deprehendi; nam et ipsa illa antiquitatis cognitio, ut in ceteris rebus, propius accedit ad ipsarum rerum originem; et ut fontium purior est haustus, sine illis sordibus, quae in rivulis, et lacunis haerere solent: sic in his pleno gurgite, atque dilucidiore veterum scriptorum sententiis fruimur. Multa sunt a Raimundo detracta, quae nisi legantur, vix relictorum sententiam deprehendimus," *ibid.*, p. 7.

²⁸⁶ See Friedberg's comments in the prolegomena to his own edition of the *5C* on the value of Agustín's edition of the pre-Gregorian decretal collections: *5C*, p. v. A more recent assessment of Agustín's

many works on the *Ius Antiquum* (*De emendatione Gratiani* especially) are a good number of insights into Raymond's editing of the *Decretals*.

Reluctant to do textual work on the *Decretals* that would cross the line laid down in *Cum pro munere*, other early-modern Catholic scholarship could only broach the issue of Raymond's editing of the *Decretals* via commentary literature. Direct commentary on the *Decretals* in the style of Johannes Andreae or Panormitanus – following the organization of the text itself – had become an antiquated form by the sixteenth century. The preferred method now took a more systematic, topic-based approach, indicated by titles such as the *Institutiones juris canonici* of Giovanni Paolo Lancelloti (Perugia, 1563),²⁸⁷ the *Jus ecclesiasticum universum* of Zegero Bernard Van-Espen (Cologne, 1748),²⁸⁸ or the *Principia juris ecclesiastici* of D. P. Gregor Zallwein (Vienna, 1763).²⁸⁹ These authors on occasion would single out the divergence of Raymond's text from his sources, but offered no assessment as to the meaning of these changes, historical or otherwise.²⁹⁰ Even those commentators who still followed the older running-commentary approach offered few new insights as to the textual problems of the

achievement was given by Kuttner: "Antonio Agustín's edition of the *Compilationes Antiquae*," *BMCL* 7 (1977) pp. 1-14.

²⁸⁷ Lancelloti's *Institutiones* was published as a supplement in editions of the *CIC*. For Lancelloti's biography, see: Schulte, *Die Geschichte der Quellen*, pp. 451-3.

²⁸⁸ This work, added to the Index along with the rest of Van Espen's *oeuvre*, was not published in its fullest form until 1748, two decades after he had died in exile from his university position at Louvain, another victim in the Jansenist struggle. For his biography, see: *ibid.*, pp. 704-7.

²⁸⁹ For Zallwein's biography, see: *ibid.*, pp. 218-9.

²⁹⁰ Van Espen probably went furthest among his peers in pointing out the differences between the *Decretals* and the *5C*, and encouraged the consultation of Raymond's formal sources for clearing up difficulties brought about by Raymond's excisions: "Harum collectionum [Quinque compilationum antiquarum] praecipua utilitas et quasi necessitas eas consulendi, haec est, quod Decretales Gregorii IX maxima ex parte ex his praeexistentibus collectionibus sint desumptae. Porro et hoc scitur, quod Raymundus Decretalium Gregorii IX Collector, Decretales non retulerit integras, prout exstabant in praecedentibus Collectionibus, sed multa resciderit, et nonnumquam immutaverit, et aliqua subinde addiderit, quae sensum Decretalis vel

Decretals. Two notable exceptions are Jacques Cujas²⁹¹ and Manuel Gonzalez Tellez,²⁹² both of whom profitably used the *partes decisae* in their commentaries, and whose work will be used to clarify some of the textual issues later in the next chapter.

2.2.3 Eighteenth- and Nineteenth-Century Editions

As was previously discussed, Protestant jurists were not bound by the constraints placed upon Catholic scholarship. Following in the steps of Contius, the three modern editors of the *Decretals*, Justus Henninger Böhmer (1747),²⁹³ Emil Richter (1839),²⁹⁴ and Emil Friedberg (1881),²⁹⁵ gradually laid the groundwork for a critical approach to Raymond's editorial methods and for establishing the original context for each decretal. This involved supplying those portions of the text that Raymond had excised from the 5C, and where possible, going further back to the original form of the decretal as it existed before its inclusion in a canonical collection. It is notable that all three authors

immutant, vel obscuriorem reddunt," 'Dissertatio in quinque libros decretalium,' in *Jus ecclesiasticum universum* (Naples, 1766) p. 304.

²⁹¹ *Recitationes ad decretalium Greg. IX libros II., III., IV.* (Frankfurt, 1594). Cujas was primarily a scholar of Roman law, whose *paratitla* accompanied most early-modern editions of the *Corpus iuris civilis*. The textual-critical approach that made his Roman Law commentaries so valuable was reproduced in the *Recitationes* as well as his annotation of Agustín's *De emendatione Gratiani*.

²⁹² *Commentaria perpetua in singulos textus quinque librorum Decretalium Gregorii IX* (Lyons, 1673). Tellez's commentary was unique for its time. Using the framework provided by the *Decretals*, Tellez drew upon a broad range of additional legal, theological, and historical texts to illustrate different aspects of Church history. He explicitly acknowledged the novelty of his approach in his preface: "In hoc opere novum scribendi genus reperies; nec enim in Decretalium expositione tantum, sed etiam historica narratione operam insumpsi, quia et utrumque maxime prodesse visum fuit; quippe antiquas lectiones, epistolas Pontificum, e quibus haec Compilatio emanavit, illorum temporum res, Urbium, Ecclesiarum quoque, et Monasterium origines diligenter acquisivi, et usque ad superstitionem retinui." This quote is taken from the 1756 edition of the *Commentaria perpetua* published in Venice. The preface lacks pagination, but the catchword at the bottom of the page quoted is "[Ly]caei".

²⁹³ *CIC*, 2 vols. (Halle-Magdeburg, 1747). For Böhmer's biography, see: Schulte *Die Geschichte der Quellen*, vol. 3, pp. 92-4.

²⁹⁴ *CIC*, 2 vols. (Leipzig, 1836-9). For Richter's biography, see: Schulte, *Die Geschichte der Quellen*, vol. 3, pp. 210-25.

²⁹⁵ *CIC*, 2 vols. (Leipzig, 1879-81). For Friedberg's biography, written only a year after the publication of vol. 1 of the *CIC* containing Gratian, see: Schulte, *Die Geschichte der Quellen*, vol. 3, pp. 238-9.

employed the *ER* as their base text, a concession to its importance in the tradition, if not to the authority of the Church.²⁹⁶ As the last in line, Friedberg's edition is the culmination of over 300 years of scholarship, and contains the majority of the *partes decisae* for the decretals of Gregory's predecessors.²⁹⁷

The distinct advantage of Friedberg's edition is the extensive critical apparatus supplying variants from *Decretals* manuscripts, as well as codices of the *5C*.²⁹⁸ The number of readings provided therein show the wide variations that developed between different copies of the collection. As Friedberg's variants will be included in the appendix, it is worthwhile here to list his manuscripts along with their sigla:

Friedberg Manuscripts of the *Decretals*:

F = Munich, BSB, clm 14011

G = Munich, BSB, clm 6904

H = Leipzig, UB, Haenel 10

²⁹⁶ These authors still felt it was incumbent upon them to justify their decision to offer a new edition in light of Gregory XIII's *Cum pro munere*. Thus, Böhmer: "Nec intentio Gregorii XIII fuisse videtur prohibendi, ne necessaria, circa aetatem, personas et locum, additamenta textibus praemitterentur, longe maiorem utilitatem adhuc decreto conciliatura, sed tantum voluisse videtur, ne nova emendatio textui adderetur, sed hic in eo statu in perpetuum subsisteret, in quo a correctoribus constitutus, et a me quoque relictus est. Et quamvis interpretationes decreto adiungere prohibuerit pariter, ad illas tamen sine dubio hoc restringendum, quibus ipsa doctrina, a Gratiano proposita, everti posset, illae autem facilius permittendae, quae textui ex antiquitatibus maiorem conciliant lucem. Saepe correctorum etiam monita lumine indigent, a quibus loca, nominaque in capitulis adducta, ubique fere incorrecta manserunt, id quod indicasse salutare omnino censendum, nec sub interdicto latere credendum est. Denique etiam ipsimet correctione indiguerunt, nec credendum est, pontificem errores eorum incorrectos manere voluisse," 'Dissertatio de varia decreti Gratiani fortuna,' *CIC*, vol. 1, pp. xxvii-xxviii. See, also, Friedberg's long elucidation ("Prolegomena," *CIC*, vol. 2, coll. xlv-xlv) of the reasons why he chose to follow Böhmer and Richter in his editorial methods and his decision to stick with the text of the *Editio Romana*, "quem [textum] quoniam legis auctoritatem obtinet mutare non ausus sum." *ibid.*, col. xlii.

²⁹⁷ In the introduction to vol. 2 of his edition of the *CIC*, Friedberg gives a thorough account (in Latin) of the methods employed in his edition, which moreover remains a vital source of information about the *Decretals*. Somewhat less well-known is the separate German pamphlet Friedberg published the year the edition came out, which is more or less a translation of the Latin introduction: *Ueber meine neue Ausgabe der Decretalen-Sammlungen und der Quinque Compilationes Antiquae* (Leipzig, 1882). There is a similar pamphlet published a few months later that reprises his Latin introduction to the *5C*, and also appends his recent thoughts about the dating of Gratian's *Decretum*: *Ueber meine neue Ausgabe der Quinque Compilationes Antiquae. Eroerterungen ueber die Entstehungszeit des Decretum Gratiani* (Leipzig, 1882).

²⁹⁸ The *Decretals* manuscripts include both those used by the previous editions of Boehmer and Richter, as well as ones Friedberg selected from German libraries.

I = Fulda, LB, D.24
K = Göttingen, UB, jurid. 149
La = Berlin, SBPK, lat. fol. 8
Lb = Berlin, SBPK, lat. fol. 7
M = Cod. Hasso-Casselanum
N = Cod. Ludwigi cancelarii
 Total: 9 mss

Friedberg Manuscripts and editions of the *Quinque Compilationes Antiquae*:

1Comp: 10 MSS, 1 ed.

Aa = Munich, BSB, clm 3879
Ab = Freiburg, UB, 361a
Ac = Munich, BSB, clm 6352
Ad = Graz, UB, 374
Ae = Graz, UB, 106
Af = Graz, UB, 138
Ag = Bamberg, SB, Can.20 (*quondam* P.II.7)
Ah = Bamberg, SB, Can.19 (*quondam* P.II.6)
Ai = Fulda, LB, D.5
Ak = Leipzig, UB, 983
Al = *Editio Antonii Augustini*, Paris 1609.

2Comp: 8 MSS, 1 ed.

Ba = Munich, BSB, clm 3879
Bb = Graz, UB, 374
Bc = Graz, UB, 106
Bd = Graz, UB, 138
Be = Bamberg, SB, Can.20 (*quondam* P.II.7)
Bf = Bamberg, SB, Can.19 (*quondam* P. II 6)
Bg = Leipzig, UB, 983
Bh = Marburg, UB, C.2
Bi = *Editio Antonii Augustini*, Paris 1609.

3Comp: 7 MSS, 1 ed.

Ca = Munich, BSB, clm 3879
Cb = Graz, UB, 374
Cc = Graz, UB, 106
Cd = Graz, UB, 138
Ce = Bamberg, SB, Can.20 (*quondam* P.II.7)
Cf = Bamberg, SB, Can.19 (*quondam* P. II 6)
Cg = Leipzig, UB, 983
Ch = *Editio Antonii Augustini*, Paris 1609.

4Comp: 7 MSS, 1 ed.

Da = Munich, BSB, clm 3879

Db = Graz, UB, 374
Dc = Graz, UB, 106
Dd = Graz, UB, 138
De = Bamberg, SB, Can.19 (*quondam* P. II 6)
Df = Marburg, UB, C.2
Dg = Leipzig, UB, 908
Dh = *Editio Antonii Augustini*, Paris 1609.

5Comp: 3 MSS, 1 ed.

Ea = Bamberg, SB, Can.23 (*quondam* P. I. 18)
Eb = Graz, UB, 374
Ec = Leipzig, UB, 908
Ed = *Editio Cironiana a J. A. de Riegger denuo curata*, Venice 1761

2.3 Transmission of the Decretals in Manuscript

Buried in his *Lectura* on the *Decretals* is an offhand remark by the thirteenth-century commentator Hostiensis that hints at some of the complexities of the manuscript tradition in the early days after promulgation.²⁹⁹ The decretal that called forth his comments was X 3.14.3, a Gregory-IX constitution under the title *De precariis*. This text sets forth the conditions that would dissolve a *precarium*, which was a type of agreement that allowed the owner of a certain property to grant long-term use to another party, without, however, transferring ownership of that property. The first part of the X 3.14.3 in the *ER* reads as follows:

Precarium utendum conceditur, quamdiu patitur qui concessit; solvitur quoque obitu eius cui concessum est, non etiam concedentis...

The use of a *precarium* is granted for as long as the one who originally granted it may allow; and the *precarium* is dissolved upon the death of him to whom it was granted, not, however, by the death of the grantor....

In his gloss Hostiensis remarks that his original copy of the *Decretals* had a defective reading for X 3.14.3, which read "...vel etiam concedentis," instead of "non etiam concedentis," which gave the false interpretation to the canon that a *precarium* was

terminated by the death of the grantor, as well as the grantee. He attached the comments to the erroneous lemma found in his text:

vel etiam] alias *non etiam*. Prima littera falsa est, erravit enim in ea compiler. Sed ego habeo ipsam, quia liber meus de primis fuit. Postea missa fuit alia littera correctata; et minus proprie correctata fuit unde sic corrige: *sed non concedentis*.

vel etiam (or also)] Or rather 'non etiam (not however).' The first word is incorrect, and here the compiler made an error. But I have the former reading, because my book was among the first ones. Afterwards another one was sent with the corrections, but it was still less than accurate, whence it should be corrected as follows: *sed non concedentis* (but not [by the death] of the grantor).

Hostiensis states that he was working with an early copy of the text, and he notably attributes the error to the compiler, meaning Raymond, rather than to a scribe or copyist. Unfortunately for us, Hostiensis does not expand on the differences between his early version and the corrected version he later received (at his own insistence?). If it were simply a matter of correcting a few words in this one decretal, it strains credulity that he would require another complete copy, rather than just making the correction himself. Which is what he ended up doing anyway, directing his readers to insert the proper reading (*unde sic corrige: 'sed non concedentis'*), since X 3.14.3 in the new copy had still not been adequately corrected (*minus proprie correctata fuit*).

Just what the full range of differences might be between Hostiensis' two manuscripts is unknown, as is his source for the corrected version (perhaps the Roman Curia?). According to his apparatus, none of Friedberg's manuscripts contains the variant *vel etiam* contained in Hostiensis' uncorrected copy. Hostiensis' remarks are a reminder of how much remains to be discovered about the early history of the *Decretals*. They are also an important indication that despite the rarity of overt discussions of textual

²⁹⁹ *Lectura*, vol. 3, fol. 55va.

criticism, thirteenth-century jurists were sensitive to the thorny issue of textual transmission and the way that compilers could skew the meaning of certain canons.³⁰⁰

Despite Hostiensis' comments, the text of the *Decretals* enjoyed remarkable stability relative to previous collections. Canonists treated it differently from the *Decretum*, which they altered and magnified with scores of *paleae*, or the first three *Compilationes antiquae*, for which there are multiple geographic and chronologically specific recensions.³⁰¹ Canonists could and did use these older collections as a malleable form to be expanded (or even abbreviated) as other relevant or newer material became available. With the possible exception of 5Comp, which was only in circulation for a short time before the appearance of the *Decretals*, there was no halo of exclusivity that hung over these collections.³⁰² Looking backwards, the *Decretals* did not function as an organic collection, and canonists did not reintroduce capitula from Raymond's formal

³⁰⁰ Textual criticism of the *Decretals* among thirteenth-century commentators will be analyzed at greater length in chapter four. The best pre-1234 example of textual criticism in the service of arriving at a clearer statement of the law is Petrus Beneventanus, the compiler of 3Comp, who derived many of his texts by comparing the readings of multiple formal sources, rather than simply relying on a single one as the conduit. The classic analysis of his method remains: Kenneth Pennington, "The Making of a decretal collection: The genesis of *Compilatio tertia*," *Proceedings of the Fifth International Congress of Medieval Canon Law, Salamanca, 1976* (Monumenta Iuris Canonici, Series C, Subsidia 6: Vatican City 1980) p. 83; repr. in: *idem, Popes Canonists and Texts, 1150-1550* (Variorum Collected Studies Series CS 412: London, 1993).

³⁰¹ See above, Ch. 1, § 2.3, for bibliography on the different recensions for the collections of Alanus and Gilbertus, 1Comp, and 3Comp.

³⁰² There are three decretals (*Cum olim inter*, after 2.4.1; *Sapientia*, after 3.20.1; *Id expectavimus hactenus*, after 3.20.4) that are not common to every 5Comp manuscript and are printed in the notes to Friedberg's calendar of the 5C, rather than in the body of the text. Leonard Boyle ("Compilatio quinta") argued that these decretals should be considered as part of Tancred's original edition, as the register copies of these texts display the same excerption marks as the other letters in Honorius' register that formed the original pool of material from which Tancred assembled 5Comp. It would be worthwhile to investigate the possible motives for the later exclusion of these three letters based upon their content. At the very least, such a clearcut distinction between 5Comp manuscripts could serve as a basis for constructing a new edition and *stemma codicum* for the collection.

sources into the body of the text.³⁰³ Post-1234 *extravagantes* were sometimes interjected in the margins or the gloss, but with few exceptions these were understood as distinct from the *Decretals* itself.³⁰⁴ The history of canon law in the late thirteenth century is one of relatively strict papal control over the sources of law; beginning with Innocent IV, separate sections of post-1234 decretals were shaped into small collections and appended to *Decretals* manuscripts. This practice continued up through the pontificate of Boniface VIII, who in 1298 commissioned the editing of the most important *extravagantes* into the *Liber Sextus*.

The rate of production of *Decretals* manuscripts remains consistent until 1350, after which there is a sharp drop-off.³⁰⁵ The *Decretals* was the only canonical collection other than the *Decretum* to receive a French translation.³⁰⁶ Fournier, who first described the manuscripts of the French translation, has plausibly assigned it a date just prior to 1245, according to its transmission of Innocent IV's *extravagantes* in their pre-First Council of Lyons (1245) form.³⁰⁷ The other known translation of the *Decretals* was into

³⁰³ As we shall see below, however, commentators on the *Decretals* did return on occasion to the *5C* or even the papal register to find *partes decisae* that clarified those capitula that were heavily redacted by Raymond.

³⁰⁴ For a comprehensive textual study of the *extravagantes* from the pontificates of Gregory IX and Innocent IV, see: . Martin Bertram, "Die Extravaganten Gregors IX. und Innocenz' IV. (1234-1254)," *ZRG*, kan. Abt. 102 (2006). Pp. 1-44.

³⁰⁵ Bertram, "Die Dekretalen," p. 76. There are any number of socioeconomic reasons why this date would mark a downturn in the production of copies of the *Decretals*. University students and doctors were just as susceptible to the plague as others, with the resulting decline lowering the demand for new copies of the *Decretals*. It would be interesting to see if there is a corresponding decline in the number of manuscripts from other canon law books such as the *Decretum* or Boniface VIII's *Liber Sextus*.

³⁰⁶ The French translation of Gratian has been edited by: Leena Löfstedt, *Decretum Gratiani: La traduction en ancien français du Décret Gratien*, 5 vols. Commentationes Humanarum Litterarum 95, 99, 105, 110, 117. Helsinki, 1992-3, 1996-7, 2001.

³⁰⁷ Ten manuscripts of the same French translation have been identified: Edouard Fournier, "L'accueil fait par la France du XIIIe siècle aux Décrétales pontificales: leur traduction en langue vulgaire," *Acta Congressus Iuridici Internationalis VII seculo a Decretalibus Gregorii IX et XIV a Codice Iustiniano*

Catalan,³⁰⁸ showing an intense interest in canon law models of jurisprudence by some secular rulers, the likely audience for a vernacular translation of the work.³⁰⁹

2.4 Parameters for evaluating early *Decretals* manuscripts

The stability of the *Decretals* is a double-edged sword when it comes to modern textual scholarship on the collection, particularly with regard to tracing the early phases of transmission and diffusion. The relative consistency from manuscript to manuscript renders it difficult to draw distinctions without a painstaking collation of the whole text. At the same time, those differences that do exist, however small, stand out in sharp contrast to the uniform background. The problem is that many small errors have accumulated over time, to the point where an edition like the *ER* contains literally thousands of them. What is needed is a method for filtering out the inconsequential from the significant, so that like a miner's sifting the riverbed, the valuable nuggets may be distinguished from the fool's gold.

Determining which variants are worthwhile will rely on collating the text of early *Decretals* manuscripts, many of which lack a full gloss or illumination scheme on which to hang a probable date or locale. At present there are four manuscripts that can be dated convincingly to before 1250, and an additional three for which a pre-1250 origin is less

promulgatis, vol. 3 (Rome, 1936) pp. 247-67. Several manuscripts also transmit smaller collections of *extravagantes* of later popes.

³⁰⁸ An edition of the Catalan translation was prepared by: Jaime M. Mans Puigarnau and Juan E. Rucabado Verdaguer, *Decretales de Gregorio IX, Versión medieval española*, 3 vols. (Barcelona, 1939-43).

³⁰⁹ One of the manuscripts of the French translation, Paris, BnF fr. 493, has the royal *écu* of Charles V in the lower margin of fol. 3r. Charles was an important patron of translations of Latin works into French, but it is unclear whether he commissioned this particular copy, or simply acquired it for his library. For Charles' patronage of translation, see: Françoise Autrand, *Charles V: Le Sage* (Paris, 1994) pp. 723-7.

certain, but which possess characteristics of an early date.³¹⁰ But which text, or which manuscript will provide the yardstick? Significant variations occur even among the earliest manuscripts, and the lack of an autograph or archetype makes it difficult to know the relative proximity of any particular text to the ones that Raymond produced. The difficulty is further compounded by the question of sources, as the proliferation of contemporary versions of the *5C* means there is no fixed star by which to navigate toward the earliest versions from the other direction. Approaching the promulgated version of the *Decretals* becomes like a calculus problem, bounded on one side by the variants of early *Decretals* manuscripts, and on the other by the range of possible readings available in the *5C* manuscripts.

The register records the universities of Paris and Bologna as the recipients of the bull of promulgation *Rex Pacificus*, and there is manuscript evidence to add Padua to this list.³¹¹ Doubtless there were others to whom the collection was sent in the initial round of diffusion, as one would expect for a collection designed to impose uniformity for the study of canon law and its use in ecclesiastical courts. The question arises, therefore, as to how much variation (if any) there was among the different versions included with *Rex Pacificus*, and whether these were responsible for initiating different branches of transmission. Recalling Hostiensis' comments, an additional layer of complexity overlays the early diffusion process, if indeed it is true that the *Decretals* went through

³¹⁰ Florence, BN Palat. 157 (dated 1235); Florence, Laurenziana S. Croce III sin. 9 (dated 1239); Oxford, Bodleian, lat. th. b. 4 (dated 1241); Fulda, Landesbibliothek D 21 (dated 1246). There are another three manuscripts which carry an early date, but for paleographic and other reasons the reliability of these dates has been called into question. All of them are still, if not within the first decade after promulgation, then from the middle or latter part of the thirteenth century: Paris, BnF lat. 13664 (likely dated 1246-9); London, BL, Harley MS 1913 (1235 colophon); Munich, BSB, clm 26301 (1240 date by another hand).

³¹¹ Auvray 2083. See ch. 1, introduction.

some kind of correction, whether formal or informal. Pushing the calculus analogy a little further, it is unclear what constitutes the limit that textual criticism on the *Decretals* should be approaching.

With all these problems in mind, it is necessary to define carefully the parameters of how the earliest version(s) of the *Decretals* can be approached. In order to limit the field of inquiry, a choice has been made to focus primarily on a specific feature of the *Decretals*, viz., the inscriptions given to each canon that attributed authorship and (in most cases) named the recipients. There are a number of distinct advantages to using the inscriptions. First of all, the degree of variation that developed for the inscriptions is more restricted than for the text of individual capitula, and this variation tended to fall within a predictable range. For example, the most damage scribal error could cause to an Innocent II letter inscription would be to change the attribution to Innocent III or I through the addition or a subtraction of a minim. One rarely finds the name of the pope transformed entirely unless the inscription has been erroneously transposed from another, neighboring letter, in which case the error is easy to identify. A related advantage is that in restricting the collation to the inscriptions, a whole host of complications can be bypassed relative to the legal content of the individual decretals. The formal uniformity of the capitula in the *Decretals* meant that there was no incentive to alter their attribution in order to shift their relative juridical weight. Raymond's commission allowed him to shape the text of the individual decretals directly, and there was no need, therefore, to resort to the editorial practices of someone like the eleventh-century compiler Burchard of Worms, who in his *Decretum* used the alteration of inscriptions to bestow an approved

genealogy upon texts from dubious sources.³¹² The overall irrelevance of the inscription to the legal value of the capitula means will thus simplify the exposition, lifting the requirement that each canon under discussion be subjected to an exhaustive analysis.

Another advantage is that attribution was a primary factor in determining where Raymond positioned a particular text in a title. As will be shown, for texts whose inscription has been corrupted through scribal error, one can work backwards from the placement of a text to the inscription Raymond encountered in his formal sources. Finally, unlike the way he handled the text of the capitula, Raymond was relatively conservative when it came to the inscriptions. While he frequently shortened or cut out the addressees altogether, he always preserved the papal, conciliar, or patristic attribution found in his formal sources. The limited number of changes to the identity of the recipients can be clearly identified, and were usually introduced to generalize the application of the letter beyond its formerly limited number of recipients.

³¹² See: Paul Fournier and Gabriel Le Bras, *Histoire des collections canoniques en occident*, vol. 1 (Paris, 1931) pp. 381ff.

Chapter 3: Textual Analysis of the Decretals

3.1 Introduction

The approximately 700 surviving manuscripts of the *Decretals* make it the most widely distributed book of medieval law – canonical, civil or feudal.³¹³ By way of comparison, Gratian's *Decretum*³¹⁴ and Boniface VIII's *Liber Sextus*,³¹⁵ the canonical collections with the broadest diffusion after the *Decretals*, have survived in around 500 manuscripts each. The breadth of the manuscript tradition, combined with the relative stability afforded the collection as an official school text, have in certain ways been a stumbling block to textual scholarship on the *Decretals*. The outward similarity of many of the manuscripts has impeded the identification of critical variants that would distinguish among various branches of the manuscript transmission.

Additionally, unlike other canonical collections, the *Decretals* did not benefit from the foundation laid by Kuttner's *Repertorium der Kanonistik*, whose cut-off date was 1234, perhaps as an indirect acknowledgement of the daunting scale of the *Decretals'* manuscript transmission. He concluded the *Repertorium* with only a cursory description

³¹³ A working *Signaturenlist* of 685 manuscripts arranged according to country and library of current location has been assembled by Martin Bertram at the Deutsches Historisches Institut in Rome, and is available online at www.dhi-roma.it.

³¹⁴ Anders Winroth is currently preparing a new list of Gratian manuscripts that reflects the discoveries made since Kuttner's *Repertorium*. The most up-to-date at present is that compiled in: Anthony Melnikas *The Corpus of the Miniatures in the Manuscripts of Decretum Gratiani*, 3 vols. (Studia Gratiana 16-18: Rome, 1975). For supplementing Melnikas, see the comments in: Anders Winroth, *The Making of Gratian's Decretum* (Cambridge Studies in Medieval Life and Thought, 4th ser., 49: Cambridge, 2000) p. 10, n. 23.

³¹⁵ Tillman Schmidt, "Die Rezeption des Liber Sextus und der Extravaganten Papast Bonifaz' VIII," in: *Stagnation oder Fortbildung? Aspekte des allgemeinen Kirchenrechts im 14. und 15. Jahrhundert* (Bibliothek des Deutschen Historischen Instituts in Rom 108: Tübingen, 2005) pp. 51-64.

of Raymond's work, without providing a manuscript list of the sort appended to the previous collections and commentaries described therein.³¹⁶

The general aim of textual scholarship on the *Decretals* is to build an overall picture of the collection's transmission, to establish, if not an actual *stemma codicum* (an impossible task given the number of manuscripts), then a framework in which to draw relationships between various classes of manuscripts and the particular form of the text they transmit. In this respect, the ongoing efforts to produce a catalogue of every datable *Decretals* manuscript will be a huge step forward.³¹⁷ Much of this work, particularly for late-thirteenth and early-fourteenth manuscripts, will rely on extra-textual indicators such as the form of the gloss,³¹⁸ illuminations³¹⁹ and the presence of *novellae* and *extravagantes*.³²⁰ Going back closer to the date of promulgation in 1234, however, there

³¹⁶ Kuttner, *Repertorium*, pp. 447-8.

³¹⁷ Martin Bertram is currently organizing these efforts.

³¹⁸ Stephan Kuttner and Beryl Smalley, "The 'Glossa ordinaria' to the Gregorian decretals," *The English Historical Review* 60 (1945) pp. 97-105; Stephan Kuttner, "Notes on the Glossa Ordinaria of Bernard of Parma," *BMCL* 11 (1981) pp. 86-93. Both articles reprinted in: Stephan Kuttner, *Studies in the History of Medieval Canon Law* (Variorum Collected Studies Series CS 325: Aldershot, 1990) XIII-XIV. These studies identified a minimum of four revisions of Bernard of Parma's gloss between 1241 and 1266. The date of the earliest stage of the gloss can be pushed back by two years according to its presence in the 1239 Florence manuscript. See below, n. 326.

³¹⁹ The work of Robert Gibbs and Susan L'Engle (both individual and collaborative) has been especially important in opening up the *Decretals* as a source for art history: Robert Gibbs, "The development of the illustration of legal manuscripts," in: *Juristische Buchproduktion im Mittelalter*, ed. Vincenzo Colli (Studien zur Europäischen Rechtsgeschichte 155: Frankfurt am Main, 2002) pp. 173-218; Susan L'Engle, "Trends in Bolognese Legal Illustration," in: *Ibid.*, pp. 219-44; Robert Gibbs and Susan L'Engle [eds.], *Illuminating the Law: Legal Manuscripts in Cambridge Collections* (London, 2001). In recent years there have also been a number of studies of individual *Decretals* manuscripts: M. Pavón Ramírez, "Estudio de unas Decretales encargadas por Tristán de Salazar, arzobispo de Sens, y copiadas por el italiano Francisco Florio conservadas en la Biblioteca Apóstolica Vaticana," in: *Roma Magistra Mundi: Itineraria Culturae Medievalis. Parvi flores. Mélanges offerts au Père L. E. Boyle à l'occasion de son 75e anniversaire*, ed. J. Hamesse (Louvain-la-Neuve, 1998) pp. 273-284; Peter Burkhart, "Die Dekretalenhandschrift Vat. Pal. lat. 629 und die Bologneser Buchmalerei am Ende des XIII. Jahrhunderts," in: *Palatina-Studien: Miscellanea Bibliothecae Apostolicae Vaticanae V*, ed. W. Berschin (Studi e Testi 365: Vatican City, 1997) pp. 33-59.

³²⁰ Bertram, "Die Extravaganten Gregors IX. und Innocenz' IV. (1234-1254).

are fewer and fewer ancillary features in these manuscripts to assist in the dating, leaving the particular form of the text as the only basis on which to make a determination.

There is no evidence of an analogue for the *Decretals* of something like the earlier recension of Gratian. The text that accompanied *Rex Pacificus* is more or less, at least in form, the same text represented in the printed editions now in use. Yet even a cursory glance at Friedberg's edition reveals a multitude of attribution errors, and a critical apparatus overflowing with variants pointing to the wide divergence between the readings of different manuscripts accumulated over centuries of transmission. In order to have a standard by which to measure individual copies of the *Decretals*, particularly those within a few decades of 1234, it would be useful to strip away the layers of variants encrusting the text. The limitations imposed by the surviving manuscripts – so far, only four pre-1250 copies have been identified – can be counterbalanced with an understanding of the methods Raymond employed to construct the collection.

3.2 Methodology

As will be demonstrated below, Raymond employed a consistent set of techniques to organize the source material drawn from the *Quinque Compilationes Antiquae* [5C]. Once these methods are discerned, it can be shown that when the text of the available printed editions deviates from what a consistent application of the techniques would predict, it almost invariably points either to a transmission error, or to an irregularity that was already present in the particular version of the formal source he employed. By collating copies of early *Decretals* manuscripts, as well as additional exemplars of the 5C, one can develop a composite picture of the form of the earliest version(s) of the *Decretals*, as well as the most common variants that arose soon after promulgation. This

collation is set forth in the appendix to this chapter. It brings together those texts in the *Decretals* whose inscriptions differ from the most common reading found in the respective formal sources. A picture will emerge from this collation that could prove invaluable for identifying and analyzing the numerous early manuscripts that no doubt survive, yet have so far evaded detection.

Approximating the archetype from one direction (*Decretals* manuscripts) also means approaching it from the other (*5C* manuscripts). This kind of textual scholarship on the *Decretals* will also benefit our still-clouded understanding of the textual traditions of pre-1234 collections. The collation will identify those places where Raymond transmitted anomalous or uncommon variants, rather than the readings most commonly found in *5C* manuscripts. In the aggregate, the collation can help narrow the range of versions of the *5C* that Raymond employed as sources. One of the most striking things that will emerge on the source questions from this study is evidence for Raymond's use of a version of Innocent III's 3Comp that was in some way dependent on the French recension of the collection.³²¹ Such a dependency opens up another avenue for greater scrutiny of the relationship between the Anglo-Norman (the presumed originator of the French recension) and the Bolognese canonical schools.³²² Recent scholarship has already uncovered more permeability than was previously thought between the two in the late twelfth and early thirteenth century.³²³ It is hoped that as the form of Raymond's sources

³²¹ See below, §3.8 on divergent inscriptions in 3-4Comp.

³²² Although they were not the originators of the designation, Kuttner and Eleanor Rathbone sketched the broad outlines of the Anglo-Norman canonists in relation to those in Bologna: Stephan Kuttner and Eleanor Rathbone, "Anglo-Norman Canonists of the twelfth century," *Traditio* 7 (1949-51) pp. 279-358; repr. in: Kuttner, *Gratian and the Schools of Law* (Variorum Collected Studies, CS185: London, 1983) VIII.

³²³ The reevaluation of the Anglo-Norman school has been accelerated by the publication of several of its principle *Summae* in the *Monumenta Iuris Canonici, Series A: Corpus Glossatorum*.

comes into sharper focus, this will reinvigorate research on his immediate predecessors, and a truer picture of the early-thirteenth century decretalists will emerge.

The chapter will proceed by selecting those inscriptions for which there appears to be a divergence between the formal source attribution and the reading in the *ER*. These inscriptions will then be collated using *Decretals* and *5C* manuscripts, much like Friedberg did for his edition. This collation pursues several goals. First and foremost, it constructs a picture, to the extent permitted by available manuscripts, of the form of the inscriptions at the moment of promulgation. This picture can then be used as a standard by which to judge the relative proximity of other early manuscripts to Raymond's archetype, as well as to one another. The collation will result in the identification of the most significant variants among the inscriptions at the earliest stage of transmission. With further research, these variants can be grouped according to which ones tended to cluster together, and from there, separate branches of transmission may be identified. The collation also enables a more precise identification of Raymond's formal sources. It will show that there are a number of inscriptions in the *Decretals* for which *5C* manuscripts containing the French recension of 3Comp are the only known source. The identity of Raymond's sources will remain a hypothesis, given how much work remains to be done on the textual transmission of the *5C*, but the collation significantly narrows the range where future scholarship must look to answer this question.

The *Decretals* manuscripts selected for the collation include two out of the four written prior to 1250, and four manuscripts of the French translation.³²⁴ For the *5C*, five

³²⁴ All manuscripts selected (including those of the *5C*) have been utilized primarily via microfilm and/or digital image, though the author did get an opportunity to work with the manuscripts of the French translation in Paris.

manuscripts have been selected, including two containing the French recension of

3Comp:

Early *Decretals* manuscripts:

Florence, Biblioteca Nazionale Centrale, Palatina 157 (1235) = **FBN 157**

Florence, Biblioteca Laurenziana Medicea, S. Croce III sin.9 (1239) = **FBL sin 9**

French translation of the *Decretals*:

Paris, Arsenal, 5215 = **Ars. 5215**

Paris, Bibliothèque Nationale de France, fonds français 491 = **BnF fr. 491**

Paris, Bibliothèque Nationale de France, fonds français 492 = **BnF fr. 492**

Paris, Bibliothèque Nationale de France, fonds français 493 = **BnF fr. 493**

***Quinque Compilationes Antiquae*:**

Admont, Stiftsbibliothek 22 (1-5Comp) = **Ad. 22**

Rome, Biblioteca Apostolica Vaticana, lat. 1377 (1-4Comp) = **Vat. lat. 1377**

Paris, Bibliothèque Nationale de France, lat. 3933 (3-5Comp; Fr. rec.) = **BnF lat. 3933**

Paris, Bibliothèque Nationale de France, lat. 15997 (1-5Comp) = **BnF lat. 15997**

Paris, Bibliothèque Nationale de France, nouv. acq. lat. 2127 (1-5Comp; Fr. rec.) = **BnF NAL 2127**

The dates of 1235 for FBN 157³²⁵ and 1239 for FBL sin 9³²⁶ have been derived from their respective colophons, and as will be seen throughout this chapter, the form of

³²⁵ The colophon for FBN 157 appears on fol. 181r: "Hoc Gualterus opus, quem morum forma decorat, scripsit, cui tribuat gratia summa quem [quietem?], M°CC°XXX°V° mense Sept. octave indict. compl." On the other side of this leaf (fol. 181v), an early nineteenth-century cataloguer/librarian added a note identifying this Gualterus as a companion of St. Francis of Assisi (*compagno di S. Francesco*). There seems to be no historical basis for this remark, as there is no one by that name identified as an intimate of Francis. It may have been suggested by the manuscript's subsequent residence at several Franciscan convents, including Venafrò and Assisi.

³²⁶ The colophon for FBL sin.9 appears on fol. 200r: "MCCXXXVIII Bergognonus notarius dictus de Caronno scripsit hoc. Deo gratias. Expliciunt decretales nove amen." Martin Bertram has surmised that the same scribe was responsible for a Bible manuscript completed in 1224: Tours, Bibliothèque Municipale 1. Bertram notes in his description (kindly provided to the author in draft form) that the manuscript carries the earliest known stage of Bernard of Parma's ordinary gloss, pushing back by two years the date Kuttner had set according to his study of the 1241 Oxford manuscript of the *Decretals*. The simplest test for determining the presence of the 1st version of the gloss was developed by Kuttner ("Notes on the Glossa Ordinaria," pp. 91-2), according to the presence/absence of brief passages for the gloss on the bull of promulgation *Rex pacificus* and for X 1.43.14. The gloss for FBL sin.9 does not begin until X 1.2.1, but the author has confirmed the lack of the final words for the gloss on X 1.43.14 (fol. 50vb, v. *heredes*), which are only present in Bernard's second and subsequent revisions.

their text leaves no reason to doubt their authenticity as early manuscripts. Three of the four manuscripts of the French translation were copied in the fourteenth century, but as Fournier has shown, they preserve the form of the text at the time the translation was made in the mid 1240s, and share a common ancestor. The restricted scope of the inscriptions permits these manuscripts to be included in the collation, since it was rare for an inscription to be lost or corrupted in translation. Because of a few instances where the inscriptions differ among the manuscripts of the French translation, it is necessary to employ all four. Far from being a complication, these points of divergence provide evidence for the copyists' having double-checked the inscription against a contemporary copy of the *Decretals*. In at least one case, this meant altering the earlier form that corresponded with Raymond's archetype to the corrupted reading that eventually made it into the *ER*.

The variants that occur in the body of the texts proper, which might relate to the early phases of the *Decretals* transmission, will not be entirely neglected. After the collation, an opportunity will come in the next chapter to examine the possible impact of thirteenth-century textual criticism on the form of the *Decretals*. The criticism primarily involved using earlier versions of Innocent III's letters – whether transmitted in 3-4Comp or his registers – to compare/correct the shape given to them by Raymond in the *Decretals*.³²⁷ The revered status of Innocent III and his legacy within the Church no doubt contributed to the differing treatment accorded to the original and intermediate

³²⁷ The most remarkable example of this kind of textual criticism occurs in the prologue to the *Decretals*' apparatus authored by Sinebaldus Fieschi, later Innocent IV, where he offers textual emendations and additions from the papal registers for eight Innocent III decretals and one Lateran IV (1215) canon: *Commentaria Innocentii quarti pontificis maximi super libros quinque Decretalium, cum indice peculiari nunc recens collecto, vovisque insuper Summariis additis, et Margarita Baldi de Ubaldis Perusini [= Apparatus]* (Frankfurt-am-Main, 1570) fol. 1rb-va.

versions of his texts prior to their inclusion in the *Decretals*, which in some ways undercut Gregory IX's attempt to locate authority exclusively in the collection. The continuing interest of later commentators in the historical context and textual history of Innocent's letters will form the background for the succeeding chapter, where evidence will be presented for the transmission of several of Innocent's letters in a slightly fuller form in one of the early Florentine manuscripts, FBL sin.9. The letters in question contain portions of the text that have until now been classified as *partes decisae*.³²⁸ These fuller readings have a huge potential significance for the early transmission history of the *Decretals*. Only after a full collation and a comparison with other early manuscripts can it be determined whether these variants can be traced back to the original promulgation, or whether they represent copyists' additions.

3.3 The Inscriptions as Sources for Variants

In the *ER*, over a third of the inscriptions from the roughly 1800 texts drawn from the *5C* differ from their formal source. Many of these differences are the simple result of centuries of accumulated scribal error. In the ecclesiastical hierarchy of canonical collections, it took little effort for a scribe to translate the archbishop of Lyons (*Lugdunensis*) to the see of Lund (*Lundensis*), or to demote him to archdeacon of Lodi (*Laudensis*). While some of these small, accidental changes may yet prove important in tracking the transmission of the text in later centuries, they can be excluded from the immediate discussion.³²⁹

³²⁸ X 2.26.18 and X 2.27.22. The full collation of FBL sin.9 remains to be done, and so there may well be other decretals that preserve additional *partes decisae*.

³²⁹ For example, there are almost 250 inscriptions in the *ER* where the recipient(s) have been either shortened or cut completely, with an approximate 2:1 ratio of shortened to cut. Presumably Raymond was responsible for every single one of these changes, since the loss of a part of an inscription in any one manuscript would have to have been propagated and repeated far and wide for it to become the

Raymond was responsible for around half of these changes. The most frequent way in which he altered the inscriptions (almost 250 examples) was to shorten or even completely remove the names of the recipients. As in the body of the texts, an invariable target for excision were honorifics and additional titles, such as addressing a fellow bishop, *venerabilis frater*, or a secular ruler as *illustris* (though there are exceptions for the latter). If multiple offices were applied to a single recipient (such as bishop *and* apostolic legate), then Raymond would generally limit the designation to a single title, giving preference to the pastoral over the administrative.³³⁰ Similarly, when there were multiple recipients, Raymond often reduced the number to two or less, usually preserving the names of those higher in rank.³³¹ If there was ever a single guiding principle for decretals he selected for this treatment, it has long ceased to be recoverable. In general, there appears to be a tendency toward saving space and simplifying, though one need not look very hard to find exceptions.³³²

After accounting for errors in transmission and organization, it is possible to conclude that Raymond did not change authorial attribution, and only rarely altered the recipients named in the inscriptions. For the latter, the alterations almost always involved expanding the application of the letter by generalizing the recipients. For example,

predominant reading. This could be put to the test, albeit in painstaking fashion, by collating the shortened or cut inscriptions in the early manuscripts.

³³⁰ The original formal source inscription for X 1.17.7 at 1Comp 1.9.8 was: "Idem [Alexander III] venerabilibus fratribus R. Cantuarensi Archiepiscopo totius Angliae primato et apostolicae sedis legato et R. Wigorniensis episcopo." In the *Decretals*, this became: "Idem [Alexander III] Archiepiscopo Cantuarensi."

³³¹ The original formal source inscription for X 2.15.2 at 2Comp 1.8.2 was: "Clemens III episcopo et archidiacono Abrincensi et priori de Luc.," and was shortened by Raymond, and later erroneously transcribed to produce: "Clemens III episcopo et archidiacono Eboracensibus."

³³² There were no absolute disqualifications based upon an inscription's length, judging from the preservation of several long inscriptions, like the one for X 1.23.10 (5Comp 1.13.1): "Honorius III abbati Arimanensi [Aremacensi: 5Comp] Trecensis diocesis, et archidiacono et decano S. Stephani Trecensis."

Raymond took a letter on the proper celebration of the mass in collegiate churches sent by Honorius III to French prelates (5Comp 3.24.2), and changed the inscription so that it was directed to all the prelates of the Church (X 3.41.11).³³³ Notably, Raymond's use of the inscription to create a kind of proto-encyclical occurred most often with decretals dealing with religious orders, and specifically, the protections and exemptions they were accorded from diocesan administration. An important example is X 5.31.16-7, derived from Gregory IX's register where it was addressed to several French archbishops and bishops, but in Raymond's hands came to be directed to all the prelates of the Church.³³⁴ Raymond's special attention to the establishment of a consistent set of parameters for the treatment of religious orders has been the subject of recent work showing how the *Decretals* created an overarching law for religious in the thirteenth-century Church, independent of the particular "Rule" governing different orders.³³⁵

The use of inscriptions to give a decretal universal application speaks to the persistence of older juridical habits in the *Decretals*. The fabrication of inscriptions was an acceptable solution in pre-Gratian canon law to give legislation more general applicability. Contemporary jurists of the *ius novum*, on the other hand, were developing methods for extending the reach of context-specific decretals in what amounted to a form of jurisprudential legislation, much as modern judges are able to legislate from the

³³³ 5Comp 3.24.2: "Archiepiscopus et episcopis et universis aliis ecclesiarum praelatis et clericis per Franciam constitutis." X 3.41.11: "Idem [Honorius III] universis ecclesiarum Praelatis."

³³⁴ X 5.31.16-7 was drawn from a single letter in Gregory IX's register (Auvray 707), and was inscribed to two archbishops and a single bishop: "Turonensi et Rothomagensi archiepiscopis, et episcopo Parisiensi." In the *Decretals*, Raymond directed both extracts to all the prelates of the Church: "Idem [Gregorius IX] universis ecclesiarum Praelatis."

³³⁵ Gert Melville, "Zum Recht der Religiosen im 'Liber extra'," *ZRG*, kan. Abt. 87 (2001) pp. 165-90. There is potentially a major exception to this generalizing tendency in X 1.10.1. Here a privilege that had been extended in 2Comp to abbots of all religious orders was restricted by its inscription only to

bench.³³⁶ Raymond's generalization of these inscriptions was not so much fabrication, but rather an anticipation of the commentary process, whereby the individual *argumenta* of each decretal were refined into a principle of positive law. It was an older technique given new usage in the *Decretals*, and was a counterpart to the Gregorian constitutions, whose non-case-specific language presupposed universal application.

The claim that Raymond faithfully transmitted the attribution of the texts in the *Decretals* still runs up against the textual problem of an *ER* chock-full of erroneous inscriptions that crept in during transmission. To take just a few examples, extracts originating from the register of Gregory the Great (590-604) are attributed to Gregory IX;³³⁷ Clement III is regularly substituted for Celestine III (and vice versa),³³⁸ and one *minim* stood between the transformation of Innocent II into Innocent III.³³⁹ Friedberg was able to account for a substantial portion of these erroneous attributions by collating variants from *Decretals* and *5C* manuscripts in his apparatus. His collation of *5C* manuscripts is particularly valuable, for it shows that on occasion the erroneous attributions were simply Raymond's reproduction of an uncommon variant in the *5C* tradition. More often, however, Friedberg's apparatus demonstrates that the errors resulted from later copyists of the *Decretals*. The quality of Friedberg's manuscript selection comes through by how frequently the correct reading in the apparatus is

Cistercians. It is an open question whether Raymond inherited this limiting inscription, or whether he fabricated it himself (see p. 53).

³³⁶ Harry Dondorp, "Review of Papal Rescripts in the Canonist's Teaching," *ZRG*, kan. Abt. 76-7 (1990-1) pp. 172-253; 32-110.

³³⁷ X 2.13.1; 3.1.4; 3.26.1.

³³⁸ X 2.16.2; 3.30.21.

³³⁹ X 3.43.2; 3.28.3.

followed by the complete run of sigla of codices he had chosen for the task (*FGHIK*). Somewhat less frequently does one find the full spectrum including the sigla from Böhmer's manuscripts (*LMN*), reflecting their comparatively later date and greater predilection toward error.

Even with the collation reflected in Friedberg's apparatus, there remains a core group of around fifty inscriptions in the *Decretals* whose divergence from the most common formal source reading has little or no support among the manuscripts he selected. It is this smaller set of inscriptions that will be put under examination in this chapter, with the goals of finding: 1) whether the divergences reflect anomalies in Raymond's sources or changes made by later copyists of the *Decretals*; 2) what the formal source anomalies tell us about the exact version of the *5C* used by Raymond; and 3) which divergent inscriptions can assist in mapping the textual tradition of the *Decretals*, particularly at its earliest stages. As will be seen, the types of variation among the inscriptions in this core group generally divide according to the formal source. Those from 1-2Comp mostly center around incorrect papal (or conciliar) attributions, while those drawn from compilations devoted to a single pontiff (3-4Comp to Innocent III; 5Comp to Honorius III) contain completely different addressees/recipients, and in some cases reproduce the addressees given in the papal registers.

3.3.1 Summary of the results of the collation

The inscriptions selected for the collation – along with the variants transmitted by each manuscript – are listed in the chapter appendix, separated into groups corresponding

to the formal source whence they derive.³⁴⁰ The results of the collation differ according to source. For texts from 1-2Comp, the collation is able to resolve almost every divergent inscription, showing either that the difference was a function of an alternate reading in the particular version of the formal source employed by Raymond, or that it was a result of a transmission error in the *Decretals*, with one or more of the early manuscripts containing the older, correct inscription that was assigned to it by Raymond.³⁴¹ In several cases the transmission “error” is, in fact, the result of someone restoring the older formal source inscription that Raymond had cut.³⁴² This is one of the rare but important examples where commentators’ and copyists’ continued (and largely underestimated) usage of the 5C as an ancillary historico-legal tool actually bled into the text of the *Decretals*.

Decretals derived from 3-4Comp present a different picture. The correspondence between the inscriptions in the *Decretals* and the most common reading in 3-4Comp manuscripts is extremely close, and there are few cases where inscriptions derived from these compilations were altered by copyists after 1234.³⁴³ Nor is transmission error in the *Decretals* the main culprit for the set of inscriptions for which there is no obvious

³⁴⁰ Appendix A = 1Comp-derived texts; Appendix B = 2Comp-derived texts; Appendix CD = 3-4Comp derived texts; Appendix E = 5Comp-derived texts.

³⁴¹ Each example will be gone through in depth later on. The general breakdown of 1-2Comp derived texts listed in the appendix is between those where Raymond was simply copying the formal source anomaly (highlighted in blue) and those where transmission error in the *Decretals* is the culprit (highlighted in red). Among the former are: X 1.10.1, X 1.11.6, X 2.1.9, X 2.7.3, X 3.20.21, X 3.25.1, X 3.41.2, X 4.4.2, X 4.19.5, X 5.10.3, X 5.23.1; and those where *Decretals*’ transmission error is to blame include: X 1.6.6-7, X 2.7.1-2, X 2.19.3, X 2.24.1, X 2.27.8, X 3.1.9, X 3.21.2, X 3.28.3, X 3.32.11, X 3.37.1, X 3.43.2-3, X 4.1.2, X 4.1.4, X 4.18.3, X 5.15.1,

³⁴² X 1.6.6-7, X 2.19.3 and X 2.27.8. There is also a single instance from a 3Comp text, X 3.26.13.

³⁴³ The same cannot be said for the text of Innocent III’s letters transmitted in the *Decretals*, the fuller reading of which (whether transmitted in 3-4Comp or in the registers) became uniquely subject to the attention of later canonists and copyists. This special attention will form part of the discussion in the next chapter.

precedent in most 3-4Comp manuscripts.³⁴⁴ The majority of these instead involve the *Decretals*' reproduction of the inscription that accompanied the letter in its original form in Innocent III's register.³⁴⁵ The collation has been able to resolve some of these divergences, showing several cases where the original register inscription is also found in the French recension of 3Comp.³⁴⁶ These precedents for the enregistered inscriptions are among several features particular to 5C manuscripts containing the French recension that show up in the *Decretals*. X 3.30.25 *Tua* (3Comp 2.1.1) is a key piece of evidence in this respect, where the form of the text in the *Decretals* contains an extra passage only attested in select copies of the French recension.³⁴⁷ The precedents from French recension manuscripts stretch beyond just 3Comp, however, and include material from 1-2Comp. As will be shown below, the one French recension manuscript included in the collation containing the full 5C (BnF NAL 2127) also happens to transmit the largest number of divergent inscriptions from 1-2Comp that appear in the *Decretals*.

The last of Raymond's formal sources to be analyzed – and from the standpoint of the inscriptions certainly the least problematic – is 5Comp, the shortest and (based on the number of manuscripts) the least circulated among all the 5C. The collation has

³⁴⁴ X 1.2.9, X 1.3.18, X 1.22.3, X 1.38.4, X 2.25.6, X 2.26.11, X 2.27.23, X 3.26.13, X 3.39.22, X 3.49.6, X 4.13.8, X 4.13.10, X 5.12.15, X 5.33.16. Although included in this list, there are some that the collation has shown to be only apparent divergences between the *ER* and the formal sources, where the early manuscripts turn out to actually agree with the common formal source reading: X 1.2.9, X 2.26.11, X 3.49.6.

³⁴⁵ The *Decretals* matches the register rather than the common formal source inscription in: X 1.3.18, X 1.22.3, X 1.38.4, X 2.25.6, X 3.39.22, X 4.13.8, X 5.33.16. The standard reading for these particular inscriptions in 3-4Comp manuscripts had simply been the papal attribution (*Idem; Innocentius III*), rather than the full addressee information given by the register.

³⁴⁶ X 1.3.18, X 3.39.22, X 4.13.8

³⁴⁷ The extra language includes the final section of the letter: *Nec occasione...restringenda*. Steven Horwitz was the first to point out that the form of *Tua* in the *Decretals* did not match any Italian 3Comp manuscripts, but was preceded only in a small number of French recension codices (“Reshaping a

produced no corrections for the five texts from 5Comp where the *Decretals*' inscription is different from the common formal source reading, strongly suggesting that the form of these inscriptions in the *ER* goes all the way back to Raymond's original text.³⁴⁸ On the contrary, there appear to be grounds for attributing the changed inscriptions directly to Raymond's editorial mistakes. Localizing in the *Decretals* the small number of erroneous inscriptions for 5Comp-derived texts simplifies the task of future collations, insofar as there appears to be no appreciable difference between the text of the *Decretals* and that of most 5Comp manuscripts.

With respect to questions about Raymond's sources, the conclusion supported by the collation is not that Raymond relied directly on a manuscript containing the French recension of 3Comp. There are too many peculiarities of that recension not reflected in Raymond's text, nor would its use explain why there is also a case of a register inscription showing up in a 4Comp-derived text (not to mention the other register inscriptions from 3Comp-derived texts in the *Decretals* with as yet no precedent in the French recension). Instead, the pattern of inscription readings from 3Comp and the other 5C, as well as the fuller form of X 3.30.25 *Tua*, suggests Raymond's usage of a 5C manuscript containing a version of 3Comp with some sort of affiliation (prior? posterior?) with the French recension. The few efforts to identify French recension influence in Italian manuscripts has not met with any success to date, but the discovery of its influence in the *Decretals* should renew the search.

decretal chapter"). See below for the discussion of X 3.30.25: § 3.5 *Organization and anomaly in the title structure: X 3.30 De decimis*.

³⁴⁸ X 1.3.30, X 1.8.7, X 1.16.2, X 3.5.34, X 4.1.28.

Of immediate benefit to the study of *Decretals* manuscripts has been the identification of the original form taken by a number of inscriptions when the collection was promulgated, which were subsequently altered/corrupted by later copyists.³⁴⁹ These inscriptions will provide a stable point of reference for determining the most common early variants in the transmission history of the collection. In a similar fashion, the collation has also uncovered several capitula whose position shifted within and even between certain titles.³⁵⁰ Because of the one-way nature of such changes, these migratory capitula will be especially important for determining the broad branches of transmission.

The key to determining whether the divergent inscriptions in the *Decretals* arose from Raymond's sources or from transmission errors lies in understanding Raymond's method of organizing the capitula, a subject to which we will now turn.

3.4 The Organization of Capitula in the Decretals

A careful scrutiny of the arrangement of capitula within each title shows that Raymond employed a consistent method in organizing his material. The overarching organizing principle is chronological. The older (pre-Gregorian Reform), non-papal capitula – consisting in the main of local councils, and Patristic and Biblical texts – appear at the front of each title.³⁵¹ Thereafter comes the papal material, grouped together

³⁴⁹ X 1.6.6-7, X 2.7.1-2, X 2.19.3, X 2.24.1, X 2.27.8, X 3.1.9, X 3.21.2, X 3.26.11, X 3.28.3, X 3.32.11, X 3.37.1, X 3.43.2-3, X 4.1.2, X 4.1.4, X 4.18.3, X 5.15.1.

³⁵⁰ Definitive manuscript evidence exists for the mobility of X 3.3.8 and X 5.6.6. Two additional cases can also be inferred: the inscriptions demonstrate that X 1.9.15 and X 1.11.14 are slightly out of place in their respective titles, but to date no manuscripts have been found containing the presumed original ordering.

³⁵¹ There are a small number of exceptions where early decretals (pre-Gregorian reform) begin the title instead of patristic or conciliar material. In X 3.26 (*De testamentis*), for example, an early medieval council of Mainz (X 3.26.6) comes after texts of Gregory the Great (X 3.26.1-5; c.1 is erroneously attributed to Gregory IX in the *ER*, but properly attributed in early manuscripts and Friedberg codices). Similarly in X 5.1 (*De accusationibus*), Gregory the Great (cc. 3-4) again appears before a Mainz canon (c. 6), a Burchard extract (c. 8) and an Augustine sentence (c. 9). This could be because of the dual status of Gregory the Great's texts as both decretals and patristic *sententiae*. While the vast majority adhere to the

chronologically by pontificate up through Gregory IX. Within each grouping – whether of patristic, conciliar or papal texts – Raymond often rearranged the order of his sources so as to fit together texts that shared similar information in their inscriptions, or derived from the same source.³⁵² The canons of Lateran IV, for example, are grouped together without exception after the decretals of Innocent III, even when they are often sequenced before Innocent's letters in the relevant 4Comp title.³⁵³ While a common origin is the most frequent non-chronological reason for reordering, Raymond also rearranged the order of his sources to bring together decretals directed to the same recipient.³⁵⁴ For groups of similar texts, Raymond employed a principle of economy in writing out the inscriptions. The inscriptions are consolidated whenever possible, with the determinative pronouns *Idem*, *eidem* and *ex eodem* used to establish links between capitula with the same sender, addressee,³⁵⁵ or canons from the same council.³⁵⁶ This principle of economy is a critical guidepost for evaluating the manuscripts of the *Decretals* as well as Raymond's formal sources. When two consecutive capitula are encountered that do not

overall chronological schema, pre-Gregorian Reform era texts are unique in the *Decretals* for the occasional lapse in chronological rigor.

³⁵² For example, Raymond reversed the order of the 1Comp sources for X 1.18.3-4 (1Comp 1.10.4 and c. 3) to keep together the canons from the council of Toledo (X 1.18.1-3; 1Comp 1.10.1-2 and c. 4), placing them in front of a canon from the council of Altheim (X 1.18.4, (1Comp 1.10.3)). For this last capitulum, the *ER* inscription is "Ex concilio apud Alichii," but Friedberg's apparatus notes the concurrence of early manuscripts and the 1Comp source around the reading of "Altheum" (Altheim).

³⁵³ X 5.38.11-4 (4Comp 5.14: c. 3, c. 2, c. 4 and c. 5), where cc. 12-4 are the Lat. IV canons.

³⁵⁴ The three Alexander III decretals at X 3.50.5-7 (1Comp 3.37.6, c. 5, and c. 7) were rearranged so that the two letters to the bishop of London (X 3.50.6-7; 1Comp 3.37.5, c. 7) appeared in consecutive order, with the inscription of the second letter (c. 7) changed from *Idem London(i)ensi* to *Idem eidem*.

³⁵⁵ X 3.38.8-9 (1Comp 3.33.10-1) are Alexander III letters to the bishop of Winchester both originally inscribed "Idem [Alex. III] Wintoniensi episcopo." Raymond consolidates the inscription of c. 11 to read "Idem eidem."

³⁵⁶ X 3.13.3-4 (1Comp 3.11: c. 3 and c. 5) are inscribed "Ex concilio Toletano," and "Ex eodem" respectively. In 1Comp the Toledan inscription was written out in full for both texts, as they were separated by a canon (1Comp 3.11.4 = X 3.13.5) inscribed "Ex concilio apud Silvanectim." Raymond displaced this canon to X 3.13.5, so as to keep the Toledan texts together.

conform to this principle – for example, when the same name is written out twice, as is Innocent III's in earlier manuscript variants for X 3.43.2-3 – it is a likely indication of a transmission error in the *Decretals*.

Unless it was found necessary to rearrange the sources – whether to maintain chronological consistency or to string together two or more texts with similar inscriptions – as a rule Raymond preserved the ordering of the capitula he inherited from the *5C*.³⁵⁷ This is why many of the titles in the *Decretals* are simply the sum of a wholesale transfer of texts from the relevant title in each of the *5C*, with the groups of texts from each *Compilatio* following in orderly succession from oldest to newest (1Comp x.1-5; 2Comp x.1-5; 3Comp x.1-5, etc.).³⁵⁸ Raymond did not always assign his texts to the same title under which they had appeared in the *5C*, and around 8% of the roughly 1800 non-Gregorian capitula were transposed to a different title in the *Decretals*.³⁵⁹ These transpositions were placed in order in their new titles, grouped with the other capitula

³⁵⁷ The one exception occurs in blocks of texts that mix Alexander III's decretals with canons from the major council during his pontificate, Lateran III (1179). The majority of the time, Raymond treated both as chronologically equal and simply transmitted them in the sequence they were found in 1Comp, no matter if the Lateran III decrees appeared prior to or after Alexander III's decretals. For reasons that are now difficult to ascertain, around one-quarter (7) of the instances where Lateran III canons are grouped together in a title with Alexander's decretals Raymond reordered the sequence of texts so that the decretals appear first (X 2.20, X 3.1, X 3.30, X 3.39, X 5.6, X 5.19 and X 5.31). Considerations of content – which otherwise did little to govern the ordering of texts in the *Decretals* – may have been behind some of the rearrangements, for example in order to make consecutive two texts dealing with essentially the same issue within the title. This seems to be behind the reordering of the first few capitula in the title on usury, X 5.19.1-4 (1Comp 5.15.1, c. 4, cc. 2-3). The Alexander III decretal X 5.19.2, *Quoniam non solum* – initially the fourth in this block of texts taken over from 1Comp (1Comp 5.15.4) – was moved up in the order in front of a Lateran III canon (X 5.19.3/1Comp 5.14.2, *Quia in omnibus*), because the decretal made a slight adjustment to the baseline definition of usury set forth in X 5.19.1. The similarities between X 5.19.1-2 were highlighted by the eventual rubric assigned to c. 2, *Quoniam non solum*: “idem in effectu dicit [hoc caput] cum praecedenti capite, sed addit tacite idem esse in laicis. Nam in praecedenti capite tantum fuit facta mentio de clericis.” With this occasional if still opaque rearrangement of Alexander's decretals in front of Lateran III canons acknowledged, it should also be noted that Raymond never took the opposite tack, i.e., deliberately repositioning Lateran III canons in front of the decretals.

³⁵⁸ This regularity can be grasped by looking at the helpful table in Friedberg's introduction (coll. xxix-xxxv).

attributed to the same pope, but usually slotted in at the end of the block of texts from whichever of the 1-5Comp it was taken. Although transpositions are occasionally found at the beginning of the block of texts drawn from the same formal source, there are only three cases where the transposition occurs in the middle of that block.³⁶⁰

The operation of these principles is most apparent in the longer titles. X 2.20 (*De testibus et attestationibus*) is a good example of where Raymond, in order to achieve chronological consistency, was forced to rearrange both the internal ordering of his sources, as well as the usual 1Comp, 2Comp, 3Comp, etc., sequence of a *Decretals'* title. The chart below lists the ordering of capitula in X 2.20 up through those drawn from 3Comp, whereafter the title reverts to following the sequence of texts as they appear in the formal source.

Table 3.1. The organization of capitula in X 2.20 *De testibus et attestationibus*

X 2.20	Inscription (papal/conc. attribution)	Formal Source	X 2.20	Inscription (papal/conc. attribution)	Formal Source
c.1	<i>Ex Conc. Matercensi</i>	2Comp c. 1 (2.12)	c.16	<i>Idem</i>	1Comp c. 16 (2,13)
c.2	<i>Gregorius I</i>	1Comp c. 3 (2.13)	c.17	<i>Idem</i>	“ c. 17 “
c.3	<i>Idem</i>	“ c. 4 “	c.18	<i>Idem</i>	“ c. 18 “
c.4	<i>Paschal II</i>	“ c. 5 “	c.19	<i>Idem</i>	“ c. 19 “
c.5	<i>Eugenius III</i>	“ c. 20 “	c.20	<i>Idem</i>	“ c. 4 (2.20)
c.6	<i>Idem</i>	“ c. 21 “	c.21	<i>Idem ex conc. Lat.</i>	“ c. 5 (5.5)
c.7	<i>Idem</i>	“ c. 23 “	c.22	<i>Idem</i>	2Comp c. 2 (2.12)
c.8	<i>Idem</i>	“ c. 24 “	c.23	<i>Idem</i>	“ c. 1 (2.2)

³⁵⁹ Another useful table drawn up by Friedberg breaks down by title and formal source the number of received and rejected capitula, as well as those that were transposed to a different title (coll. xxxv-xl).

³⁶⁰ X 2.20.23.22-4 (*De testibus et attestationibus*) derive from 2Comp 2.12.2 (*De testibus*), 2Comp 2.2.1 (*De foro competenti*) and 2Comp 2.12.5 (*De testibus*). X 2.24.31-3 (*De ieiurando*) come from 5Comp 2.15.1 (*De iureiurando*), 5Comp 1.25.1 (*De iuramenta calumniae*) and 5Comp 2.15.3 (*De iureiurando*). X 5.39.40-2 (*De sententia excommunicatione*) derive from 3Comp 5.21.14 (*De sententia excommunicatione*), 3Comp 2.2.1 (*De rescriptis*) and 3Comp 5.21.15 (*De sententia excommunicationis*). The total number of transpositions is 134, making these three a striking anomaly. There is no manuscript evidence, however, to suggest that these were anything other than Raymond's original configuration.

c.9	<i>Alexander III</i>	“ c. 7 “	c.24	<i>Idem</i>	“ c. 5 (2.12)
c.10	<i>Idem</i>	“ c. 9 “	c.25	<i>Urbanus III</i>	1Comp c. 25 (2.13)
c.11	<i>Idem</i>	“ c. 10 “	c.26	<i>Clemens III</i>	2Comp c. 3 (2.12)
c.12	<i>Idem</i>	“ c. 11 “	c.27	<i>Coelestinus III</i>	“ c. 4 “
c.13	<i>Idem</i>	“ c. 12 “	c.28	<i>Innocentius III</i>	3Comp c. 1 (2.12)
c.14	<i>Idem</i>	“ c. 14 “	c.29	<i>Idem</i>	“ c. 2 “
c.15	<i>Idem</i>	“ c. 15 “	c.30	<i>Idem</i>	c. 3, etc.

The title actually commences with a 2Comp text attributed to a local council in Mâcon.³⁶¹

The succession of papal material then proceeds with texts from the *De testibus* title in 1Comp 2.13, with the internal ordering of the canons rearranged so as to slot Eugenius III (cc. 5-8) between Paschal II (c. 4) and Alexander III (cc. 9-19). After exhausting the Alexander III texts from 1Comp 2.13, Raymond transposes two more Alexandrian capitula (cc. 20-1) drawn from other titles in 1Comp, following the normal pattern of keeping together material from the same formal source, unless compelled by chronological necessity (1Comp 2.20.4(*De donationibus*); 1Comp 5.5.5 (*De Iudaeis*)). Then follow the two Alexandrian capitula from 2Comp 2.12 (c. 22 and c. 24 = 2Comp 2.12.1 and c. 5), separated by an additional Alexander III text (c. 23) transposed from a different title (2Comp 2.2.1 (*De foro competenti*)).³⁶² Raymond returns at c. 25 to 1Comp 2.13 for a single Urban III text (1Comp 2.13.25), before listing the remaining of capitula in 2Comp 2.12, which include decretals from Clement III (c. 26 = 2Comp 2.12.3) and Celestine III (c. 27 = 2Comp 2.12.4). The title goes on from there (cc. 28ff.) to reproduce the order of Innocent III and Honorius III texts as they appeared in 3-5Comp.

³⁶¹ As Friedberg pointed out in his apparatus, the text was in fact from a Carolingian capitulary, but was labeled in 2Comp and most early *Decretals* manuscripts as "Ex concilio Maticensi." In the *ER* it is erroneously attributed to the council of the non-existent *Matercensi*.

³⁶² See note 360.

3.5 Organization and anomaly in the title structure: X 3.30 De decimis

One could easily multiply the illustrations of the regularity of Raymond's method, all of which only add to the impression of the extensive planning that went into producing the *Decretals*. This regularity renders the ruptures in continuity that much more significant, when, for example, a text is attributed to a pope that breaks the chronological order in the title, or when capitula have been rearranged from their formal source order for no apparent reason. These ruptures are of two main types: either between the *Decretals* and its 5C sources, or between the text of the *ER* and what a consistent application of the organizational method would predict. Anomalies of the first type establish significant variants that lead back to the particular versions of the 5C that Raymond drew upon. Here Raymond was merely recording the text found in his source, which happened to diverge from the usual reading found in other manuscripts. Anomalies of the second type point toward the changes that occurred during the transmission of the *Decretals* itself, and make it possible to speculate on the earliest form of the collection.

X 3.30 (*De decimis*) offers an example of how to use breaks in continuity to isolate Raymond's sources. Comparing the inscriptions of the capitula in this title between their form in the *Decretals* and the formal sources (according to Friedberg) uncovers two anomalies (highlighted in **bold**):

Table 3.2. Anomalies in title organization: X 3.30 De decimis

X 3.30	X Inscription	Formal Source	Formal Source Inscription
c. 21	<i>Clemens III</i>	2Comp c. 5 (3.17)	<i>Coelestinus III</i>
c. 22	<i>Coelestinus III</i>	“ c. 4 “	<i>Coelestinus III</i>
c. 23	<i>Idem</i>	“ c. 7 “	<i>Coelestinus III</i>
c. 24	<i>Innocentius III Pistorien. episcopo.</i>	3Comp c. 1 (3.23)	<i>Innocentius III Pistorien. episcopo</i>

c. 25	<i>Idem Vercellen. episcopo</i>	4Comp c. 4 (3.9) 3Comp c. 1 (2.1)	<i>Idem Idem Vercellen. episcopo</i>
c. 26	<i>Idem eidem</i>	3Comp c. 2 (3.23)	<i>Idem Vercellen. episcopo</i>
c. 27	<i>Idem abbati S. Col. Senonen.</i>	“ c. 3 “	<i>Idem abbati S. Col. Senonen.</i>
c. 28	<i>Idem Helien. episcopo</i>	“ c. 5 “	<i>Idem Helien. episcopo</i>
c. 29	<i>Idem</i>	4Comp c. 1 (3.9)	<i>Idem</i> ³⁶³
c. 30	<i>Idem episcopo Belvacen.</i>	“ c. 2 “	<i>Idem episcopo Belvacen.</i>

The first anomaly occurs at X 3.30.21, *Ex parte*, where a text correctly attributed in 2Comp to Celestine III (2Comp 3.17.5) has been inscribed instead by Raymond to Clement III. The second is c. 25, *Tua*, where accepting Friedberg's derivation of the text from 4Comp 3.9.1 would pose an exceptional case of Raymond's inserting a 4Comp text in the middle of a block of 3Comp capitula.

There are two possible explanations for Raymond's incorrect attribution of X 3.30.21 to Clement III: either that the correct inscription of Celestine was corrupted to Clement early on in the transmission of the *Decretals*, or that Raymond actually encountered it as a Clement III text in the version of 2Comp he was using. The first option is unlikely for two reasons. First, Raymond reversed the order of X 3.30.21-2 from that of their source (2Comp 3.17, c. 5 and c. 4), a deliberate reordering suggesting he saw X 3.30.21 as chronologically prior. Secondly, had he attributed X 3.30.21 to Celestine, he would have given an *Idem* inscription to X 3.30.22, following his usual method of consolidation. The lack of Celestine III variants for X 3.30.21 from early *Decretals* manuscripts as well as Friedberg's codices confirm that Clement III was the

³⁶³ The inscription for 4Comp 3.9.1 in Friedberg's edition of the *5C* is *Idem episcopo Belvacensis*, identical to the inscription of the next canon in 4Comp. Were this in fact true, it would raise the question why X 3.30.29-30 did not bear the inscriptions of *Idem episcopo Belvacensi*, and *Idem eidem*, respectively, following Raymond's normal method of consolidating identical, consecutive inscriptions. The full inscription to the bishop of Beauvais for 4Comp 3.9.1 was apparently an erroneous reading that Friedberg had taken over from Agustín. In the apparatus to X 3.30.29, Friedberg correctly notes that the full inscription was an anomaly of Agustín's edition (assigned the siglum *Dh*), since none of his 4Comp manuscripts carried this reading. All of the 4Comp control manuscripts used in this collation also have *Idem* as the inscription for 4Comp 3.9.1.

original form of the inscription for X 3.30.21. Thus, it is more likely that the version of 2Comp being used had the Clement inscription. As demonstrated in the appendix, evidence of a Clement III variant for 2Comp 3.17.5 is provided by Vat. lat. 1377, the only control manuscript which does not have Celestine for its inscription.

3.5.1 The Source for X 3.30.25 *Tua*

The examination of the title *De decimis* has thus far demonstrated how Raymond deployed his sources according to a predictable set of criteria. Where the inscription in the *ER* indicates a source that seems out of place, recourse should be had to the early *Decretals* and formal source manuscripts, which usually show either that Raymond derived the variant reading from the *5C* or that it was corrupted by the hands of later copyists of the *Decretals*. A whole different problem arises, however, with X 3.30.25, *Tua*, an anomaly that begins with the inscription and formal source identification, but ends up in the actual text of the decretal and the version of 3Comp Raymond might have used.

By placing this text in front of X 3.30.26, *Tua nobis* (3Comp 3.23.2), Raymond reunited two extracts from the same Innocent III letter sent to the bishop of Vercelli that addressed the various efforts parishioners made to avoid tithes on agricultural produce.³⁶⁴ The section known simply later on as *Tua* (X 3.30.25) targeted imperial exemptions from tithe payments, and criticized those laymen who, having at one time received concessions of tithes *in feudum*, attempted to extend that concession to cover the produce of newly-

³⁶⁴ Potthast 898; Reg. II.233. The letter as an integral unit received broad circulation among canonical collections during the first decade of Innocent's pontificate, but beginning with Bernardus Compostellanus, it was divided into two sections: *Tua* (Bern. 2.1.1 = 3Comp 2.1.1 = 4Comp 3.9.4) and *Tua nobis* (Bern. 3.24.2 = 3Comp 3.23.2). See below, however, for the divergence between the forms of *Tua* in 3Comp and 4Comp.

cultivated lands (*novalia*) connected with the original grant.³⁶⁵ *Tua nobis* (X 3.30.26), on the other hand, highlighted tithe-avoidance strategies among peasants and landowners, such as calculating the total amount owed based upon the net (seed crop having been deducted) rather than the gross harvest, funneling tithes to favored charitable causes and clergy, and using the incompetence and corruption of the local clergy as an excuse to withhold tithes altogether. Raymond's consecutive placement of two previously scattered extracts from the same letter was unusual, though not entirely without precedent, as one can see from the conjoinment of two sections of *Ecclesia sanctae Mariae* at X 2.16.3-4 (3Comp 2.2.5; 3Comp 2.6.1).³⁶⁶ Since there were two possible sources in the 5C for *Tua* – 3Comp 2.1.1 (*De iudiciis*) and 4Comp 3.9.4 (*De decimis*) – the question arises whence Raymond derived X 3.30.25. The answer to this question turns out to have some import for identifying Raymond's sources.

Despite its lack of the full inscription to the Bishop of Vercelli, and that it would constitute an unprecedented insertion of a 4Comp text into the middle of a block of capitula from 3Comp, Friedberg identified 4Comp 3.9.4 as the source of X 3.30.25.³⁶⁷ Raymond's normal method of organization would, instead, predict that he transposed 3Comp 2.1.1 from its original *De iudiciis* title, and placed it at X 3.30.25 in front of the

³⁶⁵ Horwitz ("Reshaping a decretal chapter," pp. 211-3) speculates that the creation of the additional *Tua* extract by Bernardus Compostellanus – and its relegation to a title unrelated to tithes (*De iudiciis*) – was prompted by the general discomfort among canons with Innocent's tacit acknowledgment in this section of the practice of laymen holding tithes *in feudum*. Bernardus (and Petrus Beneventanus after him in 3Comp) then pared down the *Tua* extract placed in *De iudiciis* to a bare condemnation against laymen wielding power over spiritual things, eliminating all mention of enfiefment. When incorporating *Tua* at 4Comp 3.9.4, Johannes Teutonicus restored the mention of lay-held tithes and placed the capitulum in the *De decimis* title. He failed to include, however, the opening portion of the canon as it read in 3Comp 2.1.1 (and X 3.30.25). A full discussion of these textual problems is given below.

³⁶⁶ Reg. II.230; Potthast 879.

other section of *Tua nobis*. This would also better account for the presence of the full inscription at X 3.30.25, which is provided in 3Comp 2.1.1. The appearance of the inscription at X 3.30.25 (*Idem episcopo Verzellensi*) is actually a solid piece of evidence in 3Comp 2.1.1's favor, even though it might seem a trivial matter for Raymond to have supplied the missing inscription on his own, based upon his knowing the common origin of X 3.30.25-6. In other cases where Raymond transmitted two consecutive extracts from the same letter he did not supply the inscription if it was lacking in the formal source.³⁶⁸

In fact, there is another, more serious textual hurdle for either 3Comp 2.1.1 or 4Comp 3.9.4 as a source for X 3.30.25, since neither one transmits the entire text of *Tua* found in the *Decretals*. This discrepancy was first identified by Steven Horwitz, who studied the canonical transmission of *Tua nobis*, focusing in particular on the version included in some manuscripts containing the French recension of 3Comp.³⁶⁹ The problem is illustrated as follows with the full text of *Tua* from the *Decretals*, along with those sections of the text that are missing from the two possible sources:

X 3.30.25: *Idem Verzellensi episcopo* [*Idem*: 4Comp 3.9.4; *Idem Verzell. ep.*: 3Comp 2.1.1]

³⁶⁷ In his edition of the *Decretals*, Friedberg did not signal the other 3Comp 2.1.1 possibility. In his edition of the *5C*, however, he annotated (but did not crossreference) his entries for both 3Comp 2.1.1 and 4Comp 3.9.4 with X 3.30.25 as the *Decretals* text for which these two served as sources.

³⁶⁸ Including X 3.30.25-6, there are fourteen cases in the *Decretals* (nine for Alexander III and five for Innocent III) where two or more consecutive extracts from the same letter appear: X 1.11.2-3 (1Comp 1.6.2-3); X 1.29.7-8 (1Comp 1.21.9-10); X 2.13.5-6 (1Comp 2.9.5-6); X 2.16.3-4 (3Comp 2.2.1; 3Comp 2.6.1); X 2.28.5-7 (1Comp 2.20.5-7); X 2.28.9-11 (1Comp 2.20.9-11); X 3.26.14-5 (3Comp 3.19.2-3); X 3.30.25-6 (3Comp 2.1.1/4Comp 3.9.4; 3Comp 3.23.2); X 3.30.29-30 (3Comp 3.9.1-2); X 3.32.5-6 (1Comp 3.28.5-6); X 3.34.8-9 (3Comp 3.26.4-5); X 3.42.1-2 (2Comp 5.19.1-2); X 4.11.1-2 (1Comp 4.11.1-2); X 5.39.1-4 (1Comp 5.34.1-4). Raymond never once corrected his sources to indicate that a second (or third) extract was part of the same letter, if such an identification was not already present in his sources. The one apparent exception in the *ER* (X 5.39.1-4 (1Comp 5.34.1-4)) turns out to be the result of a later copyist's addition, as will be shown later on.

³⁶⁹ Horwitz, "Reshaping a decretal chapter."

Tua, et infra. Porro cum laicis nulla sit de spiritualibus concedendi vel disponendi facultas, [Porro cum...facultas: *deest* **4Comp 3.9.4**]³⁷⁰ imperialis concessio, quantumcunque generaliter fiat, neminem potest a solutione decimarum eximere, quae divina constitutione debentur. Nec occasione decimationis antiquae, licet in feudum decimae sint concessae, sunt decimae novalium usurpandae, cum in talibus non sit extendenda licentia, sed potius restringenda [Nec occasione...restringenda: *deest* **3Comp 2.1.1**].

Tua, et infra. In the future, since laymen should have no power over the granting or distribution of spiritual things, an imperial grant, however general it may be, will not exempt anyone from the payment of tithes, which are owed by divine establishment. Nor shall the occasion of an older tithe, even if it has been granted in fief, be used as an opportunity to usurp the tithes on *novalia*, for in such cases the abuse should be curtailed rather than magnified.

The version of *Tua* in 4Comp 3.9.4 preserves the largest portion of text transmitted in the *Decretals*, lacking only the first half of the first sentence (*Porro cum...facultas*). The gap is more pronounced in 3Comp 2.1.1, where the entire second half of the canon is missing (*Nec occasione...restringenda*). It is almost certain that the full version of X 3.30.25 – encompassing the whole text inside *Porro...restringenda* – is the original shape Raymond gave to the canon, rather than an early modification of the text to reintroduce a *pars decisa*. Not only is this the reading of early *Decretals* manuscripts, the earliest commentaries also give lemmata from the full version.³⁷¹

Horwitz discovered that certain manuscripts of the French recension of 3Comp actually have an expanded version of 3Comp 2.1.1 that restores the missing second half of the capitula (*Nec occasione...restringenda*), and thus has the entire text of *Tua* as it

³⁷⁰ All of the control manuscripts in the appendix concur in this reading: Ad. 22, fol. 260v; BnF lat. 3933, fol. 96v; BnF lat. 15997, fol. 215v; BnF NAL 2127, fol. 194v; Vat. lat. 1377, fol. 303r. Friedberg's apparatus offers the same picture for the 4Comp manuscripts he consulted.

³⁷¹ Gottfried of Trani gives lemmata for *facultas*, *decimationis*, *quae divina*, and *novalium*: Vienna, ÖNB, cod. vind. pal. 2197, fol. 98r. Vincentius Hispanus, who compiled another early commentary on the *Decretals*, has lemmata for *nulla*, *facultas*, *imperialis*, *novalium*, and *restringenda*: Madrid, BN, MS 30, fol. 192r.

later appeared in the *Decretals*.³⁷² To the three French recension manuscripts found by Horwitz to have all of 3Comp 2.1.1 may be added the two used in this collation, BnF NAL 2127 and BnF lat. 3933.³⁷³ A key aspect of the fuller version of 3Comp 2.1.1 is that it was not based upon resuscitating text from the *Compilatio Romana*, a practice that is responsible for the bulk of the changes made to 3Comp by the French recension.³⁷⁴ The multiple etiology of French recension alterations will be an important point to consider later on when discussing the *Decretals*' preservation of the correct inscriptions from Innocent III's register that have no other known precedent other than French recension manuscripts.

The fact that the *Decretals*' version of *Tua* is only sourced in French recension manuscripts would seem to make a compelling case for dependence. The problem is that no Italian manuscripts have been uncovered that preserve the fuller version.³⁷⁵ Horwitz' solution is that Raymond reconstructed a composite chapter, pulling the bulk of the text from 4Comp 3.9.4 (*imperialis concessio...restringenda*) and the remaining, opening line

³⁷² St. Omer MS 484, Graz MS 374 (Friedberg's *Cb*) and BAV Vat. lat. 1378. Horwitz also noted that the Humanist copy of Vat. lat. 1378, Vat. lat. 2510, contained the fuller version of 3Comp 2.1.1, and interpolated the missing text at 3Comp 3.23.2 as well.

³⁷³ BnF lat. 3933, fol. 39v; BnF NAL 2127, fol. 114v. The other manuscripts of the control group adhere to the curtailed structure of *Tua (et infra) Porro...debentur*, as given in Friedberg: Ad. 22, fol. 164v; BnF lat. 15997, fol. 127r; Vat. lat. 1377, fol. 187r. Horwitz speculated ("Reshaping a decretal chapter," p. 212) that the source of the additional text might be the collection of Alanus, since all three manuscripts with the expanded 3Comp 2.1.1 also contained an extra capitulum whose only known canonical source is Alanus' collection, Alan Anh. 55, *Licet dilecti filii* (post 3Comp 3.7.3 = 4Comp 1.6.1 = X 1.10.3). This canon occurs in the chunk of text missing from BnF lat. 3933, but BnF NAL 2127 also contains it (fol. 139v), so Horwitz' solution remains valid. Note that the manuscript sigla for the listing of *Licet dilecti filii* in Pennington, "French recension," (no. 15, p. 59) should be emended to reflect the presence of the canon in BnF NAL 2127 (=Pd).

³⁷⁴ Pennington, "French recension," pp. 60ff. 3Comp 2.1.1 is not among the capitula listed by Pennington (pp. 61-3) as having been amplified, perhaps because it only occurred in a portion of French recension manuscripts.

³⁷⁵ Horwitz looked at thirty manuscripts in total, including thirteen French Recension and seventeen non-French recension: "Reshaping a decretal chapter," pp. 219-20, n. 20). Including Friedberg (whose 3Comp

from 3Comp 2.1.1 (*Porro cum...facultas*), and moreover that he was prompted to do so by discussions among 3Comp commentators of the textual problems of *Tua nobis*.³⁷⁶ The most extensive of these discussions belongs to Tancred of Bologna, who noted in his commentary on 3Comp 3.23.2 that it did not include all of Innocent's words on the subject of tithe avoidance. After laying out the main questions set up in 3Comp 3.23.2, the fourth and fifth of which are the problems of imperial exemptions from tithing and lay possession of tithes *in feudum* respectively, Tancred makes the cryptic remark at the break marking the extraction point of the text dealing with these two subjects that one must turn to 3Comp 2.1.1 for the solution to the exemption issue. Only certain manuscripts, according to Tancred, did not give the explication of the problem of lay possession of tithes.³⁷⁷ Taken at face value, this comment shows that Tancred was familiar with 3Comp manuscripts that transmitted the full text of 3Comp 2.1.1 as interpolated by the French recension and later included in the *Decretals*. It is impossible to know, however, if Tancred had encountered a French recension manuscript, or whether there were also Italian manuscripts with the interpolated 3Comp 2.1.1 circulating within his orbit.

collations aren't always reliable) and those collated for this chapter, this represents around 40% of known 3Comp manuscripts that have been checked for the expanded 3Comp 2.1.1.

³⁷⁶ Mention of the deficiencies are found in Vincentius Hispanus and Tancred of Bologna, with the comments of Tancred being the more substantial, as will be discussed presently. In his commentary on 3Comp 3.23.2, Vincentius Hispanus paraphrases a brief section of the passage that was added into 3Comp 2.1.1 in the French recension (and later X 3.30.25), though his language suggests that his source was the original, unedited letter (*integra*): "*usurpare*" cum in talibus potius restringenda licentia quam amplianda prout dicitur in *integra*," quoted in: Horwitz, "Reshaping a decretal chapter," p. 214. Johannes Teutonicus also included a brief notice in commenting on his own 4Comp 3.9.4, that it was an excerpt of 3Comp 3.23.2: "*Tua*] Hoc caput est pars illius, super eodem, *Tua*, lib. iii [3Comp 3.23.2]," Antonio Agustín, *Antiquae Collectiones Decretalium*, in: *Opera Omnia*, vol. 4 (Lucca, 1769) p. 660, note a.

³⁷⁷ "*Tenetur*] supra, e[odem] t[itulo], c. proximo. *Et infra*: Quarta [quaestio] non solvitur hic, sed habes solutionem eius supra, *de iudiciis*, c. 1, l[ibro] e[odem]. Similiter quidam libri non habent solutionem quinte questionis," BnF NAL 2127, fol. 148r.

The source question as it ultimately pertains to the *Decretals* is an important one, though given the current state of evidence no definitive answer is possible at this time. There was certainly enough ancillary information available for Raymond to construct a composite canon at X 3.30.25 from 3Comp 2.1.1 and 4Comp 3.9.4. Two points urge caution before accepting this view, however, the first methodological and the other textual. The methodological consideration is that for all the aggressiveness of Raymond's editing, he was not in the habit of significantly correcting or restoring the deleted portions of his sources. The one documented exception is the addition of the closing statement to X 3.50.4, *Super specula*, where Raymond put back in place Honorius III's original extension of the prohibition on the monastic study of civil law to include the entire clergy – a draconian, and ultimately futile effort that had to be walked back by Gregory soon after the *Decretals* was promulgated.³⁷⁸ Tancred had attempted to soft-peddle the prohibition when he placed the text at 5Comp 3.37.1 by cutting out the portion applying to the secular clergy, but Raymond reached back to the original language of the decretal and reinstated the ban for the express purpose of encouraging greater theological study by the clergy.³⁷⁹ Over and above any direction he might have received from Gregory IX, Raymond's background as a former university and cathedral school master, and as one of the motive forces behind the new penitential theology explains why he might have been so invested in the issue as to alter his sources in such a radical fashion. Other than *Super specula*, there are no examples of similar source reconstitution. This would accordingly make the purported hybridization of sources to

³⁷⁸ See above, chapter one, note 139.

³⁷⁹ "Quia vero theologiae studium cupimus ampliari..." X 3.50.4. Friedberg indicates in his apparatus to the canon where the additional language occurs (*Quia vero...observari*).

achieve X 3.30.25, *Tua*, only the second case of its kind, and also one where there was not nearly as much at stake legally or personally to explain such an exception to Raymond's normal method of deploying his sources.

The textual objection comes from the peculiar form of the longer portion of the letter placed by Raymond at X 3.30.26, *Tua nobis*. Most of Raymond's editorial interventions in X 3.20.26 are easily explainable. In keeping with the *resecatis superfluis* mandate, Raymond eliminated a section that essentially duplicated the tithe avoidance prohibitions already touched upon in X 3.30.25.³⁸⁰ The other excisions target progress reports on the judicial process surrounding the case, as well as pointed language reminding the bishop of his pastoral duty to curb clerical *nequitiae* – in short nothing out of the ordinary. The anomaly occurs, rather, in the parts of the text that were preserved, and involves the reversal of two passages. The context of the reversal seems to be an attempt to make the order of *sententiae/solutiones* at the end of the letter match the original order of *quaestiones* about tithe avoidance set forth by Innocent at the beginning. The problems were described in the following order: 1) paying tithes on net agricultural produce rather than gross, 2) the practice among some manorial lords of disbursing the tithes of their peasants to their own favored clergy or pious uses, and 3) using clerical corruption as an excuse to withhold tithes altogether. In the original letter and in 3Comp these questions are answered out of order, with Innocent addressing the issue of clerical

³⁸⁰ Raymond removed Innocent's initial remarks about imperial concessions and usurpation of novalia tithes, the solutions to which would eventually turn up in the previous canon. This kind of editing is a good example of how the *Decretals* differed from previous collections insofar as it tried to prevent the rough edges of canons from shading over into one another. The excised, duplicatory language from X 3.30.26 is as follows: "quidam insuper asserentes, se possessiones et omnia iura sua cum omni onere et districtu per imperialem concessionem adeptos, decimas sub huiusmodi generalitate detinere praesumunt. Occasione praeterea veteris decimationis, quam asserunt sibi concessam, aliqui decimas novalium sibi non metuunt usurpare."

corruption (3), before then offering a combined response to expense deduction and tithe diversion by lords and peasants (1-2). In the *Decretals*, however, the ordering of Innocent's responses has been reversed, presumably for the sake of consistency.³⁸¹

One would be hard-pressed to find any other place in the *Decretals* where Raymond made a similar adjustment to the formal aspects of a decretal. One does find examples where he inherited a text that had been *mis*-ordered by the formal source compiler – to the point where it befuddled later copyists and commentators – but he refrained even here from rearranging the text and clearing up the confusion.³⁸² The point is that when it came to editorial strategies like adding back the original language, or reordering the parts of a text, Raymond was very conservative. If Raymond was, in fact, responsible for the change in X 3.30.26, then it would be strange that this kind of a cosmetic adjustment to the form would not pop up anywhere else in the *Decretals*, when there were many such opportunities to correct the confusion in the sources. On the other

³⁸¹ The reversal occurs right before the *et infra* break made by earlier compilers where they had extracted the text that would eventually become X 3.30.25, *Tua*. The whole passage reads in the *Decretals* as follows: “[1] et cum de cunctis omnino proventibus decimae sint reddendae, sicut colonus de parte fructuum, quae sibi remanet ratione culturae, sic et dominus de portione, quam percipit ratione terrae, decimam reddere sine diminutione tenetur. [2] Praetextu vero nequitiae clericorum nequeunt eas nisi quibus ex mandato divino debentur, pro suo arbitrio erogare, cum nulli sit licitum aliena cuiquam concedere praeter domini voluntatem, *et infra*...” The first passage [1] gives a general answer meant to cover both peasants and lords trying to find ways to skirt the full tithe payment, while the second [2] rejects the excuse of clerical corruption as a valid reason for withholding tithes. In 3Comp 3.23.2 (and originally Bern. 3.24.2) passage [2] came first, followed by [1] and then the break (*et infra*). None of the manuscripts collated for this chapter show anything other than the standard *ER* and formal source readings.

³⁸² A good example is X 3.4.11, *Ex tuae devotionis*, which advised what to do with the prebends of clergy who refused to appear when summoned by a superior (Potthast 3090). Perhaps as part of editing a text that had arisen out of problems relating to the Latin-controlled East, and trying to generalize them to the Church as a whole, the compiler of 3Comp, Petrus Beneventanus, had rearranged the different parts of the text. The resulting confusion caused by this reordering apparently left later commentators scratching their heads, so much so that in later *Decretals* manuscripts a rubric was uncharacteristically inserted into the middle of the capitulum highlighting the confused meaning of the second half of the text (for the passage *contra eos...agi posset*): “iste versiculus non summatur propter varietatem lecturarum, et quia secundum unum intellectum non facit ad rubricam.” The wording of the rubric suggests that copyists may have fiddled with the language in order to force some additional sense into the X 3.5.9, which no doubt made things worse.

hand, the reordering of X 3.30.26 could just reflect changes that were already made to 3Comp 3.23.2 by a copyist or canonist engaged with the law of tithing, and more specifically the problems of *Tua nobis*. The same person who included an expanded version of 3Comp 2.1.1 might well be interested enough to match up the order of subjects and solutions in 3Comp 3.23.2.

More will be said later on about the other 3Comp anomalies showing up in the *Decretals* that have a bearing on Raymond's formal source selection. For now, though, the foregoing explanation must remain speculative in the absence of further manuscript evidence. It does add 3Comp 3.23.2 to the list of formal source manuscript variants to be checked to see if there is any precedent for the reordering that occurs in the *Decretals*.

3.6 Organization and anomaly in the order of canons: X 3.3.8 *Cum decorem*, X 5.6.5 *Iudaei sive Sarraceni* and X 1.11.14 *Vel non est*

The analysis of X 3.30 *De decimis* demonstrates that breaks in the normal method of title organization are actually fissures that may be pried apart to reveal the anomalies in Raymond's formal sources or the changes made by later copyists of the *Decretals*. Armed with an understanding of how Raymond organized his material, the rest of the collection can be scrutinized for similar breaks. The inscriptions will provide the main entry point for this investigation, but the rest of the low-hanging fruit should be plucked first.

One of the most helpful variants for relating different manuscripts are those places where the order of canons has been altered. It is surprising that in a collection of almost 2,000 capitula there are not a significant number of such occurrences, which no doubt owes a great deal to the care and sophistication of the copying process for school-texts

after the middle of the thirteenth century.

383

The scarcity of reordered canons – at least those with a wide enough circulation that they made it into the *ER* – makes them that much more valuable when found, since they provide a simple and clear way of distinguishing between the broad branches of manuscript transmission. There are two such canons in the *ER* where reordering has occurred: 1) X 3.3.8 (3Comp 3.1.4), *Cum decorem (De clericis coniugatis)*; and 2) X 1.11.14 (5Comp 1.8.2), *Vel non est (De temporibus)*. There is also another that cuts a wide swath through early *Decretals* manuscripts, but which seems to have been restored to its intended place by the time the *ER* was edited: X 5.6.5 *Iudaei sive Sarraceni*.

3.6.1 Multiple title placement of X 3.3.8 *Cum decorem*

Raymond divided 3Comp 3.1.4 (from the 3Comp title *De vita et honestate clericorum*) into three parts, transposing the first to X 1.17.15 (*De fillis prebyterorum ordinandis vel non*), leaving another part in its original title at X 3.1.12, and transposing the third piece several titles later in Book 3, which appears in the *ER* at X 3.3.8.

X 3.3.8: *Idem* [Innocent III]

Cum decorem (et infra) Eos qui sunt publice uxorati, non admittatis de cetero ad ecclesiasticas dignitates, dimissis [et admissos repellatis: *Reg. add.*] ab eis, quas non possunt sine pravo exemplo et gravi scandalo retinere.

Trans: *Cum decorem (et infra)* Henceforth you shall not award ecclesiastical office to anyone who is publicly married, and those already in office should be dismissed, since they are not able to hold them without setting a perverse example and causing grave scandal.

Even though the full version of *Cum decorem* had originated in the 3Comp title on clerical mores, the extract Raymond transposed to X 3.3.8 fits well within this

Decretals title on married clergy (X 3.3 *De clericis coniugatis*). In terms of its position within the title, however, it is out of order according to the usual way that Raymond organized his texts.

Table 3.3. The position of X 3.3.8 *Cum decorem*

X 3.3	Source	Incipit
c.4	2Comp 3.2.1	<i>Sane sacerdotes</i>
c.5	3Comp 3.3.1	<i>Diversis fallaciis</i>
c.6	3Comp 3.3.2	<i>Cum olim</i>
c.7	4Comp 3.1.1	<i>Ioannes</i>
c.8	3Comp 3.1.4	<i>Cum decorem</i>
c.9	5Comp 3.2.1	<i>Ex parte</i>
c.10	5Comp 3.2.4	<i>Ut consultationi</i>

At X 3.3.8, *Cum decorem* is separated from the other 3Comp extracts (X 3.3.5-6; 3Comp 3.3.1-2) by a text derived from 4Comp (X 3.3.7; 4Comp 3.1.1). As noted above,³⁸⁴ even when Raymond transposed a text to a title in the *Decretals* that was different from the title from which it derived in its formal source, he always grouped it together with other texts from that formal source, unless chronological consistency dictated otherwise. Since 3-4Comp are devoted exclusively to Innocent III, there appears to be no organizational reason why *Cum decorem* would have been placed at X 3.3.8, rather than immediately after the other 3Comp texts at what would be X 3.3.7.

The early manuscripts present a divided picture. FBN 157 (fol. 90v) follows the *ER* in the dubious placement of *Cum decorem* at X 3.3.8. FBL sin.9 (fol. 99v), however, places it in the following title (*De clericis non residentibus in ecclesia vel praebenda*) between X 3.4.12 *Tuae fraternitatis* and X 3.4.13 *Ex parte*. Although *Cum decorem* fits

³⁸³ In general, see: Frank Soetermeer, "Exemplar und Pecia: Zur Herstellung juristischer Bücher in Bologna im 13. und 14. Jahrhundert," in: *Juristische Buchproduktion*, pp. 481-516.

rather uncomfortably in this title on clerics who do not reside in the churches in which they are beneficed, its position at the end of a block of 3Comp texts, and in front of one from 5Comp (the current X 3.4.13, from 5Comp 3.3.4), accords with the usual methods Raymond utilized to organize texts within a title.

Table 3.4. The possible positioning of *Cum decorem* at X 3.4.13

X 3.4	Source	Incipit
c.9	3Comp 3.4.1	<i>Qualiter archiepiscopus</i>
c.10	3Comp 3.4.2	<i>Inter quatuor</i>
c.11	3Comp 3.4.3	<i>Ex tuae</i>
c.12	3Comp 3.4.4	<i>Tuae fraternitatis</i>
(c.13)	3Comp 3.1.4	<i>Cum decorem</i>
c.13	5Comp 3.3.1	<i>Ex parte</i>
c.14	5Comp 3.3.2	<i>Cum dilectus</i>
c.15	5Comp 3.3.3	<i>Ad audientiam</i>

The placement of *Cum decorem* in X 3.4 in FBL sin.9 is not an anomaly as it turns out. Confirming the early date of this alternate title structure, Friedberg notes in his apparatus that in his earliest manuscripts *F* and *G*, *Cum decorem* also appears in the subsequent X 3.4 title, though he does not specify exactly where.³⁸⁵ Without for the moment choosing between the two possible positions, one can speculate about the possible reasons why *Cum decorem* would have shifted back and forth between these two places. In either position (X 3.3.8 or X 3.4.13), *Cum decorem* preceded capitula by Honorius III (X 3.3.9 and X 3.4.13) with the exact same incipit up through the first six words: *Ex parte tua fuit propositum quod*. The two Honorius *Ex parte* canons are separated by fourteen relatively short capitula, so it is certainly conceivable that this

³⁸⁴ Section 4.4.

³⁸⁵ "In *FG*, hoc caput in titulo subsequenti," X 3.3.8, col. 459, not.1.

coincidence in the wording of these decretals could have prompted the migration of *Cum decorem* from either position.

The early commentary tradition delivers a split verdict as well on the original position of *Cum decorem*. Sinebaldus Fieschi (Innocent IV)³⁸⁶ and Gottfried of Trani³⁸⁷ glossed the text as if it were X 3.4.13, in line with its position in FBL sin.9. On the other hand, Vincentius Hispanus³⁸⁸ and Hostiensis³⁸⁹ cover *Cum decorem* where it occurs in the *ER* and FBN 157 at X 3.3.8. Hostiensis, though, found the question of placement significant enough to offer up some unusual remarks, the form of which is otherwise unprecedented in the *Lectura*.

Leading off his commentary on X 3.3.8, Hostiensis advises his readers that even though they will find *Cum decorem* in the next title, it should, in fact, be placed here at X 3.3.8.³⁹⁰ Then in the next title, Hostiensis again inserts *Cum decorem* at what would be X 3.4.13, the exact spot where it is found in FBL sin.9. It functions merely as a placeholder, however, and his commentary is limited to a single sentence redirecting the reader to where he discusses the canon in full at X 3.3.8.³⁹¹ Insensitive to the needs of modern textual scholars, he reprises his earlier remark without much further precision, noting that while “some books” (*aliqui libri*) place *Cum decorum* at X 3.4.13, it should be assigned to where he currently has it at X 3.3.8. That he is talking about various manuscripts of the *Decretals* is evident from the use of the same word (*liber*) that he

³⁸⁶ Sinebaldus Fieschi, *Apparatus*, fol. 354rb.

³⁸⁷ Vienna, ÖNB, cod. Vind. pal. 2157, fol. 81r.

³⁸⁸ Madrid, BN, MS 30, fol. 165r.

³⁸⁹ Hostiensis, *Lectura*, vol. 3, fol. 10ra.

³⁹⁰ “Hanc decretalem invenies infra, titulo p[roximo], sed debet hic collocari,” *ibid.*, fol. 10ra.

elsewhere employed when referring to his defective copy of the *Decretals*.³⁹²

Quantifying *aliqui* at this point is anyone's guess, but given the exceptional nature of Hostiensis' remark, the sequence followed by other commentaries, and the testimony of the early manuscripts, it must have represented a significant strain in the textual transmission.

The problem gets more interesting, however, when one turns to the French translation of the *Decretals*. In all four manuscripts, *Cum decorem* is reversed with the preceding 4Comp-derived text, such that it now occupies the place of 3Comp 3.3.7.³⁹³ Its placement at X 3.3.7 removes the discontinuity in title organization by being joined with the other 3Comp extracts (X 3.3.5-6). Moreover, by remaining under the title on married clergy, there is no discontinuity in subject matter as would occur if it were placed at X 3.4.13. Is it possible that the French translation, at least with regard to its title structure at X 3.3, preserves a strain in the *Decretals*' transmission that gets closer to the source? Another point in the French translation's favor is that it also happens to transmit the only other recorded marker of the earliest version, *viz.*, the "vel etiam" variant given by Hostiensis as the corrupt reading in X 3.14.3 from his *de primis* copy of the collection, a variant contained in no other known *Decretals* manuscript.³⁹⁴ In the absence of more extensive knowledge about other characteristics of the earliest version of the *Decretals*,

³⁹¹ "Aliqui libri habent hic hoc capitulum, sed debet poni et legi supra, [tit.] *De clericis coniugatis*, inter capitulum *Iohannes* [X 3.3.7] et capitulum *Ex parte* [X 3.3.9]," *ibid.*, fol. 13rb.

³⁹² See the previous chapter, p. 139ff.

³⁹³ BnF fr. 491 (147r), fr. 492 (184r), fr. 493 (121v), Ars. 5215 (171v).

³⁹⁴ BnF fr. 491, 162v: "Il est otroié a usser de la prairie tant comme cil qui otroia le suefir, mais ele est depecie par la mort de celui a qui ele est otroié u [ou: BnF fr. 493, fol. 136v] de celui qui l'otroia." The remaining manuscripts follow this translation of the "vel" rather than the "non" given in the *ER*.

the French translation can only remain an ancillary tool. More investigation is obviously needed on the subject, however.

3.6.2 The rearrangement and absence of X 5.6.5 *Iudaei sive Sarraceni*

There are no glaring inconsistencies in the current title organization that would explain the considerable variation undergone by the next capitulum under consideration, X 5.6.5 *Iudaei sive Sarraceni*, which Raymond placed in the book five title dealing with non-Christians (X 5.6, *De Iudaeis, Sarracenis et servis eorum*). The text itself was drawn from a Lateran III decree that Raymond edited down to a dual prohibition: the first against Christians acting as servants in Jewish and other non-Christian households, and the second against secular rulers who despoiled Jewish converts to Christianity of their property.³⁹⁵ The following table lays out the current order of the block of capitula (according to the *ER*) in which X 5.6.5 appears, along with the formal source derivation:

Table 3.5. Sources and inscriptions for X 5.6.4-7

Capitulum	X	<i>ER</i> inscription	Formal Source	Formal source inscription
<i>Iudaei de civitate</i>	X 5.6.3	Idem [Greg. I] Genuensi episcopo	1Comp 5.5.4	Idem Ianuensi episcopo
<i>Quia super his</i>	X 5.6.4	Alex. III	1Comp 5.5.7	Alex. III
<i>Iudaei sive Sarraceni</i>	X 5.6.5	Idem ex conc. Lat.	1Comp 5.5.5	Ex conc. Lat.
<i>Ita quorundam</i>	X 5.6.6	Idem in eodem	1Comp 5.5.6	Ex eodem
<i>Consuluit</i>	X 5.6.7	Idem	2Comp 5.4.2	Alex. III

In later manuscripts and the *ER*, *Iudaei sive Sarraceni* is consistently placed at X 5.6.5, making it the first of two Lateran III canons in this title. During the first few decades after promulgation, however, *Iudaei sive Sarraceni* is often reversed with the following canon X 5.6.6, *Ita quorundam*, or is missing entirely. The next table brings together the

³⁹⁵ Lat. III, c. 26, edited in: Norman Tanner, et al., *Decrees of the Ecumenical Councils*, vol. 1 (London, 1990) pp. 223-4. Raymond cut out the middle portion of the canon and made it into a separate capitulum at

notes in Friedberg's apparatus along with the evidence from the early manuscripts collated in this chapter, showing the three different ways in which *Iudaei et Sarraceni* was encountered (or absent) early on in the *Decretals'* transmission history:

Table 3.6. Varying Position of *Iudaei et Sarraceni* (X 5.6.5) in early manuscripts

	<i>G, H</i>	<i>F, FBL sin.9</i>	FBL sin.9 Inscription	FF491, etc.	FF491, etc. Inscription ³⁹⁶
<i>Iudaei sive Sarraceni</i>	X 5.6.6	<i>deest</i>	-----	X 5.6.5	Cil meismes el concile general
<i>Ita quorundam</i>	X 5.6.5	X 5.6.5	Idem in conc. Lat.	X 5.6.6	Cil meismes alixandres en cel meismes concile

Friedberg reports the reversal with *Ita quorundam* (thus making *Iudaei sive Sarraceni* X 5.6.6) in *GH*, while *F* is joined by one of the Florentine manuscripts (FBL sin.9) in lacking the canon altogether.³⁹⁷ This constitutes a notable divergence between Friedberg's *F* and *G*, whose readings otherwise run very close to one another, as was seen above in *Cum decorem*. The fact that the French translation (BnF fr. 491, etc.) places *Iudaei sive Sarraceni* at X 5.6.5, however, shows that the present configuration of these capitula in the *ER* was not just a later development, but was present at the earliest stages of transmission. Which one of these three options reflects Raymond's original choice?

Neither the formal source arrangement nor the variations in the inscriptions encountered in the early manuscripts provide a definitive portrait of the original placement of the canons. Given that Raymond rarely reordered his source material for non-chronological reasons, the preservation of the older formal source sequence in the

X 2.20.21 (*De testibus*), which anathematized anyone preferring the testimony of Jews to that of Christians in mixed-faith cases.

³⁹⁶ BnF fr. 491, fol. 248r; fr. 492, fol. 298r; fr. 493, fol. 212v; Ars. 5215, fol. 285r.

³⁹⁷ FBL sin.9, fol. 165r-v. The other Florentine manuscript, FBN 157, was not available at the time these data were collected.

ER for X 5.6.5-6 (1Comp 5.5.5-6) suggests that this was the intended order. On the other hand, it can be observed that the current arrangement of texts meant that Raymond deliberately repositioned the texts so as to have the Alexander III decretal at X 5.6.4 (1Comp 5.6.7, *Quia super his*) come before the Lateran decrees. As discussed earlier, the ordering of the Lateran III decrees in relation to Alexander III's decretals is the one place – other than the pre-Gregorian Reform material – where there does not seem to have been a fixed sequence: one finds Alexander's decretals in front of Lateran III texts by default and design, and thus there is no *a priori* conclusion to be drawn about the original sequence of X 5.6.4-7 on this basis.³⁹⁸

The inscriptions in the early manuscripts are similarly inconclusive. Friedberg does not indicate what the inscriptions in *FGH* were for *Iudaei sive Sarraceni* or *Ita quorundam*. FBL sin.9, on the other hand, which like *F* is missing X 5.6.5, *Iudaei sive Sarraceni*, assigns to the next canon *Ita quorundam* the full Alexander III/conciliar inscription (*Idem in concilio Lateranensi*), rather than the contracted form of *Idem ex eodem* that it has in the *ER* when following *Iudaei sive Sarraceni*. This could mean that their order was originally reversed, or simply that FBL sin.9 and other manuscripts that are missing *Iudaei sive Sarraceni* preserve a major scribal error. The etiology of the mistake would likely be the following: the scribe began transcribing the inscription for X 5.6.5, *Iudaei sive Sarraceni*, but then skipped over the initial capital “I” in *Iudaei* (c. 5), and instead began with the “I” in *Ita quorundam*, thus excising all of X 5.6.5.³⁹⁹

³⁹⁸ On the relative positioning of Alexander III's decretals and the Lateran III canons, see above, n. 357.

³⁹⁹ In all of the early manuscripts, the inscriptions were done by the main scribe rather than the rubricator.

The variations in the French translation inscriptions for X 5.6.5-6 are similarly cryptic. Rather than giving the same literal translation of Lateran III (*concile de latran*) as they provide for other canons of that council, the French translation manuscripts apply to the X 5.6.5 inscription the appellation normally applied for Lateran IV texts: (*cil meismes* [Alex.] *el concile general*).⁴⁰⁰ Since there are no other cases where the French translation renders the Lateran III inscription as it does for X 5.6.5, there must be some underlying error causing the confusion. What is unknowable at this time is whether the error was native to the Latin text off of which the translation was working, or whether it occurred after the translation had already been made and was being copied.

The balance of evidence points to the current arrangement of *Iudaei sive Sarraceni* at X 5.6.5 as the original placement. Although there was generally limited interest among the early commentators in this title, with the exception of Sinebaldus Fieschi they give no indication that this group of canons was ordered in any other way.⁴⁰¹ While suggestive, the static distorting Sinebaldus' commentary on X 5.6.5 and the surrounding texts – a double-entry for *Iudaei sive Sarraceni* at X 5.6.5 and c.6 – is ultimately insufficient on its own to draw a conclusion.⁴⁰² The lack of a definitive answer

⁴⁰⁰ This is merely a translation of what the *Decretals* without exception called Lateran IV in its inscriptions: *in/ex concilio generali*. The preposition *el* in the French translation inscription is the contracted form of *en le*.

⁴⁰¹ Until Hostiensis, the individual capitular commentaries in X 5.6 tended to be much shorter than in other titles.

⁴⁰² The printed edition of Sinebaldus' *Apparatus* follows the *ER* ordering except for the fact that *Iudaei sive Sarraceni* is seemingly listed twice: the first time (c. 5) with the full incipit, and the second with only the first word *Iudaei* (c. 6) (*Apparatus*, fol. 305va). His *Apparatus* thus has a total of twenty capitula in the title rather than the usual nineteen. Like several other capitula in this title (cc. 7-8, 13, 15, 16, 18-19), Sinebaldus provides no commentary at all on c. 5. There is no doubt, however, that the one-word-incipit *Iudaei* listed as the next capitulum at c. 6 is the same text as *Iudaei sive Sarraceni*, because the sole lemma in the commentary (*haereditatis*) is keyed to the text of *Iudaei sive Sarraceni*, and in the exact context sketched by Sinebaldus' brief remarks on the word. Until manuscripts of the *Apparatus* are able to be consulted, it will remain unclear whether we are dealing here simply with a printer's mistake, or whether Sinebaldus was reflecting the underlying confusion of *Decretals* manuscripts.

should not obscure, however, the importance of *Iudaei sive Sarraceni* for evaluating early *Decretals* manuscripts. The rarity in this collection of such widespread and easily-identified misordering evidenced in X 5.6.5 and X 3.8.14, *Cum decorem*, put them at the top of the list of serviceable variants.

3.6.3 The possible rearrangement of X 1.11.14 *Vel non est*

The other organizational anomaly is X 1.11.14, an Honorius III text from 5Comp 1.8.2 sandwiched between two decretals deriving from Innocent III: X 1.11.13 (3Comp 1.9.5) and X 1.11.15 (4Comp 1.7.1). The inscriptions themselves evidence some kind of disruption. The 4Comp derived X 1.11.15 is inscribed "Idem Leton. et Cala abbatibus,"⁴⁰³ which would have been the appropriate form had it followed another Innocent II text. However, its appearance after the Honorius III text X 1.11.14 (*Honorius III episcopo et archidiacono Legionensi*) results in an erroneous attribution. Following everything that is known of Raymond's organization, and assuming he was not trying to pass off Innocent for Honorius, the *Idem* inscription of X 1.11.15 suggests that in its earliest form it came right after X 1.11.13, which was itself inscribed: "Idem [Inn. III] eidem et Magistro H. subdiacono nostro." Moreover, as will be seen later in the chapter when discussing erroneous 5Comp inscriptions, X 1.11.14 was probably the origin for an earlier incident in the *Decretals* of inscription swapping. X 1.11.14 is inscribed to the bishop and archdeacon of Leon (*Honorius III episcopo et archidiacono Legionens.*), the same inscription given to X 1.3.30 in the *ER*. This latter text, however, derived from 5Comp 1.2.1, which in the formal source had an entirely different set of recipients (*Abbati et priori S. Proiecti et I. canonico Noviomensis diocesis*).

For X 1.11.14 one is left with a great deal of smoke, but so far in the manuscripts, absolutely no fire. Its odd positioning in the title, and its lending of an inscription to another 5Comp text earlier in the first book, place this canon on a short-list of capitula whose different configuration (possibly at what would be X 1.11.15) would be likely in the earliest version of the *Decretals*.

3.7 Divergent inscriptions in 1-2Comp

The discovery of a formal source precedent for the Clement III inscription in X 3.30.21 offered a preliminary example of how a combined examination of Raymond's organizational method, along with the manuscript variants, can resolve the seemingly divergent inscriptions in the *Decretals*.⁴⁰⁴ Friedberg's apparatus can be used to account for a good portion of the most obvious discrepancies, particularly those that resulted from the accumulation of scribal errors that eventually ossified into the *ER*. Some errors reach further back into the manuscript tradition, however, well past the limits of the manuscripts that Friedberg selected. Other discrepancies, like X 3.30.21, are not the product of scribal error, but arose from the particular manuscript form of the formal source Raymond happened to employ. For these, Friedberg's apparatus is rarely helpful. By following the procedures just outlined, it turns out that the majority of divergent inscriptions are indeed reconcilable.

The appendix to this chapter lists twenty-seven capitula taken from 1-2Comp where there is a discrepancy between the formal source and *Decretals* inscription that has not been otherwise accounted for by Friedberg's manuscripts. These can be initially

⁴⁰³ This is the mangled *ER* inscription. The early manuscripts and most Freidberg codices show that Raymond preserved the correct 4Comp inscription: "Idem Leon. et Sabrien. abbatibus."

⁴⁰⁴ See the discussion of X 3.30, *De decimis*, in section 4.5 above.

divided into two categories: 1) those dependent upon the anomalous wording of Raymond's formal sources (given in blue in the appendix), and those where there is significant variation in the *Decretals* manuscripts themselves (given in red). Each class has been preliminarily subdivided according to whether the discrepancies are supported by the manuscript variants collated in the appendix, or not. For 1-2Comp, this subdivision is according to whether one or more formal source manuscripts have been found that actually concur with the "divergent" inscription in the *Decretals*. For those texts involving the *Decretals*, the subdivision is drawn according to whether any of the early manuscripts actually preserve the "expected" reading of 1-2Comp. Also included in the supported sub-category under the *Decretals* are four capitula where the early manuscripts of the collection show that an inscription was lacking at the earliest stages, which later on was reinserted into the text (X 1.6.6-7, X 2.19.3, X 2.27.8).

Table 3.7. Discrepancies between the *Decretals* and formal source inscriptions

Form of 1-2Comp: 13 cc.

Supported in Appendix: 7

1Comp

X 1.11.6 (a)
X 2.7.3 (a)
X 3.25.1 (a)
X 4.4.2 (b)

2Comp

X 2.1.9 (ac)
X 3.30.21 (b)
X 3.41.2 (a)

(a) **BnF NAL 2127 = 5**

(b) **Vat. lat. 1377 = 2**

(c) **BnF lat. 15997 = 1**

Unsupported in Appendix: 6

1Comp

X 5.23.1

2Comp

X 1.10.1
X 4.19.5
X 5.10.3
X 5.30.2-3*
X 5.39.22-4*

* Counted as a single instance, since the inscription of one of these groupings governs the attribution of the others through an *Idem*.

Form of *Decretals*: 18 cc.

Supported in Appendix: 15

1Comp

X 1.6.6-7 (*ef*)*
 X 2.7.1 (*f*)
 X 2.7.2 (*e*)
 X 2.19.3 (*ef*)*
 X 2.27.8 (*def*)
 X 3.1.9 (*d*)
 X 3.21.2 (*ef*)
 X 3.37.1 (*f*)
 X 3.43.2-3 (*def*)
 X 4.1.2 (*df*)
 X 4.1.4 (*df*)
 X 4.18.3 (*e*)
 X 5.15.1 (*d*)

2Comp

X 3.32.11 (*def*)

(*d*) FBN 157 = 4

(*e*) FBL sin.9 = 3

(*f*) BNF fr. 491, etc. = 5

* FBN 157 unavailable for collation

Unsupported in Appendix: 2

1Comp

X 3.28.3

2Comp

X 2.24.1

The thirty-one capitula under discussion are thus divided between those for which the source of the discrepancy derives from the formal source (13 cc.), and those for which transmission errors in the *Decretals* are responsible (18 cc.).

Based upon the appendix collation of the four manuscripts containing 1-2Comp, approximately half of the discordant inscriptions in the first category (7 of 13) have a precedent in the formal sources. Notably, these precedents are concentrated in two of the four manuscripts, BnF NAL 2127 (5 cc.) and Vat. lat. 1377 (2 cc.).

3.7.1 Variants in 1-2Comp manuscripts as source for divergent inscriptions

Looking first at those variants derived from 1Comp, there are five for which the inscription in the *Decretals* matches up with a variant from the control manuscripts. As one of several Pseudo-Isidorian texts that managed to reach the *Decretals*, X 1.11.6 was

normally inscribed in 1Comp 1.4.9 to Pope Annius.⁴⁰⁵ Since this text was transposed to a different title (from *De electione* in 1Comp to *De temporibus ordinationum* in the *Decretals*), its intentional placement after a Lucius III text and "Idem" inscription means that Raymond read it as such. Friedberg's manuscripts and those in the appendix all carry the Annius reading, except for BnF NAL 2127, where the inscription is "Lucius papa."⁴⁰⁶

The variants for the inscriptions of X 2.7.3 and X 3.25.1 are relatively minor, but again, are carried solely by BnF NAL 2127 out of all the control manuscripts in the appendix. X 2.7.3, inscribed to "Eugenius papa," was drawn from 1Comp 1.35.4, where it was attributed instead to: "Augustinus servus Dei." Similarly, X 3.25.1, a canon of the council of Arles (*Arelaten.*), was derived from 1Comp 3.21.1, where in most manuscripts it was attributed to a Lateran council.⁴⁰⁷ In both cases, BnF NAL 2127 is alone among the control manuscripts carrying the *Decretals* version of the inscription, though for X 2.7.3, three out of the ten 1Comp manuscripts collated by Friedberg (*Aabk*) also attribute the text to Eugenius.

The other two capitula where there is precedent for the *Decretals* inscription are X 4.4.2 and X 5.27.3. Vat. lat. 1377 is the lone provider of the *Decretals* reading of "Ex Brocardo libro xxx" for X 4.4.2 (1Comp 4.4.2). The original 1Comp inscription

⁴⁰⁵ Although "Annius" is the most common spelling found in the manuscripts, presumably Pope Anicetus (155-66) is the intended attribution of this canon, which ultimately derived from Pseudo-Isidore (Hinschius I, p. 120).

⁴⁰⁶ In the absence of a more precise identification, it is unclear whether the manuscript Raymond ultimately used contained a further mutation of the inscription to "Lucius III," or whether Raymond simply took the liberty of assigning a text inscribed to Lucius to the most recent occupant of the papal throne by that name. Lucius II (1144-5) can certainly be ruled out as a possibility, as he had no presence in later decretal collections. As for Lucius I, none of the six letters attributed to him in the Pseudo-Isidorian decretals circulated in the 5C, either in whole or in part, making it more likely that Raymond would have naturally assumed a Lucius III identification for "Lucius papa."

⁴⁰⁷ The material source for the text was, in fact, a capitulary of Hincmar of Reims.

attributing the text to the nineteenth book of Burchard of Worms' canonical collection (*Ex Brocardo libro xix* or *xviii*) had mutated into Burchard's non-existent thirtieth book (*xxx*) in the *Decretals*. While Vat. lat. 1377 is the sole witness among the collated manuscripts, BnF NAL 2127 notably lacks the Roman numerals for the book number, raising the possibility that other manuscripts in its class support the reading in the *Decretals*.

There is a much narrower range of divergent readings in 2Comp, rendering it somewhat more inscrutable to textual criticism. The compiler, Johannes Galensis, often limited the inscriptions to the name of the pope, and the orthographic similarity between the two popes with the highest number of extracts in the collection, Clement III and Celestine III, made them easily confused.⁴⁰⁸ The result of the collation in the appendix is that for only three capitula the manuscripts establish a precedent for the inscriptions in the *Decretals*: X 2.1.9, X 3.30.21, and X 3.41.2.

The source for the Clement III-inscribed X 2.1.9 was originally attributed in 2Comp 2.1.2 to Alexander III, writing to the abbot of Evesham (*Alex. III abbati de Evesham*). The positioning of the text in the *Decretals* between Lucius III (c. 8) and Celestine III (c. 10) decretals shows that Raymond had, in fact, read this text as Clement III's. Two of the control manuscripts, BnF NAL 2127 and BnF lat. 15997, display the remnants of what must have occurred in the formal source to enable this misidentification. Both manuscripts contain the inscription "Idem" for 2Comp 2.1.2, instead of giving the full Alexander III inscription transmitted in the other control manuscripts, as well as most of Friedberg's codices. This "Idem" inscription would make

⁴⁰⁸ The confusion had an even greater chance of occurring because of the way the capitula were organized within each title. While Alexander III's texts usually led off each title, those of Clement and Celestine were often mixed together, and only rarely did the compiler employ the "Idem" for consecutive texts attributed to the same pope. Adding to the confusion was the frequent abbreviation of papal names in the manuscripts, e.g., *Clem. III* and *Cel. III*.

the text dependent on the preceding 2Comp 2.1.1, which Raymond had transposed to X 3.7.4, retaining the original inscription "Clemens III clero Constantinopolitano." Except in BnF NAL 2127 and BnF lat. 15997, the Clement III inscription for 2Comp 2.1.1 is missing, as frequently happened with the opening inscription for each book.⁴⁰⁹ The manuscript that Raymond used must have been one that carried the "Idem" for 2Comp 2.1.2, but still retained the full Clement III inscription for the preceding text.⁴¹⁰

X 3.30.21 is a case of Clement/Celestine confusion that has been treated above in the dissection of X3.30, *De Decimis*.

The final text where manuscript precedent can be found for the *Decretals'* altered inscription is X 3.41.2, inscribed to an early medieval council of Tribur (*Triburensis*).⁴¹¹ Its source at 2Comp 5.22.2 was usually inscribed to Alexander III acting (anachronistically) in the council of Tribur (*Alex. III ex conc. Triburensi*), or simply to this pope alone. It is not inconceivable that Raymond would have shortened the full inscription to exclude Alexander, leaving only the name of the council. This would mark the only instance of his having done so, however. Instead, what one finds in the case of co-inscription to pope and council in the formal source is that Raymond left both intact (e.g., X 2.20.21, *Idem* [Alex. 3] *in concilio Lateran.*), or in a few rare cases preserved the

⁴⁰⁹ It was a convention of decretal collection illumination to render the opening incipit of each book as a stylized, column-width bar of interlocking letters, multiple lines in height (typically 5-8 lines). Since inscriptions were placed before the incipit, the first inscription of every book was some lines distant from its decretal, and in greater danger of being excluded by a copyist.

⁴¹⁰ Friedberg's *Bb*, i.e., Graz, UB, 374, is alone among his 2Comp manuscripts in also having the *Idem* inscription for 2Comp 2.1.2. In his apparatus, Friedberg has made a parenthetical inference that the *Idem* refers back to Alexander III, yet in his notes on X 3.7.4, he makes no mention of *Bb* as having anything other than the Clement III inscription for 2Comp 2.1.1. This calls into question why he associated the *Idem* in 2Comp 2.1.2 with Alexander III.

⁴¹¹ Like most of the pre-Gregorian Reform conciliar texts in the *Decretals*, X 3.41.2 was merely repeating a long line of misidentifications in the formal sources, which in this case had effaced the correct attribution of the canon to the early eleventh century council of Seligenstadt (1022).

papal name alone.⁴¹² For these reasons, it is much more likely that Raymond read X 3.41.2 simply as a conciliar canon, and indeed, BnF NAL 2127 is alone among the control manuscripts in inscribing the text to the council alone.

Based upon the findings above, of the thousand-plus capitula taken from 1-2Comp, there remain only six (1Comp = 1; 2Comp = 5) for which there exists an irresolvable discrepancy between *Decretals* inscriptions and the currently known readings from the formal source manuscripts. The position of these capitula in the title, and consistency of the inscription across *Decretals* manuscripts, suggests that the source for the divergence lies in the formal source. Future collations of 1-2Comp manuscripts should reveal the sources of these texts in particular: X 1.10.1, X 4.19.5, X 5.10.4, X 5.23.1, X 5.30.2-3, X 5.39.22-4.

However, for X 1.10.1, it cannot be ruled out completely that the discrepancy was not the result of a deliberate change on Raymond's part. X 1.10.1 is inscribed: "Alexander III Cisterciensibus," and is an excerpt of a letter Alexander III had directed to multiple Cistercian abbots.⁴¹³ This particular excerpt accorded Cistercian monks the right to pronounce benediction upon their recently appointed abbots (the final prerequisite to

⁴¹² Of the twenty-three examples from 1-2Comp where Raymond encountered a co-inscription to pope and council (excluding X 3.41.2/2Comp 5.22.2), Raymond preserved the inscription in nineteen of these cases. In the other four, he dropped the name of the council in favor of the pope. The list is as follows: **co-inscription preserved:** X 1.34.1, X 2.20.21, X 2.28.26, X 3.1.8, X 3.5.4-5, X 3.5.8, X 3.50.3-4, X 5.3.8, X 5.4.1-3; **papal name only:** X 1.6.6-7, X 3.2.7, X 3.37.1.

⁴¹³ JL 11632 (7767); printed in: Migne, *PL*, vol. 200, col. 592. The excerpt from the *Decretals* is as follows: "Statuimus praeterea, ut, si episcopus tertio cum humilitate ac devotione, sicut convenit, requisitus substitutos abbates vestros benedicere forte renuerit, eisdem abbatibus liceat proprios monachos benedicere, et alia, quae ad officium huiusmodi pertinent, exercere, donec ipsi episcopi suam duritiam recogitent, et abbates benedicere non recusent."

the abbot's exercise of office), in the exceptional case when the diocesan, to whom this privilege was normally reserved, persisted in refusing to offer it.⁴¹⁴

If the change originated with Raymond, the question arises how he would have known that the original recipients of the letter were Cistercians. Raymond's source at 2Comp 1.6.1 did not list any recipients, giving only Alexander's name in the inscription and the incipit to another excerpt from the same letter at 2Comp 2.19.5: "Alexander III pars cap. 'Quia nos'."⁴¹⁵ This second excerpt was located in 2Comp (and later X 2.28.32) under the title *De appellationibus*, and restricted the right of abbots and priors to seek papal appeal for a reproof delivered in their general chapters. Despite Alexander's direction of the original letter to the Cistercians, neither extract at 2Comp 1.6.1 nor 2Comp 2.19.5 mentions the Cistercians in the body of the text nor in the accompanying glosses. On the contrary, the compiler Johannes Galensis seems to have aimed at universal application of these texts to all religious orders, an intention made explicit in the case of the 2Comp 2.19.5 inscription to all abbots (*Alexander III universis abbatibus*). Raymond retained the broad application of 2Comp 2.19.5 when transferring it over to X 2.28.32, as evidenced by the rubric that eventually was assigned to the text: "*Contra constitutiones regulares, appellatio religiosum non defendit.*"

There appears to have been nothing in the 2Comp text that would link X 1.10.1 with the Cistercians. This still does not settle the question of whether Raymond initiated the change himself, or whether it derived from an as yet unknown manuscript variant for the inscription of 2Comp 1.6.1. Settling this point would be a useful path of future

⁴¹⁴ The rubric in the *Decretals* that came to be associated with the text read: "Si diocesanus requisitus benedicere nolit Cisterciensem abbatem, ipse [abbas] monachos suos benedicere poterit."

⁴¹⁵ This method of cross-referencing multiple excerpts from the same text persisted in decretal collections up through the time of Innocent III, but was completely abandoned by Raymond.

research. The changed inscription brought a material change to the law as it had been interpreted in 2Comp, insofar as it restricts the provisional right of consecration to Cistercian abbots alone, a restriction nowhere evident in the 2Comp gloss. The remaining 2Comp manuscripts should be inspected to see if Raymond could have inherited this inscription from his formal source, or whether this is a case where he effectively legislated through his editing. If so, it would constitute an important exception to what is elsewhere a tendency to standardize the privileges and status of the religious orders in the *Decretals*.

3.7.2 Transmission errors and copyists' insertions in the *Decretals* as cause for divergent 1-2Comp inscriptions

Turning now to the second category of texts, there are eighteen where the changes to the inscriptions can be confidently assigned to transmission errors in the *Decretals*.

Sixteen are accounted for by at least one of the early manuscripts or the French translation: X 1.6.6-7, X 2.7.1, X 2.7.2, X 2.19.3, X 2.27.8, X 3.1.9, X 3.21.2, X 3.32.11, X 3.37.1, X 3.43.2-3, X 4.1.2, X 4.1.4, X 4.18.3, and X 5.15.1.

These sixteen break down into a number of distinct groups. Two cases permit the absolution of the *Correctores Romani* in the face of corrections by Friedberg: X 2.7.1 and X 3.32.11.⁴¹⁶ Taking the least complicated first, X 3.32.11 is inscribed in the *ER* and 2Comp to Celestine III. This reading is confirmed in all the manuscripts of 2Comp and the *Decretals* in the appendix, yet in a majority of Friedberg's manuscripts the text is

⁴¹⁶ Friedberg inserted an asterisk (*) next to text in the *ER* that he felt was contradicted by the manuscripts. In the two cases below, he had marked both inscriptions with an asterisk.

ascribed to Clement III. This led him to favor Clement as the likely reading, even though the positioning of the text in the title suggests Celestine instead.⁴¹⁷

The second canon, X 2.7.1, is attributed to Honorius II in the *ER*, yet in most of Friedberg's manuscripts it is given the more implausible inscription of Honorius III.⁴¹⁸

The formal source inscription at 1Comp 1.35.2 was "Honorius episcopus urbis Rome omnibus episcopis occidentalibus."⁴¹⁹ Its early position in the title, however, coming before letters of Eugenius III (1145-53) and Innocent III, makes it clear that Raymond read it as belonging to Honorius II (1124-30). Both early manuscripts agree with the Honorius III attribution in Friedberg's codices, but in most manuscripts of the French translation the correct inscription of Honorius II has been retained (*Honoires li secons*).

The exception is BnF fr. 493, which instead matches the early manuscripts and Friedberg's variants (*Honoires li tierz*). This is one of several examples where manuscripts of the French translation differ among themselves in their inscriptions, suggesting that later copyists of the translation could have checked their work against contemporary copies of the *Decretals*.⁴²⁰ The complicating factor for this inscription is the evidence from one of Friedberg's manuscripts (*K*) that gives the fuller, original form of the inscription from 1Comp that names the Western bishops as the recipients of the letter: "Honorius III omnibus episcopis occidentalibus." This represents either: 1) the

⁴¹⁷ X 3.32.11 comes immediately after another Clement III text, and precedes one belonging to Celestine III that has been inscribed "Idem."

⁴¹⁸ The material source is a letter of Honorius II: JL 7401. An edition of the letter appears in: A. Gaudenzi, "La costituzione di Onorio II sul giuramento di calunnia e la Lombarda legge imperiale di Enrico V," *Quellen und Forschungen* 14 (1911) pp. 267-86.

⁴¹⁹ The inscription in the Friedberg's edition of the *5C* directs the letter to the Eastern (*orientalibus*) rather than the Western bishops. In his edition of the *Decretals*, however, Friedberg makes the Western variant the dominant one, a reading backed up by the 1Comp manuscripts in the appendix.

survival of Raymond's original inscription, which subsequently dropped out of most copies of the *Decretals*, or 2) a later copyist's attempt to restore the full 1Comp inscription. This reading is not an isolated case, and shows up as a variant in Agustín's notes to 1Comp 1.35.2, as well as a Paris manuscript of the *Decretals* (the latter with the correct Honorius II attribution!).⁴²¹ Future collations should seek to determine how many other manuscripts carry the fuller inscription, and how far back this variant goes.

3.7.2.1 The reinsertion of formal source inscriptions by later copyists of the *Decretals*

The reinsertion of the original formal source inscription by later copyists can be identified with more certainty in a number of other capitula in the *Decretals* taken over from 1Comp. The four capitula in question, X 1.6.6-7, X 2.19.3 and X 2.27.8, constitute a small but significant evidence set for how the *Decretals* continued to be read in light of earlier compilations, a phenomenon that will be explored in greater depth in the next chapter. The straightforward cases of X 2.27.8 and X 2.19.3 will be tackled first, followed by the more complicated transmission of the pair of Lateran III canons at X 1.6.6-7.

⁴²⁰ All of the manuscripts of the French translation consulted in the appendix employ the ordinal numbers (*segons, tiers*, etc.) rather than Roman numerals, making it extremely unlikely that the misidentification of a pope occurred because of scribal error when copying the translation.

⁴²¹ Agustín, *Antiquae Collectiones*, p. 72, not. (*hh*). The Paris manuscript in question is BnF lat. 3938, where X 2.7.1 occurs on fol. 58v. The manuscript lacks the ordinary gloss, and purposefully so, as the margins are too small for all but the most cursory of notations. Space was left for the opening illuminations of each book, but only those of Book 1 (fol. 1r: Raymond's presentation of the collection to Gregory) and Book 4 (fol. 92r: the illuminated capital 'D' of the X 4.1.1 incipit *De Francia*) were completed. Even though it lacks a gloss, and is missing all of Book 3 after X 3.1.4, it has the feel of a student's copy. The text is highly abbreviated, written on low-quality parchment, and in the lower margins of several folia (53v, 58r, 92r) at least two different hands have added mnemonic quatrains of the sort students used to memorize the structure of the *Decretals* and the *regulae iuris* appropriate to different titles. The lack of gloss and rubrics, together with the character of the script, suggest that the manuscript is of a comparatively early date (second half of the thirteenth century), and deserves closer scrutiny.

X 2.27.8, *Cum causam quae*, is an Alexander III letter (and possible register extract) to a church in Verona that dealt with the retraction of prior judicial rulings guided by local customs prejudicial to ecclesiastical liberty.⁴²² Raymond had taken the letter from 1Comp 2.19.10, where it carried an inscription addressing it to a certain Theobald of the church of St. Anastasia (*Idem* [Alex. III] *Teobaldo ecclesie S. Anastasiae*), an inscription reproduced by all the 1Comp manuscripts collated in the appendix.⁴²³ In the *ER* this inscription has been expanded to include the St. Anastasian clergy and the diocese of Verona where the church was located (*Idem* [Alex. III] *T. et clericis S. Anastasiae Veronensis*), both additions perhaps designed to highlight features of the letter not accounted for in the earlier inscription, such as its address to plural recipients (*vos*) and the fact that it was the local customs of Verona that were under scrutiny.⁴²⁴ Except for a curious variant noted by Agustín, the older manuscripts of the *Decretals* offer a completely different picture of the inscription for X 2.27.8 than does the *ER*.⁴²⁵ Friedberg demonstrated that all of his control manuscripts (*FGHIK*) lacked the

⁴²² JL 12175; *Ital. Pont.* VII/1, 252, no.3; KE 138. The only pre-1Comp collection where *Cum causam quae* shows up is the *Collectio Cassellana* (51.16), where it is inscribed: *Idem in registro Theobaldo ecclesiae S. Luciae*. The inscription specifies a different church as recipient, but also identifies the letter as a register extract, an exceedingly rare example from Alexander III's pontificate, the existence of whose register is surmised but cannot be definitely proved. After 1Comp the letter also showed up in the *Collectio Sangermanensis* (5.4.4), where its inscription matched that given in 1Comp.

⁴²³ In his apparatus, Friedberg restricts the 1Comp inscription to the manuscripts *Aabc* as well as the Agustín edition. It is not clear whether this means the additional information in the *ER* inscription naming the clergy of St. Anastasia and Verona can be found in the manuscripts *Adefghi*, but presumably not since neither Holtzmann nor Agustín mentions finding the fuller *ER* inscription in 1Comp or pre-1Comp manuscripts.

⁴²⁴ The pope used the second-person plural not as an honorific, but clearly distinguishes between the person abbreviated as T. (short for Theobaldus) serving as procurator for the church (*te*), and the church as a collective (*vos*). With regard to the other addition, Verona is mentioned by name in the body of the letter, so no additional, historical/geographical knowledge was necessary to append the name of the diocese to the inscription.

⁴²⁵ The two early manuscripts of the *Decretals* collated by Agustín offered a split reading. One matched Friedberg and the appendix manuscripts in having only the *Idem*, but the other contained a slightly modified version of the entire inscription, including the full name of the abbreviated T. and the substitution of *canonicis* for *clericis*: "*idem Theobaldo et canonicis sanctae Anastasiae Veronen.*: unus ex veteribus

full inscription, with only those collated by Böhmer having any of the addressee information (*LMN*).⁴²⁶ Similarly, every early *Decretals* manuscript collated in the appendix has only an *Idem* as the inscription for X 2.27.8. Even more than for the above-discussed X 2.7.2, therefore, the conclusion to draw for X 2.27.8 is that later copyists reinserted the original 1Comp inscription that Raymond appears to have left out.

The same phenomenon of reinsertion crops up in the Alexander III decretal X 2.19.3, *Ex litteris tuis*, a text which would become an important touchstone for the principle of placing the burden of proof on the plaintiff rather than the defendant.⁴²⁷ The letter had been addressed to the deacon of Chichester in regards to a dispute with the archdean over a local piece of property, but by the time the decretal was compiled at 1Comp 2.12.2, it had become inscribed to Lucius III writing to the bishop of that diocese (*Lucius III Cistrensi episcopo*).⁴²⁸ Although there continued to be some variation in the inscription among 1Comp manuscripts, the differences were limited to the identity of the

Gregor. aptius. *Idem*, aliis omissis, altera antiquior,” *Antiquae Collectiones*, p. 121, note c. The substitution of *canonicis* for *clericis* may have been prompted by Bernard of Parma’s ordinary gloss, which refers to the T. mentioned in the letter as *quidam canonicus*. The fact that Agustín’s variant also expands the full name of *Theobaldus* is strong evidence that the copyist relied on the original 1Comp inscription, since the name is consistently abbreviated as *T.* throughout the letter.

⁴²⁶ Friedberg’s note, *insc. deest*, makes it unclear whether the entire inscription was missing, or whether his codices simply had an *Idem* identifying the text as an Alexander III letter. The convergence of the early manuscripts collated in the appendix around the *Idem* inscription (see below) strongly implies that *FGHIK* carried the same.

⁴²⁷ The rubric eventually affixed to X 2.19.3 (placed under the title on methods and forms of proof, *De probationibus*) emphasized that when the balance of evidence was even, the defendant should be absolved: *In communi iudicio probant actor et reus, et si pariter probant, reus absolvitur, nisi favorabilem causam foveat actor.*

⁴²⁸ JL 13845. The letter first appeared in the *Appendix Concilii Lateranensis* (38.2), and is known only from one other collection prior to 1Comp, the *Collectio Brugensis* (40.1). The inscription in the *Brugensis* (*Cicestr. decano*) lacks a papal attribution and lists only the recipient, which makes it easier to explain how the false Lucius III attribution could have crept in.

diocese (a frequent one was *Eliensi* = Eli), and the letter otherwise remained consistently attributed to Lucius III.⁴²⁹

The *ER* reproduces the full inscription of “Lucius III Cistrensi episcopo” for X 2.19.3, suggesting Raymond had remained entirely faithful to the source. Just as with X 2.27.8, however, all of the early manuscript evidence from Friedberg and from those collated in the appendix suggests that Raymond’s original was instead the shortened inscription of *Lucius III*.⁴³⁰ Once again all indications point toward later copyists having resupplied from the formal source an inscription that Raymond had cut out. The extent to which this fuller inscription for X 2.19.3 became part of the manuscript tradition appears to have occurred on a lesser scale than for X 2.27.8.⁴³¹ The earliest definite sign of interest in restoring the original inscription comes from Johannes Andreae in the early fourteenth century, when he made a note in his commentary that the full inscription to the bishop of Chichester could be found *in antiqua [compilation]*.⁴³² Enterprising copyists

⁴²⁹ Both Friedberg and Agustín (*Antiquae collectiones*, p. 95, note m) note a significant amount of variation as to the recipient diocese. Agustín actually opted for the bishop of Eli as the recipient, a variant that Friedberg had also found in two of his manuscripts (*Aac*). Such variation is further confirmed by the manuscripts collated in the appendix, where both Vat. lat. 1377 (*Ostrensi*) and BnF lat. 15997 (*Eliensi*) diverge from the Chichester reading.

⁴³⁰ The verdict from the appendix collation is unanimous – as are the manuscripts Friedberg had selected (*FGHIK*) – in the *Lucius III* reading for the inscription, and only those collated by Böhmer (*LMN*) have the longer inscription given in the *ER*.

⁴³¹ One measure is the representation (or lack thereof) of these inscriptions in pre-*ER* editions of the *Decretals*. Whereas the full inscription for X 2.27.8 is found as a matter of course in printed editions of the *Decretals* before 1582, there are multiple editions where the inscription for X 2.19.3 simply remained *Lucius III* in conformity with Raymond’s original, including Antwerp, 1570 (Contius) and Lyons, 1510, to name a few.

⁴³² The context of Johannes Andreae’s remarks makes it sound as if he was merely reporting the comments of one of the first commentators on the *Decretals*, Gottfried of Trani. The full gloss where the comments appears reads: “praebendas] redditus episcopus non habet nisi ex speciali indulgentia vel ex necessaria causa, *infra, De concessione praebendae*, (praebendam) *Cum nostris* [X 3.8.6], Gof. inspexit antiquam in qua scribebat Cisterciensi episcopo,” *Novella Commentaria*, vol. 2, fol. 11va. The familiar problems of early modern printings of medieval commentaries may be creating some of the confusion here. To begin with, the repetition of the word *praebendam* in the accusative has no place here, either in the name of the title (*De concessione praebendae et ecclesiae non vacantis*) or the capitulum (*Cum nostris*) from which he is quoting – it has, therefore, been enclosed in parentheses. When one turns to Gottfried (BNM, MS30, fol.

may have simply gone ahead and integrated this source criticism into the text of the *Decretals*.

There is also solid evidence that the reimportation of the inscription had multiple, independent etiologies, judging both from the *Correctores*' marginal notations and from a curious feature of the ordinary gloss to the *Decretals*. In the former case, the *Correctores* reported that some of their manuscripts contained an inscription for X 2.19.3 addressing the letter to the bishop of Eli.⁴³³ As pointed out earlier, the Eli variant was the most frequent reading for the formal source inscription at 1Comp 2.12.2 after Chichester, thus demonstrating that copyists were independently consulting older (defective) versions of 1Comp. In Bernard of Parma's *casus* on X 2.19.3, there is an attempt to specify the identities of the otherwise anonymous ecclesiastics mentioned in the *Decretals*.⁴³⁴ The recipient of the letter (originally a deacon, but in the wake of the altered inscription a bishop), along with the archdeacon with whom he was engaged in a land dispute, are assigned instead to the diocese of Bologna.⁴³⁵ Assuming this represents Bernard's

48rb), one finds that, indeed, Johannes is lifting more or less verbatim *redditus episcopus...causa* (along with the text of X 3.8.6), and follows protocol by placing the attribution *Gof.* at the end of the remarks. Nowhere after, though, does Gottfried mention anything about the inscription. Modifying *inspexit* to the first-person *inspexi* would solve the difficulty, and is a reading that should be tested against the manuscripts.

⁴³³ Along with the Eli reading, the *Correctores* also mentioned the lack of addressee in other places: "Cistrensi] alias: *Heliensi episcopo*; alias, simpliciter habetur: *Lucius III*," *ER*, vol. 2, col. 681.

⁴³⁴ The *casus* was an entry-level literary form spanning decretist, decretalist and civil commentaries that set forth the basic facts of each canon/decretal/law – in many cases it amounted to little more than a restatement of the text under discussion. Bernard of Parma originally composed a separate *casus* for the *Decretals* (the so-called *casus longi*), that later became woven into the gloss as the lead component of commentary for each decretal. The timing and pace of this integration is little better understood than when Kuttner remarked: "as for the 'posthumous' history of the *Glossa ordinaria*, nearly everything remains to be done," in: "Notes on the Glossa Ordinaria of Bernard of Parma," *BMCL* 11 (1981) pp. 86-93; repr. in: *Idem, Studies in the History of Medieval Canon Law* (Variorum Collected Studies Series, CS 325: Aldershot, 1990) XIV.

⁴³⁵ "Episcopus Bononiensis et archidiaconus eius confines habebant praebendas in villis sive terris, quas habebant praetextu terminorum sive finium: inter eos orta est controversia," *Casus ad X 2.19.3*, *ER*, col. 681.

original formulation, he was familiar with an inscription that identified the recipient of the text as the Bolognese bishop. There is no known tradition either in 1Comp or *Decretals* manuscripts that associates this letter with Bologna, so any conjecture whence Bernard derived this association would be purely speculative at this point.⁴³⁶ It demonstrates, however, the ongoing effort to recover the original inscription for this text that Raymond had excised, an effort in all likelihood involving the recourse to Raymond's formal sources.

The last pair of 1Comp texts for which later copyists attempted to recover the inscriptions were X 1.6.6-7, originally c. 1 (*Licet de (e)vitanda*) and c. 3 (*Cum in cunctis*) from the Third Lateran Council held in 1179.⁴³⁷ The first of these important canons fixed the two-thirds majority requirement of the college of cardinals for the election of the pope, while the second laid down the basic guidelines and candidate qualifications for episcopal elections. Since these canons became more or less linked together, their pre-1Comp history bears some consideration. Along with other Lateran III canons both texts were first injected into the canonical stream through the *Appendix Concilii Lateranensis*, one of the earliest systematic decretal collections that was compiled soon after the council. In the intervening collections between the *Appendix* and 1Comp, c. 2 of the council, *Quod a praedecessore*, dealing with the aftermath of the Octavian schism, was displaced to other parts of those collections, so that c. 1 and c. 3 appeared consecutively under titles on election.⁴³⁸ All of these collections highlighted

⁴³⁶ It is similarly unclear whether Bernard was cueing off of the *Decretals* or the formal source to derive this reading. One suspects the latter, given the lack of early *Decretals* manuscript testimony for the full inscription for X 2.19.3. In that case, it would again confirm the point being made of the ongoing recourse to Raymond's formal sources.

⁴³⁷ Edited in: Tanner, *Decrees*, vol. 1, pp. 211-2.

⁴³⁸ For example: *Coll. Bamb.* 56.1-2; *Coll. Cass.* 1.1-2; *Coll. Brugen.* 9.1-2.

the Lateran III provenance in their inscriptions (c. 1: *Alex. III in concilio Lateranensi*; c. 3: *Idem ex eodem*). Bernard of Pavia also kept the consecutive placement of *Licet de vitanda* and *Cum in cunctis* when including them at 1Comp 1.4.15-6, with a slight alteration to one of the inscriptions. The conciliar attribution for 1Comp 1.4.15 was maintained (*Idem in concilio Lateranensi*), but for 1Comp 1.4.16 the inscription was reduced to an *Idem*, making it simply an Alexander III text.⁴³⁹

It is now time to figure out what the inscriptions for *Licet de vitanda* and *Cum in cunctis* were when taken over in the *Decretals* at X 1.6.6-7. The *ER* makes it seem that Raymond correctly identified both as Lateran III canons through their inscriptions (c. 6: *Idem in concilio Lateranensi*; c. 7: *Idem in eodem*). This would mean Raymond took the highly unusual step of restoring the conciliar attribution for X 1.6.7, *Cum in cunctis*, which Bernard of Pavia had inscribed with a simple *Idem*. This would constitute the only case for texts originating from 1-2Comp where Raymond had supplied a missing inscription, so there is reason to be suspicious of this interpretation. The early manuscripts collated in the appendix only add to this suspicion. The inscriptions for X 1.6.6-7 in FBL sin.9 and the French translation lack conciliar attributions, representing them instead simply as Alexander III decretals through an *Idem*.⁴⁴⁰ Friedberg's collation similarly has an *Idem* inscription for X 1.6.6 in four of his manuscripts, including the two

⁴³⁹ All of the control manuscripts collated in the appendix match these readings. Although Agustín also went with a simple *Idem* inscription (Alex. III) for 1Comp 1.4.16, *Cum in cunctis*, he does remark that one of the Barcelona manuscripts linked this canon to its predecessor at c. 15, with the inscription *Idem ex eodem*. Given the near unanimity of the other 1Comp manuscripts, this fuller inscription appears to be a copyist's addition rather than Bernard of Pavia's original.

⁴⁴⁰ The microfilm of the other Florentine manuscript, FBN 157 was not available at the time the collation of these capitula was made.

earliest Munich codices among his group (*FGHI*).⁴⁴¹ The picture from Friedberg is somewhat more muddled for X 1.6.7, where he again found four manuscripts that only had the *Idem* inscription (*FHIK*), but where the early Munich codex *G* appeared to transmit some form of the fuller conciliar inscription.⁴⁴² If *G* does represent Raymond's original, then it was a reading that was not transmitted in a large portion of other manuscripts, including ones dated earlier, like those in the appendix. It only regained a significant presence later on (as in the later manuscripts *KLaLbMN*), likely through some process of restoration. If on the other hand, Raymond had cut the conciliar attribution from X 1.6.6 (1Comp 1.4.15), and simply left the inscription as he found it in X 1.6.7 (1Comp 1.4.16: *Idem*), then *G* might represent one of the earliest attempts by later canonists/copyists to reinsert the formal source inscription in one of these two canons.

The commentary on the X 1.6.6-7 introduces some further murkiness into the picture. With one possible exception, the earliest commentaries give no indication one way or the other of the type of texts X 1.6.6-7 were thought to be.⁴⁴³ Bernard of Parma,

⁴⁴¹ The fuller inscription for X 1.6.6, "Idem in concilio Lateranensi," was present in *K*, as well as Böhmer's codices, *LaLbMN*.

⁴⁴² The set for X 1.6.7(*FHIK*) is different from that for X 1.6.6 (*FGHI*), implying that the early Munich codex *G* agreed with the *ER* inscription for X 1.6.7: "Idem ex eodem." The *ex eodem* thus makes the inscription for X 1.6.7 dependent on the inscription of the preceding canon, since nowhere else in the *Decretals* do we find this kind of empty referent. The logical conclusion would be that X 1.6.6 did transmit the full conciliar inscription at an early stage, but dropped out before leaving any direct trace that has thus far been observed in the manuscripts. A note by Agustín in his commentary on the formal source for X 1.6.7 at 1Comp 1.4.16 suggests that Friedberg's reading might be suspect, however. Though Agustín assigned the same *Idem* inscription as Friedberg to the formal source of X 1.6.7 (1Comp 1.4.16), he also mentioned in his notes that the inscription from the *Decretals* contained the conciliar attribution: "*Idem in concil. Lateranensi, additur in Gregor,*" *Antiquae collectiones*, p. 22, note qq. Agustín's meticulousness is unimpeachable, so we must assume that the two *Decretals* manuscripts he collated confirmed this, as they in his note on the preceding *Licet de vitanda* (1Comp 1.4.15) that this canon had a simple *Idem* inscription when appearing in the *Decretals*. A provisional solution for the problem presented by Friedberg might be that what he encountered in *G* for the X 1.6.7 inscription was what Agustín had noted, *viz.*, *Idem in concilio Lateranensi*. He simply did not bother to note the different form of the same inscription content, an oversight he made on several other occasions.

⁴⁴³ In his commentary on X 1.6.6, Sinebaldus Fieschi referred to the text as a *canon*: "Si quis autem] Hoc quod sequitur videtur intelligendum, quando tertia pars, vel pauciores eligunt post primam electionem

however, correctly identified both as Lateran decrees in his *casus longi*, which over time became integrated into the ordinary gloss on the *Decretals*.⁴⁴⁴ As there are multiple instances where Bernard of Parma consulted the formal sources to recover an older reading (as will be discussed in the next chapter), it is unclear whether he derived the correct origin of X 1.6.6-7 from his own research or whether he was prompted by the inscriptions in his manuscript. His overall treatment of Lateran III decrees would suggest the latter. Of the thirty-seven Lateran III-derived capitula in the *Decretals* (from a total of twenty-seven canons), there are only two others outside of X 1.6.6-7 about which there is no mention of their conciliar origin in their inscriptions (X 1.34.2 and X 3.39.10), being attributed instead to Alexander III.⁴⁴⁵ For almost every other capitulum inscribed to Lateran III, Bernard had made mention of its conciliar origin, yet for the inscriptionless X 1.34.2 and X 3.39.10 Bernard did not add in his *casus* that they were Lateran canons.⁴⁴⁶ Bernard's testimony, therefore, leaves us roughly in the same place as the variant from Friedberg's *G*, showing the conciliar inscriptions for X 1.6.6-7 either as early additions, or as original readings that left only scant traces in the early manuscript record until fully resurfacing later. Further commentary from Hostiensis and Johannes

factam a duabus partibus, nam si alias, scilicet, non facta prius alia electione, tertia pars, vel etiam pauciores facerent electionem, non essent excommunicati, **nec subiacerent predictis poenis huius canonis**, licet delinquerent," *Commentaria*, fol. 41vb-42ra. Sinebaldus is elsewhere inconsistent, however, with the application of his terminology, including many conciliar canons for which there is no identification, positive or otherwise, as to their origin. It is difficult, then, to draw a conclusion about his understanding of X 1.6.6's derivation, let alone that of X 1.6.7.

⁴⁴⁴ *Casus ad X 1.6.6*: "In ordinatione Romane Pontificis ecclesia saepe passa est scisturam propter multorum ambitionem ad malum, tandem in posterum statuit Alexander in concilio Lateranensem quod..." *Casus ad X 1.6.7*: "Quia aliqui eligebantur in episcopos, qui non errant scientia, moribus et aetate idonei, statuit concilium Lateranensis quales debeant esse qui in episcopo eliguntur."

⁴⁴⁵ X 1.34.2 and X 3.39.10 were formed when Raymond split 1Comp 1.24.2 (Lat. III, c. 22) into two parts. See Friedberg's introduction (col. xii) for the complete list of other Lateran III canons. Note there that the first instance (Lat. III, c. 16) of the double-listed X 5.6.6 should be changed to X 5.4.1.

⁴⁴⁶ This does not constitute definitive proof, since there also two instances of Lateran III-inscribed capitula (X 5.3.9, X 2.20.21) where Bernard left out of the *casus* the fact that they were from this council.

Andreae do not resolve the split verdict either, which only underlines the need for a more targeted study of this issue in the manuscripts.⁴⁴⁷ If Bernard supplied this information on the basis of his own formal source research, rather than at the prompting of the inscriptions, then he gave more than enough for later copyists to add the conciliar attribution to the inscriptions.

Taken together, X 1.6.6-7, X 2.19.3, X 2.27.8 and the still-to-be-discussed X 3.26.13 (3Comp 3.19.2)⁴⁴⁸ show that there were a select few elements of the *Decretals* treated by later commentators/copyists as deficient – to the point where the formal source reading was restored. The means and motive for restoration is a subject to be addressed in the following chapter, but it is useful here to touch briefly on some of the issues involved in the case of X 1.6.6-7. With a few important exceptions, Raymond appears to have been indifferent to the inscriptions as conduits for additional legal authority or expanded/delimited scope of application.⁴⁴⁹ There is, additionally, no reason to question the general assumption that Raymond’s indifference passed over to subsequent

⁴⁴⁷ Johannes Andreae for X 1.6.6 and Hostiensis for X 1.6.7 apply the term *constitutio* to refer to the text under discussion. *Ad* X 1.6.6: “Licet]...Et sunt tres partes: in prima constitutionis causa; in secunda constitutio; in tertia quaedam protestatio,” Johannes Andreae, *Commentaria*, vol. 1, fol. 75ra. *Ad* X 1.6.7 “Cum in cunctis]...Trahit constitutio haec ad preterita, si canones non obsistunt,” Hostiensis, *Commentaria*, fol. 40rb. As with Sinebaldus Fieschi, Hostiensis does not exhibit any real consistency in his terminology. Johannes Andreae’s terminology is somewhat more regularized, so that we see him using *constitutio* to refer to Lateran IV decrees like X 1.1.1, and even Lateran III decrees like X 3.39.6. It is also true that in other circumstances he applied the label *constitutio* to an unsolicited (non-rescript) papal decrees, which is exactly how X 1.6.6-7 come off when bearing only the Alexander III (*Idem*) inscription.

⁴⁴⁸ See section 3.8: Divergent inscriptions from 3-4Comp.

⁴⁴⁹ These exceptions notably encompass texts dealing with religious orders, like the Cistercian-related Alexander III decretal X 1.10.1 discussed earlier in the chapter. Even more significant are the two Gregorian capitula at X 5.31.16-7, derived from the same enregistered letter (Auvray 707) sent to a number of French prelates ordering them to desist from various types of harassment directed at the Franciscans. Raymond altered the text of the letter to make it apply to both Franciscans and Dominicans, and altered the inscription so that it was directed to *universis ecclesiarum praelatis*. This case will be discussed in the introduction to the collation of the register with the Gregorian capitula.

compilers.⁴⁵⁰ It would not make sense, therefore, to formulate a systematic research agenda around the role of inscriptions in canonistic thought post-1234, in the same way that this frame has illuminated such critical aspects of the *Ius antiquum*.⁴⁵¹ When it comes to individual cases of restored inscriptions like X 1.6.6-7, however, the possibility of reclamation in order to shape the legal, and especially the historical understanding of the text should not be ruled out. Both *Licet de vitanda* and *Cum in cunctis* were foundational for ecclesiastical election procedure, the former being the focal point for subsequent discussions of papal elections, and the latter providing a basic primer on the essential qualifications for episcopal and lower-office candidates.⁴⁵² Particularly for the growing effort in the fourteenth century to establish some kind of constitutional legitimacy for the council as a body exercising authority independent from (and even above) the pope, the correct conciliar attribution of texts so important to the institutional function of the Church might offer more legitimacy. This explanation is purely speculative in the absence of detailed and datable knowledge of the sequence of changes

⁴⁵⁰ See, for example, Cardinal Stickler's comments on the secondary role of the inscriptions in the *Liber sextus*, just one symptom of what he and other scholars saw as a general subordination of the authentic, historical text to the legal concepts being pushed in decretal collections after 1234: "novum voluit [Bonifatius VIII] facere opus legislativum [i.e., *Librum sextum*], quod a propria potestate vim et vigorem mutuaretur. Ideoque nihil intererat textus genuinos praecedentes recipere sed sensum tantum eumque eo solum modo, quo iuri condendo conveniebat. Quapropter nil mirum quod perraro tantum, exceptis propriis textibus, inscriptiones apposuit idque plerumque forma mutila; rarius adhuc initialia decretalium originalium indicavit," Alfons Stickler, *Historia juris canonici latini: Institutiones academicae*, vol. 1: *Historia fontium* (Studia et textus historiae juris canonici, vol. 6: Rome, 1950) p. 261.

⁴⁵¹ See, for example, the classic analysis of the treatment of inscriptions in Burchard of Worms' *Decretum* in: Paul Fournier and Gabriel Le Bras, *Histoire des collections canoniques en occident*, vol. 1 (Paris, 1931) pp. 381ff.

⁴⁵² The Lateran III papal election decree certainly did not end the need to codify further legislation on the topic in subsequent collections, as evidenced by VI 1.6.3 *Ubi periculum maius*, and *Clem.* 1.3.2 *Ne Romani electione*. Given the foundational status of the *Decretals*, however, commentaries on X 1.6.6 could be generously expanded to reflect newer circumstances, as for example, Francesco Zabarella's incorporation of his treatise on ending the Great Schism (*De modo tollendi hoc schisma*) into his commentary on *Licet de vitanda: Cardinalis Zabarella in librum primum Decretalium* (Venice, 1602).

to the X 1.6.6-7 inscriptions in *Decretals* manuscripts, but it is one that should be pursued in the future.

3.7.2.2 Transmission errors in Decretals manuscripts as source for divergent 1-2Comp inscriptions

The next group of divergent inscriptions involves those where the evidence from the early manuscripts is split, where the earlier reading from the formal source is preserved in a single, or at most two control manuscripts of the *Decretals*: X 2.7.2, X 3.1.9, X 3.21.2, X 3.43.2-3, X 4.1.2, X 4.1.4, and X 4.18.3.

By the time it reached the *ER*, the inscription for X 2.7.2 had undergone a series of changes to become: "Idem Ordinatori Romanae ecclesiae subdiacono et magistro Omnibono," where the "Idem" hinged on the previously discussed text attributed to Honorius II (X 2.7.1). At its source in 1Comp 1.35.3, the text was actually attributed to Eugenius III, but with the odd inscription: "Item Eugenius papa Arditioni Romanae ecclesiae subdiacono et magistro Omnibono."⁴⁵³ All of the early manuscripts follow the *ER* in its essentials, except for FBL sin.9, which actually preserves the original 1Comp reading, save for substituting an "Idem" for the original "Item." An inscription as unusual as this, which simultaneously referenced Honorius II (*Idem*) and Eugenius (*Eug. papa*), seemed destined for misinterpretation, and it is no surprise that it was soon streamlined by copyists in favor of the Honorius attribution alone.

According to its positioning between Alexander III and Innocent III texts, the original inscription for X 3.1.9 was Gregory VIII, which is also the (correct) inscription

⁴⁵³ JL 9654; *Ital. Pont.* V, 251, no.25 = VII/1, 181, no.6; KE 67. This decretal discussing the oath of calumny circulated in a wide variety of collections prior to its appearance in 1Comp. Holtzmann makes no specific mention of the "Item Eugenius..." form of the inscription, but remarks generally that it was subject to a wide variety of corruptions: *Quellen und Forschungen* 38, p. 76.

given by most manuscripts of the formal source at 1Comp 3.1.10.⁴⁵⁴ In the *ER*, however, the "VIII" had become a "VII," and the only variant noted by Friedberg is the even more erroneous attribution to Gregory IX (*FGH*). Only FBN 157 retained the correct inscription of Gregory VIII, and the two different readings in FBL sin.9 (Gregory III) and the French translation (none) show how quickly this inscription became corrupted.⁴⁵⁵

A similar confusion of Gregories occurred in the *ER* inscription for X 3.21.2, which compounded the error by also transposing the addressee from the next capitulum: "Gregorius III Exonensi episcopo."⁴⁵⁶ The original formal source at 1Comp 3.17.2 inscribed the letter to Gregory the Great, writing to the magistrate Sanctius: "Gregorius Sanctio defensori." Friedberg's manuscripts allowed him to correct the inscription as far as the addressee was concerned (restoring the original 1Comp inscription to the magistrate), but still left the papal attribution as Gregory III. Among the early manuscripts, both FBL sin.9 and the French translation retained the original 1Comp attribution to Gregory I. The mistaken attribution to Gregory IX in FBN 157 shows how little understood the *Decretals'* method of organization was even to some contemporaries.

The next example, X 4.1.2, introduces one of the most consistent sources of attribution error in the *Decretals*. Having bequeathed so few decretals to the canonical tradition, Innocent II (1130-43) was almost invariably confused with his more famous successor, a problem no doubt exacerbated by the concentration of decretalist activity

⁴⁵⁴ JL 16074; *Ital. Pont.* VI/1, 14, no.68; KE 82.

⁴⁵⁵ In BnF fr. 491 (fol. 144r) the scribe made a notation in the margin that the name of the pope to whom the text belonged was missing: "Ci faut li nons a l'apostoile." This appears to be a unique instance in the manuscripts of the French translation, which are otherwise devoid of editorial comment.

⁴⁵⁶ X 3.21.3 is also addressed to the bishop of Exeter: "Alexander III episcopo Exoniensi."

during Innocent III's pontificate.⁴⁵⁷ One indicator of the confusion is the fact that all of Innocent II's decretals were reinscribed to Innocent III even in 1Comp, which was originally redacted before the latter had been elevated to the papal throne.

In the *ER*, X 4.1.2 is inscribed to Innocent III writing to the bishop of Exeter (*Innocentius III Exonensi episcopo*). Although the decretal derived from an Alexander III letter,⁴⁵⁸ by the time it reached 1Comp 4.1.11, it was attributed to Innocent II, and inscribed with an "Idem" according to its position after another Innocent II text (1Comp 4.1.10). While the appendix collation shows that the Innocent III attribution had seeped into the formal source record as well,⁴⁵⁹ the positioning of X 4.1.2 between a pre-Gregorian-reform conciliar canon (X 4.1.1), and an Eugenius III decretal (X 4.1.3) proves that Raymond read it as an Innocent II text. Scribal errors, however, soon converted the inscription for X 4.1.2 to Innocent III, a reading already present in FBL sin.9, and the one that ultimately reached the *ER*. The older attribution to Innocent II has been preserved in only three of the four manuscripts of the French translation. In this case it is BnF fr. 491 that ascribes X 4.1.2 to Innocent III (*Innocens li tiers a levesque de Exon.*), providing another likely example of a copyist updating an inscription in the translation on the basis of a contemporary *Decretals* manuscript.⁴⁶⁰ The evidence from the remaining early

⁴⁵⁷ There are only four letters belonging to Innocent II in 1Comp, and none in 2Comp.

⁴⁵⁸ JL 13903. The text first appeared in the *Appendix Concilii Lateranensis* (45.3), and subsequently filtered through other decretal collections before reaching 1Comp.

⁴⁵⁹ Out of the four 1Comp manuscripts collated in the appendix, only Admont 22 has the Innocent II attribution. All others manuscripts show that 1Comp 4.1.10 had already turned into an Innocent III text, forcing 1Comp 4.1.11 to become the same as a function of the latter's *Idem*.

⁴⁶⁰ See discussion above of X 2.7.1, where it is BnF fr. 493 that changed the inscription to the form more common among *Decretals* manuscripts.

manuscript, FBN 157, is inconclusive, as it transmitted the inscription without a Roman numeral after Innocent's name.⁴⁶¹

The variant in X 4.1.4 is a minor but significant one. The formal source 1Comp 4.1.1 inscribed the text from Alexander III to the bishop-elect of Pavia, identified only by his initial I: "Alexander III I. Papiensi electo."⁴⁶² In the *ER*, the bishop's initial has been eliminated, and through the change of a letter or two, has gained full possession of the see: "Alexander III Papiensi episcopo." Even though it constitutes a small change, the switch from "electo" to "episcopo" invariably went in only one direction, and rarely, if ever, were bishops demoted to bishops-elect through scribal error. That is why it is fairly certain that FBN 157 and the French translation preserve the earliest form of the inscription, thereby retaining the original bishop-elect designation. The lack of variants in Friedberg's manuscripts shows that the original designation of bishop-elect fell out of the tradition fairly quickly.

⁴⁶¹ Interestingly enough, two of Boehmer's manuscripts contain the earlier Innocent II inscription for X 4.1.2 (*LbN*). Based upon the collation in the appendix, the four codices originally collated by Boehmer (*La, Lb, M* and *N*) line up less often with the earliest readings than Friedberg's manuscripts (*F, G, H, I* and *K*). Taking this into account, as well as the ease with which Innocent II and III's texts could be confused, the Boehmer readings for X 4.1.2 could have resulted just as conceivably from a scribal error that transformed Innocent III back into his predecessor. The same holds for another decretal to be discussed below, X 3.43.2, where the older Innocent II attribution is present in three of Boehmer's manuscripts (*LabN*).

⁴⁶² JL 13137; *Ital. Pont.* VI/1, 183, no.48; KE 95. 1Comp 4.1.1 was one of two extracts from the same letter directed to the newly elected bishop Lanfranc. The other portion appeared twice at 1Comp 2.13.8 and 1Comp 4.19.4, and was cross-referenced by its inscription to 1Comp 4.1.1 (*Idem [Alex. III] Papiensi electo, pars cap. Ad Audientiam*). Neither iteration of the second extract made it into the *Decretals*. Friedberg's notes on X 4.1.4 (1Comp 4.1.1) in the apparatus are a bit obscure, but seem to indicate that only one formal source manuscript (*Ak*) contains the full inscription – all others simply carried the papal name of Alexander III (X 4.1.4, n.2). This seems rather surprising, given that two out of the four 1Comp manuscripts collated in the appendix (Ad. 22, BnF lat. 15997) have the complete address information to the bishop-elect of Pavia (the other two, Vat. lat. 1377 and BnF NAL 2127, lack an inscription altogether). According to Holtzmann, *Alex. III Papiensi electo* (without the initial *I.*) is also the inscription in the only two pre-1Comp manuscripts that contain the text: the *Collectio Petrihusensis* and the *Collectio Sangermanensis*: cf., *Quellen und Forschungen* 38, p. 91. Last of all, Agustín opted for the simple Alexander III inscription, but noted variants from two Tarragona manuscripts that had the fuller reading: *Antiquae collectiones*, p. 222, note s. Given how strongly the fuller inscription is represented in pre-*Decretals* tradition, it might be worthwhile to double-check Friedberg's 1Comp codices.

The final capitula examined in the present grouping include the Clement III decretal X 4.18.3, and a consecutive pair of texts inscribed in the *ER* to Innocent III, X 3.43.2-3. The collation of early manuscripts provides substantial – though not decisive – evidence for alteration of both inscriptions early on the transmission history of the *Decretals*.

In the *ER*, X 4.18.3 bears the inscription of Clement III writing to the bishop of Florence: "Clement III papa Florentino episcopo." The form of the inscription is itself an indication of an error somewhere along the line, since nowhere else in the *Decretals* did Raymond appose an ordinal number with the title "papa" in an inscription. The formal source inscription at 1Comp 4.17.1 attributed the text to Celestine rather than Clement, and directed the letter to the Florentine church instead of the bishop: "Celestinus papa Florentino ecclesiae."⁴⁶³ Variants from several of Friedberg's manuscripts (*FGHI*) delivered a partial correction by ascribing the text to Celestine III, and this is the reading followed by FBN 157 and the French translation. FBL sin.9, however, preserves an earlier reading that matches the papal designation in 1Comp (*Celestinus papa*). In this manuscript, the recipient remains the Florentine bishop, though it is quite possible that this change goes back to Raymond himself, who on other occasions changed the address line in favor of the prelate rather than the institution.

The last example is the consecutive pair X 3.43.2-3, which involve another case of confusion between the two Pope Innocents. In the *ER*, both X 3.43.2 and c. 3 are inscribed to Innocent III, the first (c. 2) directing the letter to the bishop of Cremona

⁴⁶³ JK †384; *Ital. Pont.* III, 10, no. 15; KE 22. The text actually derives from a letter of Celestine II. There are a number of varying attributions to be found among the many pre-1Comp collections that contain this text, including Popes Calixtus and Eugenius. None, however, matches the Clement III reading in the *Decretals*. Cf., Holtzmann, *Quellen und Forschungen* 37, p. 84.

(*Innocentius III episcopo Cremonensi*), and the second (c. 3) to the bishop of Ferrara (*Idem Ferrariensi episcopo*). The inscription for X 3.43.3 is the correct one, matching the 3Comp formal source (3Comp 5.22.1). The original inscription for X 3.43.2 is more complicated, however. It ultimately derived from an Innocent II letter, but in many 1Comp manuscripts it came to be inscribed to Innocent III.⁴⁶⁴ This attribution to the later Innocent was so frequent that both Agustín and Friedberg chose it as the prevailing inscription for 1Comp 5.35.2.⁴⁶⁵ With one exception, the Innocent III reading is also the predominant one for 1Comp 5.35.2 in the control manuscripts collated in the appendix. The minority report in this case is offered by Admont 22, which qualifies Innocent with the title of bishop, rather than with a Roman numeral (*Innocentius episcopus Cremon. episcopo*). Whether Admont 22 represents an older, better reading will only be clarified after the collation of additional versions of 1Comp, but the evidence from early *Decretals* manuscripts shows that Raymond treated the text as if it belonged to Innocent II.

According to a consistent application of his organizational method, if Raymond understood X 3.43.2-3 as decretals from two distinct popes, he would have given the names of both popes in full, rather than employ an "Idem" for X 3.43.3. The full rendering of Innocent III's name in X 3.43.3 is exactly what occurs in all of the control manuscripts in the appendix.⁴⁶⁶ These manuscripts, therefore, represent an intermediate

⁴⁶⁴ JL 8272; *Ital. Pont.* VI/1, 262, no.11; KE 101. All the collections listed by Holtzmann in which 1Comp 3.4.2 circulated (most of which pre-date Innocent III's pontificate) inscribe the text to Innocent II.

⁴⁶⁵ Agustín kept the inscription for 1Comp 5.35.2 as Innocent III, but noted that he had found the proper Innocent II attribution in the two Tarragona manuscripts of 1Comp. He reported a similar split reading (both Innocent II and III) for X 3.43.2 in his *Decretals* manuscripts, although he acknowledged that Contius and the other printed editions of the *Decretals* followed the *ER* attribution of Innocent III: "Scribendum *Innocentius II*, ut est in duobus Tarrac[onensibus manuscriptis] et in uno veteri [manuscripto] Gregor[iana]; licet in altero veteri et apud Cont[ium] et alios, ut editum est," *Antiquae Collectiones*, p. 345, note tt.

⁴⁶⁶ In his apparatus to X 3.43.3, Friedberg does not list variants for the inscription, or indicate whether any of his manuscripts had "Innocentius" instead of "Idem." Although Friedberg was in other respects sensitive

stage in the corruption of X 3.43.2. Once the erroneous attribution of c. 2 to Innocent III had been made, it became arithmetic for copyists then to consolidate the two by substituting "Idem" for Innocent III in c. 3, the end result being what appears in the *ER*.

*
* *

One significant result of the collation of this particular group of texts is the infrequency with which there is more than one witness for the older, better readings, just as each early manuscript and the French translation had three separate answers for the placement of X 3.3.8, *Cum decorem*. This shows that even within a year of promulgation (FBN 157 is dated 1235), there were already multiple, distinct groups of erroneous inscriptions associated with different strains of the tradition. Only collations of additional early manuscripts using the blueprint in the appendix will make clear how the errors tended to cluster, and whether the various groupings can be used to identify a distinct line of transmission.

3.7.3 Divergent 1-2Comp inscriptions with uncertain source

Combining an understanding of Raymond's method with the traces left in the early copies of the *Decretals* enables the resolution of the discrepancy for the inscriptions in X 3.43.2-3. For the remaining two capitula, the lack of manuscript consensus on both the formal source and the *Decretals* side, along with the absence of contextual clues derived from their placement in the title, make it difficult to establish Raymond's original inscription.

Similar to the frequent confusion over the various popes named Innocent, there is a conflation of popes Urban II and III in X 3.37.1. The most frequent for the formal

to minute variations in his manuscripts, it seems possible that he considered a variant such as this too

source at 1Comp 3.32.1 was Urban II in the council of Clermont (*Urbanus II in concilio Claremontensi*), but in the *ER* it has been shortened and changed to Urban III. As the first and only pre-3Comp text in the *Decretals* title on monastic chapels (*De capellis monachorum et aliorum religiosorum*), there is nothing to be gleaned from the position of X 3.37.1 to determine whether Raymond read it as Urban II or Urban III. Inscriptions for both popes are, in fact, found in manuscripts of the *Decretals* as well as 1Comp collated in the appendix. The issue is rather more complicated than just collecting inscription variants, however, and requires some consideration of the canon's pre-*Decretals* history.

Robert Somerville has unknotted the various strands in the tangled transmission of the text, which goes back to a decree of Urban II's Council of Clermont (1095).⁴⁶⁷ The text of X 3.37.1, *In ecclesiis ubi...pendeat conversatio*, established that the pastoral care for the congregations of monastic churches should be committed to secular clergy appointed by and subject to the local bishop. In most formal source manuscripts for this text at 1Comp 3.32.1, *In ecclesiis* had formed the second half of a longer, amalgamated capitulum ascribed to Urban II at Clermont. The first part of 1Comp 3.32.1, *Congregato apud Claromontensem...talia praesumant*, which discussed the problem of clergy acquiring possession of churches and other church property without episcopal permission, had a different line of transmission than *In ecclesiis*, and would eventually make it into the *Decretum* as a *palea* at C.16 q.7 c.2.⁴⁶⁸ In some 1Comp manuscripts,

inconsequential to collate.

⁴⁶⁷ Robert Somerville, *The Councils of Urban II* (Annuaire Historiae Conciliae, Supplementum 1: Amsterdam, 1972). An edition of the material source for X 3.37.1 – c. 3 according to the numbering of the Clermont decrees from the Collection in Nine Books – appears on p. 72, but see also the detailed discussion of its medieval and early-modern transmission on pp. 132-5, which provides the foundation for the discussion below.

⁴⁶⁸ According to Somerville, the first part of 1Comp 3.32.1 is likely not an official Clermont decree, but perhaps reflected conciliar deliberations or derived from an extract of a now-lost Urban II letter produced

however, the two sections of the canon had been formally split into two, with the *Congregato* section occupying 1Comp 3.32.1, and the *In ecclesiis* portion forming an extra capitulum at what would then be 1Comp 3.32.2.⁴⁶⁹ When the inscription was not simply left empty, the attribution of the separate *In ecclesiis* canon was made dependent on the preceding *Congregato* portion through an *Idem* or *Item*.⁴⁷⁰

As noted before, early *Decretals* as well as 1Comp manuscripts collated in the appendix contain attributions for X 3.37.1/1Comp 3.37.1 to both Urban II and Urban III⁴⁷¹ – a split attribution further confirmed by Agustín’s manuscripts – which makes it impossible to determine what reading Raymond encountered in his source or first put down in the *Decretals*.⁴⁷² The close historical association between Urban II and the council of Clermont might have even led Raymond to correct an erroneous Urban III attribution in his formal source. If, however, Raymond was working with a 1Comp manuscript that separated off the *In ecclesiis* portion as a separate capitulum, this might better explain not only the shortened, erroneous inscription (if “Urban III” was actually the original reading), but also the otherwise curious omission of the *Congregato* portion

following that council. It had circulated in decretal collections prior to 1Comp like the *Collectio Francofurtana* 16.7.

⁴⁶⁹ This was the case with three of Friedberg’s manuscripts (*Aack*) and four identified by Agustín: *Antiquae Collectiones*, p. 203, note a.

⁴⁷⁰ Our information about the inscription comes exclusively from Agustín (see above, note 469). Friedberg is silent about the presence or absence of any additional inscription for his *Aack* manuscripts.

⁴⁷¹ In 1Comp manuscripts “Urban II” is the reading given by Vat. Lat. 1377 and BnF lat. 15997, but Ad. 22 and BnF NAL 2127 have “Urban III.” Both Florence manuscripts of the *Decretals* have “Urban III,” while the French translation has “Urban II.”

⁴⁷² In his note on the inscription to 1Comp 3.32.1, which he gives as *Urbanus II in concilio Claremontensi*, Agustín writes: “*III pro II, vetus Tarrac[onensis manuscripta]; Urbanus II, vetus Greg[oriana manuscripta] aliis omissis [i.e., in conc. Clar.], Antiquae Collectiones*, p. 202, note oo.

of the text.⁴⁷³ Various reasons have been suggested as to why Raymond jettisoned the first section of 1Comp 3.32.1, from its lack of relevance to the fact that it was now circulating as a *palea*.⁴⁷⁴ Encountering the *In ecclesiis* section as its own capitulum (without a clearly defined inscription) might have been a clearer prompt for him to include this part alone in the *Decretals*, which he then assigned a simple papal inscription. In the end, X 3.37.1 might eventually provide a useful variant for checking early *Decretals* manuscripts as well as Raymond's possible sources, but because of the uncertainty described above, it should play an ancillary rather than a central role.

X 5.15.1, assigned to Innocent III in the *ER*, represents another case where indeterminacy in both the *Decretals* and formal source manuscripts makes it impossible to determine the original reading of the inscription. While originally a canon of the Second Lateran Council (1139; c. 29), it was introduced into the canonical stream by Bernard of Pavia as a text of Innocent II, the presiding pope during Lat. II (1Comp 5.19.1, by way of IISumma Parisiensis 12.1).⁴⁷⁵ Corruption of the inscription was widespread, however, with the majority of 1Comp manuscripts collated by Friedberg and half of those in the appendix bearing an inscription to the later Innocent III.⁴⁷⁶ As the unique chapter in this title prohibiting the use of ballistic weapons on fellow Christians (*De sagitariis*), there is no contextual support available for an *a priori* determination of

⁴⁷³ Raymond's normal practice was to preserve both the papal and conciliar attribution of a co-inscription, and only on three other occasions did he eliminate the council designation in favor of the papal name alone. See above, note 412.

⁴⁷⁴ Somerville suggests the *paleae* explanation (*Decreta Claremontensia*, p. 133), while Agustín opts for the relevance argument: "Haec [verba *Congregato*, etc.] usque ad illa, *In ecclesiis*, etc., omittunt Raim[undus] et Cont[ius], ut existimo, quia visa sunt temporibus quibusdam tantum accommodata," *Antiquae Collectiones*, p. 202, note pp.

⁴⁷⁵ Edited in: Tanner, *Decrees*, vol. 1, p. 203.

⁴⁷⁶ Innocent II inscription in 1Comp: Admont 22, Vat. lat. 1377; Innocent III inscription in 1Comp: BnF NAL 2127, BnF lat. 15997.

whether Raymond had the earlier or later Innocent as his reading for X 5.15.1. The historically correct inscription of Innocent II appears in only one of the *Decretals* manuscripts collated in the appendix, but there is no reason to assume that this is not just a case of further scribal confusion.⁴⁷⁷

Finally, there are two texts where the discrepancy between the inscriptions is irresolvable owing to a lack of manuscript evidence on the *Decretals* side: X 3.28.3 and X 2.24.1.

X 3.28.3 involves the familiar misconstrual of Innocent II and III.⁴⁷⁸ In the *ER*, the text is inscribed to Innocent III, writing to the archbishop of Genoa (*Innocentius III Genuensi archiepiscopo*). The position of the text in the *Decretals* – between decretals of Leo IX and Alexander III – shows that Raymond read it as an Innocent II canon, which is the papal attribution accorded to it in most 1Comp manuscripts (1Comp 3.24.5).⁴⁷⁹ While evidence from *Decretals* manuscripts is lacking for any tradition of assigning this text to the earlier Innocent, significant questions remain about the form in which Raymond encountered the inscription in the formal source (1Comp 3.24.5). To begin with, Friedberg listed the inscription for 1Comp 3.24.5 as Innocent II writing to the *bishop* of Genoa, rather than to the *archbishop* as appeared in the *Decretals*.⁴⁸⁰ Secondly, Holtzmann noted several instances where the 1Comp inscription includes the correct

⁴⁷⁷ Innocent II inscription: FBN 157. All others manuscripts in the appendix, as well as those collated by Friedberg read Innocent III: FBL sin.9, BnF fr. 491, etc.

⁴⁷⁸ JL 8275; *Ital. Pont.* VI/2, 267, no.7; KE 113.

⁴⁷⁹ In his apparatus to X 3.28.3, Friedberg limited the Innocent II reading to *Aabkl*, which includes Agustín's edition (*Al*). Normally, this would imply that his remaining 1Comp manuscripts (*Acdefghi*) agreed with the reading in the *Decretals*. As will be made clear below, the lack of corroboration for an Innocent III reading from either the control manuscripts in the appendix, or Agustín's collations, raises some uncertainty about how to interpret the silence for the inscription in Friedberg's remaining codices.

metropolitan status of the city, but also identifies the text as a register extract: "Ex registro Innocentii pape II Ianuensi archiepiscopo."⁴⁸¹ The pairing of the register/archiepiscopal variants also shows up in two of the appendix manuscripts of 1Comp, notably that containing the French recension of 3Comp and Admont 22.⁴⁸² This variant could be discounted as a source for the *Decretals* tradition, except for the fact that Agustín mentioned coming across the register attribution not only in a copy of 1Comp, but also in one of his older *Decretals* manuscripts.⁴⁸³ In the absence of any other evidence, the most that can be said for this intriguing variant is that it represents another example of the reintroduction of older formal source material on the part of copyists, which did not, however, have any lasting impact on the *Decretals'* transmission. At the very least, though, the variants for the inscription in 1Comp deserve further examination.

In contrast to the stable (if incorrect) readings for X 3.28.3, the discrepancy between the formal source and *Decretals* inscription for X 2.24.1 is exacerbated by the proliferation of different variants in *Decretals* manuscripts. X 2.24.1, inscribed to Gregory III in the *ER*, sits uncomfortably in front of the text next in line, which was originally extracted from Gregory the Great's register (X 2.24.2: *Ex registro Gregorii*). In origin the letter was a proto-encyclical of Gregory VIII, which is reflected in the inscription assigned to it by Friedberg in the *QCA* (2Comp 2.16.4: *Gregorius VIII*

⁴⁸⁰ A manuscript in the appendix, BnF lat. 15997, contains the archiepiscopal designation of Genoa. Whether Raymond took the initiative of correcting his source, or instead was working with a version of 1Comp that, like BnF lat. 15997, already had the proper archiepiscopal title, is unclear.

⁴⁸¹ The two 1Comp manuscripts containing the register extract/archiepiscopal designation are Sigüenza, Bibl. del Cab. 10 and Paris, BnF lat. 3922, *A Seg.* and *A Rot.* according to Holtzmann's sigla.

⁴⁸² BnF NAL 2127 drops the "II" from the papal designation and garbles the name of the see: "Ex registro Innocentii pape et Amien. arch." Curiously enough, Contius (as reported by Agustín, *Antique Collectiones*, p. 180, not. r) noted the orthographically similar variant "Ariminensi" for the recipient see at X 3.28.3 in his edition of the *Decretals*.

universis Christianis), although there are variants attributing it to both Gregory the Great and Gregory III. Gregory the Great would be the logical attribution for X 2.24.1, and elsewhere in the *Decretals* there is precedent for situating Gregory's register extracts prior to his decretals.⁴⁸⁴ The early manuscripts, however, all line up behind the even more erroneous Gregory IX inscription, an attribution shared by Friedberg's *F*. Friedberg notes only a single codex of the *Decretals* (*G*) that transmits Gregory the Great as the author. Whether this actually preserves the older reading, which may have been derived from a 1Comp manuscript with the same inscription (*Bch*, BnF lat. 15997), or whether it is just a secondary error, will only be clarified with the collation of additional *Decretals* manuscripts.

*
* *

The preceding examination of the transmission of inscriptions from 1-2Comp to the *Decretals* has shown that many of the inconsistencies melt away when the manuscript record is scrutinized. For those inconsistencies where precedent is found in the formal sources, agreement has been found most often with BnF NAL 2127, a manuscript distinguished by its transmission of the French recension of 3Comp. The correspondence is by no means absolute. Not enough is yet known about this class of manuscripts, and whether they tended to transmit the same versions of the other 5C as they did of 3Comp. Most other inconsistencies can be attributed to transmission errors in the *Decretals* itself, and collectively the early manuscripts contain most of the uncorrupted readings. What is

⁴⁸³ "Innocen. III Januen. Archiepiscopo: Raim[undus]. Ex registro Innocentii pape II Jan. Archiepiscopo: Barcinon[ensis] et unus ex veter[i] Gregor.," *Antiquae Collectiones*, p. 180, not. r.

⁴⁸⁴ X 3.31.5-6, inscribed: "Gregorius Anthemio subdiacono," (c. 5), and "Ex registro Gregorii," (c. 6).

surprising is that even as early as 1235 (assuming the colophon for FBN 157 is correct), there already are separate streams of errors, and more often than not the earlier reading is contained in only one of the manuscripts. Adopting a Lachmannian approach to the text, future studies should attempt to isolate the discrete clusters of erroneous inscriptions that were passed along different branches of the *Decretals'* transmission. Also valuable will be those texts where the inconsistency remains unprecedented, since the proliferation of variants for the same inscription makes them important markers of differentiation.

3.8 Divergent inscriptions in 3-4Comp

The most interesting divergences between the inscriptions of the *Decretals* and its formal sources occur in the decretals of Innocent III taken from 3-4Comp.

Ever since Heinrich Singer made the observation, it has been stated as fact that the *Compilatio Romana* exercised some influence over how Raymond of Penyafort edited the Innocent III material shared between the *Compilatio Romana* and 3Comp.⁴⁸⁵ The occasional correspondence between the *Decretals* and the *Compilatio Romana*, which in general followed Innocent III's register more closely than did 3Comp, led Singer to the conclusion that Bernardus's collection exerted some sort of weak (if not directly traceable) gravitational force on Raymond's editing.⁴⁸⁶ Singer was on to something, but

⁴⁸⁵ Heinrich Singer, *Die Dekretalensammlung des Bernardus Compostellanus antiquus* (Sitzungsberichte der kaiserlichen Akademie der Wissenschaften in Wien, philosophisch-historische Klasse 171.2: Vienna, 1914) pp. 28-9. For examples of those following Singer, see: Stephan Kuttner, "Bernardus Compostellanus antiquus," *Traditio* 1 (1943) p. 333; repr. in (with *retractiones*): idem, *Gratian and the Schools of Law* (Variorum Collected Studies, CS185: London, 1983) VII; and: Kenneth Pennington, "The Making of a decretal collection: The genesis of *Compilatio tertia*," *Proceedings of the Fifth International Congress of Medieval Canon Law, Salamanca, 1976* (Monumenta Iuris Canonici, Series C, Subsidia 6: Vatican City 1980), p. 83; repr. in: idem, *Popes Canonists and Texts, 1150-1550* (Variorum Collected Studies Series, CS 412: London, 1993).

⁴⁸⁶ Singer also identified certain places where Raymond's radical paring down of Innocent's decretals coincided with how Bernardus had edited these texts. This coincidence was not so much a word-for-word match, but rather involved things like both choosing to end the selection at the same place in the letter. The possibility that Raymond may have used Bernardus' editing will not be a subject of present discussion.

being limited to those texts common to both the *Compilatio Romana* and 3-4Comp, he did not see the broader scope of the changes.

The appendix CD lists thirteen capitula where the inscription in the *ER* exhibits a significant change compared to the expected reading in 3-4Comp. In nine of these cases the inscription matches that found in Innocent III's register.⁴⁸⁷ Of the remaining four, three include changes where the *Decretals* inscription not only differs from the reading in 3-4Comp, but also departs from the reading in the register.⁴⁸⁸ The final instance is one discussed by Singer, where the inscription seems to follow the *Compilatio Romana* rather than 3Comp or the register.⁴⁸⁹

It is possible to exclude from immediate consideration at least three of these capitula. They involve either minor changes – just as easily attributable to scribal error as to a resurrection of the register reading (X 1.2.9, X 2.26.11) – or instances where the early *Decretals* manuscripts strongly suggest that the *ER*'s reproduction of the register inscription is a later importation (X 3.49.6). These cases may well constitute important variants in tracking the later transmission of the *Decretals*, but for now they do not bear on the question of whether Raymond was more in touch with the inscriptions from Innocent III's register. The remaining capitula, where the inscriptions match the register

Suffice it to say, however, that given Raymond's heavy redaction of the *entire* contents of the *Decretals*, it is plausible that the occasional correspondence with Bernardus remains in the realm of coincidence.

⁴⁸⁷ X 1.2.9, X 1.3.18, X 1.22.3, X 1.38.4, X 2.25.6, X 2.26.11, X 3.39.22, X 4.13.8, X 5.33.16.

⁴⁸⁸ X 2.27.23, X 4.13.10, X 5.12.15.

⁴⁸⁹ X 3.49.6; Potthast 1141. The register inscription identified the addressee as the King of Ireland (*regi Conactiae*), and with the exception of BnF NAL 2127, all the control manuscripts as well as Friedberg's 3Comp codices contain some variant of this. The *ER* inscription of the text to the King of the Scots (*regi Scotorum*) is found in the *Compilatio Romana* and BnF NAL 2127 (the section containing the capitulum in the other copy of the French recension, BnF lat. 3933, is missing). However, the readings of the early *Decretals* manuscripts as well as Friedberg's *FHI* all give some version of the Ireland variant. The manuscripts of the French translation, which direct the letter to the king of France, or leave the recipient line blank, seem to be outliers in this case. As with X 2.7.2, the changeover could represent another example where an inscription was "corrected" sometime during the *Decretals*' transmission history.

rather than the expected formal source reading, may be divided into two groups, according to whether support for the reading can be found among the control manuscripts in the appendix, or not. In the first group are: X 1.3.18, X 3.39.22, and possibly X 4.13.8.

The *ER* inscription for X 1.3.18 is: "Idem electo, decano, et N. canonico Cameracensi," which matches the *Compilatio Romana* (Bern. 1.4.13) and Innocent III's register. Petrus Beneventanus's erroneous inscription, "Idem abbati de Alcobratia F. et P. monachis Alcobatiae," was transposed from the decretal two positions ahead in the *Compilatio Romana* (Bern. 1.4.11), and is the reading found in most 3Comp manuscripts.⁴⁹⁰ The appendix shows, however, that the correct inscription was available to Raymond through manuscripts containing the French recension as well as through Admont 22. There is no reason to think this was a later correction in the *Decretals*, since traces of the erroneous 3Comp inscription are nowhere to be found in its transmission.

The inscription for X 3.39.22 also matches that found in Innocent's register: "Idem Compostellano Archiepiscopo." In contrast, most 3Comp manuscripts carried a simple "Idem." This decretal is also the first of several examples proving that the *Compilatio Romana* was not the source for the changes to the 3-4Comp inscriptions in the *Decretals*, since this text was not even included by Bernardus. The sole manuscript witness to the full inscription to the Archbishop of Compostella is BnF NAL 2127, as the section in BnF lat. 3933 containing this decretal is missing. As with X 1.3.18, there is no evidence from *Decretals* manuscripts to suggest that the correct inscription for X 3.39.22 was added later in the tradition.

⁴⁹⁰ Petrus also transposed the full text for Bern 1.4.11 to 3Comp 5.23.6, whence it eventually found its way into the *Decretals* at X 5.40.22.

Finding support among the control manuscripts for the correct register inscription to the bishop of Gerona in X 4.13.8 (*Idem episcopo Gerundensi*) is more of a conjecture. In most 3Comp manuscripts, as well as the *Compilatio Romana*, the decretal is inscribed to the bishop of Grado, "Idem episcopo Gradensi," though the correct title of patriarch is also found (Ad. 22, Vat. lat 1377). Of the French recension manuscripts, only BnF NAL 2127 contains the decretal, giving as the inscription "Idem episcopo Ferunt."⁴⁹¹ This reading is somewhat closer to the register than other 3Comp manuscripts, and one can more easily imagine a line of mutation that would produce "Ferunt.," from "Gerundensi," rather than from "Gradensi." The *Decretals* manuscripts are remarkably consistent in their readings, with the exception of the French translation, where the name has been corrupted, and no attempt seems to have been made to translate the Latin into French. The possibility that scribal error produced a return to the original register inscription cannot be ruled out, however.

The second group of correct register inscriptions in the *Decretals* find no support in the control manuscripts in the appendix. These include: X 1.22.3, X 1.38.4, X 2.25.6, and X 5.33.16. All four are similar to X 3.39.22, insofar as they involve the insertion of the register inscription in place of a simple "Idem" in 3-4Comp. In every case, the *Compilatio Romana* either follows 3-4Comp or lacks the decretal altogether, eliminating it as a source for the *Decretals*. Friedberg's 3-4Comp manuscripts offer no evidence that these inscriptions were anything other than "Idem." Two, in particular, deserve further comment.

⁴⁹¹ This is, incidentally, remarkably close to the reading given by Friedberg for Graz, UB, 374 (*Cb*), with only one iota of difference: "Feriunt."

While none of the control manuscripts for 3Comp 5.16.6 contain the full inscription to the bishop of Langres given in X 5.33.16, "Idem episcopo Lingonensi," both manuscripts carrying the French recension preserve the trace of a fuller inscription: "Idem archiepiscopo." There are no inscriptions to an archbishop in the capitula immediately surrounding 3Comp 5.16.6, making it unlikely that the "Idem archiepiscopo" resulted from an erroneous transposition. At the very least, this remnant suggests there was more to the inscription in the French recension, which may emerge from a future examination of other manuscripts.

The inscription for X 2.25.6, "Idem monachis Farsensibus," is obviously dependent in some way on the original register inscription to the abbot and monks of Farfa, although no manuscript of its source at 4Comp 2.5.1 provides any reading other than "Idem." X 2.25.6 is also one of a handful of inscriptions in the *Decretals* for which there are multiple, widely diverging variants. While the origin of these variants is evident – one can clearly retrace the steps of the scribe that led to them – their mere presence offers an important feature for distinguishing among *Decretals* manuscripts. In Friedberg's *F* and *M*, the inscription addresses the letter to some variation of the archdeacon of Richmond (Chamundiae: *F*; Richemundiae: *M*). This is almost certainly an accidental transposition of the inscription for X 2.25.2 from earlier in the *De exceptionibus* title. The fact that it shows up in multiple manuscripts, including one of Friedberg's earliest (*F*), means that it was early and widespread. This is not an isolated error, however, and for whatever reason the first part of X 2.25 (*De exceptionibus*) became particularly error-prone. In some manuscripts, the inscription from X 2.25.6 was copied to the canon immediately preceding it, which resulted in the *Editio Romana* giving

"Idem monachis Farsensibus" as the inscription for both X 2.25.5-6.⁴⁹² This may explain why the inscription for X 2.25.6 is missing in some manuscripts like *G* and *H*. While an alternative hypothesis – that the correct register inscription was a post-promulgation addition – cannot be entirely ruled out, it seems unlikely given the presence of the Farfa inscription in the early *Decretals* manuscripts.⁴⁹³

To review the evidence so far: there are a handful of texts (seven) in the *Decretals* for which the inscription matches the one given in Innocent III's register, rather than their most frequent iteration in 3-4Comp. For two and possibly three of these texts, the French recension of 3Comp (and in one case Admont 22) carried the correct register inscription, raising the possibility that Raymond had in front of him a version of 3Comp that supplied him with these inscriptions. For the other four, there is, as yet, no manuscript evidence that Raymond derived these inscriptions from his formal source. The remaining extant manuscripts of 3Comp will have to be searched in order to give a definitive answer. The obvious corollary question is whether Raymond went back to Innocent III's registers to extract the correct inscription.

The possible influence of Innocent's register must be considered in the light of the three remaining capitula in the appendix that show a material difference between the *Decretals'* inscriptions and those of 3-4Comp: X 2.27.23, X 4.13.10, and X 5.12.15. In all three instances, the *Decretals'* inscriptions diverge from both the formal source and the register, thus disqualifying the latter as a source for the changes. It is doubtful that if

⁴⁹² The source for X 2.25.5 is 4Comp 2.1.2, which carried as its inscription a simple "Idem." In his notes, Friedberg does not give a full accounting for the variants in his manuscripts. He lists only *F* as carrying the transposed inscription of "Idem monachis Farsensibus." He reports the inscription as missing for *G*, *H*, *I*, *K*, and *M*, but is silent on *L* and *N*.

⁴⁹³ The absence of the inscription from one of four manuscripts of the French translation, BnF fr. 491, is probably attributable to scribal error.

Raymond were occasionally checking his readings against the register, he would have let these errors stand.

Transmission errors can also be ruled out to explain the diverging inscriptions in two out of the three cases, X 4.13.10 and X 5.12.15, based upon the near unanimity among *Decretals* manuscripts for their inscriptions.⁴⁹⁴ Whereas the inscription for X 4.13.10 directs the decretal to the archbishop of Esztergom (*Idem archiepsicopo Strigoniensi*), the formal source at 3Comp 4.7.3 and the original register entry list a recipient of an entirely different rank and see, the bishop of Brescia (*episcopo Brixienesi*). The divergence is even more striking for X 5.12.15, which bears an inscription to the archbishop of Besançon (*Idem Bisuntino archiepiscopo*). Its source at 3Comp 5.7.3 lacks an addressee altogether (*Idem*), and the register entry is directed to the bishop of Halberstadt (*episcopo Alberstadensi*). While there are no ready explanations for the different inscription in X 4.13.10, there might be a small chance that the origin of the error in X 5.12.15 goes back to a scribal error in the formal source at 3Comp 5.7.3. Three positions ahead at 3Comp 5.5.1 is the decretal *Fraternitati tuae*, which like X 5.12.15, bears the inscription "Idem Bisuntino archiepiscopo." It is not impossible that Raymond was working with a formal source manuscript that had transferred the 3Comp 5.5.1 inscription over to the inscription-less 3Comp 5.7.3, or even that he himself made the mistake. The manuscript record for 3Comp should, in any case, be scrutinized to see if the former, in particular, might have occurred.

Determining the origin of the inscription "Idem H. de castro Guarti" for X 2.27.23 is a more complex task. In the register, this letter was inscribed to "Rainerio militi de

Vico." However, for 4Comp 2.11.1 this inscription is only given in a shortened form in Agustín's edition (*Dh*): "Idem R. militi." Friedberg's apparatus is cryptic at this point, for he lists the inscription as missing for *Dafg*, but does not indicate the readings for his other 4Comp manuscripts, *Dbcde*. Even without being able to solve this issue, it is still clear that most 4Comp manuscripts did not carry an inscription for 4Comp 2.11.1, as not a single control manuscript in the appendix carries the addressee. The evidence for the presence of the inscription for X 2.27.23 in *Decretals* manuscripts is also spotty. It is missing from FBL sin.9, the French translation, as well Friedberg's *G*. Two possible explanations suggest themselves for this inconsistency, both of which would have had to take place at a relatively early stage in the *Decretals*' transmission. Either the inscription was added to the text after Raymond had completed the work, or it dropped out fairly soon afterwards. In either case, the presence/absence of this inscription will certainly function as an important variant in the future evaluation of *Decretals* manuscripts.

If Raymond did use Innocent III's register to derive the above-noted inscriptions, it was certainly not a consistent or thorough exploitation. This would also mean that for a number of other texts not necessary to mention here, Raymond went with the formal source reading even though it diverged from the register. It seems more likely to conclude that he employed a particular version of 3Comp from which the correct register inscriptions were derived. The collation has shown that unlike how the French recension has been represented in the past, its concurrence with the register was not just a question of having been modified in certain places by the *Compilatio Romana*, a point already made by the preservation in BnF NAL 2127 and Admont 22 of the full form of 3Comp

⁴⁹⁴ The one exception is the lack of an inscription for X 5.12.15 in Friedberg's *G*. If this inscription were also lacking in one of the early manuscripts, this might raise the suspicion that it was a later insertion.

2.1.1 (X 3.30.25) *Tua*, a text not found in the *Compilatio Romana*. Indeed, there was an additional source, which amplified it with corrections from the register for texts that were not included in the *Compilatio Romana*. This raises the possibility that there exist yet unknown versions of 3Comp, or some other comparable intermediate source, that might have served as both a resource for the French recension as well as the *Decretals*.

3.9 Divergent inscriptions in 5Comp

The discrepancies among the inscriptions taken from 5Comp are relatively more straightforward in comparison to the other formal sources. Honorius' register did not play any role in these changes, and so the focus can be kept narrowly on 5Comp and *Decretals* manuscripts. Overall, the results of the collation do not reveal any clues in the early manuscripts that give an indication of whether the earliest form of the *Decretals* had a better reading for resolving the discrepancies. In fact, several of the errors that caused a divergence between the *Decretals* and 5Comp inscriptions point towards the redaction process as the origin. The possibility that Raymond was merely reproducing mistakes found in his sources cannot be completely excluded, but this will only be clarified after the remaining 5Comp manuscripts are collated.

There are a total of five capitula for which the *Decretals*' inscriptions diverge substantially from their 5Comp sources: X 1.3.30, X 1.8.7, Z 1.16.2, X 3.5.34, X 4.1.28. These can be separated into two groups, according to the degree of change to the inscription, whether wholly or only in part.

There are three capitula for which there is only a partial difference between 5Comp and the *Decretals*: X 1.8.7, X 3.5.34, and X 4.1.28.

Without such evidence, however, the missing inscription in *G* must only qualify as an anomaly.

3.9.1 Partial Divergence from 5Comp Inscriptions

In X 1.8.7, it looks as if the original 5Comp (1.9.1) inscription to the archbishop of Lund (*archiepiscopo Lundensi*) was uncharacteristically abbreviated, leading to a further error in the transmission of the name in the *Decretals*.⁴⁹⁵ The *ER* reading inscribes the text to an: "archiepiscopo Tri.," which is further shortened in several of Friedberg's manuscripts and the French translation to a single initial *T.* or *G.* Both early *Decretals* manuscripts contain only Honorius' name for the inscription, though more early evidence will be needed to determine whether this is not simply a further excision of an already faulty reading.

A similar transformation occurs with X 3.5.34, where a letter (5Comp 3.5.24) originally sent to the bishop, prior and archdeacon of St. Malo (*episcopo, priori et archidiacono Macloviensibus*), is directed in the *ER* to the same officials in Hereford.⁴⁹⁶ This erroneous place name seems itself to have been a best-guess expansion of the abbreviated "de Her.," the older reading that appears in many of Friedberg's codices and both early manuscripts. While there is substantial variation in the Latin rendering for St. Malo in 5Comp manuscripts (*Maclon.*, *Mandavien.*, *Maglonien.*), there is nothing that comes near to "de Her." Moreover, the additional variants in FBL sin.9, which lists a prior and abbot as the addressees, and the French translation, which identifies the place

⁴⁹⁵ Potthast 7455. Only one of Friedberg's manuscripts (*Ea*) carried the original register inscription to the archiepiscopal see of Lund, a reading that also appears in Admont 22. Lyons (*Lugdunensi*) is the more common, erroneous form in other 5Comp manuscripts.

⁴⁹⁶ Potthast 7790.

name as Beauvais (*Biauves*), show that there was considerable fluctuation in the inscription at the earliest stages of transmission.⁴⁹⁷

The third letter from 5Comp for which the partial changes to the inscription in the *Decretals* cannot be explained through the currently available manuscript evidence is X 4.1.28, inscribed in the *ER* to the bishop of Bergen (*episcopo Berguensi*).⁴⁹⁸ Its formal source at 5Comp 4.1.2, however, directs the letter to the bishop of Schleswig (*Slesvicen*). Although the name of the see in the 5Comp codices collated by Friedberg and in the appendix had become corrupted (*Leyvicen*., *Leswiten*.), none of these variants approach in form anything close to the diocese of Bergen inscription in X 4.1.28.⁴⁹⁹

3.9.2 Complete Divergence from 5Comp Inscriptions

The other group of divergent inscriptions for 5Comp texts comprises two that are completely different in the *ER* from how they appear in the formal source: X 1.3.30 and X 1.16.2.

Whereas X 1.3.30 is addressed to the bishop and archdeacon of León (*episcopo et archidiacono Legionensibus*), the source text at 5Comp 1.2.1 was inscribed to the abbot and prior of St. Prix and a canon of St. Quentin, all in the diocese of Noyon (*Abbatu et priori S. Proiecti et I. de Villa Wade canonico S. Quintini Noviomensis diocesis*).⁵⁰⁰ The letter dealt with a dispute among multiple impetrants for the same prebend in a church in Cambrai, and Raymond retained several geographical place-names situating the case in

⁴⁹⁷ The erroneous identification of officials in FBL sin.9 may also be due simply to the wandering eye of its own scribe, or that of its source. The inscription for X 3.5.32, only two capitula prior, is: "Honorius III abbatu et priori sanctae Genovefae."

⁴⁹⁸ Potthast 6106.

⁴⁹⁹ The fact that the inscription in the French translation remained latinized (*Belguen*.) is another indication of the corruption of its source in this place. There is no Old French name for an episcopal see remotely similar to the translation's orthography for the inscription.

⁵⁰⁰ Potthast 7711.

the metropolitan province of Reims.⁵⁰¹ The lack of variants in Friedberg and the essential agreement of early *Decretals* manuscripts suggests the error originated either with 5Comp, or when the *Decretals* was being compiled.⁵⁰²

X 1.16.2 addresses whether to repeat burials and other sacramental rites that were performed by clerics loyal to the schismatic archbishop Waldemar of Bremen.⁵⁰³ The 5Comp source (5Comp 1.16.2) had been addressed to the cathedral chapter of Bremen (*capitulum Bremense*), but in the *ER*, the letter is directed to the archbishop of London and his suffragans (*archiepiscope Londonensi et eius suffraganeis*). Since London was not a metropolitan see, the Friedberg and early manuscript variants listing Lund are almost certainly the original reading. It is not entirely out of the question that Raymond deliberately altered the inscription for X 1.16.2, generalizing for an entire ecclesiastical province procedures on how to deal with schismatic sacraments. Even taking into consideration Lund's historic connection with the Bremen/Hamburg see,⁵⁰⁴ one would still expect Raymond to have inscribed the letter to the archbishopric where the schismatic archbishop had been seated.

In the absence of manuscript evidence, the reason and source for the changed inscriptions in these 5Comp texts remains a mystery. The possibility that transposition errors were responsible for some of the changes – whether in the 5Comp source or during

⁵⁰¹ The letter refers to the church in Cambrai (*Cameracensis*), the diocese of Noyon (*Noviomensis*), and twice names Tournai (*Tornacensis*). Only the Cambrai and one of the Tournai references were retained in the letter.

⁵⁰² The French translation identifies the city as Liège, rather than León. Perhaps the translator was attempting to correct the geographical inconsistency, assuming the original was meant to read *Leodien* (Liège) rather than *Legionen* (León).

⁵⁰³ Potthast 5751.

⁵⁰⁴ Lund was separated off from Bremen/Hamburg as its own metropolitan province in the eleventh century.

the *Decretals*' compilation process – cannot be ruled out completely. If transposition did occur, the following charts show the most likely sources for X 1.3.30, X 1.8.7 and X 1.16.2. Each box represents a *Decretals* canon, broken down by inscription and *incipit/explicit*. The direction of transfer is from left to right, showing what parts of which 5Comp texts could have been rearranged to form the new text in the *Decretals*.

Table 3.8. Potential sources for X 1.3.30 inscription

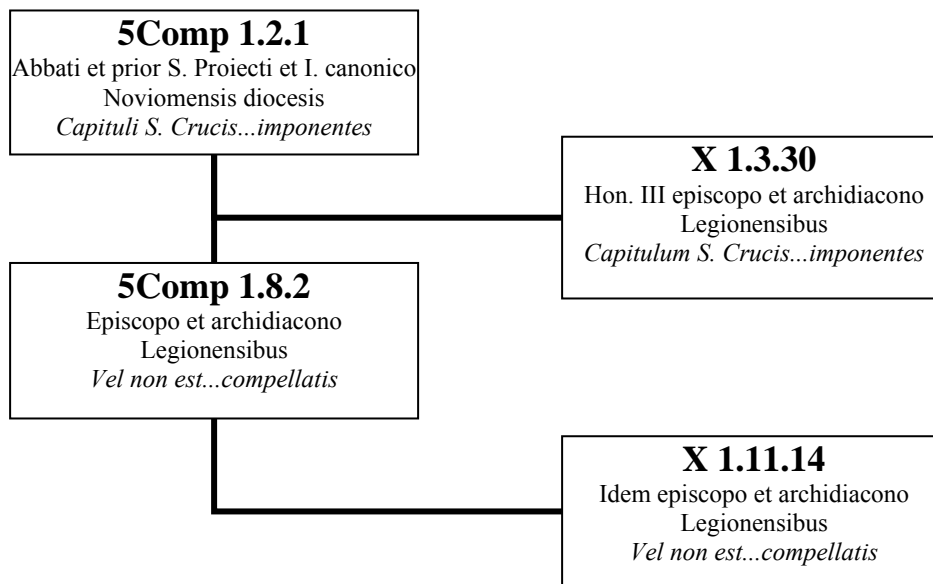
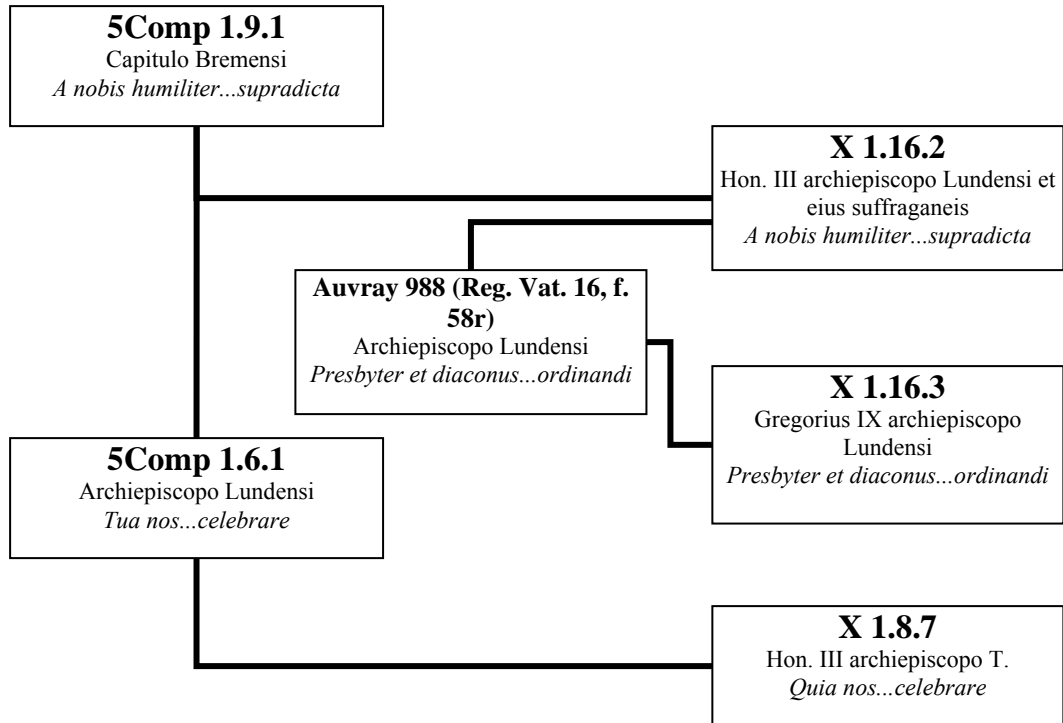


Table 3.9. Potential sources for X 1.16.2 and X 1.8.7 inscriptions

The incorrect inscription for X 1.3.30 (5Comp 1.2.1) to the bishop and archdeacon of León matches the (correct) inscription for 5Comp 1.8.2. Raymond had transposed 5Comp 1.8.2 from its original formal-source title on the age and character of candidates for ordination (*De aetate et qualitate et ordine praeficiendorum*) to X 1.11.14, under the new title on the times to perform ordination (*De temporibus ordinationum et qualitate ordinandorum*). It was revealed in an earlier discussion that the position of X 1.11.14 in its title was anomalous, wedged between two Innocent III decretals, rather than following in orderly succession after all of the 3-4Comp texts had been given.⁵⁰⁵ This caused the false attribution of the Innocent decretal at X 1.11.15, whose "*Idem*" inscription linked it to the preceding Honorius III text. This apparent misplacement of X

1.11.14 suggests an as-yet unidentified link with the completely erroneous inscription for X 1.3.30. X 1.11.14 retained the original inscription to the Leonese officials from its 5Comp 1.8.2 source, thus giving the identical inscription to two texts (X 1.11.14 and X 1.3.30) drawn from within relative proximity to one another in 5Comp.

Transposition is also a candidate for having caused the changed inscriptions of X 1.8.7 (5Comp 1.6.1) and X 1.16.2 (5Comp 1.9.1), which were originally only separated by five capitula in 5Comp.⁵⁰⁶ For X 1.16.2 there could be multiple sources for the change in the inscription to the archbishop of Lund. The very next canon in the title, X 1.16.3, is a Gregory IX register extract originally sent to the archbishop of Lund. Even though by the time of the *ER*, the inscription for Gregory's text had mutated into the archbishop of London (as it had for X 1.16.2), the evidence from Friedberg's and early manuscripts shows that Lund was the earliest inscription for X 1.16.3.⁵⁰⁷

The narrow range and uncertain genesis of the changes to the inscriptions drawn from 5Comp mean that the investigation of this formal source likely has limited value in helping determine the early shape of the *Decretals*. It is precisely this limitation, however, which will make it the easiest component among Raymond's sources to vet thoroughly. The remaining 5Comp manuscripts should, therefore, be collated in the future to see if they are responsible for the alterations.⁵⁰⁸

⁵⁰⁵ See above, pp. 48ff.

⁵⁰⁶ 5Comp 1.7.1-3 and 1.8.1-2, all of which were taken up in the *Decretals*.

⁵⁰⁷ X 1.16.3 is inscribed "Gregorius IX archiepiscopo Lundensi," in Friedberg's *F*, *G* and *K*, as well as both early manuscripts. As with many other inscriptions that could be skewed toward a French see (including X 1.16.2), the French translation directs X 1.16.3 instead to the archbishop of Lyons.

⁵⁰⁸ Out of all the *5C*, completing the collation of 5Comp should be the easiest. Between Friedberg and the appendix, these inscriptions have now been collated in seven out of the nineteen extant 5Comp manuscripts.

3.10 Conclusion

The preceding examination has demonstrated that Raymond employed a consistent set of methods to achieve a chronological reordering of the material taken from the *5C* over into the *Decretals*. Apparent organizational inconsistencies in the *ER* have been shown, in the overwhelming majority of cases, to have resulted either from Raymond's having merely copied his source, or from a subsequent transmission error in the *Decretals*. Following the source trail has led to the discovery that Raymond utilized a version of 3Comp sharing characteristics with the so-called French recension. On the other side, mapping the transmission errors has produced a discrete set of variants that can be employed for following the evolution of the collection, particularly in its earliest stages.

Going forward, there are three areas in which this research can be applied immediately to evaluating early *Decretals* manuscripts and the particular form of Raymond's sources:

- 1) Variation in positioning of X 3.3.8, *Cum decorem*, and X 1.11.14, *Vel non est*.
- 2) Variant inscriptions characteristic of early *Decretals* for: X 2.7.1-2, X 2.24.1, X 2.27.8, X 3.19, X 3.21.2, X 3.28.3, X 3.32.11, X 3.37.1, X 3.43.2-3, X 4.1.2, X 4.1.4, X 4.18.3, X 5.15.1.⁵⁰⁹
- 3) Version of 3Comp used by Raymond with fuller text of X 3.30.25 (3Comp 2.2.1), *Tua*, and variant inscriptions in: X 1.3.18 (3Comp 1.2.8), X 1.22.3 (3Comp 1.16.2), X 1.38.4 (3Comp 1.22.1), X 3.39.22 (3Comp 3.37.7), X 4.13.8 (3Comp 4.9.3), X 4.13.10 (3Comp 4.10.3), X 5.12.15 (3Comp 5.7.3), X 5.33.16 (3Comp 5.16.6).
- 4) Version of 1-2Comp with variant inscriptions for: X 1.11.6 (1Comp 1.4.9).

⁵⁰⁹ These correspond to all capitula listed in red in sections A and B of the appendix.

The first and most straightforward line of pursuit is to check *Decretals* manuscripts for the rearrangement of capitula within the titles, as shown definitively in the case of X 3.3.8, *Cum decorem*, and at least potentially with X 1.11.14, *Vel non est*. Whether or not such a search turns up anything for X 1.11.14, variation in the position of *Cum decorem* is clearly an established feature of the early history of the text, and as such can be used to identify separate lines of transmission.

Secondly, the collation of divergent inscriptions has identified a core group whose form and/or attribution changed early on in the copying process. The collation of this group of inscriptions should be extended to other early *Decretals* manuscripts, in order to determine if there are discernible smaller groupings or subsets that can be tied to a particular branch of the collection's evolution.

Finally, there is the question of which versions of 3Comp served as Raymond's source. Following the untidy seams in the organization of the *Decretals* led to the discovery that X 3.30.25, *Tua* (3Comp 2.1.1) preserved a fuller form of the text than was normally carried by the main, Bolognese tradition of 3Comp. Rather, the text of *Tua* in the *Decretals* was the same as that contained in manuscripts of the French recension of 3Comp. On top of this, there are multiple capitula in the *Decretals* that match the original inscriptions from Innocent III's register, instead of those from the Bolognese tradition of 3Comp. Starting with Heinrich Singer, these divergences were explained by suggesting that Raymond controlled certain material with the *Compilatio Romana*. It was demonstrated above, however, that a full accounting of the divergences encompassed texts not included in the *Compilatio Romana*. Rather, attention should turn to the French

recension of 3Comp manuscripts, of which several (though not all) have a precedent for Raymond's departure from the prevalent reading.⁵¹⁰

More research is, therefore, needed into other manuscripts of the French recension to see if any of them line up more closely with the anomalies detected in Raymond's source for the Innocent III material. As Pennigton pointed out in his seminal study of the French recension, this class of manuscripts is distinguished not by a single, rigid form of the text of 3Comp, but rather by a spectrum of varying attempts to blend in the *Compilatio Romana*. If Raymond did rely on a version of the French recension, this would mean that its character needs to be redefined to account for those anomalies that derive not from the *Compilatio Romana*, but from some other conduit for Innocent III's decretals.

The collation also revealed that out of all the manuscripts examined, it was one with the French recension of 3Comp (BnF NAL 2127) that contained precedent for a majority of the divergent inscriptions from 1-2Comp. This suggests that Raymond utilized a rather limited source base for his texts, employing perhaps even a single manuscript to derive his 5C material, rather than a variety of exemplars to arrive at the best reading. No final determination of the source issue is possible, however, until more examples of the French recension are studied in order to see if they provide more precise witness to the divergent inscriptions in the *Decretals*.

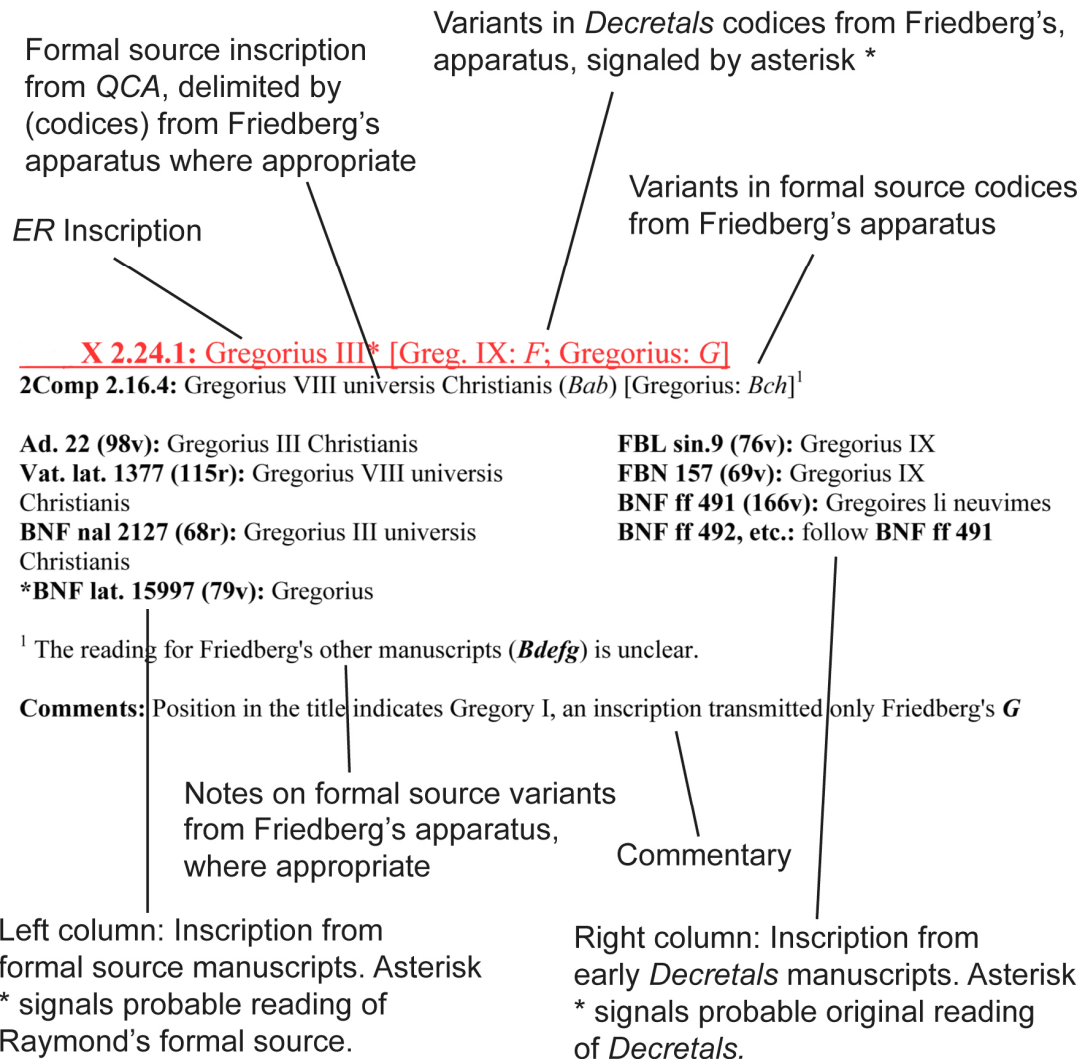
⁵¹⁰ The complicating factors here are: 1) in two cases the divergences between the inscriptions in the *Decretals* and 3Comp have nothing to do with the register 4.13.10 (3Comp 4.10.3), X 5.12.15 (3Comp 5.7.3), and 2) there are also two 4Comp-derived texts where the *Decretals* does not match the inscriptions carried by known copies of that formal source: X 2.25.6 (4Comp 2.5.1), X 2.27.23 (4Comp 2.11.1). The first of these inscriptions, X 2.25.6, matches the reading from Innocent III's register, while the second, X 2.27.23, is without precedent in known copies of 4Comp or the register.

Chapter 3 Appendix: Discordant inscriptions between the *Decretals* and the *Quinque Compilationes Antiquae*

This appendix is divided into four sections according to the formal source of the text in the *Decretals*:

App. A = 1Comp
App. B = 2Comp
App. CD = 3-4Comp
App. E = 5Comp.

Within each section, capitula are organized according to their order of appearance in the *Decretals*. For sections App. A. and B (1-2Comp), the entries are color coded: **Blue** signals those inscriptions where the discrepancy likely derives from a variant in the formal source, and **Red** signals when it derives from a transmission error or scribal addition in the *Decretals*. Below is a sample entry explained with a key:



Appendix A: Compilatio prima

X 1.6.6: Idem (Alex. III) in concilio Lateranensi [in conc. Lat.: *deest FGHI*]

1Comp 1.4.15: Idem in concilio Lateranensi

Reg.: Lat. III (1179), c. 1; Tanner, I, p. 211

Ad. 22 (2v): Idem in concilio Lateranensi

Vat. lat. 1377 (3r): Idem in concilio Lateranensi

BnF NAL 2127 (2v): Ex concilio Lateranensi

BnF lat. 15997: *cap. deest*

FBN 157 (na): na

FBL sin.9 (11r): Idem [Alex III]

BnF fr. 491 (17v): Cil meismes

BnF fr. 492, etc.: follow **BnF fr. 491**

Comments: Absence in the early manuscripts of the full Lateran council inscription suggests that the formal source inscription was added back later in the tradition.

X 1.6.7: Idem (Alex. III) in eodem* [in eodem: *deest FHIK*]

1Comp 1.4.16: Idem

Reg.: Lat. III (1179), c. 3; Tanner, I, p. 212

Ad. 22 (3r): Idem

Vat. lat. 1377 (3r): Idem

BnF NAL 2127 (2v): Idem

BnF lat. 15997: *cap. deest*

FBN 157 (na): na

FBL sin.9 (11v): Idem

BnF fr. 491 (18r): Cil meismes

BnF fr. 492, etc.: follow **BnF fr. 491**

Comments: Absence in the early manuscripts of the Lateran council inscription suggests that the formal source inscription was added back later in the tradition.

X 1.11.6: Idem (Lucius III)

1Comp 1.4.9: Annitius papa

Reg.: Cap. Pseudo-Annitius, Hinschius, I, p.120

Ad. 22 (3r): Annicius pp.

Vat. lat. 1377 (3v): Annitius episcopus

***BnF NAL 2127 (2r):** Lucius papa

BnF lat. 15997: *cap. deest*

FBN 157 (22r): Idem [Lucius III]

FBL sin.9 (26v): Idem [Lucius III]

BnF fr. 491 (40r): Cil meismes [Lucius III]

BnF fr. 492, etc.: follow **BnF fr. 491**

Comments: Position in the title indicates Lucius III, an inscription with precedent in **BnF NAL 2127**.

X 2.7.1: Honorius II* [III: *FGHIKM*; *add.:* omnibus episcopis orientalibus: *K*]

1Comp 1.35.2: Honorius II episcopus urbis Romae omnibus episcopis occidentalibus¹

Reg.: JL 7401

Ad. 22 (15v): Honorius episcopus urbis Rome omnibus episcopis occidentalibus

Vat. lat. 1377 (19v): Honorius episcopus urbis Rome omnibus ecclesiis occidentalibus

BnF NAL 2127 (11v): Honorius urbis rome episcopus omnibus episcopis occidentalibus

BnF lat. 15997 (5r): Honorius episcopus omnibus episcopis

FBN 157 (48v): Honorius III

FBL sin.9 (55v): Honorius III

***BnF fr. 491 (85r):** Honores li secons

***BnF fr. 492 (110 r):** Honiores li segonz

BnF fr. 493 (73v): Honiores li tierz

***Ars. 5215 (101v):** Honiores li secons

¹ In the *QCA*, the reading is "...orientalibus," whereas Friedberg had originally given the more likely "occidentalibus" in the *Decretals* apparatus.

Comments: Position in title indicates Honorius II, transmitted by three out of four manuscripts of the **French translation**. The preservation of the fuller inscription in Friedberg's *K*, and in **BnF lat. 3938, fol. 53v** points either to a later addition, or a separate stream of transmission.

X 2.7.2: Idem Ordinatore Romanæ ecclesie subdiacono et magistro Omnibono

1Comp 1.35.3: Item Eugenius Papa Ardicioni Romanæ ecclesie subdiacono et magistro Omnibono
Reg.: JL 9654; *Ital. Pont.* V, 251, no.25 = VII/1, 181, no.6; KE 67

Ad. 22 (16r): Item Eug. papa III Ardicioni Rom. ecc. Subd. et mag. Omnibono
Vat. lat. 1377 (20r): Item Eug. papa III Ardicioni et mag. Omnibono et Rom. ecc. subd.
BnF NAL 2127 (12r): Item Eug. papa III arch. divio Ro. e. su.
BnF lat. 15997 (5r): Idem Eugenius papa card. romanæ ecclesie subdiacono magistro omnibonos

FBN 157 (49r): Idem [Hon. III] ordini Romana ecclesie subdiacono et magistro Omnibono
***FBL sin.9 (55v):** Idem [Hon. III] Eug. papa Ordini Romane ecclesie et magistro Omnibono
BnF fr. 491 (85r): Cil meismes [Hon. II]
BnF fr. 492 (110r): Cil meismes [Hon. II] a Hardoin sozdiacre de Rome de la mere yglise et a mestre Totbuen
BnF fr. 493, etc.: follow **BnF fr. 492**

Comments: Position in title is inconclusive, depending on reading of X 2.71 (App. A.2). **FBL sin.9** is the only manuscript to preserve the fuller inscription with the "Eug. papa" following the "Idem."

X 2.7.3: Eugenius papa

1Comp 1.35.4: Eugenius servus Dei [Augustinus servus Dei: *Acel*; Eugenius servus Dei: *Aabk*]
Reg.: JL 9506; *Ital. Pont.* III, 33, no.1; KE 27

Ad. 22 (16r): Aug. servus Dei
Vat. lat. 1377 (20r): Aug. servus dei
***BnF NAL 2127 (12r):** Eugenius servus Dei
BnF lat. 15997 (5r): Aug.

FBN 157 (49r): Eug. papa
FBL sin.9 (56r): Eug. papa
BnF fr. 491 (85v): Eugenes li apostoiles
BnF fr. 492, etc.: follow **BnF fr. 491**

Comments: Position in title indicates Eugenius, an inscription with precedent in **BnF NAL 2127** and Friedberg's *Aabk*.

X 2.19.3: Lucius III Cistrensi* episcopo [Cistrensi: *deest FGHIK*]

1Comp 2.12.2: Lucius III Cistrensi episcopo (Eliensi episcopo: *Aacl*)
Reg.: JL 13845 (Alex. III)

Ad. 22 (20v): Lucius III Cistrensi episcopo
Vat. lat. 1377 (23r): Lucius III Ostren. episcopo
BnF NAL 2127 (15r): Lucius III Cistrensi episcopo
BnF lat. 15997 (9v): Lucius III Eliensi episcopo

FBL sin.9 (67v): Lucius III
FBN 157 (na): na
BnF fr. 491 (99r): *insc. deest*
BnF fr. 492 (126v): Lucius III
BnF fr. 493, etc.: follow **BnF fr. 492**

Comments: Absence in the early manuscripts of the full inscription to the bishop of Chichester suggests that the formal source inscription was added back later in the tradition.

X 2.27.8: Idem (Alex. III) T. et Clericis S. Anastasiae Veronensis [insc. deest: FGHIK]**1Comp 2.19.10:** Idem Teobaldo eccl. S. Anastasiae (*Aabcd*)¹**Reg.:** JL 12175; *Ital. Pont.* VII/1, 252, no.3; KE 138**Ad. 22 (26r):** Idem [Alex. III] Theobaldo ecclesie Sancti Anastasiae**Vat. lat. 1377 (31v):** Alexander III Theobaldo ecclesie Sancti Anastasiae**BnF NAL 2127 (19r):** Alexander III T. Sancte Anastasiae**BnF lat. 15997 (15v):** Alexander III Teballo ecclesie Sancte Anastasiae**FBN 157 (77v):** Idem [Alex. III]**FBL sin.9 (84v):** Idem [Alex. III]**FF491 (128v):** Cil meismes [Alex. III]**BnF fr. 492, etc.:** follow **BnF fr. 491**

¹ It is unclear whether Friedberg's other 1Comp manuscripts (*Adefghik*) have another reading, or lack an inscription altogether.

Comments: Inscription absent from all early manuscripts and Friedberg codices except for *LMN*. This points to either a later addition or a separate line of transmission.

X 3.1.9: Gregorius VII* [IX: FGH]**1Comp 3.1.10:** Gregorius VIII**Reg.:** JL 16074; *Ital. Pont.* VI/1, 14, no.68; KE 82**Ad. 22 (31r):** Idem [Greg. VIII]**Vat. lat. 1377 (39r):** Idem [Greg. VIII]**BnF NAL 2127 (23r):** Idem [Greg. VIII]**BnF lat. 15997 (21r):** Idem [Greg. III]***FBN 157 (88v):** Gregorius VIII**FBL sin.9 (96(bis)r):** Gregorius III**BnF fr. 491 (144r):** insc. deest [*in marg.*: Ci faut li nons a l'apostoile]**BnF fr. 492, etc.:** follow **BnF fr. 491** [without marg. note]

Comments: Position in title indicates Gregory VIII, an inscription preserved only in **FBN 157**.

X 3.21.2: Gregorius III Exonensi Episcopo* [Greg. III Sanctio Defensori: FGHIK]**1Comp 3.17.2:** Gregorius Sanctio defensori**Reg.:** JL 1315; *Ital. Pont.* X, 215, no.2**Ad. 22 (38v):** Gregorius Sanctio defensori**Vat. lat. 1377 (46r):** Gregorius Sanctio defensori**BnF NAL 2127 (27r):** Gregorius Sanct. defen.**BnF lat. 15997 (27r):** Gregorius Sacrato defensori**FBN 157 (102v):** Gregorius IX Sanctio defensori***FBL sin.9 (110v):** Gregorius Scancio defensori***BnF fr. 491 (165v):** Gregoires a Sanctio

desfendeour

***BnF fr. 492, etc.:** follow **BnF fr. 491**

Comments: Position in title is inconclusive (could be either Gregory or Gregory III). **FBL sin.9** and all manuscripts of the **French translation** match the unanimous 1Comp reading of Gregory.

X 3.25.1: Ex concilio Arelatensi**1Comp 3.21.1:** Ex concilio Laterani**Cap. Hincmari Rem., c. 18; Reg. I.222****Ad. 22 (39v):** Ex concilio Lat.**Vat. lat. 1377 (47r):** Ex concilio Lata.***BnF NAL 2127 (28r):** Ex concilio Arelaten.**BnF lat. 15997 (27v):** Ex concilio Latern.**FBN (105r):** Ex concilio Arelaten.**FBL sin.9 (113r):** Ex concilio Alaraten.**BnF fr. 491 (169r):** Del concile Arelaten.**BnF fr. 492, etc.:** Follow **BnF fr. 491**

Comments: The inscription to the Council of Arles has a precedent in **BnF NAL 2127**.

X 3.28.3: Innocentius III Genuensi* archiepiscopo [Ianuensi: *GHIKLN*]

1Comp 3.24.5: Innocentius II Ianuensi episcopo (*Aabkl*)¹

Reg.: JL 8275; *Ital. Pont.* VI/2, 267, no.7; KE 113

Ad. 22 (41v): Ex registro Innocentii pape II Ianuensi archiepiscopo

Vat Lat. 1377 (48v): Innocentius II Ianuensi episcopo

BnF NAL 2127 (29r): Ex registro Innocentii pape et Amien. arch.

BnF 15997 (29v): Innocentius II Ianuensi arch.

FBN 157 (108v): Innocentius III Ianuensi archiepiscopo

FBL sin.9 (116r): Innocentius III Ian. archiepiscopo

BnF fr. 491 (174r): Innocens li tiers a l'archevesque de Ianuen.

BnF fr. 492, etc.: follow **BnF fr. 491**

¹ It is unclear what the reading was for Friedberg's other manuscripts (*Acdefghik*), whether "Innocentius III...", or a register citation "Ex registro Innocentius...", or perhaps a substitution of "archiepiscopo" for "episcopo."

Comments: Position in title indicates Innocent II, but no early manuscript preserves this reading. According to Agustin, one of his older *Decretals* manuscripts had the inscription "Ex registro Innoc.", matching **Ad. 22** and **BnF NAL 2127**. Agustin's variant seems to be an anomaly.

X 3.37.1: Urbanus III

1Comp 3.32.1: Urbanus II in concilio Claromontensi Somerville, *Decr. Clarem.*, p. 72, no. 3

Ad. 22 (48r): Urbanus III in concilio Clarom.

Vat. lat. 1377 (56v): Urbanus II in conc. Claromaten.

BnF NAL 2127 (33v): Urbanus III in Concilio Claromonte

BnF lat. 15997 (35v): Urbanus II in concilio Clarem.

FBN 157 (121r): Urbanus III

FBL sin.9 (129r): Urbanus III

BnF fr. 491 (193v): Urbains li secons

BnF fr. 492, etc.: follow **BnF fr. 491**

Comments: Position in title is inconclusive, and reading in both the *Decretals* and its formal source is uncertain.

X 3.43.2: Innocentius III* Cremonensi episcopo [II: *LN*]

1Comp 5.35.2: Innocentius III Cremonensi episcopo

Reg.: JL 8272; *Ital. Pont.* VI/1, 262, no.11; KE 101

Ad. 22 (84v): Innocentius episcopus Cremon. episcopo

BnF NAL 2127 (56v): Innocentius III

Vat. lat. 1377 (97r): Innocentius III Cremonensi episcopo

BnF lat. 15997 (66r): Innocentius III

FBN 157 (129v): Innocentius III episcopo Cremonensi

FBL sin.9 (134r): Innocentius III episcopo Cremon.

BnF fr. 491 (207v): Innocens li tiers a l'evesque de Cremonne

BnF fr. 492, etc.: follow **BnF fr. 491**

Comments: Form of inscription for X 3.43.3 (App. A.11a) indicates Innocent II for this inscription, a reading transmitted by Friedberg's *LN*. With the exception of **Ad. 22**, all 1Comp manuscripts attribute the text to Innocent III.

X 3.43.3: Idem (Inn. 3) Ferrariensi episcopo**3Comp 5.22.1:** Idem [Inn. 3] Ferrariensi episcopo**Reg.:** Potthast 2749; Reg. IX.54***FBN 157 (129v):** Innocentius III Ferrari. episcopo***FBL sin.9 (134v):** Innocentius III Ferrarien. episcopo***BnF fr. 491 (207v):** Innocens li tiers a levesque de Ferr.***BnF fr. 492, etc.:** follow **BnF fr. 491****Comments:** This full rendering of the papal name in this inscription indicates Innocent II reading for X 3.43.2 (App. A.11).**X 4.1.2: Innocentius III* Exonensi episcopo [II: LbN]****1Comp 4.1.11:** Idem [Inn. II] Exonensi episcopo**Reg.:** JL 13903**Ad. 22 (55r):** Idem [Inn. II] Exon. episcopo**Vat. lat. 1377 (64v):** Idem [Inn. III] Exem. episcopo**BnF NAL 2127 (38r):** Idem [Inn. III] Exon. episcopo**BnF lat. 15997 (41r):** Idem [Inn. III] Exon. episcopo***FBN 157 (133r):** Innocentius Exonensi episcopo**FBL sin.9 (140r):** Innocentius III Exon. episcopo**BnF fr. 491 (212r):** Innocens li tiers a l'evesque de Exon.***BnF fr. 492 (276r):** Innocens lis segonz a l'evesque de Exon.***BnF fr. 493 (181v):** Innocenz li segonz a l'evesque Ron.***Ars. 5215 (244r):** Innocens li secons a l'evesque de Exon.**Comments:** Position in title indicates Innocent II, an inscription preserved in three out of four manuscripts of the **French translation**.**X 4.1.4: Alexander III Papiensi episcopo****1Comp 4.1.1:** Alexander III* [Alex. III I. Papiensi electo: Ak]**Reg.:** JL 13137; *Ital. Pont.* VI/1, 183, no.48; KE 95**Ad. 22 (54r):** Alexander III I. Papiensi electo**Vat. lat. 1377 (63r):** *Insc. deest***BnF NAL 2127 (37r):** *Insc. deest***BnF lat. 15997 (40r):** Alexander III L. Papiensi electo***FBN 157 (133r):** Alexander III Papiensi electo**FBL sin.9 (140r):** Alexander III Papiensi episcopo***BnF fr. 491 (212v):** Alexandres li tiers a l'eslit de Pavie***BnF fr. 492, etc.:** follow **BnF fr. 491****Comments:** Original form of the inscription was to the bishop-elect of Pavia, preserved in **FBN 157** and all manuscripts of the **French translation**.**X 4.4.2: Ex Brocardo libro XXX****1Comp 4.4.2:** Ex Brocardo libro XIX**Orig.:** *cap. incertum***Burch.** XIX.5**Ad. 22 (58v):** Ex Brocard. l. xviii***Vat. lat. 1377 (69v):** Ex Brocardo l. xxx**BnF NAL 2127 (40r):** Ex Brocardi libro**BnF lat. 15997 (44v):** Ex Broc. li. xiiii**FBN 157 (136r):** Ex Burcardo libro xxx**FBL sin.9 (144r):** Ex Brocardo libro xxx**BnF fr. 491 (219r):** De Brocart el trentime livre**BnF fr. 492, etc.:** follow **BnF fr. 491****Comments:** Inscription to Burchard's thirtieth book has precedent only in **Vat. lat. 1377**.

X 4.18.3: Clemens III papa Florentino episcopo* [*Celestinus III Flor. ep.: FGHI*]**1Comp 4.17.1** Celestinus papa Florentino ecclesiae**Reg.:** JK †384; *Ital. Pont.* III, 10, no. 15; KE 22**Ad. 22 (63v):** Celestinus papa Florentine ecclesie**Vat. lat. 1377 (74v):** Celestinus papa Florentine ecclesie**BnF NAL 2127 (43r):** Celestinus papa**BnF lat. 15997 (48v):** Celestinus papa**FBN 157 (143r):** Celestinus III Flo. episcopo***FBL sin.9 (153v):** Celestinus papa Florent. episcopo**BnF fr. 491 (231v):** Celestins li tiers a l'evesque de Florence**BnF fr. 492, etc.:** follow **BnF fr. 491****Comments:** Position in title indicates Celestine. Original 1Comp inscription is preserved only in **FBL sin.9**.**X 5.15.1: Innocentius III****1Comp 5.19.1:** Innocentius II (*Aakl*)**Orig.:** Conc. Later. II (1139), c. 29**Ed.:** Tanner I, p. 203**Ad. 22 (79v):** Innocentius II**Vat. lat. 1377 (91r):** Innocentius II**BnF NAL 2127 (53r):** Innocentius III**BnF lat. 15997 (61r):** Innocentius III**FBN 157 (158r):** Innocentius II**FBL sin.9 (172v):** Innocentius III**BnF fr. 491 (259r):** Innocens li tiers**BnF fr. 492, etc.:** follow **BnF fr. 491****Comments:** Position in title is inconclusive, and the reading in both the *Decretals* and its formal source is uncertain.**X 5.23.1: Gregorius****1Comp 5.20.1:** Augustinus* (*Abcl*)¹ [*Eugenius: Ak*]**Orig.:** *Cap. incertum***Ad. 22 (79v):** Augustinus**Vat. lat. 1377 (91r):** Augustinus**BnF NAL 2127 (53r):** *insc. deest***BnF lat. 15997 (61r):** Augustinus**FBN 157 (161r):** Gregorius**FBL sin.9 (176r):** Gregorius**BnF fr. 491 (264r):** Gregories**BnF fr. 492, etc.:** follow **FF491**¹ It is unclear what the reading is for Friedberg's remaining manuscripts (*Aadefghi*).**Comments:** Position in title is inconclusive, and the *Decretals* inscription has no precedent in available 1Comp manuscripts.

Appendix B: Compilatio secunda

X 1.10.1: Alexander III Cisterciensibus

2Comp 1.6.1: Alexander III

Reg.: JL 11632

Ad. 22 (88r): Alexander III

Vat. lat. 1377 (103v): Alexander III

BnF NAL 2127 (59v): Alexander III

BnF lat. 15997 (71r): Alexander III

FBN 157 (na): Alexander III Cisterciensibus

FBL sin.9 (25v): Alexander III Cist.

BnF fr. 491 (39v): Alexandres li tiers a freres de Cistials

BnF fr. 492, etc.: follow **BnF fr. 491**

Comments: There is no precedent in available 2Comp manuscripts for the inscription in the *Decretals*.

X 2.1.9 : Clemens III

2Comp 2.1.2: Alexander III abbati de Evesham (*Aacdefgi*) [Idem (Alex. 3): *Bb*]

Reg.: JL 13166

Ad. 22 (93v): Alexander III abbati de Evesham

Vat. lat. 1377 (109r): Alexander III abbati de Evesham

***BnF NAL 2127 (63v):** Idem [Alex. III]

***BnF lat. 15997 (75r):** Idem [Alex. III]

FBN 157 (44r): Clemens III

FBL sin.9 (51v): Clemens III

BnF fr. 491 (78v): Clemens li tiers

BnF fr. 492, etc.: follow **BnF fr. 491**

Comments: Position in title indicates Clement III. While there is no firm precedent in available 2Comp manuscripts, the "Idem" in both **BnF NAL 2127** and **BnF lat. 15997** would normally depend on the Clement III inscription for 2Comp 2.1.1, which in these manuscripts, however, happens to be missing.

X 2.24.1: Gregorius III* [Greg. IX: *F*; Gregorius: *G*]

2Comp 2.16.4: Gregorius VIII univrsis Christianis (*Bab*) [Gregorius: *Bch*]¹

Reg.: JL 16078

Ad. 22 (98v): Gregorius III Christianis

Vat. lat. 1377 (115r): Gregorius VIII univrsis Christianis

BnF NAL 2127 (68r): Gregorius III univrsis Christianis

***BnF lat. 15997 (79v):** Gregorius

FBN 157 (69v): Gregorius IX

FBL sin.9 (76v): Gregorius IX

BnF fr. 491 (166v): Gregoires li neuvimes

BnF fr. 492, etc.: follow **BnF fr. 491**

¹ The reading for Friedberg's other manuscripts (*Bdefg*) is unclear.

Comments: Position in the title indicates Gregory I, an inscription transmitted only in Friedberg's *G*.

X 3.30.21: Clemens III

2Comp 3.17.5: Celestine III

Reg.: JL 17051

Ad. 22 (108v): Celes. III

***Vat Lat. 1377 (125r):** Clemens III

BnF NAL 2127 (74v): Idem [Celest. III]

BnF lat. 15997 (87r): *Cap. deest*

FBN 157 (111r): Clemens III

FBL sin.9 (118v): Clemens III

BnF fr. 491 (178r): Clemens li tiers

BnF fr. 492, etc.: follow **BnF fr. 491**

Comments: The Clement III inscription has a precedent only in **Vat. Lat. 1377**.

X 3.32.11: Celestinus III* [**Clemens III: GHILbMN**]**2Comp 3.19.3:** Celestinus III**Reg.:** JL 16794**Ad. 22 (110r):** Celestinus III**Vat. lat. 1377 (126v):** Celestinus III**BnF NAL 2127 (76r):** Celestinus III**BnF lat. 15997 (88r):** Celestinus III***FBN 157 (115r):** Celestinus III***FBL sin.9 (123r):** Celestinus iii***BnF fr. 491 (184v):** Celestins li tiers***BnF fr. 492, etc.:** follow **BnF fr. 491**

Comments: Position in title indicates Celestine III, a reading transmitted in all early manuscripts, and Friedberg's *FKLa*.

X 3.41.2: Ex concilio Triburensi**2Comp 5.22.2:** Alexander III ex concilio Triburensi (*Bgi*)¹**Conc. Salegunstad. (1022), c. 10****Ad. 22 (128r):** Alex. III ex concilio Triburien.***BnF NAL 2127 (89r):** Ex concilio Tribu.**Vat. lat. 1377 (145r):** Alexander III**BnF lat. 15997 (100r):** Alexander III**FBL sin.9 (134r):** Ex concilio Trib.**FBN 157 (125v):** Ex concilio Triburen.**BnF fr. 491 (201v):** Del concile de Tribur.**BnF fr. 492, etc.:** follow **BnF fr. 491**

¹ The reading for Friedberg's other 2Comp manuscripts (*Babcdefh*) is unclear, whether "Alexander III," or, in line with the *Decretals*, "Ex concilio Triburensi."

Comments: The inscription in the *Decretals* has a precedent only in **BnF NAL 2127**.

X 4.19.5: Idem (Alex. III)**2Comp 4.3.3:** Clemens III**Reg.:** JL 16645**Ad. 22 (116v):** Clemens III**Vat. lat. 1377 (133r):** Clemens III**BnF NAL 2127 (80v):** Clemens III**BnF lat. 15997 (92r):** Clemens III**FBN 157 (143v):** Idem**FBL sin.9 (154r):** Idem**BnF fr. 491 (232v):** Idem**BnF fr. 492, etc.:** follow **BnF fr. 491**

Comments: Position in the title indicates Alexander III, but no precedent has been found among 2Comp manuscripts.

X 5.10.3: Idem (Lucius III)**2Comp 5.5.1:** Alexander III**Reg.:** JL 14201**Ad. 22 (122v):** Alex. III**Vat. lat. 1377 (139v):** Alex. III**BnF NAL 2127 (85r):** *Insc. deest***BnF lat. 15997 (96r):** Alex. III**FBN 157 (155v):** Idem [Luc. III]**FBL sin.9 (169r):** Gregorius nonus**BnF fr. 491 (254r):** Cil meismes [Luc. III]**BnF fr. 492, etc.:** follow **BnF fr. 491**

Comments: Position in the title indicates Lucius III, but no precedent has been found among 2Comp manuscripts. The Gregory IX inscription in **FBL sin.9** is an erroneous transposition from the next decretal (X 5.11.1).

X 5.30.2: Celestine III**2Comp 5.12.1:** Clemens III (*Bghi*)¹**Reg.:** JL 16603**Ad. 22 (124r):** Clemens III**Vat. lat. 1377 (141r):** Clemens III**BnF NAL 2127 (86r):** Clemens III**BnF lat. 15997 (97r):** Clemens III**FBN 157 (162v):** Celestinus III**FBL sin.9 (178r):** Celestinus III**BnF fr. 491 (267r):** Celestins li tiers**BnF fr. 492, etc.:** follow **BnF fr. 491**

¹ The reading in Friedberg's other manuscripts (*Babcdef*) unclear. If it were Celestine III, then there would be similar variants attributing to this pope the next decretal (2Comp 5.12.2), which carries an "Idem" inscription. No such attribution is made in Friedberg's apparatus, however.

Comments: Position in the title is inconclusive, and there is no precedent for the *Decretals* inscription in available 2Comp manuscripts.

X 5.30.3: Idem (Celestine III)**2Comp 5.12.2:** Idem [Clemens III]**Reg.:** JL 16597**Ad. 22 (124r):** Idem [Clem. 3]**Vat. lat. 1377 (141r):** Idem [Clem. III]**BnF NAL 2127 (86r):** Idem [Clem. III]**BnF lat. 15997 (97r):** Idem [Clem. III]**FBN 157 (162v):** Idem [Celest. III]**FBL sin.9 (178r):** Idem [Celest. III]**BnF fr. 491 (267r):** Cil meismes [Celest. III]**BnF fr. 492, etc.:** follow **BnF fr. 491**

Comments: See comments for preceding decretal, X 5.30.3 (App. B.9).

X 5.39.22: Idem (Clemens III)**2Comp 5.18.11:** Clemens III [Alex. III: *Bh*; Celest. III: *Bi*]**Reg.:** JL 17642; *Ital. Pont.* V, 374, no. 14**Ad. 22 (127r):** Clemens III**Vat. lat. 1377 (144r):** Clemens III**BnF NAL 2127 (88v):** Idem [Clem. III]**BnF lat. 15997 (99v):** Clemens III**FBN 157 (174r):** Idem [Clem. III]**FBL sin.9 (192r):** Idem [Clem. III]**BnF fr. 491 (284v):** Cil meismes [Clem. III]**BnF fr. 492, etc.:** follow **BnF fr. 491**

Comments: Position in title is inconclusive. The original attribution could well be to Clement III, but the discrepancies with the next two decretals could also point to a Celestine III attribution for this text in the *Decretals*.

X 5.39.23: Idem (Clemens III)**2Comp 5.18.12:** Celestinus III (*Babcgi*) [Idem (Alex. 3): *Bh*]**Reg.:** JL 16552**Ad. 22 (127r):** Celestinus III**Vat. lat. 1377 (144r):** Celestinus III**BnF NAL 2127 (88v):** Celestinus III**BnF lat. 15997 (99v):** Celestinus III**FBN 157 (174r):** Idem [Clem. III]**FBL sin.9 (192r):** Idem [Clem. III]**BnF fr. 491 (284v):** Cil meismes [Clem. III]**BnF fr. 492, etc.:** follow **BnF fr. 491**

Comments: As with the previous and next decretals, the position in the title is inconclusive, and the original reading in the *Decretals* is uncertain.

X 5.39.24: Idem (Clemens III)**2Comp 5.18.13:** Celestinus III**Reg.:** JL 17609**Ad. 22 (127r):** Celestinus III**Vat. lat. 1377 (144r):** Celestinus III**BnF NAL 2127 (88v):** Idem [Celest. III]**BnF lat. 15997 (99v):** Celestinus III**FBN 157 (174r):** Idem [Clem. III]**FBL sin.9 (192r):** Idem [Clem. III]**BnF fr. 491 (284v):** Cil meismes [Clem. III]**BnF fr. 492. etc.:** follow **BnF fr. 491**

Comments: As with the two previous decretals, the position in the title is inconclusive, and the original reading in the *Decretals* is uncertain.

Appendix CD: Compilationes tertia and quarta

X 1.2.9: Idem Clugiensi* Episcopo [Lugiensi: *F*; Augiensi: *I*; Dugiensi: *K*; Clut'n: *M*; Elugiensi: *N*]

3Comp 1.1.5: Idem Elugiensi Episcopo (*Cdefg*) [Elugiensi: *Cab*; Flugiensi: *Ch*]

Bern. 1.4.12: Dugiensi episcopo

Register Hag. I.98: Clugiensi episcopo

Potthast 88

Ad. 22 (129v): Idem Elugiensi Ep.

Vat. lat. 1377 (148r): Idem Eulug. episcopo

BnF NAL 2127 (90v): Idem Elugien.

archiepiscopo

BnF lat. 3933 (2v): Idem Elugiensi archiepiscopo

BnF lat. 15997 (101v): Idem Elugiensi episcopo

FBN 157 (na): Idem episcopo Elugiensi

FBL sin.9 (2v): Idem episcopo Elugiensi

BnF fr. 491 (fol. 4r): Cil meismes

BnF fr. 492, etc.: follow **BnF fr. 491**

Comments: The small degree of difference between register and 3Comp inscriptions makes it impossible to discount scribal error as a determining factor. Although the *ER* inscription agrees with the register, the early manuscripts follow the predominant reading in 3Comp.

X 1.3.18: Idem electo, decano, et N. canonico Cameracensi

3Comp 1.2.8: Idem abbati de Alcobratia F. et P monachis Alcobratiae¹

Bern. 1.4.13: Idem Decano, electo et N. canonico Cameracens.

Register Hag. I.62: Electo, decano et magistro Nicholao de Levennes canonico, Cameracensibus

Potthast 59

***Ad. 22 (131r):** Idem electo et decano N. canonico Cameracensi

Vat. lat. 1377 (149v): Idem abbati de Acob. F. et P. monachis Acobatie

***BnF NAL 2127 (91v):** Idem S. electo, decano et M. canonico Cameracen.

***BnF lat. 3933 (3r):** Idem S. electo decano et R. canonico

BnF lat. 15997 (102v): Idem abbati et P. monachis Alcobr.

FBN 157 (na): Idem electo, decano, et N. canonico Cameracensi

FBL sin.9 (5r): Idem electo, decano, et N. canonico Cameracensi

BnF fr. 491 (8v): Cil meismes a l'eslit et au doien et a N. chanoinie de Cambrai

BnF fr. 492, etc.: follow **BnF fr. 491**

¹ This is the inscription for Bern 1.4.11, a text which Petrus Beneventanus subsequently transposed to 3Comp 5.23.6. When constructing 3Comp from the base of the *Compilatio Romana*, Petrus must have accidentally applied the inscription from Bern. 1.4.11 to 3Comp 1.2.8 (Bern. 1.4.13).

Comments: The *Decretals* inscription matches the register and the *Compilatio Romana*, and has a precedent in **Ad. 22**, **BnF NAL 2127**, and **BnF lat. 3933** manuscripts of 3Comp.

X 1.22.3: Idem Patriarchae Hierosolymitano**3Comp 1.16.2:** Idem**Bern.: 1.18.2:** Idem**Register Hag. IX.252:** Eidem [Ierosolimitano patriarche, apostolice sedis legato: **Reg. IX.251**] Potthast 2994**Ad. 22 (155r):** Idem**Vat. lat. 1377 (176v):** Idem**BnF NAL 2127 (108r):** Idem**BnF lat. 3933 (25v):** Idem**BnF lat. 15997 (120r):** Idem**FBN 157 (na):** Idem Patriarche Ierusalem.**FBL sin.9 (33r):** Idem Patriarche Ierusalem.**BnF fr. 491 (50v):** Cil meismes au patriace [patriarche: **BnF fr. 492 (59v)**] de Ierl'm.**BnF fr. 493, etc.:** follow **BnF fr. 492****Comments:** Inscription matches the register, but has no precedent among available 3Comp manuscripts.**X 1.38.4: Innocentius III Cabilonensi et Catalanensi Episcopis****3Comp 1.22.1:** Idem**Bern. 1.27.1:** Idem**Register Hag. IX.257:** Cabilonensi et Cathalaunensi episcopis et priori Clarevallensi Potthast 2995**Ad. 22 (161v):** Idem**Vat. lat. 1377 (183v):** Idem**BnF NAL 2127 (112v):** Idem**BnF lat. 3933 (32r):** Idem**BnF lat. 15997 (124v):** Idem**FBN 157 (na):** Innocentius III Cabulon. et Cathalon. episcopis**FBL sin.9 (46r):** Innocentius III Cabilien. et Cathalan. episcopis**BnF fr. 491 (70v):** Innocens li tiers a l'evesque de Cabellon. et a celui de Chaalons**BnF fr. 492, etc.:** follow **BnF fr. 491****Comments:** Inscription matches the register, but has no precedent among available 3Comp manuscripts.**X 2.25.6: Idem monachis Farsensibus* [*insc. deest. GH; Inn. III archidiac. Chamundiae: F; archidiac. Richemundiae: M; monach. Fuensibus: I; mon. Frasen.: K*]¹****4Comp 2.5.1:** Idem**Bern.: cap. deest****Register Baluz. XII.92:** Abbati et monachis Farfensibus Potthast 3791**Ad. 22 (254r):** Idem**Vat. lat. 1377 (292r):** Idem**BnF NAL 2127 (188v):** Idem**BnF lat. 3933 (87v):** Idem**BnF lat. 15997 (206r):** Idem**FBN 157 (71v):** Idem monachis Farsen.**FBL sin.9 (81v):** Idem monac. F.**BnF fr. 491 (123r):** Cil meismes**BnF fr. 492 (155v):** Cil meismes as moines de Farfen.**BnF fr. 493 (103v):** Cil meismes as moines de Faruen.**Ars. 5215 (143v):** Cil meismes as moines de Faruen.¹ The inscriptions for Friedberg's *FM* are almost certainly due to a scribe's transposition of the inscription from an earlier canon in the title, X 2.25.2: "Inn. III archidiacono Richemundiae."**Comments:** Inscription matches the register, but has no precedent among available 4Comp manuscripts. The inscription is missing from Friedberg's (*GH*).

X 2.26.11: Innocentius III Abbati de Cenedo* [Cerreto: *FGKN*]**3Comp 2.17.1:** Idem Abbati de Ceticio**Bern. 2.15.1:** Idem abbati de Cereto**Register Hag. I.563:** Abbati de Cerreto
Potthast 608**Ad. 22 (184r):** Idem abbati de Ceco**Vat. lat. 1377 (208v):** Idem abbati de Cerro**BnF NAL 2127 (128v):** Idem abbati de C'ta**BnF lat. 3933 (55v):** Idem abbati de Creta.**BnF lat. 15997 (141r):** Idem abbati de Cento**FBN 157 (75v):** Innocens III abbati de Ceneto**FBL sin.9 (83r):** Innocentius III abbati de C.**BnF fr. 491 (125v):** Innocens li tiers a l'abe de Cenati**BnF fr. 492, etc.:** follow **BnF fr. 491**

Comments: The small degree of difference between the register and 3Comp inscriptions makes it impossible to discount scribal error as a determining factor. The original inscription in the *Decretals* is therefore uncertain.

X 2.27.23: Idem H. de castro Guarti* [*insc. deest: G; Wartim: FI; Wa.: H; Warece: K*]**4Comp 2.11.1:** Idem R. militi (*Dh*) [*insc. deest: Dafg*]¹**Bern.:** *cap. deest***Register Baluz. XV.158:** Rainerio militi de Vico
Potthast 4587**Ad. 22 (256v):** *insc. deest***Vat. lat. 1377 (295v):** Idem**BnF NAL 2127 (190v):** Idem**BnF lat. 3933 (90v):** Idem**BnF lat. 15997 (209r):** Idem**FBN 157 (80r):** Idem H. de Castro Wartim**FBL sin.9 (87r):** Idem**BnF fr. 491 (131v):** Cil meismes**BnF fr. 492, etc.:** follow **BnF fr. 491**

¹ The inscription for Friedberg's other 4Comp manuscripts (*Dbcde*) is unclear.

Comments: The *Decretals* inscription matches no known formal source, and has no precedent among available 4Comp manuscripts. Then inscription is also missing from **FBL sin.9** and Friedberg's **G**.

X 3.26.13: Innocentius III Altissiodorensi episcopo* [Alt. ep.: *deest FGHIK*]**3Comp 3.19.1:** Idem Altissiodorensi episcopo**Ber. 3.20.3:** Idem Altissiodorensi episcopo**Register Hag. V.39:** Autissiodorensi episcopo
Potthast 1796**Ad. 22 (206):** Idem Altissiodorensi episcopo**Vat. lat. 1377 (236r):** Idem Altissiodor. episcopo**BnF NAL 2127 (146r):** Idem Altissiodor.
episcopo**BnF lat. 3933:** *cap. deest***BnF 15997 (159v):** Idem Altissiodorensi
episcopo**FBN 157 (na):** na**FBL sin.9 (114r):** Innocentius III**BnF fr. 491 (170v):** Innocens li tiers**BnF fr. 492, etc.:** follow **BnF fr. 491**

Comments: Absence in the early manuscripts of the full inscription to the bishop of Auxerre suggests that the formal source inscription was added back later in the tradition.

X 3.39.22: Idem Compostellano Archiepiscopo**3Comp 3.37.7:** Idem**Bern.:** *cap. deest***Register Hag. X.76:** Eidem [Compostellano archiepiscopo: **Reg X.75**]

Potthast 3124

Ad. 22 (220v): Idem**Vat. lat. 1377 (251v):** Idem***BnF NAL 2127 (158v):** Idem Compostellano arch.**BnF lat. 15997 (172r):** Idem**BnF 3933:** *cap. deest***FBN 157 (125r):** Idem Compostellano episcopo**FBL sin.9 (133r):** Idem Compostellano archiepiscopo**BnF fr. 491 (200r):** Cil meismes a l'archevesque de Composte**BnF fr. 492, etc.:** follow **BnF fr. 491****Comments:** The inscription matches the register, and has a precedent in **BnF NAL 2127**.**X 3.49.6: Innocentius III. Illustri Regi Scotiae* [Conatiae: *FHI*]****3Comp 3.32.1:** Idem illustri regi Conactiae [Conatiae: *Cabgh*; Coaciac.: *Cc*]**Bern. 3.38.1:** Idem regi Scotie**Register Breq. III.5:** Illustri regi Conactie

Potthast 1141

Ad. 22 (215v): Idem illustri Regi Coaie**BnF NAL 2127 (153v):** Idem illustri regi Scotorum**Vat. lat. 1377 (245r):** Idem illustri Regi Cone.**BnF lat. 15997 (167v):** Idem illustri Regi Conacie**BnF 3933:** *cap. deest***FBN 157 (na):** Innocentius III illustri regi Educatie**FBL sin.9 (115v):** Idem illustri regi Coaie**BnF fr. 491 (210r):** Innocens li tiers a noble roi de France**BnF fr. 492 (252r):** Innocens li tiers au noble roi**BnF fr. 493, etc.:** follow **BnF fr. 491****Comments:** The inscription in the *ER* matches the *Compilatio Romana* and **BnF NAL 2127**, but most early manuscripts follow **3Comp** and the register.**X 4.13.8: Idem Episcopo Gerundensi****3Comp 4.9.3:** Idem episcopo Gradensi* (*Cacgh*) [Feriunt: *Cb*]¹**Bern. 4.9.4:** Idem episcopo Gradensi**Register Hag. VI.92:** Episcopo Gerundinensi

Potthast 1942

Ad. 22 (223r): Idem patriarche Granden.**Vat. lat. 1377 (254v):** Idem patriarche Granden.**BnF NAL 2127 (160v):** Idem episcopo Ferunt.**BnF lat. 15997 (175r):** Idem episcopo Granden.**BnF 3933:** *cap. deest***FBN 157 (139r):** Idem episcopo Guerundensi**FBL sin.9 (148v):** Idem episcopo Geruen.**BnF fr. 491 (fol. 224v):** Cil meismes a l'evesque de Geñden.**BnF fr. 492 (270v):** Cil meismes a l'evesque Gnōden. [*sic*]**BnF fr. 493 (191v-192r):** Cil meismes a l'evesque de Geneden.**Ars. 5215 (257r):** Cil meismes a l'esveque de Genden.¹ The inscription for Friedberg's other **3Comp** manuscripts (*Cdef*) is unclear.**Comments:** The inscription matches the register, but has no precedent among available **3Comp** manuscripts. Only **BnF NAL 2127** and Friedberg's *Cb* come close to the reading in the *Decretals*.

X 4.13.10: Idem archiepiscopo Strigoniensi**3Comp 4.10.3:** Idem episcopo Brixiensi* (*Cabcg*) [Brien.: *Ch*]**Bern. 4.10.3:** Idem episcopo Brixiensi**Register Hag. VIII.190:** Episcopo Brixiensi

Potthast 2656

Ad. 22 (223v): Idem episcopo Brixin.**Vat. lat. 1377 (255r):** Idem episcopo Brixien.**BnF NAL 2127 (161r):** Idem Brixien. episcopo**BnF lat. 15997 (175v):** Idem episcopo Brixien.**BnF 3933:** *cap. deest***FBN 157 (139v):** Idem archiepiscopo Strigoniensi**FBL sin.9 (148v):** Idem archiepiscopo Stringoniensi**BnF fr. 491 (224v):** Cil meismes a l'arcevesque de Stagon. [Strigon.: **BnF fr. 492, etc.**]**BnF fr. 492, etc.:** follow **BnF fr. 491**¹ The inscription for Friedberg's other 3Comp manuscripts (*Cdef*) is unclear.**Comments:** The inscription does not match any known formal source, and has no precedent among available 3Comp manuscripts.**X 5.12.15: Idem [I3] Bisuntino Archiepiscopo [*insc. deest: G*]****3Comp 5.7.3:** Idem**Bern. 5.9.5:** Idem**Register Hag. IX.42:** Alberstadensi episcopo

Potthast 2737

Ad. 22 (233r): Idem**Vat. lat. 1377 (266v):** Idem**BnF NAL 2127 (170r):** Idem**BnF lat. 3933 (64v):** Idem**BnF lat. 15997 (185v):** Idem**FBN 157 (151r):** Idem Bisuntino episcopo [arc.: *add. in marg.*]**FBL sin.9 (171v):** Idem Bisunen. archiepiscopo**BnF fr. 491 (256r):** Cil meismes a l'arcevesque de Bezançon**BnF fr. 492, etc.:** follow **BnF fr. 491****Comments:** The inscription does not match any known formal source, and has no precedent among available 3Comp manuscripts.**X 5.33.16: Idem Episcopo Lingonensi****3Comp 5.16.6:** Idem**Bern. 5.17.7:** Idem**Register Hag. IX.263:** Lingonensi episcopo

Potthast 3012

Ad. 22 (238r): Idem**Vat. lat. 1377 (272r):** Idem***BnF NAL 2127 (175r):** Idem archiepiscopo***BnF lat. 3933 (69v):** Idem archiepiscopo**BnF lat. 15997 (190v):** Idem**FBN 157 (na):** Episcopo Lingonensi**FBL sin.9 (183r):** Idem episcopo Lingon.**BnF fr. 491 (273v):** Cil meismes a l'evesque de Lengres**BnF fr. 492, etc.:** follow **BnF fr. 491****Comments:** The inscription matches the register, but has no precedent among available 3Comp manuscripts.

Appendix E: Compilatio quinta

X 1.3.30: Idem episcopo et archidiacono Legionensibus

5Comp 1.2.1: Abbati et priori S. Proiecti et I. de Villa Wade canonico S. Quintini Noviomensis diocesis
Reg.: Potthast 7711

Ad. 22 (272r): Abbati et priori Sancti Proiecti et Iohanni de Villa Vadet canonico Sancti Quintini Novicen. diocesis

BnF NAL 2127 (204v): Idem abbati Sancti P. et N. canonico Sancti Stephani Noviom. diocesis

BnF lat. 3933 (112v): Idem abbati Sancti Petri et Io. canonico Sancti Stephani Novarien. diocesis

BnF lat. 15997 (231r): Idem abbati S. et P. et Io. canonico Sancti Stephani Noumianoun. diocesis

FBN 157 (5v): Idem episcopo et archidiacono Eyogen.

FBL sin.9 (7r): Idem episcopo et archidiacono Legionensibus

BnF fr. 491 (11v): Cil meismes a l'evesque et arcediacre del Liege

BnF fr. 492, etc.: follow **BnF fr. 491**

Comments: The inscription has no precedent among available 5Comp manuscripts. It could, however, be an erroneous transposition from X 1.11.14 (5Comp 1.8.2).

X 1.8.7: Honorius III archiepiscopo Tri.* [T: FGHK]

5Comp 1.6.1: Archiepiscopo Lugdunensi* [Lundensi: Ea]
Reg.: Potthast 7455

Ad. 22 (274r): Archiepiscopo Lunden.

BnF NAL 2127 (205r): Idem archiepiscopo Luddon.

BnF lat. 3933 (114v): Idem archiepiscopo Lugdoun.

BnF lat. 15997 (232v): Idem archiepiscopo Lugdunen.

FBN 157 (18r): Honorius III

FBL sin.9 (23r): Honorius III

BnF fr. 491 (34v): Honores li tiers a l'archevesque G.

BnF fr. 492, etc.: follow **BnF fr. 491**

Comments: The inscription has no precedent among available 5Comp manuscripts, and both **FBN 157** and **FBL sin.9** lack the addressee.

X 1.16.2: Honorius III archiepiscopo Londonensi* et eius suffraganeis [Lundun.: FLA; Laugd.: G; Lundensi: HI; Lunden: KN; Lugdun.: M]

5Comp 1.9.1: Capitulo Bremensi
Reg.: Potthast 5751

Ad. 22 (275r): Capitulo Bremen.

BnF NAL 2127 (206v): Idem Capitulo Bremen.

BnF lat. 3933 (115v): Idem capitulo Breven.

BnF 15997 (233r): Idem Capitulo Bremensi

FBN 157 (24r): Honorius III Archiepisco Lundensi et suffraganeis eius

FBL sin.9 (30r): Honorius III archiepiscopo Ludun. et eius suffraganeis

BnF fr. 491 (46r): Honores li tiers a l'arcevesque de Lugd. et as evesques de sous lui

BnF fr. 492, etc.: follow **BnF fr. 491**

Comments: The inscription has no precedent among available 5Comp manuscripts. It could, however, be an erroneous transposition either from X 1.16.3 (Auvray 988) or 5Comp 1.6.1.

X 3.5.34: Idem episcopo et priori et archidiacono Herfordensibus* [de Her.: *FHIK*]**5Comp 3.4.5:** Episcopo, priori et archidiacono Macloviensibus* [Madoniensi: *Eb*; Maclon: *Ec*]**Reg.:** Potthast 7790**Ad. 22 (294r):** Episcopo priori et archidiacono Maglonien.**BnF NAL 2127 (216v):** Idem episcopo, priori et archidiacono Madovien.**BnF lat. 3933 (131r):** Idem episcopo, priori et archidiacono Mandavien.**BnF lat. 15997 (246r):** *Cap. deest***FBN 157 (94v):** Idem episcopo, priori, et archidiacono de Her.**FBL sin.9 (102r):** Idem priori et abbati de Her.**BnF fr. 491 (153r):** Cil meismes a l'evesque et au priour et a larcediacre de Biauves [Biauves: *deest***BnF fr. 492]****BnF fr. 493, etc.:** follow **BnF fr. 491****Comments:** The inscription has no precedent among available 5Comp manuscripts.**X 4.1.28: Honorius III episcopo Berguensi****5Comp 4.1.2:** Episcopo Slesvicen.**Reg.:** Potthast 6106**Ad. 22 (303v):** Episcopo Leyvicen.**BnF NAL 2127 (221v):** Idem episcopo Lesviten.**BnF lat. 3933 (138v):** Idem episcopo Leswiten.**BnF lat. 15997:** *cap. deest***FBL sin.9 (142r):** Honorius III episcopo Besguen.**BnF fr. 491 (215v):** Honores li tiers a l'evesque de Belguen.**BnF fr. 492, etc.:** follow **BnF fr. 491****FBN 157 (134v):** Honorius III episcopo Besguen.**Comments:** The inscription has no precedent among available 5Comp manuscripts. It could, however, be an erroneous transposition either from X 1.16.3 (Auvray 988) or 5Comp 1.6.1 (see above, Table 3.7).

Chapter 4: Thirteenth-Century Textual Criticism of the *Decretals*

4.1 Introduction

The previous chapter presented evidence of how discrepancies in the inscriptions between the formal sources and the *Decretals* can be mined for significant variants that will assist in sorting through the manuscript tradition of the text. In a number of cases it was shown that inscriptions that Raymond had removed, or never included in the first place, were reinserted by later copyists, and would gain such widespread transmission that they became part of the official text of the *ER*.⁵¹¹ Of all the results of the collation this is perhaps the most curious. It is generally understood that the *Decretals* marked a clean break with the past in terms of the sources of law. Not only did the codification achieved by the *Decretals* exclude from any further consideration decretals issued prior to 1234, but the form of the included texts, without their *partes decisae*, was the version in which they were to be cited and commented upon, rather than the fuller versions left over in the *5C*. Moreover, since each text of the *Decretals* began with the same baseline of authority – insofar as they were all papal decretals – there seems to be no juridical motive for reintroducing the inscriptions. What possible significance could there be to knowing that X 3.26.13 (3Comp 3.19.2), a decretal treating the validity of a last will and testament delegated to a third party, wasn't just a letter of Innocent III, but that he had written it to the bishop of Auxerre?

⁵¹¹ The unequivocal examples are: X 1.6.6-7 (1Comp 1.4-15-6), X 2.19.3 (1Comp 2.12.2), X 3.26.13 (3Comp 3.19.2), X 2.27.8 (1Comp 2.19.10).

4.2 Codification vs. Compilation

Following the elegant formulation of Bertram, the axis on which discussions of the *Decretals*' significance has turned places codification at one pole and compilation at the other.⁵¹² To review the main points of the debate: the view common to nineteenth and early twentieth-century scholarship was that the *Decretals* was by design both a codification of decretal law and a vehicle for the concentration of legal authority in the hands of the pope.⁵¹³ By virtue of its inclusion in this universal and exclusive type of collection, each text was abstracted from its original context, and was now invested with a new kind of public authority inherent in the collection itself, almost as if Gregory had reissued them all himself. By extension, those texts not taken from the 5C, and even the *partes decisae* of those that were, were to be excluded from the legal corpus of the church going forward, and could no longer play any kind of role in establishing the law.

In contrast to this view of the *Decretals* as an *alter Codex Iustinianus*, later scholarship, beginning with Kuttner, pointed to the essential continuity between what Gregory had commissioned and the older decretal collections, especially in terms of how

⁵¹² The succinct formulation appears in the title of the Bertram's general article on the *Decretals*: "Die Dekretalen Gregors IX: Kompilation oder Kodifikation?" See Ch. 1 for a more detailed discussion.

⁵¹³ An unspoken assumption of this view was that there was essentially no daylight between the papacy and major commentators over the ahistorical nature of the law in the *Decretals* and later official collections. So, for example, the following description by Schulte of Gregory IX's intentions for the *Decretals* was more or less the mindset ascribed to canon law commentators as well (emphasis added): "der eigentliche, wahre und hauptsächlichste Beweggrund Gregors IX [war]...die unbedingte Befugniss des Papstes zur Gesetzgebung für die ganze Kirche und mit Ausschluss der allgemeinen Geltung jeder nicht bereits anerkannten Norm durchzusetzen, auf solche Art diegesamte kirchliche Rechtsbildung beim päpstlichen Stuhle zu konzentrieren, allen Papstbriefen, die er aufzunehmen für gut fand, **ohne Rücksicht auf ihren historischen Charakter die allgemeine Geltung zu verleihen und zu sichern**, durch einheitliche Zusammenfassung des gesammten von den Päpsten erlassenen und in Kraft belassenen Materiales das Papstthum als solches als Träger der Machtvollkommenheit erscheinen zu lassen," Schulte, *Die Geschichte der Quellen*, vol. 2, p. 6.

jurists constructed their interpretations.⁵¹⁴ Gregory's primary intent had been to settle the problem of the sources of law issued prior to his pontificate, but those texts included in the *Decretals* possessed no additional authority beyond the *rationes* and *argumenta* extracted from them by commentators.⁵¹⁵ They were still *auctoritates* in the traditional sense of the term, which needed to be reconciled with one another as well as with the older law preserved in Gratian through the usual process of scholastic interpretation.

As to the status among post-1234 commentators of those texts from the *5C* not included by Raymond, modern scholarship has not essayed a complete reversal of the older view, but has noted the existence of an internal debate complicating the idea that the *Decretals* resulted in a total abrogation of all prior texts and collections of the *Ius*

⁵¹⁴ "Il n'y a rien dans les paroles du pape qui revendiquerait pour son *Liber decretalium* les qualités ultérieures qu'une interprétation extensive lui donnera plus tard. En premier lieu, Grégoire ne voulait pas créer une codification abstraite qui aurait transformé tous les textes recueillis en des normes, des commandements absolus, revêtus d'une nouvelle force obligatoire, comme s'ils étaient tous des lois uniformément et simultanément promulguées pour la première fois le 5 septembre 1234... [P]armi les *extravagantes* il y avait bon nombre de canons du droit ancien que Gratien avait omis de citer, que Bernard de Pavie avait puisés dans les sources prégratiennes, et qui de là avaient passé dans la compilation officielle. L'idée que de la sorte, parmi plusieurs textes anciens d'origine identique, l'un aurait acquis par un pur hasard un nouveau titre d'autorité universelle, tandis que les autres, chez Gratien, seraient restés des lois de portée relative, allait être prise au sérieux au XVe siècle. Pour le droit classique, c'était une proposition absurde," Kuttner, "Quelques observations sur l'autorité des collections canoniques dans le droit classique de l'Église," *Actes du Congrès de droit canonique, Paris 22-26 avril 1947* (Paris, 1950), repr. in: Idem, *Medieval Councils, Decretals, and Collections of Canon Law* (Variorum Collected Studies Series CS 126: London, 1980) I, pp. 311-2.

⁵¹⁵ Though there was the presumption that what the *Decretals* contained was by definition consonant with the *ius commune*. Thus Hostiensis in the opening to his *Lectura* (ad *Rex pacificus*): "In iudiciis] Fatuum est ergo dicere, quod aliqua decretalis sit in hoc corpore, quae non contineat ius commune, secundum Ia. [Jacobus de Albenga?] q.[ui] d.[ixit], ex quo hac compilatione ergo, et omnibus capitulis, qui ibi continentur, uti debemus," *Lectura*, vol. 1, fol. 4va. Expanding the "q.d." to *qui dixit* makes this sentence awkward, but it is not clear what else might be the solution here. According to tradition, Jacobus de Albenga was Hostiensis' teacher. He composed the most substantial apparatus to *5Comp*, and his partial glosses on *1Comp*, *4Comp* and the *Decretum* have been preserved in a few manuscripts. He is not known to have written anything on the *Decretals*, however, so it is unclear what Hostiensis is referring to here – presuming, of course, that "Ia." is the correct reading. On Jacobus see: Schulte, *Die Geschichte der Quellen*, vol. , pp. 205-7; Kuttner, "Bernardus Compostellanus Antiquus," p. 335, with *Retractiones VII*, pp. 22-3.

novum.⁵¹⁶ Representative of the strident view is a statement from the composer of the ordinary gloss to the collection, Bernard of Parma, that those who either use (*uti*) or study (*legere*) earlier collections should be subject to excommunication.⁵¹⁷ On the more permissive/inclusive end we find Vincentius Hispanus, who stated that older decretals from the *5C* could be cited (*allegare*), though only because the decretal *qua* decretal provided certain *rationes* or arguments, not because there was any authority remaining in the older collection which contained it.⁵¹⁸

Setting aside for now the question of Gregory IX's intentions for the collection, the revised assessment that canonists did not radically alter their interpretive methods for the *Decretals* seems to accord best with the practice of thirteenth and fourteenth-century jurisprudence.⁵¹⁹ The *Decretals* functioned just as earlier compilations had, and as the *Decretum* continued to function: not as a full and complete statement of The Law, but as so many instantiations of the larger common law of the Church. As with other common law systems, legality and illegality were determined not solely on the basis of specific

⁵¹⁶ See discussions in: Kuttner, "Quelques observations," *passim*; Pennington, "French recension," pp. 65-7; Horwitz, "Magistri and Magisterium" p. 214, n. 15; Bertram, "Kompilation oder Kodifikation," pp. 81-6.

⁵¹⁷ "*In iudiciis*]...Quid erit si aliqui vellent uti et legere priorem? Dico quod illi essent excommunicandi, quia faciunt contra mandatum principis, *infra*, de maiortate et obedientia, si quis [X 1.33.2], et 25., q. 1, generali [C. 25, q. 1, c. 11]," *ER*, vol. 2, col. 5. It will be shown later on, however, how even Bernard himself ignored this hard-line on the consultation of the *Decretals'* sources.

⁵¹⁸ "*Compilationem*]...Sed numquid possumus allegare decretalem aliarum compilationum precedentium? Ita non ratione compilationis [et actoris: *add. in marg.*] sed ratione rationis et continentie, *infra*, de fide instrumentorum, pastoralis [X 2.22.8], et xix. di., si romanorum [D. 19, c. 1]," Vincentius Hispanus, *Apparatus*, ad *Rex pacificus*, Madrid, BN, MS 30, fol. 1va.

⁵¹⁹ It was only in the fifteenth and sixteenth century that the *Decretals* was interpreted as having a special type of public authority over and above a collection like the *Decretum*, owing to the former's papal origination. Panormitanus (*al.* Nicholas Tudeschi, 1386-1445), for example, in discussing whether the rubrics composed by Gratian in the *Decretum* may be cited as if they were *sententiae iuris*, rejects their usage for this purpose because the *Decretum* lacked the public authority that came with papal approval: "sed non video, unde sumant [rubricae Gratiani] autoritatem; quia non apparet quod etiam ipsum volumen Decreti fuerit approbatum [a Papa]," *Commentaria ad Decretum*, cited in: François Florent, "Praefatio de methodo et autoritate collectionis Gratiani, et reliquarum omnium collectionum decretalium post Gratianum," in: *Idem, Opera Juridica*, vol. 1 (Paris, 1679) pp. 41-59.

written prohibitions, but by their congruence or departure from the jurisprudential principles derived from the *Decretals* and other collections of what would become the *Corpus iuris canonici*. Despite the papal monopolization of the production and culling of legal sources into collections, jurists continued to play a central role in evaluating and integrating these sources into the larger superstructure of the *ius commune*.

Defining the problematic as one of codification vs. compilation has provided a helpful frame through which to examine the interrelationship between the authority claims of canon law collections and the individual texts contained therein. There are two further questions, however, that do not necessarily fall under this rubric, and have more to do with how canonists viewed the texts of the *Decretals* on an individual basis. First, did thirteenth-century commentators simply take what was presented to them by Raymond's editing and handle the individual texts of the *Decretals* as self-contained, neutral conduits of the law – treating them as more-or-less known quantities, notwithstanding the sometimes contortive jurisprudence required to make sense of them? Or did they approach them as still in some ways attached to a larger context – whether legal, historical, or textual – that despite the exclusivity claims of *Rex pacificus*, required a canonist to reach back to the historical circumstances in which the decretal was generated, or the form of the text as it was transmitted by earlier compilations, or even the papal registers? Asking this question is different from, but in no way exclusive of the current view that canonists understood the *Decretals* as a compilation of texts needing to be interpreted and harmonized with one another. If we liken the task of canonical jurisprudence to building a jigsaw puzzle, treating the issue as one of compilation imagines the methods of commentators as the careful identification, sorting and joining

together of the various pieces constituted by the individual decretals. Framing the issue as one of context awareness, however, proposes that when canonists came across a piece that was ill-fitting, they could either file it down or fill it out according to the contextual information about the text drawn from previous sources.

Scholarship in this area has recognized the existence of general statements by some post-1234 commentators supportive of utilizing the historical and textual context of a decretal as a jurisprudential tool. Assuming it can be demonstrated that canonists were sensitive to the extra-legal context of the texts they were dealing with, a second question presents itself, *viz.*, how often did the context creep back into the text itself, with words and phrases that Raymond or even the compilers of his formal sources had rejected rejoining the text of the *Decretals*? We began by recalling the examples of inscriptions cut by Raymond that had migrated back into the text over the course of its transmission.⁵²⁰ It turns out that there are a multitude of similar small reinsertions in the text proper – places where later copyists reintroduced language from some version of the text prior to its inclusion in the *Decretals*. The *Correctores Romani* had begun to mark off these restored bits – the proper word for them, since they are rarely more than a few words⁵²¹ – with outer-marginal notations that the portion was missing *in antiquis*

⁵²⁰ See note 511.

⁵²¹ A good illustration occurs in X 3.38.14 (1Comp 3.33.17), *Ex insinuatione*, which settled a conflict between administration responsibility and patronage rights in a local proprietary church. In 1Comp and the *ER* the sentence in question reads: “mandamus, quatenus, si est ita, earum [ecclesiarum] detentores, ut easdem predicto clerico restituant, per eum libere **et pacifice** ordinandas, monitione praemissa compellas.” Friedberg (and the *Correctores* before him) noted that the pair of words *et pacifice* was absent from all of the *Decretals* codices he had examined, as they are from both early Florentine manuscripts (FBL sin 9 and FBN 157) and those of the French translation (BnF fr. 491-3; Ars. 5215). The phrase had thus been reinserted, likely sometime in the fourteenth century. There is, however, no apparent jurisprudential reason for the reappearance of these words, as neither in 1Comp nor in the final iteration of the ordinary gloss to the *Decretals* did this phrase have any commentary attached to it. There are dozens upon dozens of similar instances in the *ER* where earlier pieces of text left out by Raymond were reintroduced by later copyists into the *Decretals*.

codicibus. Friedberg then built upon their work to provide a much fuller, if not exhaustive account of those places where the plurality of his manuscripts revealed a portion of text that had not been part of Raymond's original.⁵²²

There are compelling textual reasons to pay attention to these additions, as cataloguing them will doubtless facilitate the work of sorting through the manuscript tradition of the *Decretals*.⁵²³ Preliminary evidence will also be introduced at the end of the chapter from one of the early Florentine manuscripts of the *Decretals*, Laurenziana, S.Croce III sin.9, showing that the additions go beyond just the traces left in the *ER* – which generally represent later (post-1300) insertions – and include the earliest stages of transmission. Besides the long-range, codicological interests, however, there is also the more immediate question of the origin of these reinsertions, and what they reveal about canonists' views of the authority inhering in official collections. What follows is an attempt to situate the changes to the text of the *Decretals* in the context of canonistic practices of the later-thirteenth century.

4.3 The critical mode in Hostiensis and Sinebaldus Fieschi (Innocent IV)

“Creation is three-fold,” declares Hostiensis in the prologue to his *Summa Aurea*, made up of spiritual or angelic nature, corporeal, and then a third type proper to human beings, one that is fashioned equally out of spirit and flesh.⁵²⁴ Far from being an adulteration, however, our composite nature renders us superior in dignity to either one of

⁵²² Friedberg specially highlighted these instances with an * asterisk, followed by a notation in the critical apparatus.

⁵²³ Short of conjuring the spirit of Adam Vetulani, the best first step would be to scour the outer margins of the *ER* and the apparatus of Friedberg to compile a working list of these additions.

⁵²⁴ For a discussion of Hostiensis' legal “philosophy,” particularly as expounded in the introduction to the *Summa Aurea*, see: Clarence Gallagher, *Canon Law and the Christian Community* (Analecta Gregoriana 208, Series Facultatis Iuris Canonici, sec. 8, no. 8: Rome, 1978) pp. 73-6.

our components; or in words of the Apostle: “Do you not know that you will judge the angels? How much more, then, the carnal and temporal things [of this world]!” This moral hierarchy is reproduced in the knowledge appropriate to each realm of creation: theology as the study of the angelic, and civil law as the study of the corporeal, are drawn together in the science of the human, which is the science of canon law.⁵²⁵ Like human creation, canon law does not merely straddle two worlds but constitutes a separate, higher form of knowledge – the “science of sciences,” in fact, through which all things, whether spiritual or temporal, can be governed.⁵²⁶

Compared to their contemporaries in theology, twelfth and thirteenth-century canon law commentators were less inclined to use metaphor as an analytical tool for explicating the law. Hostiensis is a good example, however, of how general reflections on the role of canon law as a discipline provided one of the few places where canonists were free to engage in symbolic discourse, both serious and silly.⁵²⁷ His elevation of

⁵²⁵ “Creature numero triplex est, scilicet spiritualis sive angelica, et corporalis sive mundana, tertia est humana, quasi communis ex spiritu et corpore constituta et composita ex premissis duabus, *infra*, De Summa Trinitate, c. i, resp. i [X 1.1.1]. Sed composita dignior videtur aliis, unde illud Apostoli, ‘Nescitis quod angelos iudicabitis? Quanto magis carnalia seu temporalia,’ [1Cor 6] *infra*, Qui filii sint legitimi, c. *Per venerabilem*, § tria [X 4.17.13]...Sicut ergo natura composita dignior et maior est omnibus aliis, sic et scientia nostra...Quinimo Theologia spiritualis creature scientia, civilis vero corporalis, humanae canonica potest dici. Sicque debet canonica, ut ex premissis patet, ab omnibus quibus appropriatur, ut proprie prae ceteris commendari,” Hostiensis, *Summa Aurea* (Venice, 1574; repr., Turin, 1964) col. 8. The usual rendering of 1Cor 6:3 was *seacularia* instead of *carnalia seu temporalia*, but Hostiensis takes advantage of the standard medieval equation of flesh = world to fit the passage into his symbolism.

⁵²⁶ “Et haec nostra lex, sive scientia, vere potest scientiarum scientia nuncupari, *infra*, De aetate et qualitate, c. *Cum sit ars artium* [X 1.14.14]. Quamvis civilis hoc sibi usurpet, que etiam alias utilissimas reputat...sed canonica videtur precellere. Nam si hoc bene intelligatur et sciatur, per eam tam spiritualia quam temporalia regi possunt, ideo debet ab omnibus recipi et teneri...Ideo dicit Imperator, quod sacre leges non dedignantur sacros canones imitari...[et] idem videtur in civilibus, cum alibi dicat idem Imperator quod per omnia vult sequi sacras regulas, et quod sacre regule pro legibus valere debent,” *ibid.*, col. 7.

⁵²⁷ Hostiensis caps off his discussion of the superior virtues of the composite by likening theology, civil and canon law to the horse, donkey and mule, respectively: “Sed nunquid species mulina maior est et dignior equina et asinia? Et planum est quod equinam theologicae scientiae, asininam civili sapientiae poteris comparare.” Ullmann didn’t see the joke, but Kuttner places it in the proper context of an audience saturated with overblown, partisan claims for the preeminence of one’s own field of study: Walter Ullmann, *Medieval Papalism: The Political Theories Of The Medieval Canonists* (The Maitland Memorial Lectures 1948: London, 1949) pp. 30-1; Stephan Kuttner, *Harmony From Dissonance*, p. 15.

canon law as the “science of sciences” came less than a century after Stephan of Tournai’s more modest banquet analogy, which likened the task of the canonist to trying to satisfy the two widely different tastes of the civil lawyer and the theologian.⁵²⁸ In this respect, the symbolic edifice constructed by Hostiensis is, if nothing else, a monument to how canon law had developed fully independent standards for itself as a discipline over the course of the thirteenth century.

The theme of self-definition continues with a more intriguing complex of symbolism and association representing the aims of those who devote themselves to various fields of study. Building off of an earlier metaphor that likened the books of the *Decretals* to the five bodily senses, Hostiensis links each of the five senses, the motivations and goals of intellectual pursuit, and the areas of study with which they are aligned.⁵²⁹ According to Hostiensis, there are five reasons that motivate intellectual

⁵²⁸ Stephan of Tournai’s metaphor is the jumping off point for Kuttner’s elegy on the spirit of medieval canon law: *Harmony from Dissonance*. “If you invite two guests to dinner, you will not serve the same fare to those who demand opposite things. With the one asking for what the other scorns, will you not vary the dishes, lest either you throw the dining room into confusion or offend the diners?... I invited two men to a banquet, a theologian and a lawyer, whose tastes diverge toward different desires, since this one is delighted by tart things, and that one longs for sweets. Which of these should we offer, which should we withhold?” *Prefaces to Canon Law Books in Latin Christianity*, ed. and trans. Robert Somerville and Bruce Brasington (New Haven, 1998) p. 194. The original is as follows: “si duos ad coenam convivas invitaveris, idem postulantibus contraria non appones; petente altero quod alterum fastidiat, nonne variabis fercula, ne vel confundas accubitus vel accumbentes offendas?... Duos ad convivium vocavi, theologum et legistam, quorum voluntates varia sparguntur in vota, cum iste delectetur acido, ille dulcia concupiscat,” Stephen of Tournai, *Die Summa über das Decretum Gratiani*, ed. J. F. von Schulte (Giessen, 1891; repr. Aalen, 1965) p. 1.

⁵²⁹ In the interests of brevity all of Hostiensis’ legal citations have been left out of this passage: “Hic notandum [est], quod quinque sunt fines quare homines legunt. Primus, ut sciantur, et ad hunc tendere videntur Rhetorici;...hic finis est vana gloria, et potest aequiparari visui, quia tales volunt vocari Rabbi ab hominibus et videri. Secundus, ut aedificentur, et ad hunc et ad quantum tendunt Theologi et Canonistae boni et iusti;...hic finis est prudentia, et aequiparatur gustui, quia gustare et videre volunt quam suavis est Dominus, et sic vivere, quod de ipsius dulcedine valeant saturari. Tertius, ut sciant, et ad hunc tendere videntur Dialectici nimis in arte illa immorantes;...hic finis est superbia, et aequiparatur auditui, quia plus audiunt quam proficiunt, et cum inflati sive imbuti fuerint, alios argumenta sua ignorantes despiciunt, et ipsos reputant nihil scire. Quartus, ut lucrentur, et ad hunc tendere videntur Physici et Legistae, nolentes in paupertate vivere...non vere philosophantes, quia si tales essent, pecuniam contemnerent;...hic finis est avaritia, et aequiparatur tactui, quia ad hoc semper tendit manum, nec ei totus mundus est obolus...Quintus, ut aedificent, ut magistri boni qui non legunt ad laudem humanam, sed Dei, et ad instructionem suam et

endeavors: to be known (*sciri*), to be edified (*aedificari*), to know (*scire*), to profit (*lucrari*), and lastly to edify (*aedificare*). For each motivation there is also a corresponding goal (either virtuous or unethical), as well as a symbolic alignment with one of the five senses. Hostiensis then puts them together with a brief explanation of their moral dimension. So, for example, those who pursue learning in order to make a living or profit from it (*lucrari*) are, in fact, driven by greed and a fear of poverty. Such people include physicians and civil lawyers, and their motivation is likened to the sense of touch, since their hand is constantly grasping. Canonists and Theologians, unsurprisingly, come off somewhat better. They exemplify intellectual pursuit for the sake of edification, the ultimate aim of which is the acquisition of prudence, or practical wisdom. This mode of seeking knowledge is compared to the sense of taste, since those who follow it desire to savor and be saturated by the sweetness of the Lord. The entire series of comparisons can be represented as follows:

Table 4.1. The symbolism of intellectual pursuit from Hostiensis' *Summa Aurea*

Reason for study	Goal	Bodily Sense	Discipline(s)
To be Known (<i>sciri</i>)	Vainglory (<i>vana gloria</i>)	Sight	Rhetoricians
to be Edified (<i>aedificari</i>)	Prudence (<i>prudentia</i>)	Taste	Theologians/Canonists
to Know (<i>scire</i>)	Pride (<i>superbia</i>)	Hearing	Dialecticians
to Profit (<i>lucrari</i>)	Greed (<i>avaritia</i>)	Touch	Physicians/Civil Lawyers ⁵³⁰
to Edify (<i>aedificare</i>)	Love (<i>caritas</i>)	Smell	Preachers and their Masters

It seems appropriate that Hostiensis chose the sense of taste to characterize the practice of canon law. Compared to the more narrow efforts of decretalist commentators prior to 1234, whose main focus was establishing the internal harmony of the law,

aliorum, qui predicant verbum Dei...hic finis est charitas, et aequiparatur odoratui, quia de talibus redolet bona fama," *Summa Aurea*, col. 12.

⁵³⁰ It is not clear exactly who Hostiensis was referring to by the term *Physici*. It seems possible that Hostiensis had in mind the medical faculty of the University of Paris, which was well known for its

commentary on the *Decretals* was self-consciously expansive. The concern for harmony remained primary, and in some ways grew more complicated in the face of a richer understanding of Roman Law, but canon law commentaries also became a staging area for substantial incursions into philosophical, theological and what would today be termed political territory. The ability to project into these areas with confidence was due in no small measure to the fact that the *Decretals* had solved the problem of the sources of law. Canonists finally had an agreed-upon set of texts from which to weave canonistic doctrine, and an established framework into which they could integrate new papal pronouncements.

Because of the intense focus of modern canon law scholarship on the historical and textual dimensions of the subject, it has been difficult to break the assumption of nineteenth-century scholarship that medieval canonists of the thirteenth and fourteenth centuries were not all that engaged with issues of textual transmission or sensitive to the historical context of the law. According to this view, canonists now had a discrete set of equipollent legal texts – shorn, moreover, of much of their narrative and historical data – and in theory they no longer needed to go beyond the legal sources at hand (extensive as they might have been) to derive an interpretation. Gregory’s intention for the practice of law, as outlined in *Rex pacificus*, that *hac tantum compilatione universi utantur in iudiciis et scholis* (“everyone should use only this compilation in the courts and schools”), had carried the day.

It is true that textual criticism was rarely discussed explicitly by thirteenth-century commentators. Prior to the *Decretals*, it had been an implicit part of the tool-kit of

theoretical bent. On the other hand, he is very precise in his terminology for identifying a lawyer trained in Roman legal procedure, using the specific term *legisti* instead of the more generic *advocati*.

compilers of collections, who had to compare and select their texts from any number of intermediate sources, and who sometimes chose to present a version that was an amalgam of several formal sources.⁵³¹ *Rex Pacificus* put an end to compilations born of private initiative. However, the critical approach that considered the textual form of a decretal alongside its legal content did not disappear after 1234.

The strongest and clearest advocacy of textual-critical methods is again found in Hostiensis' preface to his *Summa Aurea*. Hostiensis argued for a rigorous and nuanced form of interpretation that was at the same time sensitive to the historical context of the law as well as the changes that could result from the interventions of editors and scribes:

A studious person should be questioning (*dubitare*) in all things. Indeed, this is not without benefit according to Aristotle – no detail, therefore, should be overlooked. Such a person should possess a broad understanding, as is shown, *infra, De officio primicerii, c. uni.*, near the end [X 1.25.1]. Nevertheless, one must exercise caution lest one rashly find fault [when studying something closely]. Careless fault-finding happens in a number of ways, and someone is inconsiderately assigns blame when he:

- 1) passes judgment (*iudicare*) prior to fully understanding something;
- 2) indicts (*incuplare*) a text before thoroughly scrutinizing it a second time, *30 Dist., Sciendum [immo, D. 29, c. 1]*;
- 3) does not take into account that copyists or base and uneducated illuminators (*pictores*) can corrupt the text, a possibility that should be considered even in papal letters, lest real letters be taken as fake, or vice versa, *infra, De crimine falsi, Quam gravi*, at the end [X 5.20.6];...a single letter [of a word] is easily omitted or changed,⁵³² as demonstrated *infra, De fide instrumentorum, Ex parte* [X 2.22.11]; *infra, De rescriptis, Causam quae* [X 1.3.18] and *c. Significante*, and *seq.* [X 1.3.34-5]. In those cases one can say it is the fault of the copyist and not the author;
- 4) out of envy viciously condemns the interpretations of others, for the sole pupose of disparaging someone or of sowing discord, which is forbidden, *46 dist. § 1* [D.46, *dict. ante c.1*], and *c. Clericus invidens* [D.46, c.7];
- 5) does not finely distinguish between different viewpoints; for frequently a scholar (*doctor*) will seem to be writing contradictory statements, and even to

⁵³¹ See Ch. 1, § II.3.3, and the comments of Pennington in "The Making of a Decretal Collection: The Genesis of *Compilatio tertia*," pp. 79ff.

⁵³² Left out of the translation is the beginning of this sentence: "nam multum diversa sunt, est et non est, tamen..." The neuter plural subject of *sunt* is unclear, and rendering it generically, such as "things are frequently contrary," leaves no clear path to make sense of the *est et non est* that follows.

contradict himself, while in fact he is only reviewing the various opinions of others. For this reason the interpretations and names of scholars should be learned and carefully distinguished. On this point, *infra*, *De officio del.*, *Super q. artic.* [X 1.29.27], and, *De feriis, capellanus* [X 2.9.4], and, *De simonia, Per tuas* [X 5.3.32]. Some things we write and study so that we don't misunderstand them, some so that we don't pass over them, and others still so that we can refute them, *37 Dist.*, *Legimus*, and *c. seq* [D.37, c.7-8];

6) does not consider the intentions of the person speaking or writing, for example, whether he is arguing from the rigor of the law or from mercy; whether he is speaking on the basis of written law or of custom; or indeed, whether he is following the style of the curia, and the form by which people, cases, locales, events and other circumstances are wont to be treated, as we see, *infra*, *De translatione, c. fi.*, at the end [X 1.7.4], and *De homicidio, Sicut dignum* [X 5.12.6], *29 Dist.*, *c. 1* and *2* [D.29, c. 1-2], and *ff.*, *De poen.*, *Aut facta* [Dig. 48.19.16; De pen. D.1, c.19];

7) relies on his own judgment, and prefers a grand, sweeping (*capitaneus*) interpretation over the truth, *37 Dist.*, *Relatum est* [D.37, c.14], *infra*, *De constitutionibus, c. 1*, and *c.*, *Ne innitaris* [X 1.2.1, and c.5];

8) indiscriminately condemns the older collections⁵³³ (*antiquas*) using the new law (*ius novum*), as illustrated, *infra*, *De constitutionibus, c. fi.* [X 1.2.13];

9) intending to remove what is superfluous, he instead cuts out what is necessary and useful, as will be shown at the end, *infra*, *De votis, Quod super his, § rursus*, at the end [X 3.34.8], and *c. responsio, infra, ver. sic ergo ille est* [X 3.34.9].⁵³⁴ But as my lord [Innocent IV] used to say, one is not able to explain complex and difficult statements with just a few simple remarks, and when I endeavor to be brief, I end up becoming unintelligible;

10) prefers appropriateness of speech to the intention or truth behind the words, *infra*, *De verborum significatione, Praeterea* [X 5.40.8, *Propterea*], and [*c.*] *sequitur in seq. ver.* [X 5.40.9].

⁵³³ Post-1234 commentators like Hostiensis normally used the bare adjective as shorthand to refer to the 5C, for example, *in antiqua* or *in antiquis* (see quote below, n. 534, for an example of the former). It is also possible that Hostiensis simply meant older decretals, as in *antiquas decretals*.

⁵³⁴ Hostiensis is referring to a discussion in his *Lectura* where he overtly criticized Raymond's editing of X 3.34.8-9, capitula from two successive Innocent-III letters to the archbishop of Canterbury on the subject of vows made to go on pilgrimage or crusade to the Holy Land. In the first letter (X 3.34.8), the pope had declared that under certain circumstances (mainly physical or financial debility) the archbishop could allow people to redeem their vows, and that this should be done *per viros religiosos et providos*. The second letter (X 3.34.9) followed up a subsequent inquiry by the archbishop as to who exactly was meant by *viri religiosi et providi*. In the *Decretals*, Raymond had cut the *per viros religiosos et providos* language and some of the associated discussion from both letters – not once but thrice! Hostiensis reinserted it in his commentary and took Raymond to task: “et infra] Nimis fuit hic breviloquus compiler, nam causa brevitas in hoc articulo totum opus destruxit. Sequebatur enim hic in antiqua haec clausula: ‘Unde per viros religiosos dispensationem huiusmodi volumus providere.’ Et est haec clausula adeo necessaria, quod nisi ipsam habeas, nescies, unde procedat questio, quae fit infra, c. i., respons. i., ver. sic ergo [X 3.34.9]. Unde aut istam clausulam non debuit hic decidere compiler, aut illam non apponere,” ad X 3.345.8, *Lectura*, vol. 3, p. 129ra. The issue deserves a sustained inquiry beyond the brief explanation just offered, particularly given the multiple, purposeful excisions of the same language.

Provided they avoid these ten types of rash fault-finding, I entrust [this work] to the careful discernment of any zealous person learned in the law who seeks understanding, so that he may compensate for any imperfection of my labor.⁵³⁵

The later discussion of X 1.6.23, *Bonae memoriae*, will provide an opportunity to show how Hostiensis himself applied these recommendations in practice. There we find him going back to the papal registers in order to establish the chronology of the canon, as well as the ideas contained in portions of the text removed by Raymond. This is a powerful example of how canonists – in search of the proper meaning of the law – could

⁵³⁵ “Nam labor improbus omnia vincit, C. de petit. bo. sub., l.1; lib. x., infra, de purg. can., cum in iuventute, §ceterum [*immo* X 2.23.15 (see below)]; de pen., dist. i., importuna [De pen., D.1, c.53]. Studiosus vero debet dubitare de singulis. Hoc vero non est inutile secundum Aristotilem., ergo nihil debet negligere. Requiritur etiam quod capacem sensum habeat, ut hoc probatur, *infra*, de officio primicerii, c. uni., ad finem [X 1.25.1]. Caveat tamen ne temere reprehendat, fit autem temeraria reprehensio multis modis. Temere enim reprehendit: primo qui ante iudicat quam intelligat. Secundo qui ante inculpat, quam iterando lecta perquirat, 30 dist., sciendum [*immo* D.29, c.1]. Tertio, qui quod scriptores pictores corrupti et idiotae corrumpunt scripturas, non considerat, quod tamen etiam in literis papae, ne verae pro falsis, vel false pro veris recipiantur, diligentur est attendendum, *infra*, de crimine falsi, quam gravi, in fine [X 5.20.6]. Nam multum diversa sunt, est et non est, et tamen una figura de facili omittitur vel mutatur, ut arg. *infra*, de fide instrumentorum, ex parte [X 2.22.11]; *infra*, de rescriptis, causam quae [X 1.3.18], et c. significante, et seq. [X 1.3.34-4]; ideo dicit quod vitium scriptoris, non est authoris. Quarto, qui ex invidia aliorum dicta mordendo condemnat, ad hoc tantum, ut detrahat, vel discordiam pariat, quod prohibetur, 46 dist., § 1 [D.46, *dict. ante* c.1] et c. clericus invidens [D.46, c.7]. Quinto, qui diversas opiniones subtiliter non denotat, videtur enim plerumque doctor contraria scribere, et sibi ipsi esse contrarius, dum diversa dicta recitat, et ideo doctorum dicta et nomina sunt scienda, et subtiliter discernenda, ad hoc, *infra*, de officio del., super q. artic. [X 1.29.27], et de feriis, capellanus [X 2.9.4], et de simonia, per tuas [X 5.3.32]. Scribimus enim sicut et legimus aliqua, ne ignoremus, aliqua, ne negligamus, aliqua, ut repudiemus, 37 dist., legimus, et c. Seq [D.37, c.7-8]. Sexto, qui mentem dicentis sive scribentis, utrum videlicet de rigore iuris, vel de benignitate, et utrum de iure scripto, vel consuetudine, vel secundum stylum curiae loquatur, non ponderat, in quo quidem personas, causas, loca, et tempora, et alias circumstantias considerari oportet, ut *infra*, de translatione, c. fi., in fine [X 1.7.4], et de homicidio, sicut dignum [X 5.12.6], 29 dist. c., 1 et 2 [D.29, c. 1-2], et ff., de poen. aut facta [Dig. 48.19.16; De pen. D.1, c.19]. Septimo qui prudentie sue innititur, ut capitaneam sententiam veritati preponat, 37 dist., relatum est [D.37, c.14], *infra*, de constitutionibus, c. 1, et c., ne innitaris [X 1.2.1 et c.5]. Octavo, qui antiquas per ius novum indistincte condemnat, ut patet *infra*, de constitutionibus, c. fi. [X 1.2.13]. Nono qui superflua intendens remove, necessaria vel utilia resecat, ut patet in fine, *infra*, de votis, quod super his, § rursus, in fine [X 3.34.8], et c. responsio, *infra*, ver. sic ergo ille est [X 3.34.9; see below]. Sed sic dicebat dominus meus, ne queunt de facili magna et ardua verba, brevibus expedire, et dum brevis esse laboro, obscurus fio. Decimo, qui potius proprietatem verborum quam mentem et veritatem approbat, *infra*, de verborum significatione, praterea [X 5.40.8], et sequitur in seq. ver. His decem repre[he]nsionibus, quae temerarie sunt, evitatis, cuilibet diligenter studenti iurisperito et intelligenti, ad predicta subtiliter discernenti committo, ut imperfectionem operis suppleat,” Hostiensis, *Summa Aurea*, coll. 3-4. Hostiensis’ first citation, *Cum in iuventute*, references the section appearing in the title on canonical purgation, X 5.34.12. The task he assigns it, however – to back up the statement that hard work *omnia vincit* – is consistent with the gloss on the other section of the letter filed under the title on presumption, X 2.23.15. For X 3.34.9, Hostiensis writes *c. responsio* rather than the incipit *Ex multae tuae*, because c. 9 was Innocent III’s reply to an inquiry prompted by the previous letter at c. 8. See n. 534 for a discussion of these two.

cut against Raymond's tendency to abstract the law and decouple it from its original context.

The future Innocent IV, Sinebaldus Fieschi, mounted an even more detailed, if not quite as elegant challenge to the self-sufficiency of the individual texts in the *Decretals*. Sinebaldus produced one of the earliest and most influential commentaries on the *Decretals*, the *Apparatus in quinque libros Decretalium*, a work that went through several revisions and survives in around thirty manuscripts. Sinebaldus' career prior to taking the papal office exemplified the connection between jurisprudence and ecclesiastical administration, which by the mid-thirteenth century was well established.⁵³⁶ He served as *Auditor litterarum contradictarum* spanning the end of Honorius III's and the beginning of Gregory IX's pontificates, and briefly headed up the papal chancery as vice-chancellor before his elevation in the first round of Gregory's cardinal appointments in September 1227.⁵³⁷ Sinebaldus' intimate familiarity with the mechanics of Rome's judicial and chancery procedure is a distinguishing feature of his commentary, making it an indispensable witness for the actual practice of decretal law. The *Apparatus* went through several revisions – the last one done in 1245 – evidence for which has only recently been identified in the manuscript record.⁵³⁸

The prologue to the *Apparatus* provides the most explicit discussion of textual criticism in thirteenth-century canon law. Taking advantage of his privileged access as a

⁵³⁶ For a general discussion of the increased representation of legal professionals in the Church hierarchy, see: James Brundage, *The Medieval Origins of the Legal Profession* (Chicago, 2008) pp. 469ff.

⁵³⁷ Sinebaldus was one of six individuals appointed cardinal on September 23, 1227. For the list, which also included the future Alexander IV (Rainaldus of Segni), see: Conrad Eubel, *Hierarchia Catholica Medii Aevi*, vol. 1: 1198-1431 (Regensburg, 1913) p. 6.

⁵³⁸ Martin Bertam, "Zwei vorläufige Textstufen des Dekretalenapparats Papst Innocenz' IV," in: *Juristische Buchproduktion*, pp. 431-79. Bertram examined two manuscripts that each represents a distinct, earlier

curial official, Sinebaldus collated the papal registers with a small number of texts in the *Decretals* that had become, in his words, "corrupted."⁵³⁹

These are the decretals which were corrupted, and which have been emended according to the actual wording of the register:

1) The first is from *De electione*, c. *Bonae memoriae M.* [X 1.6.23]: at the end where it used to read: "*confirmantes*," it should read: "*duximus confirmandam*," namely, in the past [*quondam*], according to what is noted in the penultimate gloss.

2) The second is from the same title, c. *Auditis*, [X 1.6.29], [corrected] in the beginning and in the end. In the beginning where it used to read: "*unam de G. Archidiacono et alteram de R. Subdiacono*," it should read: "*unam de R. Archidiacono et alteram de magistro R. Subdiacono*." Also where it used to say: "*Decanus cum paucioribus in ipsum R. et cantor cum pluribus in dictum Archidiaconum convenissent*," it should read: "*et cantor cum pluribus in G. Archidiaconum convenissent*." Also where it used to say near the end: "*a nominatione dicti Archidiaconi recedentes*," it should read: "*a nominatione dicti V. Archidiaconi recedentes*." Also where it used to say: "*de novo praefatum Subdiaconum*," it ought to read: "*de novo magistrum R. Subdiaconum, cum esset Subdiaconum eligere praesumpserunt*."

3) The third is from *De officio [iudicis] ordinarii*, c. *Quanto* [X 1.31.7], past the middle where it used to read: "*secundum Abbatis consilium*," it should read: "*secundum arbitrii tui consilium*."

3a) Also corrected is the decretal from *De sententia et re iudicata*, c. *Cum inter nos* [X 2.27.13];

3b) and another from the same title, c. *Cum I. et A.* [X 2.27.22].

They are corrected according to what will appear further below when these decretals are discussed [in the body of the commentary].

4) The fourth is from *De appellationibus*, c. *Cum speciali* [X 2.20.61], near the end, where it used to read: "*iudex ex officio suo procedet*," it ought to read "*procedit*."

4a) Also corrected is the text from *De appellationibus*, c. *Constitutus [immo]*, c. *Constitutis*, X 2.28.46], as will be shown further below when the decretal is discussed [in the body of the commentary].

5) The fifth is from *De clericis non residentibus in ecclesiis vel praebendis*, c. *Ex tuae* [X 3.4.11], [corrected] in several places. First off there is some text missing where it used to read: "*suas deseruerunt ecclesias*," to this should be added: "*ut iuxta sanctiones canonicas eis debent merito spoliari*." Also where it used to say: "*contra eos procedatur*," to this should be added: "*hoc modo ut ipsos, etc.*" Also

stage of development than the text of the early modern printed editions: Assisi, Biblioteca Comunale 230, and London, British Library, Arundel MS 461.

⁵³⁹ "Textus quarundam Decretalium corruptarum, in registro eiusdem [apostolicae] sedis vigilantissimo studio inquisitarum, plenius colligi potuerunt, cuius textus corruptio et veritas, ad eiusdem loca transmittuntur per ordinem annotata," *Apparatus*, fol. 1r.

where it used to say: “*ab Episcopali administratione,*” it ought to read: “*ab Episcopatum.*”

6) The sixth is from *De praebendis et dignitatibus, c. Pro illorum* [X 3.5.22], near the middle where there are words missing. For where it used to say: “*praedictum magistrum de praebenda et canonicatu Santonensis ecclesiae, etc.,*” to this should be added: “*praedictum magistrum cum consensu et voluntate tua frater Episcopo [leg. Episcopo] de praebenda et canonicatu Santonensis ecclesiae, etc.*”⁵⁴⁰

Every one of the nine decretals mentioned in the prologue belongs to Innocent

III.⁵⁴¹ The principle of selection seems somewhat arbitrary, though there are discernible groupings around the topics of ecclesiastical elections, judicial process and benefices.

The gaps in Innocent III’s surviving registers make it impossible to prove that Sinebaldus worked from them directly in every single case (as opposed to an intermediate formal source like 3-4Comp), but there are several examples where the register is the only

⁵⁴⁰ “Istae sunt decretales quae corruptae erant, et sunt secundum veram literam registri emendatae. Prima est *De electione, c. Bonae memoriae M.* [X 1.6.23], in fine ubi dicebatur: “*confirmantes,*” debet dicere: “*duximus confirmandum,*” scilicet, quondam, secundum quod in penultima glossa ibi notatur. Secunda est eodem titulo, c. *Auditus* [X 1.6.29], in principio et etiam in fine. In principio ubi dicebatur: “*unam de G. Archidiacono et alteram de R. Subdiacono,*” debet dicere: “*unam de R. Archidiacono et alteram de magistro R. Subdiacono.*” Item ubi sequitur: “*Decanus cum paucioribus in ipsum R. et cantor cum pluribus in dictum Archidiaconum convenissent,*” debet dicere: “*et cantor cum pluribus in G. Archidiaconum convenissent.*” Item ubi sequitur circa finem: “*a nominatione dicti Archidiaconi recedentes,*” debet dicere: “*a nominatione dicti V. Archidiaconi recedentes.*” Item ubi sequitur: “*de novo praefatum Subdiaconum,*” debet dicere: “*de novo magistrum R. Subdiaconum, cum esset Subdiaconum eligere praesumpserunt.*” Tertia est *De officii [iudicis] ordinarii, c. Quanto* [X 1.31.7] ultra medium ubi dicebatur: “*secundum Abbatis consilium,*” debet dicere: “*secundum arbitrii tui consilium.*” Item corrigitur decretalis *De sententia et re iudicata, c. Cum inter nos* [X 2.27.13]; alia eodem titulo, c. *Cum I. et A.* [X 2.27.22]. Corriguntur, sicut apparet inferius, ubi super eisdem decretalibus notatur. Quarta est *De appellationibus, c. Cum speciali* [X 2.28.61] circa finem ubi dicebatur: “*iudex ex officio suo procedet,*” debet dicere: “*procedit.*” Item corrigitur textus *De appellationibus, c. Constitutus, [immo Constitutis, X 2.28.46]*, ut apparet inferius, ubi super eadem decretalis notatur. Quinta est *De clericis non residentibus in ecclesiis vel praebendis, c. Ex tuae* [X 3.4.11] in pluribus locis. Primo deest textus ubi dicebatur: “*suas deseruerunt ecclesias,*” debet addi: “*ut iuxta sanctiones canonicas eis debent merito spoliari.*” Et sequitur: “*contra eos procedatur,*” debet addi: “*hoc modo ut ipsos, etc.*” Item ubi sequitur: “*ab Episcopali administratione,*” debet dicere: “*ab Episcopatum.*” Sexta *De praebendis et dignitatibus, c. Pro illorum* [X 3.5.22], circa medium, et est defectus literae. Nam ubi dicitur: “*praedictum magistrum de praebenda et canonicatu Santonensis ecclesiae, etc.,*” debet ibi addi: “*praedictum magistrum cum consensu et voluntate tua frater Episcopo de praebenda et canonicatu Santonensis ecclesiae, etc.*” Innocent IV, *Apparatus*, fol. 1rb-1va.

⁵⁴¹ 1) X 1.6.23, 2) X 1.6.29, 3) X 1.31.7, 3a) X 2.27.13, 3b) X 2.27.22, 4) X 2.28.61, 4a) X 2.28.46, 5) X 3.4.11, 6) X 3.5.22. The anomalous numbering (3, 3a, 3b; 4, 4a) stems from the fact that Innocent only assigned numbers to six of the decretals, but lists a total of nine. See the following page for a proposed interpretation of this curious feature.

known source for the additional wording supplied.⁵⁴² In addition to his comments in the prologue, for several decretals on the list Sinebaldus went into greater detail about the textual emendations in the main body of the commentary. His textual criticism falls into two rough categories: identifying transmission errors, and resupplying the *partes decisae* excised either by Raymond or the formal sources. In light of recent advances made in understanding the *Apparatus*' development, a few prefatory remarks are in order before evaluating Sinebaldus' textual criticism.

The structure of the prologue – including the inconsistent numbering and lack of detail for several emendations – suggests that it underwent revision. The prologue was itself a later addition, just one of many Sinebaldus made over the course of a decade to expand and improve the *Apparatus*.⁵⁴³ As seen in the text above, Sinebaldus assigned an ordinal number (*prima, secunda*, etc.) to just six out of the nine corrupted decretals. For each of the six he also included a brief description of the emendations, which in most cases received further elaboration in the body of the commentary.⁵⁴⁴ On the other hand, Sinebaldus merely cites the three unnumbered decretals (X 2.27.13, X 2.27.22 and X 2.28.46), and then directs the reader to the body of the commentary for the corrections. This inconsistent treatment suggests that the textual-critical remarks in the prologue for these three were added at some later stage of the prologue's composition, with Sinebaldus merely slotting them in under the existing numbers rather than renumbering the whole sequence.

⁵⁴² For two of the eight (excluding the one for which there is no discussion) there is no available precedent from the registers: X 2.28.61, which is c. 48 from Lateran IV; and X 3.5.22, which dates from 1201, one of the early missing years of Innocent's register.

⁵⁴³ Bertram: "Zwei vorläufige Textstufte," p. 431. Just how much later the prologue was added is still unclear given the lack of detailed study of the manuscript tradition.

The more important question is whether the alleged additions to the prologue reflect ongoing revisions of the *Apparatus*, or whether the prologue was more of a self-contained text, which Sinebaldus later chose to expand to include these three additional textual-critical remarks that were already present in the *Apparatus*. Martin Bertram's comparison of the fuller printed edition of the *Apparatus* with the earlier versions in the London and Assisi manuscripts (representing two distinct earlier stages of composition) provides evidence to support the idea that Sinebaldus' textual criticism was evolutionary rather than executed all at once. Both manuscripts lack the register corrections made to X 2.28.46 in the body of the commentary, showing in at least one case that Sinebaldus did not do all the textual critical work at the same time.⁵⁴⁵ The significance of this point is not immediately clear, but it may assist future work on the manuscript tradition of the *Apparatus* and provide context for understanding the motivations behind some of Sinebaldus' additions and changes to the text.

4.4 The use of textual and source criticism in the commentary on X 1.6.23 *Bonae memoriae*

For the sake of brevity and thoroughness, this analysis of textual and source-critical methods in the thirteenth century will focus on a single decretal, X 1.6.23 *Bonae memoriae*. The goal of the analysis is two-fold. First, it will demonstrate how in the

⁵⁴⁴ There are no additional remarks in the body of the commentary on the proposed emendations for the fifth (X 3.4.11) and sixth (X 3.5.22) numbered decretals in the prologue.

⁵⁴⁵ Bertram, "Zwei vorläufige Textstufte," p. 458. The missing section includes the entire extract from Innocent III's registers supplied by Sinebaldus: "*nos ergo*] deficit totus iste textus sequens secundum quod compertum est in registro, et incipit: 'Nec appellatio quam post confirmationem obiecerat. Confirmationis factum debuit impedire, quoniam a maiori parte contra constitutionem maioris et sanioris, nulla rationabili causa obiecta vel offensa interposita fuerat, quia et decanus apponens rationabilem causam suae appellationis, nec opposuit, nec ostendit, nos ergo, etc.,'" *Apparatus*, fol. 327rb. Owing to Sinebaldus' having skipped over X 2.28.12, *Super eo* (1Comp 2.20.13), the numbering thereafter of the *De appellationibus* title is off by one, such that the commentary on X 2.28.46 is numbered as c. 45. For the subsequent history of this gloss, which even managed to infiltrate some versions of Bernard of Parma's ordinary gloss, see: Pennington, "The Making of a Decretal Collection," p. 82, n. 44.

wake of the *Decretals* canonists continued to consult the older sources from which Raymond drew his material, and in some cases went even further, going to the papal registers as a more authentic repository of the text and as a valuable contextual tool. Canon law commentary thus provided a privileged space where writers could effectively circumvent the exclusivity claimed for the *Decretals* in *Rex pacificus*. Secondly, it will show how later insertions of deleted material into the text of the *Decretals*, whether by copyists or students, can be directly tied to commentary employing textual criticism. This kind of commentary can, therefore, help explain one of the vectors by which material was added back into the *Decretals*.

4.4.1 The text of X 1.6.23, *Bonae memoriae*

X 1.6.23 (3Comp 1.6.8), *Bonae memoriae*, transmits a decretal issued by Innocent III in 1202 to settle the disputed archiepiscopal election of Mainz.⁵⁴⁶ The decretal itself was merely the last in a long-running and sharply contested case that burst open after the Mainz chapter divided over who should replace their recently deceased archbishop. With Phillip of Swabia's presence providing pressure, the first and *maior pars* of the chapter elected an already-sitting bishop, Lupold of Worms. Lupold then assumed the administration of the Mainz archbishopric despite having yet to receive papal confirmation or dispensation for his otherwise unlawful translation from one see to another. In the meantime, a smaller group from the chapter, fearing the influence of Phillip, had performed a second, offsite election that selected the provost from a local

⁵⁴⁶ Pottast 1647; Reg. V.14. The case left a substantial paper trail in papal correspondence, including: Potthast 1518, 1536, 1643 and 1731. For a discussion of the affair in the context of Innocent's attempts to exert greater control over the German church, see: Paul Pixton, *The German Episcopacy and the Implementation of the Decrees of the Fourth Lateran Council, 1216-45* (Studies in the History of Christian Thought, ed. Heiko Oberman, vol. 64: Leiden, 1995) pp. 103-4, 109-10.

church, the eventual Archbishop of Mainz, Siegfried of Eppenstein.⁵⁴⁷ Both the electors of Lupold and those of Siegfried claimed to have lodged appeals to Rome prior to the other's election, thereby potentially voiding both sets of results, since canonically all appeals had to be resolved before proceeding to a vote. Innocent knew a mess when he saw one and promptly dispatched the cardinal legate of Palestrina, Guy de Paré, to hear the case.

It is at this point in the case that the form of the commission given to the legate – the findings of fact and points of law he was instructed to consider – becomes critical for understanding how the rest of the case ultimately broke in favor of Siegfried of Mainz. Equally important for understanding the knots that later commentators attempted to untie were those elements that Raymond excluded as *partes decisae*. To that end, a facsimile of the full decretal as it appears in Friedberg's edition is included below. This is given along with a translation just of the text that Raymond ultimately produced, following the version given by the *Correctores Romani* in the *ER*. To understand how to interpret Friedberg's composite, collated version, readers are reminded that Raymond's text is given in unitalicized typeface. Sections in italics represent what Raymond removed, except for those italicized portions that are enclosed within square brackets [], which represent the excisions made by the compiler of 3Comp from the original text as given in Innocent III's register.⁵⁴⁸

⁵⁴⁷ Phillip is not mentioned by name in this decretal. The decretal simply refers to the fear of coercion (*vis*) alleged by the group electing Siegfried. That Phillip was the source of the coercion is made clear by contemporary accounts of the case, and was presumably cited in earlier, now-lost exchanges between Innocent III, the Cardinal Bishop of Palestrina and Archbishop Siegfried. See, for example: *Cronica Reinhardbrunensis*, ed. O. Holder-Egger (MGH, *Scriptores* 30: Hanover, 1896) pp. 563-5.

⁵⁴⁸ In many cases Petrus Beneventanus, the compiler of 3Comp, was simply following how earlier compilers like Alanus and Bernardus Compostellanus had edited the text, and it has not been established that he even used Innocent's register as his base text for all the material in 3Comp. For the sake of clarity, however, the earlier, pre-*Decretals partes decisae* will be assigned simply to Petrus.

quod, vacante praepositura Colocensis⁵* ecclesiae, in duo se vota eligentium divisissent⁶, causam iudicibus⁷ duximus committendam, †quod⁸ auditis, quae proponerentur hinc inde, si de partium procederet voluntate, definitivam sententiam promulgarent; alioquin causam sufficienter instructam ad nostram remitterent audientiam⁹; statuente partibus terminum competentem, quo per se, vel idoneos responsales ad sedem apostolicam accederent sententiam receptorum. Ipsi vero, manulatum apostolicum fideliter exsequi cupientes, partes ad suam praesentiam convocarunt, receperunt testes hinc inde productos, examinauerunt eligentium conscientias, audiverunt allegationes utrinque. Et quoniam praepositus sancti Georgii eorum sententiae se tandem asseruit nolle stare, processum¹⁰ ad sedem apostolicam destinarunt, partibus festum beati Michaelis tunc proximo venturum veniendi ad sedem apostolicam terminum praefigentes, [quem praepositus SS. Apostolorum, allegans, quod terminus tam prolixus dispendium ecclesiae generaverat, ad festum S. Servatii brevavit.] Quumque nuncios praepositi sanctorum Apostolorum statuto termino ad praesentiam nostram accessissent, praepositus sancti Georgii nec venit, nec pro se¹¹* misit idoneum responsalem. [Sed venerabilis frater noster Coloniensis archiepiscopus eius absentiam excusavit, asserens eum captum, arrepto itinere ad sedem apostolicam veniendi, a nobili viro W. Juliacensi comite detineri. Nos autem ne aliquid disponere in eius praedictum videremur, per dilectum filium praepositum S. Gereonis et B. concanonicum suum mandavimus ad festum Resurrectionis dominicae sub peremptorio partem utramque citari. Qui, sicut ex literis ipsorum acceptimus, SS. Apostolorum praepositum viva voce, praepositum vero S. Georgii per literas et nuncios pariter citaverunt; qui citatione recepta se scripsit ad sedem apostolicam accessurum. Verum, quum nec ad terminum, nec ultra terminum, etiam per VIII. hebdomadas exspectatus venerit, vel miserit idoneum responsalem, eum reputavimus contumacem, eundem in expensas legitimas parti condemnantes adversae.] Visis attestationibus et Gestis igitur¹² iudicium diligenter inspectis, invenimus, quod pro praeposito sanctorum Apostolorum auctoritas, pro praeposito vero sancti Georgii numerus eligentium faciebat, quum primus a quatuordecim, tum personis, tum canonicis, qui alios dignitate¹³, aetate et tempore praecedebant, secundus vero a viginti quatuor fuisset electus. †Obiciebatur autem praeposito S. Georgii minor scientia, defectus aetatis, et quod in minoribus erat ordinibus constitutus. Unde quum praepositurae illi esset archidiaconatus annexus, nondum erat ei dignitas conferenda, ratione cuius cogebatur infra praefixum a canonicis spatium in diaconum promoveri. Proponebatur autem pro altero, quod vir erat aetate, scientia et moribus commendandus. Unde meliori ducti zelo propter hoc electores ipsius in eum se confessi pariter convenisse; non¹⁴ solum sui, sed quidam aliterius etiam electores eum prudentiorem esse praesertim in spiritualibus assererent, quamvis alium magis utilem maxime circa temporalia propter potentiam fuerint protestati. Quum autem allegationes pro eodem praeposito sancti Georgii coram iudicibus ipsis praeposita¹⁵ nobis non fuerint praesentatae, propter quod non potuimus scire per nos, quid obiecerit¹⁶*, vel quid responderit ad obiecta, sicque causa remissa non fuit¹⁷ sufficienter instructa, [tunc] ad definitivam sententiam non duximus procedendum, sed decisionem causae ipsius iudicibus¹⁸ commisimus sub hac forma, ut, vel si notorium esset, vel per ea¹⁹, quae iam dicta erant, constaret, quod praepositus S. Georgii electionis²⁰ tempore pateretur vel in ordinibus, vel in²¹ scientia, vel in²²* aetate defectum, qui eum iuxta canonum²³ sanctiones impediret ad huiusmodi officium promoveri, ei, sublato appellationis obstaculo, non obstante ipsius absentia corporali, silentium imponentes, praeposito sanctorum Apostolorum praeposituram adiudicarent eandem, et eum in possessionem corporalem

mittentes pacifica²⁴ facerent possessione gaudere. Alioquin, quum in eum non solum plures, sed duae paene partes convenerint²⁵, et impedimentis cessantibus appareat²⁶, quod eum bono zelo elegerint²⁷, praepositi sanctorum Apostolorum electione appellatione remota²⁸ cassata, electionem²⁹ confirmarent ipsius³⁰, et ei facerent praeposituram assignari praedictam, et de cetero tanquam praeposito responderi, [contradictores etc. Dat. Lat. V. Id. Apr. 1203.]

CAP. XXIII.¹

Recipientes postulatam ad ecclesiam tanquam institutum vel administratorem ante admissionem postulationis a superiore factam, privati sunt potestate eligendi, et ad alios, licet pauciores, devolvitur potestas eligendi; et si omnes privati sunt, devolvitur ad Papam in ecclesiis cathedralibus. Hoc dic. secundum principalem intellectum, qui magis congruit literae.

Idem Canonicis Maguntinensibus².

Bonae memoriae C. Maguntinensi archiepiscopo³, episcopo Sabiniensi, viam universae carnis ingresso, quum vota vestra⁴ se in varia divisissent, et⁵ quibusdam petentibus Wormaciensem⁶* episcopum quibusdam vero venerabilem fratrem nostrum nunc archiepiscopum vestrum, tunc praepositum sancti Petri Maguntinensis, sibi eligentibus in pastorem, dilectus filius magister P. scholasticus Maguntinus cum quibusdam aliis pro⁷ illis, qui Warmatiensem episcopum postularunt, procurator ad apostolicam sedem accessit; pro aliis⁸ vero dilecti filii E. et R. clerici [Maguntini] venerunt, quorum alter institutus fuit⁹ procurator. Partibus igitur in nostra praesentia constitutis, et eis in consistorio nostro diligenter et sufficienter auditis, de fratrum nostrorum consilio venerabili fratri nostro Praenestino episcopo, a sede apostolica legato¹⁰, dedimus in mandatis, ut, si eundem episcopum quoad temporalia vel¹¹ spiritualia recepisse constaret ecclesiam Maguntinensem, vel ministrasse in temporalibus aut spiritualibus in eadem, prout obiectum fuerat ex adverso, postulationem factam de ipso, sublato cuiuslibet¹² appellationis obstaculo, nunciaret irritam, †de gratia nostra concedens eum, ut Warmatiensem sibi ecclesiam retineret. Nam de iure communi, quia praeter auctoritatem nostram transire praesumpsit, utraque erat¹³ spoliandus, ut [et] ea careret, quam concupivit avare, et¹⁴ ea, quam superbe desepxit. Quod si parere contemneret, utraque ipsum ecclesia denunciaret auctoritate nostra privatam. Deinde inquireret de ipsius¹⁵ electione archiepiscopi diligentius veritatem, et, si ei de vi, quam ipse et sui metuebant, constaret, eo non obstante, quod post appellationem ad nos interpositam fuerat in ipsius electione processum, quum alii, qui appellationi ad nos interpositae, ne¹⁶ sine ipso ac sociis eius haberent in electione processum, non duxerint¹⁷ deferendum, uti contra ipsum hac exceptione non possent, quia¹⁸* frustra legis auxilium invocat qui committit in legem, unde nec ab eis posse obici videbatur, quod idem¹⁹ esset a paucioribus secundum eorum assertionem electus, quum ipsi, appellationem ad nos legitime interpositam contemnerent, et praeter licentiam nostram recipientes episcopum memoratum, reddiderint²⁰ se indignos, electionem archiepiscopi²¹, dummodo nihil obstaret de canonicis institutis, sublato appellationis obstaculo confirmare²². †Quod si nec recepisse praefatam²³ ecclesiam quoad spiritualia vel temporalia, nec in spiritualibus vel temporalibus ministrasse constaret episcopum memoratum, idem legatus audiret quae super postulatione ipsius et electione archiepiscopi proponerentur hinc inde²⁴, testes utrinque²⁵ reciperet, et eorum depositionibus publicatis usque ad calculum sententiae definitivae procedens, gesta omnia sub sigillo suo ad nostram praesentiam destinaret, statuens partibus terminum competentem, quo apostolice se consueti praesentarent²⁶ sententiam receptorum²⁷. Licet autem essent notoria, quae contra dictum Wormaciensem episcopum et eius fautores fuerant obiecta, praedictus tamen²⁸ legatus ad

Tit. VI. Cap. XXII. 5) Coloniensis: Codd. coll. o. C recte 6) divisio etiam: Ch 7) dil. f. (add.: nost.: Cgh) de Laen, I. de Claustro, et G. de Valle S. Petri in Hesterbach (Hesterbach: Cefg) abbatibus sub eo tenore (male omis. a Richter) duximus etc.: C 8) ut: C 9) add.: auctoritate apostolica: Ch 10) depositiones testium hinc inde receptas et allegationes partis alterius sub sigillis suis ad sed. ap.: C Reg. 11) pro se: deest: FGHKMC Reg. 12) ergo: Cab 13) tam aetate, quam dignitate ac ordine: Reg. 14) nec: Cab 15) proposita: LaNC Reg. 16) obiecerint... responderint: FGHJKLNC; quod: Cab 17) fuerit: C Reg. 18) dil. fil. S. Gereonis (Gedeonis: Cech; et S. Severini praepositi Coloniensis. (deest: C) et decano Bunensi (Bonnenis: Cdef; Brunens: Cgh) duximus (add.: sub ea forma: C) committendam: C — per ap. scripta mandantes eisdem, quatenus: Reg. 19) per iam acta: Reg. 20) in elect.: Cab 21) in: deest: Reg. 22) in: deest: FGHK Reg. 23) canonicas: LaCb Reg. 24) eum pac.: C ac 25) convenerunt: GHICab; convenirent: Ch 26) apparet: HCch; appa-

reret: Cab; praesumi deberet: Reg. 27) elegerunt: Ch 28) cessante: Cac 29) add.: auctoritate nostra suffulti: C 30) illius: Reg.

Cap. XXIII. 1) Restitutum ex Reg. Bregu. V, 14; Alan. 2. (1, 5); Comp. III. c. 8. h. t. (1, 6). 2) Potthast no. 1647. 3) olim ep.: Ch 4) canonicorum Mogunt. eccl.: T 5) et: deest: T Reg. 6) Warmaciensem: FGHKNCab Reg. et sic deinceps 7) pro illi: deest: T 8) alio: Ch 9) fuerit: Ch; fuerat: T 10) sedis apost. legato: FGHK Reg. 11) vive: Cac; vel spir.: deest: T 12) cuiusl.: deest: ChT 13) fuerat: T 14) ac: CabT 15) dicti: T 16) nec: Hla; verba: ne... process.: addita sunt a Raymundo 17) duxerant: LaCT Reg. 18) quoniam: FGHJKLNC Reg. 19) id.: deest: T 20) reddiderunt: Chch 21) add.: eiusdem: T 22) finis canonis: T 23) praedictam: Cab 24) inde: deest: Ca; huius (hinc inde: deest): Cc 25) utriusque partis: Ch 26) representant: Ca; representarent: Cc 27) receptorum: Cab 28) tam: deest: Cab

Corpus iur. can. Ed. Friedberg. T. II.

maiores cautelam multos et magnos testes recepit, ex ipsius archiepiscopi parte productos, qui super praedictis deposuerunt iurati. Unde ipse iuxta mandati nostri tenorem procedens, postulationem factam de Wormaciensi cassavit, et electionem archiepiscopi memorati, quamvis²⁹ a paucissimis celebratam, curavit auctoritate apostolica confirmare, ipsumque ordinavit in presbyterum, et tandem in archiepiscopum³⁰ consecravit. † Ipse autem humiliter ad nostram praesentiam accedens, suppliciter postulavit, ut pallium sibi, videlicet insigne pontificalis officii, de consueta sedis apostolicae benevolentia conferremus. Verum quidam simplex³¹ nuncius ab adversariis eius ad sedem apostolicam destinatus ex eorum parte apertas nobis cum sigillo pendente literas praesentavit, per quas idem significabant canonici, quod praedictus legatus corruptus pecunia iniquam sententiam protulisset. Addebant etiam, quod Maguntini cives pariter iuraverunt, quod eum nunquam haberent³² episcopum, et quod universi clerici, paucis exceptis, suo faebant electo. Quum autem super his coepissemus deliberare cum fratribus nostris³³, electioni eiusdem archiepiscopi duo videbantur obstare, videlicet quod a paucissimis, et post interpositam³⁴ a se ipso appellationem videbatur³⁵ electus. Nam quum postulatione Wormaciensis episcopi fuerit praecedentis appellationis ratione cassata, archiepiscopi electio debebat etiam³⁶ ex eadem causa cassari. Sed e contra, sicut superius est expressum, qui in appellationem³⁷ deliquerant, appellationem contra eundem archiepiscopum non poterant allegare. Poterat quoque dici, quod, etsi post appellationem, non tamen³⁸ contra formam appellationis fuisset electus archiepiscopus saepe dictus, quum appellaverit in hac forma, ne canonici Maguntiae residentes sine ipso ac sociis suis haberent in electione processum. Nec nocet, quod posset ex altera parte replicari; quia nec ipse et³⁹ socii sui debuerant procedere sine ipsis, quia ipsi appellationem apud⁴⁰ nos interpositam contemnendo reddiderant se indignos, et abusi fuerant iure suo. Unde, quum in Lateranensi concilio de his, qui quasdam personas inhibitas eligunt, sit statutum, ut eligendi tunc potestate privatos, et ab ecclesiasticis beneficiis triennio noverint se suspensos, illis pro longe maiori delicto tanquam indignis ab electionis potestate cadentibus, penes eundem ac socios suos tantum ius remanserit eligendi. Quare, si multo pauciores in ipsum quam convenerint⁴¹ convenissent, intelligendum est tamen, quod omnes, qui tunc eligere poterant, elegerunt eundem. Contra legati vero processum hoc facere videbatur, quod non citatis⁴² Wormaciensi episcopo et eius fautoribus processisset. Porro iuxta canonicas sanctiones excessus notorius examinatione non indiget, et pro his, quae a iudice sunt acta, praesumitur, quod omnia rite fuerint celebrata; quamvis et, quod citati non fuerint, non posset⁴³ de facili comprobari, quia negantiam factam per⁴⁴ rerum naturam nulla est directio⁴⁵ probatio, quum, etsi quilibet de se posset asserere, quod ad eum citatio minime pervenisset, singuli tamen vestrum essent in suo testimonio singulares. Ad ipsum quoque legatum, si voluissent, secure potuissent procuratorem idoneum destinare, sicut [et] nuncium destinarent⁴⁶, † quemadmodum ex ipsorum ad nos directis literis comprobatur, qui secure ad eundem legatum accessit, et ad propria remeavit, quum et ipse legatus paratus fuerit securitatem omnimodam providere. Nec obest, quod idem nuncius dicitur appellasse, quum appellationi renunciarerit, et in commissione nostra, quam pars reportavit utraque, obstaculum fuisset appellationis amotum. Sed nec apparebat etiam, qui⁴⁷ contra factum legati quicquam posset obicere ac probare, quum non procurator sufficiens, sed simplex ad nos contra praedictum archiepiscopum fuisset nuncius destinatus. [Praeterea si appareret etiam, non esset aliquatenus audiendus, quum adversarii eius per praesumptionem, contemptum et blasphemiam audientia nostra se reddiderint indignos. Praesumptio enim fuit, quod virum, pastoralis praedictum dignitate, alteri ecclesiae spirituali coniugio copulatum, praeter auctoritatem nostram contra formam canonicam non solum eligere, sed recipere praesumpserunt. Contemptus accessit ex eo, quod post-

quam procurator eorum nostras literas reportavit, in quibus mandabatur expresse, quod si Wormaciensis episcopus Maguntinam ecclesiam quoad spiritualia vel temporalia recepisset, vel in spiritualibus vel temporalibus ministrasset in ea, ipsius postulatione cassaretur, et eisdem non veniret in dubium, sed potius manifeste constaret, quod Wormaciensis temporalia saltem receperat, et ministrarat in eis, ipsi postmodum tanquam electo suo, sicut ex literis ipsorum apparet, in quibus eum electum suum nominant et ei se asserunt unanimi consensu favere, temere paruerunt, et consenserunt in ipsum, spirituale cum eo adulterum perpetrantes, quum et per nuncium ad nos ultimo destinatum electionem ipsius in publico consistorio postulaverunt confirmari. Blasphemia vero in eo fuerat subsecuta, quod, ponentes in coelo os suum, legatum nostrum, qui fungebatur in illis partibus vice nostra, et qui prius etiam, quam assumeretur ad officium pastorale, multae religionis exstiterat, utpote qui in Cisterciensi ordine fuerat primo abbas, quantum in eis existit infamantes, eum corruptum fuisse pecunia sunt mentiti.] Nos igitur, etsi propter auctoritatem iudicialiam praesumamus pro his, quae acta sunt a legato, illi tamen plus⁴⁸ innititur rationi, quod adversarii archiepiscopi ex tribus causis praedictis se usque adeo reddiderunt indignos, quod contra eum non debebant audiri. Unde quod de ipso factum fuerat non poterat impediri per eos, quin etiam si electores eiusdem partis⁴⁹ pariter deliquissent, ut se reddidissent indignos, ad nos devoluta fuisset hac vice ordinatio ecclesiae Maguntinensis, quare⁵⁰ dictum archiepiscopum sine iuris⁵¹ iniuria potuissemus eidem ecclesiae praeficere in pastorem, praesertim quum per legatum apostolicae sedis fuisset in Maguntinum episcopum⁵² consecratus. Super his ergo⁵³ cum fratribus nostris habito diligenti tractatu, de ipsorum consilio cassationem postulationis factae de Wormaciensi episcopo ratam habemus, electionem memorati⁵⁴ archiepiscopi confirmantes. [Dat. Lateran. X. Kal. April. 1202.]

CAP. XXIV.¹

Sufficit electo ad obtinendum docere, eligentem fuisse in quasi possessione tempore electionis, licet non probet, quod proprietas iuris eligendi ad illum pertineret.

Idem Clericis sanctae Agathes².

Querelam, quam³ dilectus filius G. tituli sancti Vitalis nunc presbyter, tunc sanctae M. in Aquiro diaconus cardinalis per oeconomum ecclesiae vestrae, cuius idem cardinalis est gubernator, contra P.⁵ nunc presbyterum, tunc vero diaconum ecclesiae sancti⁶ Salvatoris, quae dicitur de Cornuti, coram bonae memoriae C. Papa praedecessore nostro super ecclesia ipsa⁷ proposuit, C.⁸ papa praedecessor noster nobis, in minori officio constitutus, audiendam et examinandam commisit. Petebat igitur idem oeconomus praefatum⁹ P. ab ecclesia sancti¹⁰ Salvatoris, quam in praeiudicium vestrae ecclesiae ad¹¹ iniuriam cardinalis praedicti occupare praesumpserat, removeri, quum ipsa ecclesia sancti Salvatoris pertineat ad ecclesiam sanctae Agathes pleno iure¹², petens etiam pensionem sexdecim denarium Papiensem¹³, debitam ecclesiae sanctae Agathes, pro eadem¹⁴ ecclesia Salvatoris de¹⁵ Thermis¹⁶ sibi restitui de novo subtractam. Praedictus vero P. clericus respondebat, quod ipse nullam iniuriam irrogaverat cardinali, nec in praeiudicium ecclesiae vestrae¹⁷ receperat dictam ecclesiam, quum haec ad illam nullo iure pertineat, nec aliquam sibi debeat¹⁸ reddere pensionem; sed ipse per electionem populi, ad¹⁹ quem de antiqua consuetudine pertinet electio²⁰, a cardinali sanctae Susannae, cui eadem ecclesia Salvatoris, tanquam capella suo titulo²¹, in spiritualibus est subiecta, canonice fuerat institutus. † Quumque ad suam assertionem probandam utraque pars multoties testes produxisset, nos illos recepimus et examinavimus diligenter, quorum depositionibus publicatis disputationem audivimus super illis. Sed antequam huiusmodi controversia

Tit. VI. Cap. XXIII. 29) verba: quamvis... celebr.: addita sunt a Raymundo 30) episcopum: FGHKMN 31) simpl.: deest: Cae 32) recipere in archiep.: Cb 33) nostr.: deest: Cae 34) add.: ad sedem ap.: Cb 35) dicebatur: Cbc 36) et.: deest: Cae 37) appellatione: ib. 38) tamen: deest: ib. 39) nec: Cbc 40) ad: Cbc 41) quam conv.: deest: Cae; quam malum: Cb 42) quod dicebatur (dicebat: Cb) in loco suspecto et... processisse: C Reg. 43) possent... comprobare: Cgh 44) secundum: Cb Reg. 45) nulla est probatio: Codd. coll. o. C praet. Cb; — nulla esse probatio perhibetur: Cb Reg. 46) destinarent: FLCaegh Reg. 47) quod: Cbc 48) add.: etiam: FN 49) part.: deest: FGHKLaC Reg. 50) quia: Cb 51) add.: cuiusquam: Cb 52) archiep.: Cbc 53) vero: Cb Cont. Bohm. 54) mem.: deest: Codd. coll. o.; et electionem archiep. memorati auct. ap. duximus confirmandam: C Reg.

Cap. XXIV. 1) Restitutum ex Reg. Brequ. VIII. 86. Comp. III. c. 9. h. i. (1. 6.) 2) Potheast no. 2531. 3) quam: deest: C 4) Gaufridus: M 5) Petrum: N; deest: Ca 6) super eccl. S. (S.: deest: Reg.) Salv.: C Reg. 7) verba: sup... ips.: addita sunt a Raymundo 8) Coelestinus: N; proposuit ipse nobis: C Reg. 9) ut praefatus... removeretur: ib. 10) sancti: deest: Reg. 11) ac: Cbc 12) plebano: Ch 13) add.: monetate: Cb 14) ead.: deest: C Reg. 15) et: H Reg.; in: GLKCb; ac: Cb 16) terminis: Cb Reg. 17) ecclesiae S. Agathes acceperat ecclesiam sancti (deest: Reg.) Salvatoris: C Reg. 18) debebat: Cgh 19) quae de ant. cons. pertinet ad eundem a card. S. Sus., cui eadem eccl. sancti (deest: Reg.) Salv. etc.: Cb Reg.; quae de ant. cons. ei pertinet, ad eundem a card. S. Sus. praesentatus, cui eadem eccl. S. Salvatoris: Ch 20) ei.: deest: Codd. coll. o. 21) iure vel tit.: Cb

X 1.6.23, *Bonae memoriae* (Innocent III to the canons of Mainz)⁵⁴⁹

With the Archbishop of Mainz of blessed memory going the way of all flesh, and with some petitioning for the Bishop of Worms, but others electing as their pastor your current archbishop, who was at the time the provost of St. Peter's in Mainz, we commissioned the Bishop of Palestrina, as legate of the Apostolic See, that if it were established that the bishop of Worms had taken possession of the temporal and spritual administration of the church of Mainz, or had begun to govern in these matters, then the legate would declare the postulation of the Bishop of Worms invalid. (*et infra*) Thereafter, the legate would also investigate the truth concerning the present archbishop's [Siegfried] election, and if the alleged coercion feared by him and his supporters were established, then he should confirm the election of the archbishop⁵⁵⁰ – notwithstanding the fact that his election was conducted after an appeal had already been lodged with us, because

⁵⁴⁹ The text of X 1.6.23 is here given without the *partes decisae*, according to the edition found in the *ER*: “Bonae memoriae C. Maguntinensi archiepiscopo, viam universae carnis ingresso, et quibusdam petentibus Wormaciensem episcopum quibusdam vero archiepiscopum vestrum, tunc praepositum sancti Petri Maguntinensis, sibi eligentibus in pastorem, Praenestino episcopo, a sede apostolica legato, dedimus in mandatis, ut, si eundem episcopum quoad temporalia vel spiritualia recepisse constaret ecclesiam Maguntinensem, vel ministrasse in temporalibus aut spiritualibus in eadem, postulationem factam de ipso, nunciaret irritam. (*Et infra*) Deinde inquireret de ipsius electione archiepiscopi veritatem, et, si ei de vi, quam ipse et sui metuebant, constaret, (eo non obstante, quod post appellationem ad nos interpositam fuerat in ipsius electione processum, cum alii, qui appellationi ad nos interpositae, ne sine ipso ac sociis eius haberent in electione processum, non duxerint deferendum, uti contra ipsum hac exceptione non possent, quia frustra legis auxilium invocat qui committit in legem, unde nec ab eis posse obiici videbatur, quod idem esset a paucioribus secundum eorum assertionem electus, cum ipsi, appellationem ad nos legitime interpositam contemnerent, et praeter licentiam nostram recipientes episcopum memoratum, reddiderint se indignos) electionem archiepiscopi confirmaret. (*Et infra*) Licet autem essent notoria, quae contra dictum Wormaciensem episcopum et eius fautores fuerant obiecta, praedictus tamen legatus ad maiorem cautelam multos et magnos testes recepit, ex ipsius archiepiscopi parte productos. Unde ipse iuxta mandati nostri tenorem procedens, postulationem factam de Wormaciensi cassavit, et electionem archiepiscopi memorati, quamvis a paucissimis celebratam, curavit auctoritate apostolica confirmare, ipsumque ordinavit in presbyterum, et tandem in archiepiscopum consecravit. (*Et infra*) Contra legati vero processum hoc facere videbatur, quod non citatis Wormaciensi episcopo et eius fautoribus processisset. Porro excessus notorius examinatione non indiget, et pro his, quae a iudice sunt acta, praesumitur, quod omnia rite fuerint celebrata; quamvis et, quod citati non fuerint, non posset de facili comprobari, quia negantis factum per rerum naturam nulla est directa probatio, cum, etsi quilibet de se posset asserere, quod ad eum citatio minime pervenisset, singuli tamen vestrum essent in suo testimonio singulares. Ad ipsum quoque legatum, si voluissent, secure potuissent procuratorem idoneum destinare, sicut nuncium destinarant. (*Et infra*) Nos igitur, etsi propter auctoritatem iudicariam praesumamus pro his, quae acta sunt a legato, illi tamen plus innitimur rationi, quod adversarii archiepiscopi ex tribus causis praedictis se usque adeo reddiderunt indignos, quod contra eum non debebant audiri. Unde quod de ipso factum fuerat non poterat impediri per eos, quin etiam si electores eiusdem partis pariter deliquissent, ut se reddidissent indignos, ad nos devoluta fuisset hac vice ordinatio ecclesiae Maguntinensis, quare dictum archiepiscopum sine iuris iniuria potuissemus eidem ecclesiae praeficere in pastorem, Super his ergo habito diligenti tractatu, cassationem postulationis factae de Wormaciensi episcopo ratam habemus, electionem memorati archiepiscopi confirmantes,” Friedberg, *CIC*, vol. 2, coll. 66-8.

⁵⁵⁰ There is a long parenthetical passage separating “then he should confirm the election of the archbishop,” from the earlier part of the sentence, constituting the block of text: “notwithstanding the fact...made themselves unworthy” (*eo non obstante...se indignos*). For the sake of clarity, Innocent's description of the legate's commission has been given in its entirety, before moving on to the parenthetical remark.

those appealing [i.e., supporters of Bishop of Worms] had themselves not thought to defer to the earlier appeal that they not proceed with the election without the provost [Siegfried] and his allies present, and therefore they were not able to allege this exception against the provost. For in vain do those men call upon the aid of the law, who have themselves transgressed it. Wherefore it did not seem possible to grant their objection that the provost was elected, according to their assertion, by a minority [of the chapter]; because by disregarding an appeal lawfully entered to us, and by welcoming the aforementioned bishop [of Worms] without our allowance, they made themselves unworthy. (*Et infra*)

Even though the things which the aforesaid bishop of Worms and his supporters were accused of were notorious, nevertheless the previously mentioned legate took the extra precaution of hearing multiple witnesses produced by the archbishop's side. Whence the legate, proceeding according to the letter of our mandate, vacated the postulation of the Bishop of Worms, and undertook to confirm the election of the aforementioned archbishop (even though it had been conducted by a minority),⁵⁵¹ ordained him into the priesthood, and finally consecrated him as archbishop. (*Et infra*)

The one charge that could be made against the legate's inquiry is that he proceeded without the bishop of Worms and his supporters having been summoned. However, a notorious transgression does not require investigation, and in general everything carried out by a judge should be presumed to have been performed correctly. That they were not summoned would be difficult to prove, since it is commonly accepted that the denial of a fact does not itself constitute direct proof; and because, even if any one of them were able to assert on their own behalf that he had not received a summons, each individual's testimony would only cover his own person. Moreover, if they had wished to do so they could have safely sent a qualified procurator to meet with the legate, just as they did send him a messenger. (*Et infra*)

Even though we are confident – on account of his judicial authority – in the things which have been done by the legate, nevertheless we base our judgment more on the fact that for the three aforementioned reasons,⁵⁵² the adversaries of the archbishop have made themselves unworthy to such an extent, that their complaints against the legate ought not to be considered. Whence they were not able to forestall the decision in favor of the archbishop;⁵⁵³ but even if the electors

⁵⁵¹ The parenthetical qualification of the archbishop's decision to confirm Siegfried's election despite its having been conducted by a minority was added by Raymond to the text (*quamvis a paucissimis celebratam*). While this addition was not designed to change the meaning of the decretal, it was used as a place holder for a much more detailed, and potentially problematic discussion of the irregularities surrounding Siegfried's election. For more, see below, p. 286.

⁵⁵² Innocent had gone into detail about these reasons earlier in the decretal, but Raymond had excised that portion of the text. The now-empty referent was one of the main questions raised by later commentators, and the search for a solution is what led them in part to search through sources prior to the *Decretals*.

⁵⁵³ "Whence they were not able to forestall the decision in favor of the archbishop," is a translation of *unde quod de ipso factum fuerat non poterat per eos impediri*. The referent of *de ipso* is a bit obscure given the neutral construction "what had been done" (*quod factum fuerat*), and could seem to refer equally to Archbishop Siegfried or Lupold of Worms. Bernard of Parma's *Casus* on the decretal makes it clear the

of both candidates had failed equally in their obligations, such that they rendered themselves unworthy, in this event the ordination of the Mainz church would have devolved to us, wherefore we would have been able to appoint the aforesaid archbishop [Siegfried] as pastor over the church without injury to the law. Having conducted a careful deliberation over these matters, we hold as valid the annulment of the Bishop of Worms' postulation, while at the same time confirming the election of the said archbishop.

4.4.2 Problems of Interpretation surrounding X 1.6.23, *Bonae memoriae*

The legal questions raised by *Bonae memoriae* – both those directly addressed by Innocent and those implicit in his decision – went well beyond election procedures, encompassing issues of due process, legatine authority, and papal intervention in local elections. They were also somewhat confused due to large portions of the text having been left out by Raymond and the previous editor of 3Comp; sections that included not just the narrative but detailed expositions of Innocent's legal reasoning. Innocent's original commission to Guy had been twofold. First, the legate should determine whether Lupold, the Bishop of Worms, had actually assumed administration of the church at Mainz. If this were determined then Guy should nullify his election. The legal basis for this nullification turned on the technical distinction between election and postulation, the difference between the two being based on the canonical suitability of the person elected, and thus what kind of approval was needed from a superior to make the election valid.⁵⁵⁴ An election of a fully qualified candidate created a right to that office, and the *electus*, as he was now termed, could presume the automatic confirmation by a superior that was required to validate the process. This is why *electi* would frequently assume the duties of

ipso is Siegfried (*quod factum est de ipso preposito per eos non potest impedi*), and so the translation has been worded to reflect that designation.

⁵⁵⁴ For a general overview of ecclesiastical election procedure with attention to the issue of *postulatio*, see the chapter on episcopal elections in: Richard Helmholz, *The Spirit of Classical Canon Law* (Atlanta, 2010) pp. 33ff. For the contemporary, canonical understanding of postulation, see Johannes Andreae's ordinary gloss in the *Liber sextus* on the title *De postulacione praelatorum* (VI 1.5): *ER*, vol. 3, coll. 64-5.

their office prior to receiving confirmation. On the other hand, if the election had chosen someone with a canonical impediment, for example, if he were of illegitimate birth, or as was the case with Lupold, already held episcopal office, then the election resulted in a *postulatio*, a request by the electors that the *postulatus* receive the dispensation necessary for him to be confirmed. Like the pallium, the insistence that an archiepiscopal *postulatus* seek dispensation from the pope prior to being seated was a powerful tool that popes since the Gregorian reform had been using to exercise greater control over the ecclesiastical hierarchy.

The second part of Innocent's commission was that Guy should examine the circumstances of the minority's election of Siegfried, and the appeal that his electors had originally lodged against the majority prior to the election of Lupold. Guy was to determine whether the fear of coercion they alleged should they have participated in the first election had any basis. If so, then the legate should confirm Siegfried as archbishop. Innocent urged Siegfried's confirmation in this case even though Lupold's side had lodged their own appeal prior to the election. His reason for doing so was simple. Because Lupold's side had not shown deference to the minority's appeal, they were not entitled to call upon the same legal protections for themselves.

Canonists were thus confronted with several issues in the first part of Innocent's letter. To begin with, what was it exactly that invalidated Lupold's election. Was it the fact that his electors had not deferred to the appeal of the minority? Or was it because Lupold, as a *postulatus*, had assumed the duties of office without first having his postulation confirmed by the pope, his lawful superior? Even if one or both of these reasons obtained, what made Siegfried's election canonical? Here is where canonists

started to come up against the limitations of the severely edited text. Raymond was innocent on the initial count, for it was a previous editor who had removed all mention of Phillip of Swabia's role, such that there was no longer enough information for commentators to judge the merit of Siegfried's electors' appeal, or even what the nature of the alleged coercion was.⁵⁵⁵ Even if their appeal was granted legitimacy, on what basis did they presume to perform a second election before the first one had been declared invalid? In order for the second election to have any standing, it was not enough that Lupold's was invalid, but that his electors had been deprived of the power of election – but no formal sentence of deprivation had been given in this case prior to the second election.⁵⁵⁶ Innocent would ultimately spell out the legal rationale whereby Lupold's electors through their actions had forfeited their power of election *ipso iure*, whence it automatically devolved to the minority without need of formal declaration by outside authority.⁵⁵⁷ Raymond had removed this portion of the text, however, leaving subsequent commentators to argue over which actions in this case had triggered the deprivation and devolution of election authority.

On top of this already substantial set of questions, an additional order of complication was created by the results of the legate's inquiry into the case. Guy had

⁵⁵⁵ This was one of the reasons why commentators like Innocent returned to the papal registers for the full context; see below, p. 296.

⁵⁵⁶ Sinebaldus Fieschi crystallized the issue in the following way, citing other precedents in the title on election whereby the formal sentence of deprivation that had not been pronounced in this case seemed to be required: “*Confirmantes*...procedi non poterat ad secundam [electionem], prima non cassata, *supra* eodem [tituluo] Consideravimus [X 1.6.10]; *infra*, eodem [titulo], Auditis [X 1.6.29]; et nota de hoc, *supra*, c. proxima [X 1.6.22], et sic etiam per consequens non erat ad alios devolutia potestas eligendi, nisi per sententiam privarentur,” *Apparatus*, fol. 53rb.

⁵⁵⁷ Innocent cited a Lateran III canon (c. 3, *Cum in cunctis* = X 1.6.7) that declared those knowingly electing an unsuitable candidate as deprived of their powers of election. The citation occurs in a portion of text that Raymond had removed, as can be seen in the Friedberg text given above (col. 67), which begins: “unde cum in Lateranensi concilio de his, qui quasdam personas inhibitas eligunt, sit statutum...”

conducted the entire investigation, including witness hearings and purgations, without the presence of Lupold or his supporters, and had ultimately decided in Siegfried's favor and consecrated him archbishop. Guy seems to have exceeded his mandate, and Lupold and his supporters cried foul and asked the pope to rehear their case. Their objection was three-fold: one procedural, one *ad hominem*, and the other substantive. The procedural complaint obviously focused on the fact that they had not been represented at the legate's hearing. They also leveled an *ad hominem* charge against the legate, that he had been influenced by a bribe to rule against them. This charge, however, as well as the discussion of its implications, had been entirely removed by the combined effort of Raymond and earlier editors.⁵⁵⁸ The final objection of Lupold's side had a more substantive basis in ecclesiastical election law, *viz.*, that Siegfried's election had been conducted by a small minority, and as was the case with the first election, had occurred only after Lupold's side had entered an appeal that the minority not go forward. If Lupold's election had been declared invalid, so too should Siegfried's election.

Innocent's reply to the procedural objection was to point out that Lupold's unlawful transfer from the see of Worms and subsequent administration of the Mainz church had been notorious, i.e., well-known and public, such that a formal hearing that followed the *sollemnitatem iuris* was not absolutely required. Since, however, the hearing was to determine not just the validity of Lupold's election, but also whether his electors had acted with such malicious intent that they were thereby deprived of the

⁵⁵⁸ See the Friedberg version given above for the full context of the editorial changes. Raymond was responsible for removing the section containing the canons' first mention of the legate's corruption, leveled in a letter delivered by their *nuncius* to the apostolic see: "verum quidam simplex nuncius ab [electoribus Lupoldi] ad sedem apostolicam destinatus ex eorum parte apertas nobis cum sigillo pendente literas praesentavit, per quas iidem significabant canonici, quod praedictus legatus corruptus pecunia iniquam sententiam protulisset," *CIC*, vol. 2, col. 67. It was an earlier editor who had excised Innocent's actual

power of election, the Mainz canons had a right to be present and defend themselves.⁵⁵⁹ Innocent's response to the Mainz canons relied on a several technical points of law that were problematic at best. Innocent started with the assumption that the legate, by nature of his office and juridical authority, had followed proper judicial procedure (*omnia rite fuerint celebrata*), and therefore one must presume that the canons were lawfully summoned to the hearing. This placed the burden of proof upon them to show otherwise, in which case they were, according to Innocent, at a serious disadvantage with respect to the law. To begin with, they would have to prove a negative, something which by nature was difficult, if not impossible to do.⁵⁶⁰ Second of all, even if an individual canon were to testify that he had not been summoned, his testimony would only be valid as far as himself, since "singuli...vestrum essent in suo testimonio singulares."

These technical justifications did not sit well with commentators, however. There was, to begin with, a well-known oath designed specifically for denials of fact, the *iuramentum negantis*.⁵⁶¹ Secondly, it was possible to imagine a number of scenarios, as did Bernard of Parma, in which a prelate who received a summons for the whole chapter

discussion and rebuttal of the charges (coll. 67-8), the removal of which created some additional problems of interpretation for canonists, as will be seen below.

⁵⁵⁹ In a gloss explaining the canons' objection Sinebaldus pointed out the different standards that obtained for the summons of Lupold on the one hand, and that of his electors on the other: "*contra legati*] et vere iniuste processerat legatus, quia non citaverat canonicos, licet episcopum citare non tenerentur," *Apparatus*, fol. 53ra. The reason for these different standards was that unlike the bishop, their offense was not deemed notorious: "*porro*] allegando dicit, quia delictum eligentium non erat sic notorium, qui citari debuerant," *ibid.*, fol. 53ra.

⁵⁶⁰ "Quod citati non fuerint, non posset de facili comprobari, quia negantis factum, per rerum naturam nulla est directa probatio," *CIC*, vol. 2, col. 67.

⁵⁶¹ Bernard of Parma laid out the case that there was a legal avenue open for them to deny they had been summoned: "*singulares*]...Sed nonne capitulum erat excusatum, si quilibet de capitulo iuret se non fuisse citatum? Videtur quod sic. Negativa enim probatur per iuramentum ipsius negantis," *ER*, vol. 2, col. 142.

decided to conceal it from them.⁵⁶² Issuing a summary judgment in their absence risked making the many responsible for the crimes of the few. Furthermore, the language of the letter seemed to suggest that Guy might have exceeded the original mandate. Innocent's original commission had empowered Guy to declare Lupold's postulation *irritam*, should he find that the bishop had already assumed responsibility for the Mainz church's administration. Guy, however, at least according to the language of *Bonae memoriae*, had annulled the entire process (*cassavit*), which was inclusive of the actions and intentions of the canons, rather than just those of the person they elected. This important distinction was pointed out by Hostiensis, who combined the fact that the canons had been absent from the inquiry to show how problematic the legate's actions were.⁵⁶³ This is where the canons' absence from the inquiry became a serious issue, since the legate had made a decision about their intentions without giving them a hearing. The gap between the legate's decision and the proper judicial procedure that was called for even led some canonists to insist that Innocent, while accepting the legate's nullification of Lupold's

⁵⁶² Bernard posed the hypothetical case of a prelate or chapter officials who hid the fact of a chapter's summons. Analogizing the well-established Roman law principle that a litigant should not suffer for the misdeeds of his advocate (*procurator*), Bernard raised the possibility that the chapter could have been victimized by the contumely of their pastor. Bernard did admit, however, that in this case there seemed to be a fair amount of evidence against the chapter, such that they should at least give a formal statement as to their ignorance of the summons, even though this would be difficult to prove: "*singulares*]...Sed si litterae [citationis] presententur prelato, et aliquibus de maioribus [capituli], et ipse occultaverit litteras, nec presentaverit eas capitulo, et non vadet vel mittat ad iudicem, et sic iudex reputans capitulum contumax, totum capitulum suspendat vel excommunicet, numquid illi qui nihil sciverunt, sunt excommunicati? Videtur quod non, nam propter contumaciam procuratoris dominus non punitur, ff., Si quis ius dicenti non obtemperaverit, l. 1 § Si procurator [Dig 2.3.1.2]; et *infra*, Ut lite non contestata, c. 1, in fine [X 2.6.1], ubi innuitur a contrario sensu, quod propter contumaciam procuratoris dominus excommunicari non potest, si dominus ignoraverit. Sed hoc tutius videtur, quod capitulum petat absolutionem, quia praesumptio non modica est contra ipsum capitulum, nisi capitulum diceret se nescisse. Sed non de facili posset hoc probare," *ER*, vol. 2, col. 142.

⁵⁶³ "*Cassavit*] In hoc videtur excessisse formam mandati, quia non mandabatur, quod cassaret, sed quod irritam nunciaret, dic., ut nota supra super verbo *irritam nunciaret*, litem et formam iuris, quia processit contra canonicos non citatos, ut nota infra eodem [capitulo], ver. *Porro*," *lectura*, vol. 1, fol. 51ra. The main thrust of this comment is clear, but there is some obscurity with the *litem et formam iuris*, namely, which verb is putting them into the accusative.

postulation, had tacitly rejected his confirmation of Siegfried's election. The reasoning behind this judgment, which was offered by both Sinebaldus and Hostiensis, is somewhat obscure.⁵⁶⁴ It hinged in part on Innocent's closing words in *Bonae memoriae*, wherein the pope never explicitly offered confirmation of the legate's decision to accept Siegfried's election, but had instead given a direct, papal confirmation. Since this point relates closely to commentators' textual criticism on the *Decretals*, a more detailed examination will be reserved for later.

As stated earlier, Innocent's response to the *ad hominem* charge had been removed by an earlier editor. That left only his reply to the substantive complaints by the majority that a small minority had gone ahead with Siegfried's election even after Lupold's electors had filed an appeal for them to hold off. Raymond, however, had removed a substantial portion of this part of Innocent's response, which went into greater detail about why the appeal by Lupold's electors did not affect the canonicity of Siegfried's election.⁵⁶⁵ The version of the letter in the *Decretals* still contained

⁵⁶⁴ Sinebaldus repeated the point that because the actions of the majority were not by nature notorious, the legate was, therefore, required to follow the full *ordo iudicarius*, which allowed the defendants to appear in person, give testimony, and call witnesses (*Apparatus*, fol. 53rb, v. *notorius*). He then reasoned that while Innocent had given his explicit approval of Guy's nullification of Lupold's postulation, he never offered the same confirmation of what the legate had decided concerning Siegfried's election. Rather, Innocent had ended the decretal by saying: "cassationem postulationis factae de Wormaciensi episcopo ratam habemus, electionem memorati archiepiscopi confirmantes [duximus confirmandam: 3Comp and *Reg.*]." The fact that the pope had offered his direct confirmation of the election, rather than what the legate had done, suggested to Sinebaldus Innocent's disapproval. As Hostiensis makes more or less the same point, and in a slightly clearer fashion, his comments are given below: "*porro*] porro processus contra canonicos habitus non confirmatur, cum ea, quae eis opponerentur de exceptione episcopi et alia non essent in sui natura notoria, et ideo male [legatus] procedit, quia eos non citavit, et alium iuris ordinem non servavit. Quare et processus ipse in hac parte tacite cassatur in eo quo electio praepositi confirmatur, quod ex eo perpendi potest, quia non dicit, confirmationem legati ratam habentes, sed dicit electionem archiepiscopi confirmantes," *ibid.*, fol. 51ra.

⁵⁶⁵ See Friedberg's edition above, col. 67, for the editorial context. The relevant text was in the same longer passage that referenced the charges of bribery against the legate. Rather than just relying on a tit-for-tat justification, i.e., that those who ignored an appeal deprived themselves of a right to make one, Innocent went into more detail about the form of the appeal: "cum autem super his coepissemus deliberare cum fratribus nostris, electioni eiusdem archiepiscopi duo videbantur obstare, videlicet quod a paucissimis, et post interpositam a se ipso appellationem videbatur electus. Nam cum postulatio Warmaciensis episcopi

Innocent's initial comments on the appeal issue, i.e., that those who contemned another's appeal could not then turn around and themselves appeal. Canonists were left, however, with a fairly weak rebuttal on Innocent's part to the substantive charges made by Lupold's side.

The technical points of law and Innocent's professed faith in his own legate were ultimately not the definitive basis for the pope's decision not to hear the objections of Lupold and his electors. Instead, he declared that they had made themselves unworthy (*indigni*) to have their case considered any further. Because of the way in which the text of *Bonae memoriae* was edited, the full explanation for Innocent's declaration of unworthiness was missing. As can be seen in Friedberg's edition (coll. 67-8), a large chunk of text had already been left out of the version of *Bonae memoriae* at 3Comp 1.6.8, such that when Innocent justified his declaration *ex tribus causis praedictis*, there was no indication of what these "three aforementioned reasons" were.⁵⁶⁶ The missing link had not seemed to trouble commentators on 3Comp, who simply glossed the *tribus praedictis* as harkening back to the earlier charges that Lupold, a candidate with a canonical impediment, had been elected while the minority's appeal was still outstanding, and that

fuerit praecedentis appellationis ratione cassata, archiepiscopi electio debebat etiam ex eadem causa cassari. Sed e contra, sicut superius est expressum, qui in appellationem deliquerant, appellationem contra eundem archiepiscopum non poterant allegare. Poterat quoque dici, quod, etsi post appellationem, non tamen contra formam appellationis fuisset electus archiepiscopus saepe dictus, cum appellaverit in hac forma, ne canonici Maguntiae residentes sine ipso ac sociis suis haberent in electione processum. Nec nocet, quod posset ex altera parte replicari; quia nec ipse et socii sui debuerant procedere sine ipsis, quia ipsi appellationem apud nos interpositam contemnendo reddiderant se indignos, et abusi fuerant iure suo."

⁵⁶⁶ The portion of *Bonae memoriae* that was already missing from 3Comp starts towards the bottom of col. 67, comprising all of the italicized text enclosed in square brackets: *Praeterea si appareret...sunt mentiti*. Raymond made some further excisions in front of where the section had been, removing the discussion of the dealings between the pope and the *nuncius* sent by the majority.

moreover, he had taken over the administration of the Mainz church before approval of his nomination had been granted.⁵⁶⁷ This surmise was not entirely off the mark.

In the deleted portion of the decretal Innocent had been very specific in his reasoning, however, charging the majority with presumption, contempt, and blasphemy (*praesumptio, contemptus, blasphemia*), and providing concrete illustrations thereof, by which they had rendered themselves *indigni*.⁵⁶⁸ The charge of presumption was based not only on the majority's election of someone who already held episcopal dignity, but their reception of him as pastor before papal approval had been given. The charge of contempt was leveled on the basis that even after the legate had been sent to investigate whether they had received Lupold into the administration of the church, the majority had sent a letter to Rome in which they declared Lupold as the unanimous choice of the chapter, and asked for confirmation of the postulation in the papal consistory. Last of all,

⁵⁶⁷ According to Johannes Teutonicus, Innocent had denied Lupold and his supporters a hearing because they hadn't respected the appeal of the minority; had elected an unsuitable candidate, who had, moreover, taken up the administration of the church; and had not heeded the summons to appear at the legate's inquiry: "*ex tribus causis*] Quia appellationi non detulerint et indignum elegerint, et ille se inmiscuit administrationi, et quia vocati non venerunt," *Apparatus*, p. 63. Tancred (Vat. lat. 1377, 3Comp, fol. 16v) and Laurentius Hispanus (*Apparatus*, p. 270) both include similar, brief explanations in their glosses on this lemma.

⁵⁶⁸ The entire passage given below had already been excised from 3Comp. A paraphrase summary of the contents of the passage will be given in the main body of the text. The original passage is as follows, with each of the *tria causa* highlighted in **bold**: "praeterea si appareret etiam, non esset aliquatenus audiendus, cum adversarii eius per praesumptionem, contemptum et blasphemiam audientia nostra se reddiderint indignos. **Praesumptio** enim fuit, quod virum, pastorali praeditum dignitate, alteri ecclesiae spirituali coniugio copulatum, praeter auctoritatem nostram contra formam canonicam non solum eligere, sed recipere praesumpserunt. **Contemptus** accessit ex eo, quod postquam procurator eorum nostras literas reportavit, in quibus mandabatur expresse, quod si Warmaciensis episcopus Maguntinam ecclesiam quoad spiritualia vel temporalia recepisset, vel in spiritualibus vel temporalibus ministrasset in ea, ipsius postulatio cassaretur, et eisdem non veniret in dubium, sed potius manifeste constaret, quod Warmaciensis temporalia saltem receperat, et ministrarat in iis, ipsi postmodum tanquam electo suo, sicut ex literis ipsorum apparet, in quibus eum electum suum nominant et ei se asserunt unanimi consensu favere, temere paruerunt, et consenserunt in ipsum, spirituale cum eo adulterium perpetrantes, cum et per nuncium ad nos ultimo destinatum electionem ipsius in publico consistorio postulaverunt confirmari. **Blasphemia** vero in eo fuerat subsecuta, quod, ponentes in coelo os suum, legatum nostrum, qui fungebatur in illis partibus vice nostra, et qui prius etiam, quam assumeretur ad officium pastorale, multae religionis exstiterat, utpote qui in Cisterciensi ordine fuerat primo abbas, quantum in eis exstitit infamantes, eum corruptum fuisse pecunia sunt mentiti," *CIC*, vol. 2, coll. 67-8.

Innocent charged them with blasphemy for the slanderous allegations of corruption they had made against someone whom he held as above reproach, not only because of his past legatine service, but on account of his previous position as a Cistercian abbot. The absence of this section thus deprived commentators of what might have been Innocent's most detailed and legally-sound set of justifications for why the majority came up short in their counter charges.

Innocent's closing comments were in some ways the most incredible, since they seemed to casually brush aside all of the complicated legal issues that *Bonae memoriae* bought up. Innocent stated that it ultimately did not matter if both groups of electors had transgressed (*delinquere*) proper election procedure. In that case, oversight of the Mainz church would have devolved to him, as the direct superior, and he could then go ahead and appoint Siegfried to the post without injury to the law.⁵⁶⁹ Such an assertion of papal authority presaged what would become the principal interpretation of *Bonae memoriae* among later canonists.

The foregoing analysis of the legal issues involved in X 1.6.23, *Bonae memoriae*, should make clear not only how serious were the legal issues at stake, but also how handicapped commentators were as a result of several generations of editing the material. These gaps in the text would become the basis for a remarkable effort to reconstruct the historical context of the decision. As will be shown, canonists' attempts to supplement the *Decretals'* version of *Bonae memoriae* provide a case study for how complicated decretals remained embedded within their historical and textual history, which could be recalled when needed to clarify ambiguities and settle disputes. Recourse to an earlier

version of the letter or its historical context was not required for every problem, but there was enough to make a layered reading of the text an integral part of its interpretation.

4.4.3 Source criticism on X 1.6.23, *Bonae memoriae*

By way of overview it is useful to point out how the overall interpretation of X 1.6.23 would eventually shift, compared to what it had been prior to its inclusion in the *Decretals*. Even if the various sections of the same decretal could serve as proof-texts for a variety of different points of law, commentators generally assigned just one or two broad lines of interpretation, which were usually those that would later become crystallized in the rubrics given to each of the texts in the *Decretals*. Commentators on 3Comp (1.6.8) had focused mainly on what had made the initial election of Lupold uncanonical, or on the due process issues surrounding the legate's inquiry.⁵⁷⁰ As will be evident with Sinebaldus Fieschi, these concerns did not disappear from the tradition after the *Decretals*, but perhaps because their textual basis had been so undercut by Raymond's editing, it became necessary to delve back into the earlier versions of *Bonae memoriae* in order to make sense of them. The interpretative weight placed upon *Bonae memoriae* would eventually shift towards the papal role in episcopal elections, as exemplified by the definitive interpretation assigned to it through Panormitanus' (Nicholas de Tudeschi, aka Abbas Siculus/Modernus; 1386-1445) rubric.⁵⁷¹

⁵⁶⁹ "Si electores eiusdem partis pariter deliquissent, ut se reddidissent indignos, ad nos devoluta fuisset hac vice ordinatio ecclesiae Maguntinensis, quare dictum archiepiscopum sine iuris iniuria potuissemus eidem ecclesiae praeficere in pastorem," *CIC*, vol. 2, col. 67.

⁵⁷⁰ The single longest piece of Johannes Teutonicus' commentary on the decretal was taken up by what Innocent meant by *singuli tamen vestrum essent in suo testimonio singulares*: "each individual's testimony would only count as far as himself." See the remarks at 3Comp 1.6.8, v. *singulares*: Johannes Teutonicus, *Apparatus*, pp. 62-3.

⁵⁷¹ "Recipientes postulatum ad ecclesiam tanquam institutum vel administratorem ante admissionem postulationis a superiore factam, privati sunt potestate eligendi, et ad alios, licet pauciores, devolvitur potestas eligendi; et si omnes privati sunt, devolvitur ad Papam in ecclesiis cathedralibus. Hoc dicit secundum principaliorem intellectum, qui magis congruit literae," *CIC*, vol. 2, col. 66. The rubrics were

Those admitting a nominee into their church – prior to approval by a higher authority – as if he were already instituted, or possessed of full administrative power, are deprived of the power of election; and to others shall this power of election then devolve, even if they are a minority. In the case of cathedral churches, however, if all of electors have been thus deprived, the power devolves to the pope. This reading follows the prevailing interpretation, which is more in accord with the text of the letter.

Further on in his commentary on X 1.6.23, Nicholas also alluded to the stark difference between the commentary tradition on *Bonae memorie* pre- and post-*Decretals*:⁵⁷²

According to another interpretation, one which Innocent [Sinebaldus Fieschi] finds greatly acceptable, those who nominate⁵⁷³ someone because of pressure from laymen are *ipso iure* deprived of the power of election. This reading, however, does not match up very well with the text, but rather to the form contained in the old [compilation]. It can also be interpreted in a third way, again according to Innocent, for whom it means that those who nominate someone after a legitimate appeal [has been lodged] are *ipso facto* deprived of the power of election, and then that power devolves to others, even if they are a minority. Even this reading does not fit the text very well, as it is elicited more from the old [compilation].

That Panormitanus is still even making this distinction, however, between the text of a decretal prior to its inclusion in the *Decretals* and to its current (fifteenth-century) form, shows that canonists were still grappling with the claim the older textual and interpretative traditions should have on their attention.

taken more or less directly from Nicholas of Tudeschi's early-fifteenth-century *Lectura* on the *Decretals*, as cited below, note 572.

⁵⁷² “Secundum alium intellectum, qui placet multum Innocentio [Sinebaldus Fieschi], hoc dicit: qui per impressionem laicorum aliquem postularunt, ipso iure sunt privati potestate eligendi. Hec tamen lectura non multum convenit littere huic, sed allegationi contente in antiqua. Tertio legitur secundum eundem Innocentium alio modo, secundum quem hoc dicit: qui post appellationem legitimam aliquem postularunt, sunt ipso facto privati potestate eligendi, et alios, licet pauciores, potestas devolvitur. Hec etiam lectura non multum congruit litterae, sed magis elicitur ex antiqua,” Nicholas de Tudeschi, *Lectura in Decretales*, Basel, 1477, fol. 116r. The same comment was excerpted – with a slightly different sentence order – by the *Correctores*, and placed at v. *Bonae memoriae*: ER, vol. 2, col. 138.

⁵⁷³ For clarity *postularunt* is here translated as nominate, though when the act of nominating itself is spoken of, i.e., *postulatio*, it will be translated as postulation in order to distinguish it from election. Although they were often used interchangeably, the technical distinction between *postulare* and *eligere* is of particular importance for this decretal, as was noted above, p. 283.

As shown in the prologue to his *Apparatus*, Sinebaldus Fieschi had suggested a small emendation at the end of X 1.6.23 on the basis of the version found in Innocent's registers.⁵⁷⁴ The emendation – from *electionem archiepiscopi confirmantes* to *electionem archiepiscopi duximus confirmandam* – seems to relate to Sinebaldus' earlier observation that Innocent only approved of the legate's annulment of the first election, but not the simultaneous confirmation of Siegfried's.⁵⁷⁵ His use of the enregistered text for his commentary on *Bonae memoriae* goes far beyond this final passage, however. As Panormitanus pointed out, one avenue of interpretation explored by Sinebaldus had been the relevance of *Bonae memoriae* for the exclusion of lay influence on ecclesiastical elections. The specific circumstance to which this reading was tied was the appeal to Rome lodged by the absent members of the Mainz chapter – those who would eventually elect Siegfried – alleging fear of coercion should they gather with the other canons to perform the first election. Innocent had instructed his legate to investigate their claims, and if coercion were established, then the legate should confirm the archbishop's election.⁵⁷⁶

⁵⁷⁴ See above, p. 274.

⁵⁷⁵ See above, p. 289 and note 564. The connection between the emendation and Innocent's disapproval of the legate's actions is implied, however, rather than explicit. Later canonists like Hostiensis also puzzled over why Sinebaldus had suggested the change to the text. Hostiensis suggested that it was because any archiepiscopal election was by definitioun a postulation (i.e., needing special papal confirmation), because of the archbishop's assumption of the *pallium*. The original register formulation made it clear, then, that Innocent was directing the formal, solemn confirmation and consecration of the election, rather than just the actions of his legate: "*electionem*] Non est ver littera, etc. [repetition of Sinebaldus' gloss on *electionem*]...vel potest dici electionem, per consequens et confirmationem et consecrationem, sicut in converso casu, *supra*, c. *Qualiter* [X 1.6.17]; ad hoc, *infra*, De officio [judicis] delegati, *Coram* [X 1.29.34], in fine; et De renunciatione, *Veniens* [X 1.9.13], in fine; et De accusationibus, *Ad petitionem Galteri* [X 5.1.22] § vir. Et intelligas quod hoc est ex gratia, non enim potest eligi archiepiscopus nisi in postulandum, quod dic., ut nota, *supra*, *Cum nobis olim* [X 1.6.19] § fin.," Hostiensis, *Lectura*, vol. 1, fol. 52ra.

⁵⁷⁶ X 1.6.23: "Deinde inquireret de ipsius electione archiepiscopi veritatem, et, si ei de vi, quam ipse et sui metuebant, constaret... electionem archiepiscopi confirmaret." The connection between the establishment of coercion and Siegfried's confirmation was twofold. To begin with, it confirmed the legitimacy of the minority's judicial action, which would render Lupold's election automatically invalid for having been

Panormitanus was right to say that this reading did not accord with the form of the text as it appeared in the *Decretals*, for there was only one brief mention in X 1.6.23 of the issue of coercion.⁵⁷⁷ Nowhere else did the text of the letter in the *Decretals* address the circumstances or source of the pressure. He was mistaken, however, in identifying the older compilations as the textual basis for Sinebaldus' interpretation, since the whole question of what or whom Siegfried's electors feared, such that they sought redress from Rome, is absent even from Raymond's formal source for *Bone memorie* at 3Comp 1.6.8. One has to look back even further to Innocent III's papal register to discover the full context. This is, in fact, the approach Sinebaldus took, as he states explicitly in his comments on the question of coercion, and whether it could have served as a legitimate grounds for appeal by Siegfried's electors:⁵⁷⁸

Appellationem] And moreover the underlying reason [for the appeal of Siegfried's electors], viz., the pressure that was being applied during the election, because, as it says in the original letter [*in integra*], Phillip, Duke of Swabia, who was usurping for himself the German kingship, was using coercion to force [upon them] the Bishop of Worms. But even if he had not forced [the bishop through], and there existed only a reasonable fear of coercion, this alone would have sufficed to render the election void, and to deprive *ipso iure* the electors

conducted while some of the electors had a lawful, outstanding appeal. Secondly, it meant they had a legitimate reason for being absent from the first election (and were not just stalling, as frequently happened with episcopal elections), and thus still had the *potestas eligendi* when they proceeded to the subsequent election. In both cases one of the quirks of canonical procedure is revealed, which is the *ex post facto* legitimation or delegitimation of judicial actions. Such was the case for the subsequent appeal lodged by Lupold's electors prior to the second election of Siegfried. Because Innocent determined after the fact that Lupold's electors had deprived themselves of their right to bring action (for reasons that will be further explored below), Siegfried's election was deemed canonical, despite its having been conducted, like Lupold's, in the face of an appeal by the majority of the chapter.

⁵⁷⁷ "Si ei de vi, quam ipse et sui metuebant, constaret," X 1.6.23. See above, p. 278, for the full context of the passage.

⁵⁷⁸ "*Appellatione(m)*] Et causam, quae suberat, scilicet impressionem quae fiebat in electione, quia sic continetur in integra Philippus dux Suevia, qui se pro Rege Alemaniae gerebat, istum Varmacensem per vim intrusit. Sed si non intrusisset, sed solus iustus timor intrusionis fuisset, tamen sufficeret ad reddendum nullam electionem, et ad privandum ipso iure postulantes potestate eligendi, quia pro eodem videtur debere haberi, si impressio facta sit, et si iustus timor impressionis subsit, licet impressio non sit secuta, quam sequi forte non fuit necesse, quia electores scientes eam imminere non exspectaverunt eam, quia sine impressione fecissent, si ibi exspectassent," Sinebaldus Fieschi, *Apparatus*, fol. 52vb. The lemma is misprinted as the ablative *appellatione*, when it should be in the accusative.

[*postulantes*] of the power of election. These ought to be considered as equivalent situations: 1) when force has been applied, and 2) when there exists only a reasonable fear of coercion, but the application of force does not thereafter follow. For it was not necessary that it follow, since the electors, knowing that it was being threatened, did not wait around for it to materialize, and thus without the application of force they would have done the same thing had they awaited its arrival.

Sinebaldus' effort to establish the context of Siegfried's allegations of coercion thus pushed him to return to the original source of *Bonae memorie* in Innocent III's papal registers, where he found the details about Phillip of Swabia's intervention.⁵⁷⁹ Insofar as this context was also missing from Raymond's formal source at 3Comp, Sinebaldus introduced a line of inquiry that previous canonists had not focused upon.⁵⁸⁰

Sinebaldus, whose eminent authority as a canonist was only magnified by his elevation to the papal throne as Innocent IV, helped carve out a space in which canonists could read the texts of the individual decretals critically and historically. Bernard of Parma did not initially employ such source criticism in the first iteration of his ordinary gloss on X 1.6.23, but by the final, expanded recension he had incorporated and even advanced several insights taken over from Sinebaldus.⁵⁸¹

⁵⁷⁹ The relevant passage comes at the end of the letter, and so after the final phrase (*electionem memorati archiepiscopi confirmantes*) that appears in the *Decretals'* version: "Praeterea nobilem virum Philippum, ducem Sueviae, moneatis, ut se praedicto archiepiscopo non opponat, quo minus Maguntinam ecclesiam tam in spiritualibus quam temporalibus salubriter valeat gubernare. Alioquin, cum nullus imperator, nullus princeps episcoporum translationi se unquam praesumpserit immiscere: nos ecclesiasticam libertatem in hoc, et sedis apostolicae dignitatem quae a praedecessoribus nostris ad nos hactenus emanavit et a nobis ad successores nostros in finem saeculi, favente Domino, protendetur, nullatenus pateremur infringi, quin pro ea potius, si necesse foret, animam poneremus," *Register Innocenz*, V.14.

⁵⁸⁰ In the ordinary gloss to 3Comp, Tancred gave only a brief comment on the issue of coercion (substituting *violenia* for the usual *vi* as lemma), and without once questioning it as a grounds for appeal: "*de violenita*] Quia timebat accedere ad ecclesiam Maguntinam, unde appellavit ne eo absente alii procederent ad electionem, sicut postea sequitur," Vat. lat. 1377, fol. 15v of 3Comp. Johannes Teutonicus was similarly brief: "*de vi*] Propter quam cum non auderent interesse electioni, appellaverint ne alii sine ipsis eligerent, ut infra," *Apparatus*, p. 60.

⁵⁸¹ In FBL sin.9, which contains the earliest known recension of Bernardus' gloss, none of the textual critical glosses on X 1.6.23 are present (fols. 14r-v).

Foremost among Bernard's concerns was the use of appeals by each group of Mainz electors. To begin with, how should one judge the merit of the initial appeal by the minority that would eventually elect Siegfried, since the decretal only alluded to, but did not explain, the fear of coercion on which it was based. Secondly, if one admitted the legitimacy of the minority's appeal, in what sense was Siegfried's election then legitimate, when it had itself been conducted in the face of an appeal by the first group of electors. It was a bedrock principle of election law that appeals needed to be resolved before proceeding to an election, which would make *Bonae memoriae* a troubling contrary precedent if one generalized Innocent's allowance of Siegfried's election. A legal principle had to be found according to which the electors of Lupold had lost their right of appeal, but which did not also nullify Siegfried's election on similar grounds.

Bernard was highly skeptical of the alleged coercion as a legitimate basis for the first appeal by Siegfried's supporters, even going so far as to suggest that such an appeal would not have been granted in his own day.⁵⁸² Without mentioning Sinebaldu's comments directly – though demonstrating his familiarity through various direct quotations – Bernard then explores the specific historical circumstances in which the initial election of Lupold was held:⁵⁸³

⁵⁸² Bernard made this judgment on the basis of the Lateran IV decree *Quia propter* (c. 24), which placed the onus on the minority to gather for an election, and required them to send procurators if they were not able to attend in person: “*metuebant*] si citati non poterant venire ad ecclesiam cathedralem, debebant constituere procuratores, qui vice fungerentur illorum, *infra*, eodem [titulo], quia propter [X 1.6.42]. Et sic videtur quod non valuisset eorum appellatio, quo minus alii procedere potuissent. Non credo quod hodie valeret talis appellatio, quia ex quo maior pars citat minorem, si iusta causa impediti venire non possunt, constituere debent procuratorem, *infra*, eodem titulo, quia propter [X 1.6.42],” *ER*, vol. 2, col. 140. This was only the first part of a long comment on the issue of coercion, at the end of which Bernard acknowledged, as will be shown, the specific, historical circumstances that obtained for *Bonae memoriae*. Still, it is not clear whether Bernard actually walked back completely from his initial disapproval of the coercion-based appeal.

⁵⁸³ “Maguntini favebant Phillipi, per cuius potentiam Wormaciensem episcopus fuit postulatus et intrusus, praepositus iste favebat Ottoni; qui electi erant in discordia, unde timebant ipse et sui quod non possent liberum habere consensum in electione. Unde appellaverunt ex illa causa, quae iusta fuit; unde in locum

The Mainz canons were favorable towards Phillip, through whose power the Bishop of Worms had been nominated and forced through, while the provost [Siegfried] favored Otto [of Saxony]. The elections having been conducted in discord, the provost and his supporters feared that they would not be able to have a free choice in the election. For this reason, which was a just one, they appealed. Whence, too, the electors should have gathered at a site that was safe for both sides.

Even in the version found in the papal register, *Bonae memorie* nowhere makes mention of Phillip's rival for the throne, Otto of Saxony (the future emperor Otto IV), and his alleged ties to Siegfried. Bernard thus provided some additional historical information in which to assess the legal claims made in the decretal.⁵⁸⁴

Like Sinebaldus, Bernard treated X 1.6.23 as still emmeshed within a textual and historical context outside of the *Decretals*. The importance of context for resolving the thornier problems of *Bonae memoriae* is even more evident in each commentator's discussion of why Innocent had decided not to grant a further hearing to Lupold's electors after the legate's inquiry. Recalling for a moment the letter, Innocent had ruled that they had rendered themselves unworthy to have their claims given any further consideration. The specific basis for this ruling had been left out, however, by a previous

securum utrique parti convenire debebant," *CIC*, vol. 2, col. 140. The exact meaning of the phrase, *qui electi erant in discordia, unde timebant ipse et sui*, is somewhat vague, given the necessity of positing two different sets of subjects for *electi erant* (Lupold and Siegfried) and *timebant* (Siegfried and his supporters), which also then gives a different timeline to the events by implying Siegfried was already elected when the issue of *timor* arose. Earlier manuscripts don't suggest any emendation (*quia electores erant in discordia?*), so the present translation will have to stand for the moment.

⁵⁸⁴ Otto is nowhere else mentioned by name in the *Decretals*, but the succession crisis is discussed in great detail later on in the title on election in X 1.6.34, *Venerabilem. Venerabilem* (Potthast 1653) records Innocent III's intervention in the succession dispute between Otto and Phillip, and confirms the election procedures for the Holy Roman Emperor. Raymond had eliminated all of the proper names of the parties involved in the dispute, however, so that the conflict was presented as being between an anonymous *dux* (Phillip) and *rex* (Otto). In Bernard's separate work of commentary on the *Decretals*, the *casus longi*, there is a long and detailed recapitulation of the historical events that led to the succession crisis, "ut melius littera intelligatur," *ER*, vol. 2. If the *casus* belonged to Bernard it would constitute an even better example of the continuing importance for commentators of a decretal's historical context. According to the *Correctores*, however, the *casus* did not appear in the older manuscripts of the *Casus longi*, and should therefore not be assigned to Bernard. Having access only to the 1479 Basel edition of the *Casus longi* (GW

editor. The *tria causa praedicta* supporting this ruling referred to justifications that appeared neither in the *Decretals* nor in 3Comp. While commentators on 3Comp had simply recycled their earlier comments on the problems with Lupold's election to explain Innocent's reasoning, the gap had prompted Sinebaldus to again supply the missing link from the papal register. In his gloss on *ex tribus causis pradecitis*, Sinebaldus reports almost word for word the entire missing section from the register, wherein Innocent cited the electors' presumption, contempt and blasphemy:⁵⁸⁵

ex tribus] meaning because of their **presumption**, since they presumed not only to elect the aforementioned [bishop] contrary to canonical procedure, but also to admit him into pastoral office; because of their **contempt**, since after their procurator brought back our letters,⁵⁸⁶ wherein it was ordered, that if the Bishop of Worms was administering the temporal or spiritual affairs of the church, his postulation should be annulled, they boldly displayed their obedience to him⁵⁸⁷ just as if he were their elected bishop, as is evident from their letters, in which they call him *electum*; and finally because of their **blasphemy**, because they made every effort to defame our legate by saying that he had been corrupted by money.

For whatever reason, Sinebaldus did not say that he was pulling this text from the register, and simply presented it as is. His lack of comment should not be seen as reticence, however, since he elsewhere unapologetically corrected *Bonae memoriae* using

4093, where the *casus* to X 1.6.34 appears on fol. 23r), and not the manuscripts, the author has not been able to check the *Correctores*' claim.

⁵⁸⁵ See above, note 568, for the full text of the missing passage found in the registers. Sinebaldus' remarks are as follows: "*ex tribus*] scilicet, praesumptione, scilicet, quod virum pastorali predictum dignitate contra formam canonicam non solum eligere, sed etiam recipere praesumpserunt; contemptu, quia postquam procurator eorum vestras [*immo*: nostras] litteras reportavit quibus mandabatur, quod si Varmacensis episcopus in temporalibus, vel spiritualibus ministrasset, ipsius postulatio cassaretur, ipsi postmodum, quasi electo suo, sicut ex eorum litteris apparet, quibus eum suum electum nominantes, temere spreverunt; et blasphemiam, quia legatum nostrum quantum in eis fuit infamantes, eum corruptum fuisset pecunia, sunt mentiti," *Apparatus*, 53va.

⁵⁸⁶ The Venice 1495 edition (fol. 21ra) also has *vestras litteras*, but since Sinebaldus is paraphrasing the register in this passage, one should assume he originally wrote *nostras litteras*, meaning papal letters, as is written in the register manuscript: Reg. Vat. 5, an. 5, fol. 4v.

⁵⁸⁷ The text reads *spreverunt* (reject, spurn), but has been amended to *paruerunt* (obey, submit to). This is the original formulation in the register, and is doubtless what Innocent also wrote given that he kept the dative construction *quasi electo suo*, which would otherwise not make sense with *spreverunt*.

Innocent's registers. In doing so, he provided a much more solid legal basis on which later commentators could work through the problems of the letter.

As was pointed out earlier, Bernard was skeptical of the appeal issue as a basis for the invalidation of the election.⁵⁸⁸ This was true not only for the effectiveness of Siegfried's appeal, which earlier commentators on 3Comp had cited as one of the *tria causa* prompting Innocent to invalidate Lupold's election.⁵⁸⁹ Bernard was also hesitant about the disparate treatment given to the appeal of Lupold and his supporters, and why this appeal did not similarly impede Siegfried's election. Bernard began his commentary on *ex tribus causis* by repeating the explanations given by glosses on 3Comp, which pointed to the appeal as one of the main issues among others:⁵⁹⁰

Causis] In other words, because [Lupold's electors] did not defer to the appeal; because they admitted [into the church] an unworthy candidate without the permission of the pope; because they did not heed a summons; and because the bishop transferred sees without permission of the pope. Against this view see above in the same title, *Consideravimus* [X 1.6.10] and also further on in the title, *Auditis* [X 1.6.29], where both elections were nullified, because they were celebrated after an appeal had been lodged, and also because the second election had been conducted before the first had been annulled. The same thing ought then to happen in this case, because both [Lupold's and Siegfried's] elections were carried out with an appeal outstanding. One can furthermore object that even though [Lupold's electors] held the election in the absence of those who made the appeal, they were not thereby deprived of the power of election, because [the minority] could have come to an agreement and renounced their appeal, as seen above, *De postulatione*, Bonae 2 [X 1.5.4], and in the previously mentioned decretals *Consideravimus* [X 1.6.10] and *Auditis* [X 1.6.29]. Therefore the second

⁵⁸⁸ See above, note 582.

⁵⁸⁹ For the 3Comp gloss of *ex tribus causis*, see above, note 567.

⁵⁹⁰ "*Causis*] Scilicet, quia non detulerunt appellationi, et quia indignum sine licentia Papae receperunt, et quia citati non venerunt, et etiam quia idem episcopus sine licentia Papae transivit. Contra, *supra*, eodem [titulo], *Consideravimus* [X 1.6.10]; contra, *infra*, eodem [titulo], *Auditis* [X 1.6.29], ubi utraque cassatur, quia factae fuerunt electiones post appellationem, et prima non cassata, facta fuit secunda. Idem debuit hic fieri, quia utraque post appellationem facta fuit. Praeterea et econtra opponitur, eo ipso quod primi postulerunt post appellationem sine aliis, non fuerunt ipsi privati potestate eligendi, quia alii potuerant consentire et renunciare appellationi, *supra*, *De postulatione*, Bonae 2 [X 1.5.4], et in praedictis decretalibus *Consideravimus* [X 1.6.10] et *Auditis* [X 1.6.29]. Ergo secunda electio debuit hic etiam cassari, cum prima postulatio non fuerit nulla ipso iure," *ER*, vol. 2, coll. 142-3.

election ought to be annulled, because the initial posulation was not *ipso iure* cancelled.

Bernard was attempting to draw out the legal logic that would rescue *Bonae memoriae* from contradiction, and found that if one used the appeal as the trigger for cancelling Lupold's election and depriving his electors of their electoral rights, there was no way one could then turn around and justify Siegfried's election.

Fortunately for Bernard, Sinebaldus had provided the solution when he gave the extract from Innocent's register. Bernard used Innocent's emphasis on the presumption and contempt for papal authority shown by Lupold's electors in nominating an unsuitable candidate whom they then accepted as their fully empowered pastor without papal approval. The register extract's focus on the actions of the canons allowed Bernard to ground both the nullification of Lupold's election, and the *ipso iure* devolution of electoral power to Siegfried's electors, which then made Innocent's confirmation of Siegfried's election at least lawful. Bernard then gave the entire missing text as it appeared in Sinebaldus' commentary, noting explicitly that it was found in the register:⁵⁹¹

Causis]...But they lost their power of election for one reason above all others: by receiving [Lupold into their church] without the pope's permission; otherwise, if they had not received him, they would not have lost their power of election, as is made obvious in the original letter...[Bernard then gives the full text of the register extract, presumably taken from Sinebaldus' *Apparatus*]...This letter is in the register, and thus for these three reasons they rendered themselves unworthy, such that they did not deserve a hearing.

⁵⁹¹ "Sed ex una praecipue amiserunt potestatem eligendi, recipiendo illum sine licentia Papae; alias si non recepissent illum, non amississent potestatem eligendi, ut patet in integra...[register extract taken from Sinebaldus' commentary]...Haec littera est in registro, et sic ex tribus causis reddiderunt se indignos, unde non debent audiri, supra, eodem [titulo], Consideravimus [X 1.6.10], ut sequitur in glossa," *ER*, vol. 2, col. 143.

There is no evidence elsewhere in his commentary that Bernard consulted the register himself, and so it is presumed that he was able to correctly infer Innocent's source for the register extract, which was not otherwise available.

Hostiensis was aware of the different textual traditions on *Bonae memoriae*, but his comments reflect some of the drawbacks of source-critical interpretation when later commentators did not have access to the same original sources as had their predecessors. Commenting on the legality of the initial appeal by Sigfried and his electors, Hostiensis writes:⁵⁹²

De vi] That is, on account of the coercion applied during the election; and thus it was not the appeal, but the coercion that rendered void the postulation, and deprived the electors of the power of election, *infra, eodem titulo, Quisquis* [X 1.6.43]. This reading and its solution appear better to our lord [Sinebaldus Fieschi] than any other; it requires, however, a substantial and far-reaching (*violenta*) supplementation⁵⁹³ of the letter. Nor was the appeal made on the basis of force that was actually applied, but rather on the fear that they would apply it, as it says here [in the decretal]. Nevertheless, our lord supplements this section using the original letter, as noted further on, *v. Cum ipsi*.⁵⁹⁴ But whatever it might say in the original, it says here explicitly that the form of the appeal was as follows: that the canons residing in Mainz should not follow through with the election process without them [i.e., the supporters of Siegfried]. But after this appeal was made those present at Mainz proceeded to nominate the Bishop of Worms anyway. There is certainly no discussion of coercion in the older compilation [i.e., 3Comp], though I am not sure whether such a reference is to be

⁵⁹² “*De vi*] Id est, de impressione facta in hac postulatione, et sic non appellatio, sed impressio facta reddidit postulationem nullam, et postulantes privatos potestate eligendi, *infra, eodem, quisquis*. Et haec lectura et solutio videtur melior, dominus noster, quam aliqua alia. Verumtamen magna et violenta est suppletio contra literam istam, nec enim propter vim factam fuit appellatum, sed propter illam quam metuebant, ut hic dicit, tamen dominus noster hoc supplet per integram, ut nota, *infra eodem, ver. Cum ipsi*. Verum quicquid dicat in integra, continetur expresse, quod haec fuit forma appellationis, videlicet, ne canonici Maguntine residentes sine ipsis haberent in electione processum. Et post hanc appellationem processerunt praesentes ad postulationem Vuarmecien. Nec de intrusione loquitur in compilatione antiqua, nescio tamen si contineatur in registro, nam si sic intelligat, credo ei, ut et nota, *infra eodem § finem*.”

⁵⁹³ Hostiensis here uses the word *suppletio*, in the sense of an extra gloss or supplementary reading that needs to be applied to the text to clarify its meaning. The term was a familiar one among biblical exegetes, but was not commonly used in canon law. Hostiensis was probably drawing on his familiarity with theological discourse gained during his time in Paris. On *suppletio*, see: G. R. Evans, “*Suppletio*,” *Archivum Latinitatis Medii Aevi* 42 (1979/80), pp. 73-8.

⁵⁹⁴ Hostiensis does elsewhere discuss Sinebaldus' use of the original version of the letter, but not in his comments on the lemma *Cum ipsi*. Nor did Sinebaldus gloss these words in his commentary.

found in the register; if he [Sinebaldus] saw it there, I would give it credence, as I have done later on in the last section.

Hostiensis does not reject the contextual argument in of itself, he was just hesitant to rely on sources that he had not seen. That he took a nuanced approach with respect to his predecessors' use of fuller versions of texts is quite evident later on in his commentary on *Bonae memoriae*. Addressing Innocent's denial of a hearing to Lupold's electors, Hostiensis again called attention to the existence of relevant, supplementary information found in the papal registers, using it to contrast Innocent's interpretation of his own actions with what commentators on 3Comp (who did not have access to the passage) offered as justifications. Having the full text at his disposal this time (thanks to Sinebaldus and Bernard), Hostiensis does not hesitate to adopt Innocent's original explanation why Lupold's electors should not have additional recourse after Guy de Paré's decision had been made.⁵⁹⁵

⁵⁹⁵ “*Ex tribus*] Que fuerunt prasumptio, contemptus, et blasphemia, ut in antiqua, de qua hoc pessime decisum fuit. Praesumptio dico, quia in temporalibus et spiritualibus ministrantem admittebant. Contemptus, quia papa inhibuerat eis ne sibi parent, nec eum reciperent. Blasphemia, quia infamantes cardinalem, quod pecunia corruptis fuit, de hoc mentiti sunt. Et istae sunt causae in antiqua expresse, secundum dominum nostrum. Similis inepta decisio, infra de Iudaeis, Ad liberandam, cum suis concordibus [X 5.6.17]. Intelligas autem, quod haec remanserunt in registro. Nam in antiqua compilatione haec non ita plene specialiter exprimuntur. Alii dicunt ex tribus, scilicet, quia locum tutum assignare nolunt, quia episcopum non licentiatum receperunt, quia appellationi non detulerunt, *supra*, responsio i. Sed secundum T., tertia est quia citati non venerunt, *supra*, proxima [glossa]. Dicas cum papa, quia sibi credendum est in hoc casu,” *Lectura*, vol. 1, fol. 51vb-52ra. Hostiensis' other reference was to Lateran IV (1215), c. 71, *Ad liberandum*, which was originally made up of a long crusading indulgence and provisions for the relief of crusader debts owed to Jews. For the *Decretals*, Raymond had removed all of the material relating to the indulgences, and had just kept the portions relevant to the title in which it appeared, *De Iudaeis et Sarracenis atque servis eorum* (X 5.6). As he alludes to here, Hostiensis thought that X 5.6.17 was poorly edited, and so in his commentary on *Ad liberandam* he resupplied large portions of the text relating to the indulgences – portions that he terms *concordia* (*Lectura*, vol. 5, fol. 33ra). He no doubt felt this supplementation doubly necessary because the canon had never appeared in 4Comp, and was one of the ones that Raymond had derived from a collection along the lines of the *Collectio Bambergensis secunda*, as discussed earlier in chapter one § 1.7.2 The *Collectio Bambergensis secunda* as a source for the *Decretals* (pp. 62ff.). On Hostiensis' gloss of *Ad liberandam*, see: Michel Villey, *La croisade. Essai sur la formation d'une théorie juridique* (L'Église et l'État au Moyen Âge 6: Paris, 1942) *passim*.

Ex tribus] The reasons being presumption, contempt and blasphemy, as in the original decretal, from which their elimination was exceedingly improper⁵⁹⁶ ...
 ...[Hostiensis then gives a paraphrase of the register extract]... You should know, however, that this passage remains in the register. For in the older compilation these were not explained quite so fully. Others say the three reasons are because [Lupold's electors] did not wish to hold the election in a safe place, because they received into their church a bishop who was not thus permitted, and because they did not defer to an appeal [prior to the election]. But according to Tancred, the third reason is because they did not come when they were summoned [to the legate's hearing], as discussed in the previous gloss. You should follow the pope here, because he is to be believed in this case.

Hostiensis' remarks are so perfunctory that it is easy to miss their broader implications. Here was a decretal that related to one of the most contested areas of jurisdiction between the papacy and an episcopate jealous to guard its liberties. It is difficult to say what the intentions of the editors of *Bonae memoriae* had been beyond just denuding it of its historical particulars and ancillary detail. In any case, their combined efforts had produced a text so spare that canonists' attempts to extract and generalize its legal *argumenta* risked cannibalizing what little internal coherence it had. They did not hesitate, therefore, to resurrect prior versions of the letter as well as the historical context in which it was originally embedded. This was a far cry from Gregory's injunction in *Rex pacificus* for judges and students to utilize *haec tantum compilatio*. This kind of layered reading and interpretation was not purposefully subversive, however. After all, as Hostiensis said to justify his use of supplementary material from the older version of *Bonae memoriae*: "here you should follow the pope, because he is to be believed in this case." Rather, it looked to the original intent of a

⁵⁹⁶ *Antiqua* (used as a substantive adjective) is here translated as "original decretal," though this is admittedly not the optimal solution. If one takes *antiqua* as referring to compilation, it is not clear, then, what the passage, "ut in antiqua, de qua hīc pessime fuit decisum," would mean, since he later acknowledges that the issues of presumption, contempt and blasphemy are "non ita plene specialiter exprimuntur," in the older compilation (*antiqua compilatio*). Manuscript readings for this passage concur with the printed edition.

decretal's issuer, which could be discerned through consultation of prior versions of the text.

Still, there is an important way in which this type of interpretation went against both the letter of *Rex pacificus* and the spirit of Raymond's editing. It accorded ongoing legal authority to earlier versions of the texts in the *Decretals*, at least in those cases where a fuller context was necessary to establish the legal reasoning or principle of the text. The continued usefulness of the older compilations as repositories of fuller versions of texts may help to explain why copying of the 5C did not end after 1234, and in one notable case of a 3Comp manuscript, certain decretals were outfitted with Bernard of Parma's ordinary gloss to the *Decretals*.⁵⁹⁷ *Rex pacificus* may have secured the exclusivity of the *Decretals* in the courts, but in the schools of law there remained the option of reading and interpreting the collection in context.

The contextualization practiced by Sinebaldus, Bernard and Hostiensis also ran counter to the spirit of Raymond's editing. As discussed at the end of the first chapter, Raymond's editing had tended not just toward ahistorical abstraction, through the elimination of a decretal's narrative or individuating details of the parties involved in a dispute. It had also begun targeting the language tying the texts to their original form as decretal letters, opening up a formal rift between the *Decretals* and its sources that went beyond the directive for its exclusive usage laid out in *Rex pacificus*. The Gregorian constitutions were, in a sense, the ultimate expression of this latter tendency, insofar as they came into being with no context at all other than the titles in which they were found,

⁵⁹⁷ New Haven, Yale Univ., MS 423. Most of the manuscript, which is devoted to 3Comp alone, has the commentary of Johannes Teutonicus, but a select, unknown number show the later addition Bernard's gloss. A description of the manuscript by Kenneth Pennington has been made available online at: <http://brbl-net.library.yale.edu/pre1600ms/docs/pre1600.ms423.htm>.

and the legal principles they invoked. On the other hand, canonists consulting the 5C and the papal registers to establish points of interpretation were preserving the linkage between text and source that Raymond's editing threatened to sever.

4.5 Conclusion

Not every decretal needed – or could even support – source criticism of the sort conducted on X 1.6.23, *Bonae memoriae*. The full extent of this criticism in the thirteenth century remains to be fully researched. As the commentary on X 1.6.23 demonstrates, however, the recourse to Raymond's sources was surprisingly uncontroversial in practice. It is perhaps an ironic testimony to the acceptance of such criticism as an interpretative method that even Bernard of Parma, who at one point seemed to favor excommunication for those using prior compilations, made free use of the *Decretals'* sources to clarify his own interpretation.⁵⁹⁸ The foregoing examination has been narrowly focused on just a single decretal taken from the list of to-be-emended texts compiled by Sinebaldus Fieschi in the prologue to his *Apparatus*. It would not be surprising if more examples of source criticism came to light that were not included in Sinebaldus' original tally.

Bernard of Parma provided contextual details for X 1.6.23 based on his own familiarity with the original circumstances surrounding the case. Hostiensis elsewhere also demonstrated knowledge of Innocent III's register that was independent of Sinebaldus' *Apparatus*. In his commentary on X 1.6.29, *Auditis*, which is another one of the texts listed in Sinebaldus' prologue, Hostiensis utilized Innocent III's register in a novel way that demonstrates how the individual texts of the *Decretals* remained tied to a

⁵⁹⁸ See above, note 517.

larger context. Sinebaldus' recommended emendations focused on the names of the candidates and electors in this decretal chronicling yet another disputed episcopal election.⁵⁹⁹ Sinebaldus' final addition reintroduced Innocent's justification for having rejected the election of one of the candidates due to his being a subdeacon, a reason that Raymond had cut, presumably owing to its later abrogation by Innocent himself.⁶⁰⁰ At the time of *Auditis*' composition (1206), however, subdeacons were not yet permitted to gain episcopal dignity without special permission.⁶⁰¹

Hostiensis based his commentary on the fuller version of *Auditis* provided by Sinebaldus, and was curious why Innocent would have noted this impediment to subdeacons when there existed another text in the *Decretals*, also by Innocent III, that granted them full license to acquire episcopal office: X 1.14.9, *A multis*. Hostiensis solved the question by means of Innocent's register, noting that *Auditis* appeared in year eight, while *A multis* was not issued until two years later.⁶⁰² Once again, Hostiensis showed how commentators viewed their texts as continuing to exist within an older complex of relationships and chronologies, which could be unknotted by recourse to the original sources.

⁵⁹⁹ Number two in Sinebaldus' list, as above, p. 274.

⁶⁰⁰ "Item, ubi sequitur 'de novo prefatum subdiaconum,' debet dicere: 'de novo magistrum R. subdiaconum, cum esset subdiaconum, eligere praesumpserunt,'" Sinebaldus Fieschi, *Apparatus*, fol. 1va.

⁶⁰¹ The reason stemmed in part from there having been no subdiaconate in the early church, and so texts discussing episcopal qualifications never mentioned the non-existent subdeacon as worthy of office.

⁶⁰² "*Contra formam canonicam*] Licet enim idem Papa, scilicet, Dominus Innocentius tertius author sit, utriusque, scilicet istius [X 1.6.29, *Auditis*] et illius decretalis [X 1.14.9, *A multis*], tamen, sicut patet in registro, ista precedit illam per biennium. Nam sicut probatur per Registrum, emanavit haec pontificatus eiusdem domini Innocentii, anno viii, illa vero pontificatus eiusdem anno decimo. Unde patet quod ista de illa futura non potuit somnare, sed oportuit, quod cassaret haec electio secundum iura, quae tunc currebant, ut in Auth., ut cum de app. Cog. § i., coll. Viii [Nov 115.1 (Auth 111)], et patet in eo, quod legitur et nota, *supra*, de const., c. 2 [X 1.2.2], et c. fi [X 1.2.13]," Hostiensis, *Lectura*, vol. 1, fol. 55vb.

Further research on the use of source criticism by thirteenth-century canonists should focus first on commentary on the rest of Innocent III's material in the *Decretals*. It is probably not an accident that Sinebaldus' list of emendations only included texts belonging to this pope (as well as one Lateran IV canon). Innocent's reputation as a legal mind of the first order – already current among his contemporaries – persisted throughout the thirteenth century, and may explain why canonists felt on safer ground going back to his original formulations of the law.⁶⁰³

4.5.1 The reappearance of *partes decisae* in the *Decretals*: X 2.26.18 and X 2.27.22 in Florence, Laurenziana, S. Croce III sin.9

This chapter concludes with an example of how a climate where source criticism was practiced may have been responsible for changes made to the text of certain decretals in individual manuscripts of the collection. In the course of collating early *Decretals* manuscripts for this study, two decretals emerged from the 1239 Florence manuscript (FBL sin.9) with variants that could only have been derived from an earlier version of the letter. The changes were added to both in a slightly later hand (late-thirteenth century?) that had erased and then rewrote small sections of each. One of the texts, X 2.27.22 (3Comp 2.18.12), *Cum I. et A.*, is among those identified by Sinebaldus in his *Apparatus* prologue; curiously, however, the changes to X 2.27.22 have nothing to do with the emendation from Innocent's register proposed by Sinebaldus. The second decretal is X 2.26.18 (3Comp 2.17.8), *Cum olim frater*. In both cases, the changes include the reappearance of language from the earlier version of the text in 3Comp that Raymond had removed from the final form of the text in the *Decretals*. These resuscitated *partes*

⁶⁰³ See, for example, the praise given Innocent by the compiler Rainerius of Pomposa, as cited above, note 81.

decisae are small – ranging in length from an entire phrase to a single word – and of little obvious legal significance. Both texts are collated below.

For X 2.26.18, the reinserted *pars decisa* occurs near the head of the decretal, and so the collation below is restricted to the first part of the canon. The base text used is that of Friedberg's hybrid edition, with italicized portions indicating the excised portions from the formal source in 3Comp:

X 2.26.18 *Cum olim (De praescriptionibus)*
3Comp 2.17.8

1 Cum olim, frater episcopo, cum *dilectis filiis* abbate et monachis sancti Salvatoris de
2 Ficheto¹ super plebe Salamazanae² et adiacentibus capellis ipsius in nostra praesentia
3 litigando, institutionem in eis et alia ad ius episcopale pertinentia vendicares, ad
4 fundandam intentionem tuam ius commune principaliter allegabas, cuius auctoritate³
5 dicebas, universa spiritualia in praedictis locis, quae sunt in diocesi tua⁴ constituta,
6 ad te tanquam ad diocesanum episcopum pertinere, arbitrium praeterea super hoc
7 promulgatum a *bonae memoriae* Pistoriensi episcopo, *et*⁵ archipresbytero ac⁶
8 primicerio Lucanis *a partibus electis* allegans, *quod ab utraque parte fuerat*
9 *communiter approbatum.*⁷ Ad elidendam autem intentionem tuam abbas *praedictus*
10 *felicis recordationis* Gregorii VII. Papae praedecessoris nostri privilegium exhibuit,
11 quod praedictum arbitrium multo videbatur tempore praecessisse...

¹ F.: *FBL* ² Sanamazena: *FBL* ³ auctoritate cuius: *FBL* ⁴ tua diocesi: *FBL* ⁵ et: *incl.*,
FBL ⁶ ac] et: *FBL* ⁷ Lucanis allegans. Ad elidendam] Lucanis a partibus electis
allegans, quod ab utraque parte fuerat communiter approbata. Ad eligendam...: *FBL*

X 2.26.18 records the mediation of a dispute between the bishop of Lucca and the monastery of Ficheto over whether the latter could exercise certain episcopal rights such as the appointment of clergy and the perception of tithes in churches that belonged to the monastery, but were physically located in the diocese of Lucca. The *pars decisa* reinserted in *FBL* sin.9 (lines 7-9, including the *et* on line 7), merely clarifies the status of the arbiters appointed to mediate the dispute, stating that they were selected by the common consent of both parties. Neither Friedberg's codices nor the other early

manuscripts contain the additional language, nor is it picked up as lemmata in any of the thirteenth-century commentaries.

For X 2.27.22, the additional language occurs in three places, and its legal import is even less significant than the additions to X 2.26.18. The collation covers only those sections relevant to the reinserted *partes decisae*. As X 2.27.22 was identified by Sinebaldus as in need of emendation, his proposed changes are given after the text for the sake of comparison, though they do not correspond to the extra language found in FBL sin.9:

X 2.27.22 *Cum I. et A. (De sententia et re iudicata)*
3Comp 2.18.12

1 Cum I. et A. canonici sancti Dionysii Remensis *ad nostram dudum praesentiam*
2 *accessissent*¹ ex parte quorundam canonicorum eiusdem ecclesiae nostro apostolatu
3 reserarint,² quod abbas eorum super dilapidatione, periurio, simonia et quibusdam
4 aliis erat multipliciter infamatus,^a *et cum super his et aliis cum procuratore ipsius*
5 *abbatis apud sedem apostolicam diu litigassent*, nos *postmodum venerabili fratri*
6 *nostro* Cathalanensi episcopo³ et eius collegis dedimus in mandatis, ut ad ecclesiam
7 *ipsam* personaliter⁴ accedentes, tam in capite quam in membris *appellatione*
8 *postposita* corrigerent corrigenda, et statuerent quae statuenda viderent (Et infra)
9 Iudices autem...[break]...sententiam procedere praesumpserunt. Quia vero de
10 conspiracy articulo nobis non potuit fieri plena fides, mandamus, quatenus,
11 *inquisita plenius veritate*, si vobis constiterit, quod illi conspiratores fuerint, quorum
12 constat a iudicibus iuramenta recepta, *et quod hoc ipsum abbas*⁵ probare voluit coram
13 eis, et *quod* eorum dicta iudices secuti tantummodo, cum per alios ea probata non
14 essent, sententiam protulerunt, vos *appellatione remota* irritantes processum eorum in
15 negotio *ipso* iuxta praedictam formam, comprehensam in prioribus literis, procedatis.

¹ Remensis ad nostram audientiam accessissent: *FBL* ² reserarunt: *FBL* ³ episcopo: *deest FBL* ⁴ ad ecclesiam personaliter] ad ipsam ecclesiam personaliter: *FBL* ⁵ recepta, quod abbas] recepta, et hoc ipsum abbas: *FBL*

^a **Apparatus ad X 2.27.22** (fol. 313vb): "*infamatus*] Post hunc textum corrigitur littera decretalis per registram sic: *et cum super his, et aliis cum procuratore ipsius abbatis aliquamdiu litigassent*

The additional language in FBL sin.9 seen in lines 1-2 (*ad nostram audientiam accessissent*) is not an exact replica of 3Comp (*ad nostram dudum praesentiam*

accessissent), but it is too close to be coincidental. The other two additions include the reintroduction of the determinative pronoun *ipsam* (line 7), and the original 3Comp wording of *et hoc ipsum abbas* (line 12), as opposed to Raymond's shortened formulation *quod abbas*.

The erasures and rewrites by the later hand appear only in the later titles of book 2, and they notably include several texts that do not belong to Innocent III.⁶⁰⁴ In no other of the dozen or so instances does one find the reinsertion of *partes decisae* from the formal sources, however. X 2.26.18 and X 2.27.13 thus stand alone in their transmission of text that Raymond had removed.

The presence of these *partes decisae* in FBL sin.9 ultimately raises more questions than it answers. Their infrequency and the relative insignificance of their content make it difficult to speculate about the reasons why they would have been added. Perhaps the later owner of the manuscript was correcting errors by the original hand, which would explain why some non-Innocent III texts were among those corrected. In order to get the readings for X 2.26.18 and X 2.27.22, however, the later scribe would have had to consult a 3Comp manuscript specifically, and not just another copy of the *Decretals*. Why this scribe would then choose to rewrite only selected sentences of X 2.27.22 and not others, including the one identified by Sinebaldus Fieschi as in need of emendation, is a mystery. In an environment where commentators like Sinebaldus, Bernard of Parma and Hostiensis were resorting to source criticism, however, the

⁶⁰⁴ Among the non-Innocent III texts is X 2.26.1, a conciliar decree from the late-antique, North-African church derived by Raymond from 1Comp 2.18.1. The later hand is responsible for the whole text, the only such instance where an entire capitulum was erased and rewritten. The text does not differ, however, from that found in the *ER*. The earliest appearance of the hand is for X 2.20.31, where about one-quarter from the middle of this relatively brief decretal is rewritten: “nisi forsan ante publicationem id fuerit protestatus, vel ostendere poterit, quod post publicationem didicerit quod obiicit in personas,” FBL sin.9, fol. 69r. The rewritten portion matches the normative text of the *ER* exactly.

occasional consultation and correction of the *Decretals*' text using Raymond's sources may not have seemed as surprising as it appears to us now.

Chapter 5: The Registers of Gregory IX as source for the Decretals

5.1 Introduction

The previous chapter examined the transmission of the *Decretals* in manuscript and print, and the textual problems inherent in a collection that survives in 700 manuscripts with no critical edition. The critical reexamination of the sources of Christian history and doctrine prompted by the religious upheavals of the sixteenth century culminated on the Catholic side with the 1582 *Editio Romana* of the *Decretals* inside the *Corpus iuris canonici*. In one of the rare instances of ecumenical scholarly détente, the *Editio Romana* provided the core around which later Protestant scholars gradually reassembled the full text of each decretal by using the pieces that had been discarded by Raymond and his predecessors. Four centuries of scholarship thus stand behind Emil Friedberg's edition of the *Decretals*, which has become the *de facto* vulgate edition.

The painstaking reconstruction of the *ur-text* of the *Decretals* and its sources has largely taken place without considering Raymond's method of organizing his texts. Raymond did not pour the selected texts of the *Quinque compilationes antiquae* indiscriminately into the *Decretals*. The previous chapter showed how Raymond carefully organized his sources by grouping them according to pontificate and transposing almost 8% of the 1776 texts derived from the *Quinque compilationes* into different titles. In comprehending Raymond's method, we can peer behind the curtain, so to speak, moving past the transmission errors that still plague the *Editio Romana*. By controlling these results with the readings from recently discovered pre-1250 manuscripts of the *Decretals*, we have moved a step closer to Raymond's original text, and toward

building a *stemma codicum* for a future critical edition of the *Decretals*. Understanding the origin of certain errors in the *Decretals* also sheds light on the form of the sources Raymond employed. This is of particular significance given the extraordinary amount of work that remains to be done on the development of canon law in the first quarter of the thirteenth century, the critical period that saw the canonistic center of gravity shift from northern Europe to Bologna, and the subsequent alliance between academic jurists and the papacy.

Friedberg's 1881 edition arrived only two years before the Vatican's Secret Archives were opened, too late to take advantage of the papal registers and other valuable sources contained therein. The handful of examples he offered for Raymond's editing of Gregory IX's decretals and constitutions were either a few steps removed from the actual register, or provided from original letters.⁶⁰⁵ This chapter will examine Raymond's employment of the registers of Gregory IX as a source for the *Decretals*. The main fruit of this examination can be found in the following chapter: a full collation of the register with those texts in the *Decretals* that were derived from it. This collation finally brings to a close the basic work of source criticism on the collection. To establish the possibility of the registers as Raymond's source, however, the character and function of Gregory's registers must first be addressed.

The papal registers are a subject worthy of attention in their own right. They represent the single most important source for papal history from the thirteenth century to the close of the medieval period, and are hardly less critical to our understanding of the

⁶⁰⁵ Friedberg offered reconstructions of 16 Gregorian texts: **[Book I]** 1.6.50, 1.6.52, 1.16.3, 1.31.19, 1.33.16; **[Book II]** 2.18.3, 2.25.9; **[Book III]** 3.19.9, 3.32.2; **[Book V]** 5.1.27, 5.7.15, 5.22.4, 5.27.9, 5.31.16-7, 5.36.8. All of these letters can also be found in the register, and the majority were, in fact, derived therefrom by the small number of scholars, including Raynaldus, Ughelli and Theiner, who were permitted direct access to the Secret Archives during the previous centuries.

innumerable local institutions and individuals whose correspondence with Rome on every conceivable topic is preserved therein. A close examination of the register manuscripts will reveal previously hidden dimensions to the powerful forces that were shaping the direction of the Church during Gregory's pontificate. The registers will also provide a crucial context for assessing the changes in the law that Raymond introduced via the *Decretals*.

5.2 The Registers of Gregory IX as source for the Decretals

Stephan Kuttner pointed the way toward locating the sources for the 195 Gregorian capitula in Gregory IX's own registers.⁶⁰⁶ Kuttner limited his scope to the first book of the *Decretals*, identifying which of its 65 Gregorian texts had been derived from the registers. This allowed him to make the conjecture, based upon the significant number of previously unissued texts that Raymond had inserted into Book I, that the *Decretals* marked an important transformation in the history of canon law toward statutory legislation. However, a definitive judgment on the ultimate balance between decretals and texts composed specifically for the collection has awaited the completion of the source criticism for Books II-V. Moreover, Kuttner only collated three of the Book I texts he found in the registers – a full collation of the remaining Gregorian capitula is a precondition for an accurate assessment of Gregory's intentions for the collection, as well as Raymond's accomplishment.

A thorough search reveals that 88 of the 195 Gregorian texts can be found in 82 separate entries in Gregory's registers, after accounting for multiple capitula derived from the same letter. Adding to these the lone decretal found in Honorius III's register (X

⁶⁰⁶ Kuttner, "Raymond of Penyafort as editor."

3.5.8; Pressutti 6244), which may or may not have been taken by Raymond directly from the register of Gregory's predecessor, one arrives at a total of 89 capitula in the *Decretals* that can be traced back to the papal registers.⁶⁰⁷ The breakdown is as follows:

Table 5.1. Gregorian Capitula taken from the Registers

	<i>Decretals</i>	Date	Potthast	Auvray	Register
1	3.05.38	Feb. 17, 1227	9632	(Pressutti) 6244	Reg. Vat. 13: 174r
2	1.38.10	Apr. 7, 1227	9570	16	Reg. Vat. 14: 3v
3	2.25.09	Apr. 22, 1227	7882/post 9611	46	Reg. Vat. 14: 6(bis)v
4	5.27.09	Apr. 27, 1227	7882/post 9611	46	Reg. Vat. 14: 6(bis)v
5	5.01.27	Apr. 27, 1227	7887	52	Reg. Vat. 14: 7v
6	1.30.08	Apr. 24, 1227	9559	55	Reg. Vat. 14: 9r
7	3.32.19	Jun. 8, 1227	9652	110	Reg. Vat. 14: 17r
8	4.11.8	Jun. 23, 1227	9666	117	Reg. Vat. 14: 18v
9	1.06.49	Mar. 30, 1227	9540	122	Reg. Vat. 14: 23r
10	1.06.50	Mar. 21, 1228	8152	184	Reg. Vat. 14: 63v
11	1.06.57	Mar. 22, 1228	9546	192	Reg. Vat. 14: 66r
12	3.38.31	Jul. 3, 1228	9655	205	Reg. Vat. 14: 76r
13	1.03.32	Jul. 19, 1228	9527	213	Reg. Vat. 14: 80v
14	5.07.14	Oct. 3, 1228	9675	219	Reg. Vat. 14: 83r
15	1.06.51	Oct. 25, 1228	9541	221	Reg. Vat. 14: 83v
16	3.26.18	Nov. 16, 1228	9645	245	Reg. Vat. 14: 91r
17	1.06.52	Feb. 20, 1229	8343/9542	274	Reg. Vat. 14: 101r
18	3.33.2	May 16, 1229	8399	298	Reg. Vat. 14: 114r
19	2.25.10	May 28, 1229	9612	302	Reg. Vat. 14: 116r
20	3.05.35	Jul. 17, 1229	9629	323	Reg. Vat. 14: 130r
21	1.33.13	Sep. 28, 1229	9564	346	Reg. Vat. 14: 138r
22	3.04.16	Sep. 26, 1229	9627	348	Reg. Vat. 14: 138r
23	2.19.15	Oct. 6, 1229	9599	349	Reg. Vat. 14: 138v
24	2.14.10	Sep. 28, 1229	9596	353	Reg. Vat. 14: 139v
25	1.43.12	Nov. 28, 1229	9581	380	Reg. Vat. 14: 147r
26	2.28.67	Jan. 18, 1230	9619	390	Reg. Vat. 14: 150v

⁶⁰⁷ X 3.5.28, *Cum olim priori*, is the fourth and final decretal attributed to Gregory IX (with an *Idem* inscription) in the title on prebends (*De praebendis et dignitatibus*). It is found on the last folio of Honorius' final register volume (Reg. Vat. 13, fol. 174r), and was issued on Feb. 17th, just under a month before this pontiff's death on March 18th, 1227. Given what was shown in the third chapter about the regularity of Raymond's method of organization, there is no ready explanation for why Raymond would have positioned the text at the end of the title if he understood it to belong to Honorius. One possible solution is that Gregory reissued (or was petitioned to reissue) the decretal – which forbade using a mandate for a benefice provision as an occasion to seize a formal office within a church – upon taking office. While it was never reentered into Gregory's own registers, it could have been among the several dozen loose decretals Raymond selected for the collection, and so there is no *a priori* reason to assume he derived the letter from Honorius' register. For lack of any other source, though, the decretal has been collated in the appendix to this chapter using the text from Honorius' register.

27	1.42.2	Jan. 28, 1230	9580	393	Reg. Vat. 14: 152r
28	1.03.33	Jan. 21, 1230	9528	397	Reg. Vat. 14: 152v
29	1.41.08	Feb. 7, 1230	9577	399	Reg. Vat. 14: 153r
30	2.28.68	Jan. 30, 1230	9620	402	Reg. Vat. 14: 154v
31	1.03.34	Mar. 25, 1230	9529	434	Reg. Vat. 15: 1v
32	2.03.3	Apr. 13, 1230	9588	438	Reg. Vat. 15: 2v
33	1.43.13	Apr. 27, 1230	9582	445	Reg. Vat. 15: 5r
34	1.06.53	May 17, 1230	9543	454	Reg. Vat. 15: 14v
35	5.33.31	Jun. 28, 1230	9681	475	Reg. Vat. 15: 21v
36	2.25.11	Aug. 26, 1230	9613	487	Reg. Vat. 15: 27v
37	2.08.4	No date	9591	488	Reg. Vat. 15: 28r
38	3.32.20	Oct. 4, 1230	9653	500	Reg. Vat. 15: 33v
39	2.28.69	Oct. 31, 1230	9621	511	Reg. Vat. 15: 40r
40	1.29.38	Oct. 20, 1230	9553	512	Reg. Vat. 15: 40r
41	2.02.16	Jan. 27, 1231	post 9583	534	Reg. Vat. 15: 47r
42	2.02.17	Jan. 23, 1231	9584	538	Reg. Vat. 15: 49r
43	5.07.15	No date	8445/post 9675	539	Reg. Vat. 15: 49v
44	1.31.19	Feb. 14, 1231	8661/post 9561	551	Reg. Vat. 15: 52v
45	5.36.8	Mar. 18, 1231	8681	571	Reg. Vat. 15: 59v
46	3.31.23	No date	8682/9650	572	Reg. Vat. 15: 59v
47	2.22.12	Mar. 7, 1231	9604	573	Reg. Vat. 15: 60r
48	1.03.35	Apr. 3, 1231	9530	591	Reg. Vat. 15: 67v
49	1.03.36	Apr. 22, 1231	9531	626	Reg. Vat. 15: 83r
50	1.38.11	Apr. 26, 1231	9571	630	Reg. Vat. 15: 86r
51	1.33.15	May 12, 1231	9566	645	Reg. Vat. 15: 92v
52	3.21.8	May 9, 1231	9639	649	Reg. Vat. 15: 93v
53	3.39.25	May 17, 1231	9656	654	Reg. Vat. 15: 95r
54	1.06.54	May 15, 1231	8306	655	Reg. Vat. 15: 95r
55	1.33.14	May 26, 1231	9565	668	Reg. Vat. 15: 102r
56	2.05.1	Jun. 18, 1231	9599	669	Reg. Vat. 15: 103r
57	1.02.13	Jun. 16, 1231	9526	670	Reg. Vat. 15: 103v
58	3.05.36	May 7, 1231	9630	672	Reg. Vat. 15: 104r
59	5.40.33	Jul. 9, 1231	9692	681	Reg. Vat. 15: 108v
60	5.22.4	Jul. 26, 1231	8774/post 9678	686	Reg. Vat. 15: 110v
61	1.06.56	Aug. 4, 1231	9545	695	Reg. Vat. 15: 113r
62	3.26.17	Jul. 21, 1231	9644	697	Reg. Vat. 15: 114r
63	5.31.16	Aug. 23, 1231	8786a/8788	707	Reg. Vat. 15: 119r
64	5.31.17	Aug. 23, 1231	8788	707	Reg. Vat. 15: 119r
65	1.18.8	Sep. 10, 1231	9552	712	Reg. Vat. 15: 124r
66	4.01.29	Aug. 19, 1231	9660	719	Reg. Vat. 15: 128r
67	5.06.18	Oct. 20, 1231	9673	733	Reg. Vat. 15: 131r
68	5.03.44	Nov. 4, 1231	9670	736	Reg. Vat. 15: 133v
69	3.19.9	Oct. 20, 1231	8822	737	Reg. Vat. 15: 133v
70	1.11.16	Nov. 12, 1231	8832	740	Reg. Vat. 15: 134v
71	1.06.55	Nov. 10, 1231	9544	741	Reg. Vat. 15: 135r
72	2.18.3	Jan. 21, 1232	8846	756	Reg. Vat. 15: 149v
73	3.23.2	Feb. 11, 1232	8874	775	Reg. Vat. 15: 157r
74	1.33.16	Mar. 20, 1232	8899	783	Reg. Vat. 15: 159r

75	5.01.26	Apr. 3, 1232	9669	787	Reg. Vat. 16: 1v
76	1.33.17	Mar. 29, 1232	9567	790	Reg. Vat. 16: 2v
77	3.23.3	May 28, 1232	9641	794	Reg. Vat. 16: 4r
78	1.17.18	Jun. 23, 1232	9551	800	Reg. Vat. 16: 6v
79	4.13.11	Jul. 7, 1232	9667	805	Reg. Vat. 16: 11v
80	5.31.18	Jun. 23, 1232	9680	810	Reg. Vat. 16: 16r
81	1.16.3	Dec. 9, 1232	9056	988	Reg. Vat. 16: 58r
82	4.01.30	Dec. 20, 1232	9661	1009	Reg. Vat. 16: 62v
83	2.24.34	Dec. 20, 1232	9609	1010	Reg. Vat. 16: 62v
84	3.40.09	May 21, 1233	9203	1324	Reg. Vat. 17: 30r
85	3.40.10	May 21, 1233	9203	1324	Reg. Vat. 17: 30r
86	3.49.09	May 21, 1233	9203	1324	Reg. Vat. 17: 30r
87	5.39.55	May 21, 1233	9203	1324	Reg. Vat. 17: 30r
88	3.31.24	Dec. 23, 1233	9651	1667	Reg. Vat. 17: 120v
89	3.49.10	Jun. 26, 1234	9659	1987	Reg. Vat. 17: 190v

Doubts remain, however, about whether the register was, in fact, the source for these texts. The registered letters in question (and the registers as a whole) lack the tell-tale crosses that punctuate the registers of Honorius and Innocent, which scholars have identified convincingly as selection marks used by canonists. In the absence of any detailed scholarship devoted to Gregory's registers, it is even an open question whether they could have been Raymond's source in all possible cases. There is as yet no agreement on how the thirteenth-century papal registers were compiled, *viz.*, whether they were kept as ongoing records of correspondence, or whether they were put together sometime after the close of each pontifical year, the traditional line of separation for the individual register books. It is necessary, therefore, to take the time to explore Gregory IX's registers, in order to establish that Raymond could have employed them to compile the *Decretals*. As will be shown below, following a review of the main scholarship on thirteenth-century registration, the evidence points to Gregory's registers having been running records of papal correspondence updated throughout the year. This conclusion offers a correction, in particular, to Friedrich Bock's studies of Gregory's registers, which

have remained, until now, the only in-depth treatment of the subject. On the basis of this conclusion, a provisional date of the summer of 1232 will be offered as the beginning point for Raymond's work on the *Decretals*.

5.3 Scholarship on the thirteenth-century Papal Registers

There are no regulations from the papal chancery that cover how and why the papal registers were kept in the thirteenth century.⁶⁰⁸ Thus, our understanding has of necessity been derived from a close scrutiny of the registers themselves, a process that has unfolded but gradually since the Vatican Secret Archives were opened to scholars in 1883.⁶⁰⁹ Only after the editions of the registers were complete or in process could the scholarship really turn to an examination of registration practice.⁶¹⁰

⁶⁰⁸ The earliest administrative guidelines date from the Avignonese pontificate of John XXII (1316-34), and are printed in: Michael Tangl, *Die päpstlichen Kanzleiordnungen von 1200-1500* (Innsbruck 1894; repr. Aalen, 1959) p. 88; 110.

⁶⁰⁹ An excellent summary of the research program was given by A. Giry, who wrote when the critical editions of the registers were still being assembled: "Pour connaître avec exactitude la valeur et l'autorité des documents contenus dans cette magnifique collection, il importe de soumettre les volumes qui la composent à une étude critique: il faut en déterminer exactement la nature et le caractère, discerner les règles qui ont présidé à leur rédaction et distinguer les différentes catégories de registres que les anciens archivistes ont souvent confondues dans la série générale. La comparaison des registres entre eux, l'examen de la nature, de la disposition, de l'ordre et de la numérotation des pièces, le rapprochement des transcriptions avec les documents originaux, l'interprétation des annotations, des signes et des mentions de toute sorte qui peuvent se rencontrer dans les volumes en dehors des documents, tels sont, entre beaucoup d'autres, les moyens d'investigation qui peuvent conduire à ces résultats," *Manuel de diplomatique* (Paris, 1894) p. 683.

⁶¹⁰ Soon after the archives were opened, scholars were introduced to an initial sampling of the contents of the thirteenth-century registers via: Carl Rodenberg, *Epistolae saeculi XIII e Regestis pontificum Romanorum selectae*, 3 vols. (Monumenta Germaniae Historica, Epistolae: Berlin, 1883-94; repr. Munich, 1982); and: Heinrich Denifle and Gregor Palmieri, *Specimina paleographica ex Vaticani tabularii Romanorum Pontificum registris selecta* (Rome, 1888). The Écoles françaises d'Athènes et de Rome were responsible for editing most of the registers up through Pope John XXII. Letters extracted from the registers of later popes were also undertaken by the Écoles, but according to region owing to the vast quantity of material. The Écoles did not produce full critical editions: those letters for which an original survives are usually only calendared. They are not, therefore, a substitute for the manuscripts, particularly when there are significant differences between the original and register versions. Fortunately, the Vatican's release of the register manuscripts on CD ROM has provided a means to control these editions. The Écoles did not bother with the registers of Innocent III, which had drawn enough interest in the previous centuries to merit several partial editions, the most comprehensive (though still incomplete) being that of Étienne Baluze: *Epistolarium Innocentii III Romani pontificis libri XI* (Paris, 1682); repr. in: Migne, *Patrologia latina cursus completus*, vols. 214-7. The need for an updated edition of Innocent's registers was soon realized, however, and since 1964 the gold standard for editions of papal registers has expanded to ten

5.3.1 Friedrich Bock and later registration

The debate over how the registers were compiled was dominated by Friedrich Bock up until the edition of Innocent's registers began to be published.⁶¹¹ Bock introduced an important corrective by showing that registration was frequently done on the basis of drafts of letters rather than the engrossed original.⁶¹² His studies across different pontificates led him to the conclusion that the registers were not kept as running records, but were instead assembled from archives sometime after the close of each pontifical year under the supervision of the Apostolic Chamber, and kept there as part of the papal treasury.⁶¹³ In this way, Bock was able to account for the fact that the registers did not follow a strict chronological order, and that there was no absolute correspondence

volumes as of 2010: Othmar Hageneder et al., *Die Register Innocenz' III* (Publikationen des Österreichischen Kulturinstituts in Rom, II Abteilung: Quellen, 1. Reihe, vols. 1-11: Rome, 1964-). At Leo XIII's directive, the Vatican itself undertook the edition of Honorius' registers: Pietro Pressutti, *Regesta Honorii papae III* (Rome: 1888-95). The Holy See also supported the edition of Clement V's registers, undertaken by the Vatican archivists Gregor Palmieri and Luigi Tosti together with a number of other Benedictines. For information on this edition see the index produced by the Écoles in 1956: Y. Lanhers and G. Mollat, *Tables des Registres de Clément V publiés par les Bénédictins* (Bibliothèque des Écoles françaises d'Athènes et de Rome, 3e série: Paris, 1957).

⁶¹¹ Bock rightly swung the pendulum away from an older scholarship that overestimated the bureaucratic efficiency of the papal chancery. For the most forceful exposition of his arguments, see: Friedrich Bock, "Päpstliche Sekretregister und Kammerregister," *Archivalische Zeitschrift* [=AZ] 59 (1963) pp. 30-58; "Kodifizierung und Registrierung in der spätmittelalterlichen kurialen Verwaltung," *AZ* 56 (1960) pp. 11-75; *idem*, "Studien zu den Register Innocenz' IV" *AZ* 52 (1956) pp. 11-48; *idem*, "Studien zu den Originalregistern Innocenz' III (Reg. Vat. 4-7A)" *AZ* 50-1 (1955) pp. 329-64.

⁶¹² Although hardly any survive in their original form, it is now agreed that the thirteenth-century papal chancery produced drafts – called *nota* or *minuta* – for most of the letters it sent out. The *abbreviatores* held the responsibility for composing the draft on the basis of an approved petition or mandate, or in the case of something like an appeal, the judicial record maintained by the judge delegate. The highly abbreviated draft was then corrected by the *corrector litterarum apostolicarum*, and rewritten with the appropriate diplomatic formulae fully spelled out. This engrossment was then paid for and sealed to produce the authentic, original letter. On the composition of drafts, see: Peter Herde, *Beiträge zum päpstlichen Kanzlei- und Urkundenwesen im dreizehnten Jahrhundert* (Kallmünz, 1961) pp. 101-31; Harry Bresslau, *Handbuch der Urkundenlehre für Deutschland und Italien*, vol. 2, 2nd ed. (Leipzig, 1912) pp. 150-9 (note there is a 3rd ed. of Breslau (Berlin, 1958), that was not available to the author at the time of this note).

⁶¹³ This was part of Bock's claim that in the medieval Curia, *regesta* meant the *res gesta Romanorum pontificum*, of which the register volumes were a part, but which included more generally, collections like the *Liber Pontificalis* or the *Liber Censuum*, as well as archives of documents held in the *Camera*. This led

between the chancery note *R. scriptum* that often but not always appeared on the backs of surviving originals that were also in the register.⁶¹⁴ Furthermore, Bock saw a stability and continuity in the hand responsible for keeping the registers, both within and across pontificates, suggesting that each year was compiled in one go from start to finish. Bock argued that there was a single hand (Hand A) responsible for the majority of the registers of Innocent III, the entirety of Honorius III's, Gregory IX's and Innocent IV's, and the first year of Alexander IV's pontificate.⁶¹⁵ This would, in fact, create a continuity virtually unparalleled in any medieval chancery (half a century!).

5.3.2 Registration under Innocent III

Bock's arguments stood unchallenged until more conclusive studies of the registers of individual popes could be concluded. In a preparatory study for the edition of Innocent III's registers, Othmar Hageneder argued convincingly for the antithesis of Bock's conclusions: Innocent's registers were, indeed, kept as a running record by up to thirteen different scribes.⁶¹⁶ The letters were registered – sometimes from drafts and sometimes from the original – in groups every week to two weeks.⁶¹⁷ The fact that the

him to the provocative, but by now dismissed conclusion that the reason no twelfth-century papal registers have survived is because there were none.

⁶¹⁴ Bock argued that the *R. scriptum* was more likely a procurator's mark, identifying the advocate who had secured a papal letter for his client: "Kodifizierung und Registrierung" p. 22. Starting with the pontificate of Innocent IV, the *R. scriptum* was usually followed by a number that corresponded to its place in the registers, showing that by this point it had definitely become associated with registration.

⁶¹⁵ The last appearance of Hand A is in Reg. Vat. 24, fol. 179: idem, "Kodifizierung und Registrierung," p. 29-30; 35-40.

⁶¹⁶ Othmar Hageneder, "Die äusseren Merkmale der Originalregister Innocenz' III," *Mitteilungen des Instituts für Österreichische Geschichtsforschung* 65 (1957) pp. 296-339. Hageneder built mainly on the work of the Jesuit Friedrich Kempf: Friedrich Kempf, *Die Register Innocenz III; eine paläographisch-diplomatische Untersuchung* (Miscellanea historiae pontificiae 9, collectionis 18: Rome, 1945). Kempf himself took aim at Bock in a point-by-point refutation of the latter's claims: "Zu den Originalregistern Innocenz' III: eine kritische Auseinandersetzung mit Friedrich Bock," *Quellen und Forschungen* 36 (1956) pp. 86-135.

⁶¹⁷ Hageneder distinguished discrete blocks of registration by looking for a *Neuansatz* – a term he adopted from Emil von Ottenthal and Willhelm Peitz – meaning a place in the text where the scribe took a break for

chronological order was not absolute can be explained by the different pace letters took to wind their way through the curia before engrossment, as well as the policy of registration in groups rather than as each letter was issued. Innocent's reform of the papal chancery had also put more controls in place – and thus more of a time lag – for bringing a letter from draft form to completed bull.⁶¹⁸ The date on the bull might not reflect the actual date of issue, as a letter could go through several corrections without necessarily being assigned a later date.

Surveyed as a whole, the formal qualities of Innocent's registers were best explained by ongoing registration, e.g., the grouping of certain letters from a particular procurator, corrections added to reflect changes in the case or law, the preservation of gaps for the subsequent insertion of a date or list of *a-pari* letters,⁶¹⁹ and the registration from originals not likely held at the curia. Hageneder further bolstered his argument by pointing out the close parallels between the main registers (Reg. Vat. 4, 5, 7 and 7A) and

a certain period of time. These betray themselves through a change in the character of the script (more or less spacing between words or letter, thickness of letter-forms beyond what a sharpening of the *calamus* would achieve, size of letters). Bock ridiculed this analytical technique as arbitrary ("Kodifizierung und Registrierung," pp. 26-7). While the technique has shown to be effective, at the margins it can be unclear how one is to distinguish between the scribe taking a short break from writing, and an extended interruption.

⁶¹⁸ For a recent summary of Innocent's reforms, see: Patrick Zutshi, "Innocent III and the reform of the papal chancery," *Innocenzo III: Atti del Congresso Internazionale Roma, 9-15 settembre 1998*, ed. Andrea Sommerlechner, vol. 1 (Miscellanea della Società Romana di storia Patria, vol. 45: Rome, 2003) pp. 84-101.

⁶¹⁹ When multiple copies of the same letter were sent to different addressees, the register usually included this note after the text of the letter: "[n] e[undem] m[odo] scriptum est..." In letters of justice there were usually slight differences between each copy, depending upon whether the judge or the litigants were being addressed. More often than not the only indication given of these changes in the register was: "In eundem fere modo scriptum est..." Gregory's register did on occasion transmit the full text of those changes. Auvray 667 (cathedral chapter of Messina) and 668 (*a-pari* letter to the Dominican prior of St. Paul outside the walls and the archdeacon of Reggio) settled a case of disputed election rights between the late Archbishop of Messina and a local monastery in favor of the former. The *a-pari* letter, Auvray 668, added a closing mandate for its recipients to enforce the judgment even though the see of Messina was now vacant, with the election rights in the monastery devolving to the cathedral chapter. Raymond extracted this short passage and placed it at X 1.33.14 under the title treating seniority and obedience (*De maioritate et obedientia*), owing to the obligation that a local monastery respect even devolved patronage rights.

the so-called *Regestum super negotio Romani Imperii* (Reg. Vat. 6), which collected letters from the first eleven years of Innocent's pontificate related to the disputed succession of the German Empire.⁶²⁰ Both the changes in hands and in the physical format of the main registers (quire structure, ruling) coincided chronologically with those in Reg. Vat. 6, a powerful argument for the practice of ongoing registration in all of Innocent's registers.

5.3.3 Registration under Honorius III

Jane Sayers upheld Bock's conjecture that Honorius' registers were assembled after the close of each pontifical year, though she parts with him in some of the particulars, such as her identification of eight different hands responsible for registration rather than Bock's single, long-lived Hand A.⁶²¹ This is not the place to delve into the character of Honorius' register, but a few points should be made. Sayers's commitment to later registration is based, as for Bock, on the lack of strict chronological order and a belief that registration was done only at Rome in the *Camera*. She hypothesizes, counterfactually, that if letters were registered throughout the year, then we would expect all the letters issued outside of Rome to be entered *en bloc* when the curia returned with the cache it had built up while away. While Honorius' registers do maintain a rough chronological order, at the margins there is interpenetration of letters issued outside of Rome with those written within, and vice versa.⁶²² This is not an absolute

⁶²⁰ Reg. Vat. 6, dubbed the "Thronstreitsregister," was edited prior to and separate from the main registers prepared by the Österreichisches Kulturinstitut: Friedrich Kempf, *Regestum Innocentii III papae super negotio Romani Imperii* (Miscellanea historiae pontificiae 12, collectionis 21: Rome, 1947).

⁶²¹ For Sayers' discussion of Honorius' register, see: Jane Sayers, *Papal Government and England during the Pontificate of Honorius III, 1216-1227* (Cambridge studies in medieval life and thought, 3rd ser., vol. 21: Cambridge: 1984), pp. 65-93. Sayers rejects Boyle's contention that Tancred's use of the registers to assemble *Comp5* can be pinpointed exactly by a gap in the dates of registration.

⁶²² *Ibid.*, p. 88-9.

disqualification for ongoing registration, as Hageneder was able to show with the varying pace of document production and registration by groups during Innocent's reign.

Moreover, just as Innocent's registers traveled with the Curia, there is no conclusive evidence that the same was not the case with Honorius.⁶²³

Another problem has to do with Honorius' registers as a source for Tancred of Bologna's 5Comp, issued on May 2, 1226. Honorius' registers are the exclusive source for 5Comp. The texts that make up the collection are among a group of over 500 snippets that have been marked in the register with a marginal cross. Leonard Boyle argued that this group of texts was the initial pool of register extracts out of which Tancred ultimately selected the capitula for 5Comp, showing that the crosses mark the exact place where Tancred chose to begin and end his extracts.⁶²⁴ The last text marked with a cross dates from January 30th, 1226, three months prior to the promulgation of 5Comp in the tenth year of Honorius' reign. Since the changeover of Honorius' pontifical year was July 24th – the date of his consecration in 1216 – there would not yet have been a register for that year for Tancred to select from, if we are to follow Sayers and Bock. The only way to resolve this contradiction in favor of later registration would be to argue that the crosses were added later, and coincidentally or not, were inscribed to coincide with the textual breaks in 5Comp. Even then we would still have to explain why Tancred would have used the register for every text prior to July 24, 1225 – the most current register run available in Bock/Sayers' scheme – but then decided to pillage the archives for those texts issued in the first half of the tenth pontifical year included in 5Comp.

⁶²³ See below for further discussion on the physical location of the registers.

⁶²⁴ Boyle, "Compilatio Quinta", p. 11ff.

Examining the intersection of Honorius' register with 5Comp is a reminder of the importance of canonistic evidence for the study of papal diplomatics and administration. There are just too many contradictions and leaps of logic with this evidence to warrant clinging to later registration under Honorius. Future studies could look at determining the identity of the eight scribes discerned by Sayers as the registrars. During Innocent's reign there was crossover between registration and chancery duties, with the register hands found to have composed some of the surviving originals.⁶²⁵ This suggests more fluidity between the register and the papal Chancery, and argues against isolating registration in the *Camera Apostolica*, as Bock did.

It should be evident by now how unreliable Bock's claims were for the registers of Gregory's predecessors. Unfortunately, Bock's slotting of Gregory IX's registers into the larger scheme he constructed for thirteenth-century registration has stood until now, for lack of any other study.⁶²⁶ His discussion of Gregory's registers is extensive for those portions that foreshadow the later development of secret registers⁶²⁷ – separate registers devoted to a particular subject usually of political import – but relatively limited with respect to the process of registration. Bock ultimately bases his judgment on continuity: the above-mentioned paleographical continuity across pontificates, and a continuity internal to Gregory's registers, whereby Gregory's relocation of the curia from place to place and long stays outside of Rome do not result in any irregularities in the register.

⁶²⁵ Upwards of six of the hands in Innocent's register are also represented in Innocent's surviving correspondence, according to: Kempf, *Die Register Innocenz III*, pp. 120ff.; and: Wilhelm Peitz, *Regestum domini Innocentii tertii papae super negotio Romani imperii (Reg. Vat. 6) riprodotto in fototopia a cura della Biblioteca apostolica Vaticana* (Codices e Vaticanis selecti 16: Rome, 1927) introduction, p. 40.

⁶²⁶ The same is true for his study of Innocent IV's register: Friedrich Bock, 'Studien zu den Registern Innozenz' IV.', *AZ* 52 (1956) pp. 11-48.

⁶²⁷ Bock, "Kodifizierung und Registrierung," pp. 40-68. See below for an account of the early incarnation of the secret registers under Gregory.

One would expect otherwise, according to Bock, with changes in location corresponding to changes in hands. Leaving aside for the moment why there could not be continuity in the registers when they were kept outside of Rome just as there actually was for the production of papal letters by a mobile Curia, we should take a closer look at Gregory's registers themselves to see what an examination of their contents reveals about how they were kept.

5.4 The Registers of Gregory IX

5.4.1 Overview of Reg. Vat. 14-17

In the fourteenth century, the earliest for which there is information, Gregory's registers were contained in ten separate volumes.⁶²⁸ These were later rebound, and in the process certain years were agglomerated to make up what are now seven bound volumes held in the Vatican Secret Archives with the shelf marks Reg. Vat. 14 through Reg. Vat. 20.⁶²⁹ These registers form an unbroken record of Gregory's correspondence between 1227 and 1241, and he is the only pope besides Honorius III for whom there is a complete series of registers in the first half of the thirteenth century.

Gregory's registers contain a number of smaller collections of politically important documents compiled separately from the main registers, similar to but on a lesser scale than Innocent's *Regestum super negotio Romani imperii*. Three of the six collections transmitted with the register relate to the ongoing conflict with Frederick II.

⁶²⁸ This information comes from an inventory made in 1339, which was edited with a generous introduction by: P. Heinrich Denifle, "Die päpstlichen Registerbände des 13. Jhs. und das Inventar derselben vom J. 1339," *Archiv für Litteratur- und Kirchengeschichte des Mittelalters*, vol. 2 (Berlin, 1886) 1-105. Gregory's registers are described on pp. 83-6. After listing the registers, the inventory goes on to describe a (now lost) "parvum volumen" with the rubric "tempore bone memorie domini Gregorii pape ix." Although this volume was kept with the registers in the fourteenth century, there is no necessity that it was also a collection of letters, or even that it was drawn up during Gregory's lifetime. The rubric refers to Gregory as already deceased, and could just as easily be the beginning of a narrative source.

Although they do contain copies of letters found elsewhere in Reg. Vat. 14-20, the majority of their contents is unique to these collections, making them a prototype for the so-called secret registers maintained by later popes. The first collection begins with the rubric "Forma pacis inter Ecclesiam Romanum et Imperatorem," and was appended early on to the volume that is now Reg. Vat. 14.⁶³⁰ This collection is a mixed bag of twenty-two imperial, papal, legatine and episcopal letters related to the negotiations during the Summer and Fall of 1230 to release Frederick II from the sentence of excommunication Gregory had leveled against him a year earlier. A second larger – though incomplete – collection survives in two quires at the front of a manuscript in the municipal library of Perugia.⁶³¹ It includes 83, mostly papal letters drawn from the first eight years of Gregory's pontificate, and is also devoted to the conflict with Frederick and the wider political fall-out in Lombardy. This so-called Perugian register is the only smaller collection to have survived outside of the main registers. The remaining four collections appear as single-quire fascicles bound in between the pontifical years contained in Reg. Vat. 18 and 19. They are devoted to the truce ending the conflict between city of Rome and the Church in 1235,⁶³² the conflict between Gregory and Frederick after the latter's

⁶²⁹ For a list of Gregory's registers amongst all the medieval papal registers, see: Leonard Boyle, *A Survey of the Vatican Archives and of its Medieval Holdings*, rev. ed. (Toronto, 2001).

⁶³⁰ It constitutes the last quire (ff. 161-8) of Reg. Vat. 14, transmitting Auvray 410-31. In the fourteenth century inventory cited above, the description of the penultimate folio of the first register volume corresponds to what it is today in Reg. Vat. 14, which includes the *Forma pacis*. See: Bock, "Kodifizierung und Registrierung," pp. 40-4.

⁶³¹ The collection appears on the first 16 folia of Perugia, Bibl. Mun., MS 302, and was discovered by the editor of the Gregory's main registers: L. Auvray, "Le registre de Grégoire IX de la Bibliothèque municipale de Pérouse," *Bibliothèque de l'École des Chartes* 70 (1909) pp. 313-34. Auvray subsequently edited the letters in an appendix to the third volume of his edition of the registers (Auvray 6101-83). See also: Bock, "Kodifizierung und Registrierung," pp. 44-54.

⁶³² The third collection going under the name *Acta pacis inter ecclesiam et Romanos initae*, occupies fols. 121-6 in Reg. Vat. 18, and is bound between the ninth and tenth pontifical years. It transmits 27 papal and non-papal documents (Auvray 3018-44) clearly written in a number of different hands, though according to Bock, is the product of just one scribe: Bock, "Kodifizierung und Registrierung," pp. 54-8.

second excommunication;⁶³³ the legatine mission of Jacob of Palestrina to Arles in 1238;⁶³⁴ and the treaty of Paris in 1229 between Louis IX and Count Raymond VII of Toulouse that officially ended the military portion of the Albigensian campaign.⁶³⁵ These smaller, issue-specific dossiers, illustrate a more general point that registration as an administrative practice was well established by Gregory's reign. This practice had also extended beyond just the papal chancery, as shown by the surviving registers of important legatine missions, including that of Gregory himself when he was Cardinal-Bishop of Ostia.⁶³⁶

⁶³³ Auvray 3565-77; Reg. Vat. 18, fols. 255-6r. Although the letters in this single-quire dossier date to 1240, they are bound three years prior between the tenth and eleventh years of the register. None are of papal origin. Rather, they are letters sent to the pope from German prelates and magnates urging a settlement to the dispute with Frederick. The dossier has been twice printed in: G. H. Pertz, *Monumenta Germaniae Historica*, vol. 4, *Leges*, vol. 2 (Hannover, 1837; repr. Stuttgart, 1962) pp. 334-7; Huillard-Bréholles, *Historia diplomatice Friderici secundi*, vol. 5, pt. 2 (Paris, 1852) pp. 985-91. Contrary to what Bock says, the letters are only calendared in Rodenberg (*Epistolae*, vol. 1, no. 768). See: Bock, "Kodifizierung und Registrierung," p. 58.

⁶³⁴ Auvray 4758-81; Reg. Vat. 19, fols. 79-83 (between years twelve and thirteen). The dossier leads off with a series of sixteen petitions from Count Raymond VII of Toulouse, among which was a request to shorten the length of his crusading vow, and to suspend the activities of the Dominican inquisitorial tribunals in his lands. This latter petition resulted in a three month suspension of inquisitorial activities, which ended up lasting three years. These letters have been discussed by the principal historian of the inquisition in the Midi: Yves Dossat, *Les Crises de l'Inquisition toulousaine au XIIIe siècle, 1233-1273* (Bordeaux, 1959) pp. 139-45. As Bock pointed out, however, there exist substantial differences between the letters in the dossier with their form in the main registers, and the manuscript exhibits erasures, additions, and corrections that are not all represented by Auvray. This is a great example – in need of further study – of how the register can be mined for traces of a dynamic policy in action. See: Bock, "Kodifizierung und Registrierung," pp. 58-67.

⁶³⁵ Auvray 4782-92; Reg. Vat. 19, fols. 87-98 (also between years twelve and thirteen). This collection of letters of the French King and the Count of Toulouse immediately follows the documents of the Arles mission. The sequence was probably intentional, as Raymond's pleas to the Pope in 1238 would have been evaluated in light of the original terms of his surrender in 1229.

⁶³⁶ Gregory's register as Cardinal Hugolinus for his legatine mission to Lombardy in 1221-2 has been edited by: Guido Levi, *Registri dei Cardinali Ugolino d'Ostia e Ottaviano degli Ubaldini* (Fonti per la storia d'Italia: Regesti secolo XIII: Rome, 1890) pp. 3-124. For the register compiled during the legatine mission to Germany in the mid-1220s of Conrad of Urach, the Cardinal-Bishop of Porto and S. Rufina, see: Falko Neiniger, *Konrad von Urach, 1227: Zähringer, Zisterzienser, Kardinallegat* (Quellen und Forschungen aus dem Gebiet der Geschichte, n. F. 17: Paderborn, 1994).

5.4.2 Contents and character of the registers

Like those of his predecessors, Gregory's main registers (Reg. Vat. 14-20) contain a heterogeneous mixture of documents reflecting Rome's status as the center of Western Christendom. Privileges, dispensations, dispute settlements, judicial mandates, responses to questions of law, ritual and theology, unsolicited statutes and ecumenical letters, provisions of benefices and episcopal appointments, levies of tithes, correspondence with secular rulers, the exercise of seigneurial rights over subject-lands – all of the Curia's spiritual and secular affairs were represented in the registers.⁶³⁷ Letters of particular importance addressed to the pope by secular, and even non-Christian rulers found their way in as well. While the issue-specific dossiers discussed above show a strategic use of registration to create an archive of past events and decisions as a basis for future policies, the main registers do not disclose a unified purpose. This was inherent in the diverse motives behind the selection of any particular letter for registration, motives that are often lost to us, or surmised only after heavy conjecture. No letter from Gregory's chancery ever stated explicitly that it should be transcribed in the register *pro futura rei memoria*. Complicating the picture as well is the fact that recipients could pay a fee for registration. There will be numerous examples of letters enumerated below, which the Curia would have had little interest in registering for itself.⁶³⁸

⁶³⁷ One of the few contemporary non-Curial references to the function of the papal registers came from Gerald of Wales in the early thirteenth century, who described the papal register as a book which contained copies of the privileges and correspondence concerning the major issues of the pope's time: "registrum autem suum facit papa quilibet, hoc est librum ubi transcripta privilegiorum omnium et literarum sui temporis super magis arduis causis continentur," *De Invectionibus*, ed. W. S. Davies, *Y Cymmrodor* 30 (1920), pp. 177. Gerald's generalizing of the registration (*papa quilibet*) is another good indication that the registers were not just Innocent's resurrection of what had been done under Gregory VII, but were a continuation of twelfth-century practice.

⁶³⁸ Registration was inconsistent even for those documents whose preparation involved a considerable amount of care and expense, or which established a special relationship between the Curia and the recipient. One might think, for example, that the Curia would have a special interest in registering solemn

The composition of the registers, therefore, reflected both Roman interests and those of the recipients of papal letters. This is not surprising, and was a general feature of medieval administration for most of the thirteenth century as it struggled to find a purpose for the archives it was gradually assembling.⁶³⁹ In order to impose a supervening order on the mass of documents contained therein, Gregory's chancery took the small but innovative step of inserting a table of contents at the front of every pontifical year, making them the first surviving papal registers to do so.⁶⁴⁰ The table of contents enumerated the letters according to the Roman numerals assigned to each letter in the body of the register, followed by a list of the letter's recipients and a short summary of its contents. A table of contents or similar index, which might appear obvious to a modern sensibility interested in organizing and retrieving masses of information, was a remarkable innovation for this time period. Indexing technologies, whether internal to a text or a separate work in of itself, were just making their appearance in the West in the 1220s.⁶⁴¹ The novelty of a table of contents for the papal registers can be measured by the evolution in its physical form during the first eight years of Gregory's pontificate, as can be seen by comparing *fig. 1* (Reg. Vat.14, fol. i v) and *fig. 2* (Reg. Vat. 17, fol. 162r). Among other things, these changes added a measure of protection to the register itself,

privileges, which took the requesting institution *sub protectione Sancti Petri*, and often granted exemptions that could directly interfere in the future with the exercise of papal authority. Yet of the five solemn privileges issued before June, 1227, only two are recorded in the register. See pp. 23-4 for further discussion and references.

⁶³⁹ For illustrations of the difference between the assembly and exploitation of royal archives in England, see: Michael Clanchy, *From Memory to Written Record: England 1066-1307*, 2nd ed. (Oxford, 1993) pp. 162ff.

⁶⁴⁰ The tables of contents for Innocent and Honorius' registers were added in the fourteenth century, presumably as part of the archival assessment undertaken during the significant expansion of papal bureaucracy at Avignon, of which the Inventory of thirteenth century registers cited above was a part.

⁶⁴¹ Richard and Mary Rouse, *Preachers, Florilegia and Sermons: Studies on the Manipulus Florum of Thomas of Ireland* (Studies and Texts 47: Toronto, 1979) pp. 11-23.

with entries completed by a line brought to the edge of the writing space, much as the written amount line of the modern check is filled out in full to prevent any fraudulent additions. Additionally, the table went from being an add-on to becoming an integral part of the registration process – whereas at the beginning it was undertaken by a different scribe than the main register hand, by the third year the table had become the responsibility of the scribe who had composed that year of the register.⁶⁴² The overlay of this system on virtually every year of the register allowed the chancery to compensate for or at least control the admixture of the register's contents.⁶⁴³ No matter the origin of a letter or the particular reason behind its registration, the chancery could survey at a glance the full contents of the registers.

Gregory's registers represent only a fraction of his total correspondence. Determining the total amount of papal correspondence on the basis of the registers and surviving letters is an imprecise science to put it mildly. The estimate for Honorius' correspondence is around 2000 letters per year, making his registers the repository for roughly one-quarter to one-fifth of the total output of the chancery.⁶⁴⁴ Using the surviving evidence as a basis for these estimates can be misleading, since it bypasses whole classes of documents such as the letters of justice of the *Audientia litterarum contradictarum*⁶⁴⁵ and simple letters of provision⁶⁴⁶ that rarely, if ever, survived or were registered.

⁶⁴² See below for a further discussion of the register hands, and the timing of the composition of the table of contents.

⁶⁴³ For the registers that cover the first eight years of Gregory's pontificate (Reg. Vat. 14-7), only Reg. Vat. 15 (years 4-5) lacks a table of contents.

⁶⁴⁴ Sayers, *Papal Government*, pp. 50-2.

⁶⁴⁵ The *Audientia litterarum contradictarum* was a division of the chancery established by Innocent III as a way of dealing with the explosion in petitions for papal letters, particularly those granting the appointment of judges to look into a petitioner's complaint about injustices committed at the local level. The *Audientia*

More instructive is to look at the relative proportion of registered letters to the surviving correspondence. The tables in the appendix provide a month-by-month comparison for the first eight years of Gregory's pontificate of the number of registered letters with the non-registered correspondence known from other sources.⁶⁴⁷ These tables show that while after the first two years the total number of unregistered letters remains very consistent, the level of registration increases over time. The number of registered letters only begins to match or exceed the number of unregistered ones on a regular basis at the end of 1230, which coincides with Gregory's return from Perugia after a year and a half of virtual exile following a revolt by the Roman people.⁶⁴⁸ Then, in the latter half of 1232 there is a dramatic jump in the number of registered letters, as graphically illustrated in Table 4. Thereafter, the number of registered letters remains well above that of unregistered ones through the end of the period under discussion. If we take the number of unregistered letters as accurately reflecting a consistent (albeit unknown)

served the dual function of routinizing a whole class of judicial mandates that did not need special papal permission, and also allowed there to be some check on the malicious use of these mandates to harass one's opponents/enemies, since the *Audientia* provided an initial opportunity for those potentially affected by the appointment of a judge with powers of excommunication for non-compliance, to object to the scope or even the basis of the judicial mandate. On the *Audientia litterarum contradictarum*, see: Herde, *Audientia litterarum contradictarum*.

⁶⁴⁶ Papal letters providing an income to a cleric through a benefice or prebend in a local church were probably the second most common type of papal letter after judicial mandates. An example of a simple letter of provision can be seen in X 1.3.38. Provisions occasionally became matters of litigation, however, if two or more candidates competed for the same spot, or there was a conflict over who had jurisdiction to dispose of a particular benefice. It was only in the case of a drawn-out conflict that a papal letter attempting to settle a dispute over a provision would make it into the register. For the history of papal provisions, see: Geoffrey Barraclough, *Papal Provisions: aspects of church history, constitutional, legal and administrative in the later Middle Ages* (Oxford, 1935); Hermann Baier, *Päpstliche Provisionen für niedere Pfründen bis zum Jahre 1304* (Vorreformationsgeschichtliche Forschungen 7: Münster, 1911).

⁶⁴⁷ The appendix contains a full bibliography of the sources, which include the indispensable registers such as Potthast and the *Schedario Baumgarten*, as well the newer calendars produced by and in association with the Commission Internationale de Diplomatie as part of the *Index Actorum Romanorum Pontificum* series. The number of non-registered letters should obviously be viewed more as a percentage rather than a total figure, particularly since the comprehensive cataloguing of surviving papal letters is still incomplete.

⁶⁴⁸ See below for a discussion of the papal itinerary.

percentage of the overall output of the papal chancery, then it appears that the registers became a more comprehensive record of papal correspondence over the course of Gregory's reign, with mid to late 1232 perhaps even pointing to a moment of decision to increase the level of registration. This evidence for the increase in registration will again be considered at the end of the chapter, when the timing of Raymond's compilation of the *Decretals* is discussed.⁶⁴⁹

It is the argument here that Gregory's chancery composed the registers as an ongoing record of papal business and correspondence, maintaining it regularly throughout the year. The evidence for this claim will be provided by a close study of Reg. Vat. 14, focusing in particular on the first year of Gregory's pontificate. We will begin by looking at the formal aspects of registration – how and by whom it was kept – so as to uncover the aberrations and uneven "seams" that have been shown in cases such as Innocent III's registers to be compelling signs of ongoing registration. Thereafter, we will attempt an explanation for some of the chronological peculiarities of the register. While the lack of a strict chronological order has often been adduced to disprove ongoing registration, it actually shows the way business was normally conducted at the Curia, as well as how the register functioned for those who kept it.

5.4.3 Structure and paleography of the registers

Reg. Vat. 14 contains the first three years of Gregory's pontificate, which appear in Auvray as follows:

Table 5.2. Overview of Reg. Vat. 14

⁶⁴⁹ See below, p. 381.

Pontifical Year	Auvray Number ⁶⁵⁰	Foliation
Year 1 (1227-8)	Auvray 1-182	fols. i-iii (table), fols. 1-58 (letters)
Year 2 (1228-9)	Auvray 183-285	fols. 59-61 (table), fols. 63-104 (letters)
Year 3 (1229-30)	Auvray 286-409	fols. 105v-108 (table), fols 109-158 (letters)
<i>Forma pacis inter Ecclesiam Romanam et Imperatore</i> (1230)	Auvray 410-31	fols. 161-168

The first few quires of Reg. Vat. 14 vary in their format relative to the rest of the register. The first two quires are ruled with 42 lines, followed by a third with 36, and a fourth and fifth with 31 lines, before finally settling on 32 lines for the remainder of the volume.⁶⁵¹ One explanation for the initial high line count is a carry-over from Honorius' register, the last volume of which (Reg. Vat. 13) was ruled at 41 lines.⁶⁵² After a few months the scribes felt at liberty to experiment, then rapidly went through several changes before arriving at the form that would hold for the next two and a half years of Gregory's pontificate.

A similar variation can be seen in the changeover of scribes, almost as if the chancery personnel was in flux during the first few months of Gregory's rule. The table below illustrates the contrast between the registers' early fluidity and later consistency:

⁶⁵⁰ For Reg. Vat. 14-5, Auvray does not include *a-pari* letters in his count, merely listing them under the number for the main letter. Early on in Reg. Vat. 16, however, he begins to add these to his numeration (Auvray 875 is the first *a-pari* letter counted), thus inflating the numbers for the correspondence for the sixth pontifical year and beyond. For the most part this inflation is negligible, though there are some instances where the numbers give a false impression, such as in November 1234, when the register lists 70 *a-pari* letters having been issued during the month.

⁶⁵¹ The index for the second pontifical year (59r-61r) is an exception being an exception with a 40 line ruling.

⁶⁵² The 41 line ruling actually starts on fol. 90, and continues to the end at fol. 174. Up through fol. 90 it was ruled at 37 lines.

Table 5.3. Quire Structure of Reg. Vat. 14

QUIRE ⁶⁵³	SCRIBE	RULING
Q1: fols. i-iii (Yr. 1 table)	D (fol. i ^r -iii ^v ; table for Auvray 1-180) E (fol. iiiv; table for Auvray 181-2)	39 lines
Q2: fols. 1-7 (6bis)	A (fols. 1r-2v; Auvray 1-10) B (fols. 2v-4v; Auvray 11-22) A (fols. 4v-12v; Auvray 23-82)	42 lines
Q3: fols. 8-15	C (12v-29v Auvray 83-146)	“
Q4: fols. 16-23 ⁶⁵⁴	“	36 lines
Q5: fols. 24-31 (fols. 30-1 blank)	B (29v; Auvray 147)	31 lines
Q6: fols. 32-39	C (32r-58r; Auvray 148-182)	31 lines
Q7: fols. 40-47	“	32 lines
Q8: fols. 48-55	“	“
Q9: fols. 56-58 (end of Yr. 1) (fols. 57v and 58v blank)	“	“
Q10: fols. 59-63 (yr. 2 index) (fols. 61v-62 blank)	E (fol. 59r; table for Auvray 183-210) C (fols. 59r-61r; table for Auvray 211-285)	40 lines
Q11: fols. 63-70	C (fols. 63r-104; Auvray 183-285)	32 lines
Q12: fols. 71-8	“	“
Q13: fols. 79-86	“	“
Q14: fols. 87-94	“	“
Q15: fols. 95-102	“	“
Q16: fols. 103-104 (end of Yr. 2)	“	“
Q17: fols. 105-108 (Yr. 3 index)	C (all of table)	“
Q18: fols. 109-116	C (fols. 109r-158r; Auvray 286-409)	“
Q19: fols. 117-124	“	“
Q20: fols. 125-132	“	“
Q21: fols. 133-140	“	“
Q22: fols. 141-148	“	“
Q23: fols. 149-156	“	“
Q24: fols. 157-60 (end of Yr. 3) (fols. 158v-160 blank)	“	“

⁶⁵³ A cautionary note is called for here because of the limitations of working with digital scans. The quire structure can be determined with reasonable certainty given the changes in ruling as well as the occasional use of catchwords and quire signatures. However, there is some room for error at the points of transition between the years. For example, the three folia Q9 (fols. 56-58; end of yr. 1) and the five folia Q10 (fols. 59-63; yr. 2 index) could actually constitute a single quaternion, given that odd numbered quires are relatively infrequent in the registers. This quire structure must remain provisional until the registers are consulted first hand.

⁶⁵⁴ Both sides of fol. 20 have only 35 lines of text, though the ruling is too faint to tell whether this was deliberate or whether the last line was simply left blank. The latter explanation seems more likely, since both recto and verso of fol. 20 have letters that end on the very last line, leading the scribe to start the next entry on a fresh page.

Q25: fols. 161-168 (<i>Forma pacis</i>) (fols. 168v blank)	C (fols. 161r-168r; Auvray 409-431)	28 lines
---	-------------------------------------	----------

Table 5.4. Quire Signatures and Catch Words of Reg. Vat. 14

Q6 (39v): pertinentibus consimili	Q19 (124v): .ii. ⁹ omni excusatione
Q7 (47v): faciatis creditores	Q20 (132v): .iii. ⁹ [catchwords cut off]
Q8 (55v): castrum de martura	Q21 (140v): .iiii. ⁹ nicas
Q14: (94v): fraudum comenta	Q22 (148v): .v. ⁹ et ab omnibus
Q15 (102v): eam apostolica auctoritate confirmamus	Q23 (156v): .vi. ⁹ extitisset
Q18 (116v): .i. ⁹ pro congregando	

Fig. 3 illustrates the changeover from Hand A to B at Auvray 11 on fol. 2v. The hands are similar, but Hand B uses somewhat higher ascenders, while Hand A has the tendency to lean back to the left. The contrast can be seen in *fig. 4* as well, where Hand B gives way again to A at Auvray 23 on fol. 4v. Here the difference in the forms of the *Dat.* in the dating clause can be compared side by side, showing the rounded "D" made by Hand B, and the concave "D" presented by Hand A. The next changeover happens on fol. 12v with Auvray 83, where Hand C picks up from Hand A, as illustrated in *fig. 5*. Hand C introduces a more characteristically gothic script into the registers, though his style varies considerably over the course of the register. It becomes the main hand for the rest of the register, interrupted only once by a later addition in the middle of the first year (Auvray 147, fol. 29v) by Hand B; and then again for the first part of the table of contents for the second year (fol. 59r), which was composed by Hand E. Hand E shows up briefly in the table for year one (fol. iii^v), adding the contents for two letters that were later insertions in the space left blank at the end of the first year (Auvray 181-2).

Hand A and possibly Hand C were part of the group of scribes who registered under Honorius III.⁶⁵⁵ There is no trace of either of them in the final volume of Honorius' register (Reg. Vat. 13), but rather in the volume containing the seventh and eight years of his pontificate (Reg. Vat. 12). There is no mistaking so distinctive a hand as Hand A, and the elements of his style remained consistent across pontificates, as seen in *fig. 6* (Reg. Vat. 12, fol. 7r), right down to the concave "D[at.]" Identifying hand C poses more of a problem. As already mentioned, this hand displays considerable evolution over the course of Reg. Vat. 14. Two examples separated by over a hundred folia look like they could belong to different scribes – but when the intervening pages are examined one can chart the gradual development in the hand's style (compare *fig. 5* with *fig. 7*: Reg. Vat. 14, 147r). Substantial portions of Reg. Vat. 12 were composed by a hand that bears striking resemblance to Hand C, as shown in *fig. 8* (Reg. Vat. 12, 27v). The correspondence is not absolute, however, and some allowances would have to be made for stylistic development to establish an identity. In any event, there is a case to be made for continuity across pontificates for the scribes working on the register. While nowhere near the single hand imagined by Bock as responsible for a half-century of registration, this continuity shows that there were certain scribes who were regularly trusted with registration. Future research could focus on determining whether any of the hands active in Gregory's register can also be found in surviving documents from his reign.

Both the initial variation in the ruling of the parchment, as well as the frequent changeover of hands in the first few quires of Reg. Vat. 14, suggest a work in process, if not progress. This is what one would expect from a register taking shape over the course

⁶⁵⁵ Sayers does not provide the exact division of labor for the eight scribes to whom she attributes registration appear. Thus the comments that ensue are based upon this my own observations of Honorius'

of the first year of Gregory's pontificate, rather than one drawn up sometime after the end of the year. The personnel keeping the register went through some initial shuffling as Gregory's administration took shape, and they experimented with the physical form of the page ruling until fixing upon the format that became the standard for the next few years.

5.4.4 Location of the registers

Reg. Vat. 14 follows a rough chronological order for the first three years. None of Gregory's various peregrinations around central Italy during this time appear to have affected the way letters were registered. Gregory's travels brought him back and forth between Rome, Anagni and Perugia (with stops along the way in places like Assisi and Velletri), following the regular pontifical practice of escaping the notorious Roman summers, as well as the occasional outburst of the Eternal City's enmity toward papal overlordship.⁶⁵⁶ Roman sedition essentially kept Gregory in exile from the end of April 1228 to the beginning of his fourth pontifical year in March 1230.⁶⁵⁷ In order for there to have been regular registration, the registers would obviously have traveled with the Curia. Bock and those who follow him have argued for a fixed site of registration in the *Camera*, which was located in the Lateran palace. The reasoning is that the first example of a register from the thirteenth century is the *Liber Censuum*, the survey of papal

register.

⁶⁵⁶ Rome's poisonous heat and air quality were a frequent topic for Gregory's biographer. He describes Gregory's transfer of the papal court to Anagni, where the pope had family ties, in this way: "Decurso vero ibidem temporis spatio, quia Romani aeris suspecta conditio langores minabatur estivos, primo sui presulatus anno, estate media, venit Anagniam," *Le liber censuum de l'église romaine*, vol. 2, edd., Paul Fabre and L. Duschene (Paris, 1889) p. 19. For the movement of the papal court in the thirteenth century, see: Agostino Paravicini Bagliani, "La mobilità della corte papale nel secolo XIII," in: *Itineranza Pontificia: La Mobilità della Curia papale nel Lazio (Secoli XII-XIII)*, ed. Sandro Carocci (Nuovi Studi Storici 61: Romes, 2003).

⁶⁵⁷ Already inflamed by a local conflict with Viterbo, Roman hostility boiled over with Frederick's excommunication at the end of March. See the accounts in: Matthew of Paris, *Chronica Majora*, ed. Henry Luard (Rolls series, vol. 57, pt. 3: London, 1867; repr. Wiesbaden, 1964) p. 156; and: Richard of St.

revenue and other documents relevant to the Patrimony of St. Peter, begun by Honorius III when he served as chamberlain in the late-twelfth century. To bolster the claim that the *Camera* was the only curial office capable of compilation, Bock adduced an off-hand reference by Gerald of Wales, who reported that when he was searching for a document in the registers of Eugenius IV, he was watched over by a clerk of the *Camera*, and was required to ask this clerk's permission to have the letter copied for a case Gerald was pursuing before Innocent III.⁶⁵⁸ The fact that a cameral clerk supervised the use of previous registers in no way excludes the possibility that the registers traveled with the pope, since officials from the *Camera* moved with the papal court just like the other divisions at the Curia. Moreover, there is strong evidence that all of the registers were kept wherever the Curia was stationed, including the registers of Gregory's predecessors. This evidence comes in the form of direct citations of previous registers, usually when a confirmation of an existing privilege was being granted. Gregory's letters made a clear distinction between when the confirmation was working off of a letter provided to them by the recipient, and when the letter could be found in the registers of his predecessors.⁶⁵⁹

Germain, *Chronica*, ed. Carlo Garufi (Rerum Italicarum Scriptores: Raccolta degli Storici Italiani, vol. 7, pt. 2: Bologna, 1938) p. 150.

⁶⁵⁸ "Papa vero super hoc habito cum fratribus consilio, quod de tam ardua causa sicut de archiepiscopatu et pallio petendo, cum privilegia nulla praetendentur, nec in registris suis quicquam inde reperirent, vel causam antea motam audirent, commisionem dari non posse respondit...Adjecit [Geraldus] tamen et supplicavit, quatinus registri Eugenii papae, coram quo causam status inter Bernardum episcopum et Theobaldum archiepiscopum in Francia actitatum audierat, copiam sibi parumper indulgeret. Quo impetrato, vertens ad gesta Eugenii in Francia, coram clerico camerarii consedente et totum observante, confestim invenit, nec mediocriter exultans inspexit et legit literas istas; quas et hic inserere dignum duximus. Eas enim archidiaconus a camerario licentia data statim transcribi fecit," *De iure et statu Menevensis ecclesiae Distinctiones VII* (Rerum Britannicarum medii aevi scriptores, vol 21, pt 3: London, 1863; repr. 1964) pp. 180-1.

⁶⁵⁹ Auvray 558-9, both written from Rome, confirm a number of privileges granted by previous popes to the archbishops of Esztergom in regard to certain powers they had vis-à-vis the Hungarian crown. Auvray 558 confirms an earlier privilege by Alexander III (as well as by the Hungarian king and the archbishop of Cologne), which granted the right for the archbishop alone to crown the Hungarian king: "ius quod a bone memorie Alexandro papa predecessore nostro et inclite recordationis Bela Ungarorum Rege ac ecclesia Colocensi videlicet ut Ungarici Reges ab archiepiscopis Strigoniensibus semper debeant coronari," Reg.

Direct references to as well as full citations of the registers of Gregory's predecessors are found even when the pope was outside Rome.⁶⁶⁰ The terminology alternates between *Regestum* and *Registrum* (with a capitalized "R"), but in either case an actual consultation of the register is strongly implied. If Gregory took the trouble to have the registers of previous popes carted to and fro in order to have them available for consultation, then it would be logical to suppose that he took the same measures for his own.

5.4.5 Ordering of letters

There are no significant examples of later letters appearing in a chronologically prior place in the register, such that end-of-year registration would be the only possible conclusion. The sequence is characteristic of a slight time lag between the dating of a letter and registration, and reflects circumstances similar to those that produced Innocent's register, such as group registration and the different pace of letters making their way through the chancery. The presence of earlier letters can also be explained by the fact that the same person sometimes pursued multiple cases before the Curia, and whether at his initiative or the Chancery's, the letters procured for each case were

Vat. 15, fol. 54v. Auvray 559 on the other hand, explicitly mentions the presence of a similar privilege in Celestine's registers: "iuxta quod in Registro bone memorie C[elestini] predecessoris nostri habetur inscriptum tibi privilegium confirmamus," Reg. Vat. 15, fol. 54v.

⁶⁶⁰ Citations of Honorius III's register while outside of Rome:

-Auvray 355 (Perugia: October 10, 1229): "cum igitur bone memorie Honorius papa predecessor noster ex vestra insinuatione accepto, quod quasdam habeatis ecclesias, in quarum parrochiis decime a laicis per violentiam detinentur, que quidem ad ecclesias ipsas pertinere noscuntur, per suas litteras sicut in Regesto ipsius continetur, plenius inhibuerit...," Reg. Vat. 14, fol. 140v.

-Auvray 896 (Anagni: October 11, 1232): "In regesto felicis recordationis Honorii pape predecessoris nostri eius privilegium de verbo ad verbum preter clausulam illam videlicet aut etiam publice usurarii quam ex certa scientia presenti pagine precepimus annotari contineri perspeximus in hunc modum...," Reg. Vat. 16, fol. 39v.

Citation of Celestine III's (now lost) register while outside of Rome:

-Ripa 325 (Anagni: February 26, 1233): "In regesto felicis recordationis Celestini pape tertio predecessoris nostri ipsius privilegium publica forma presentium...," Eliseo Sanz Ripa, *La documentación*

registered together. A similar delay operated for multiple letters related to a single case, with registration not initiated until the affair had been settled. The following sequence shows how interpenetration of earlier letters could take place, even after the relocation of the Curia to a new locale:

Table 5.5. Registration practice in Year 1, Reg. Vat. 14

Auvray	Date	Place	Recipient: Subject
99	26-May	Lateran	King of Aragon: immunity from excommun. by anyone other than Pope or legate
100	8-Jun	Anagni	Monastery of S. Croce Sassovivo: solemn privilege
101	27-May	Lateran	Pelagius of Lydda: his transfer to See of Salamanca as bishop
102	27-May	Lateran	Archbishop of Compostella: same subject
103	9-Jun	Anagni	Deacon and chapter of Salamanca: same subject
104	29-May	Lateran	Templars: approves use of force to defend fortifications against Saracens
105	12-Jun	Anagni	Convent of SS Maria, Peter and Cyriac in Gernroda, Thuringia: solemn privilege
106	10-Jun	Anagni	Regensburg clergy: disputed episcopal election in Regensburg
107	16-Jun	Anagni	Oresne bishop: exemption from provisioning requirements
108	12-Jun	Anagni	Conrad of Margburg: confirmation of powers of provision
109	12-Jun	Anagni	Same: investigating heresy in Germany
110	8-Jun	Anagni	Rudolph of Hildesheim: mission to reformed prostitutes
111	7-Jun	Anagni	German prelates: same subject
112	7-Jun	Anagni	Abbot of Wizburg: same subject
113	20-Jun	Anagni	Conrad of Marburg: clerical reform in Germany
114	19-Jun	Anagni	Bishop of Padua: disputed episcopal election in Regensburg
115	19-Jun	Anagni	Same: same subject
116	11-Jun	Anagni	Abbot of Hünigen: Rudolph of Hildesheim mission
117	23-Jun	Anagni	Deacon of Cranthom: marriage case in Canterbury
118	17-May	Lateran	Phillip of Foligno: provision of canonry in Tripoli
119	21-Jun	Anagni	Bishop and chapter of Tripoli: same subject
120	23-May	Lateran	Convent of Querculus: solemn privilege
121	6-Apr	Lateran	T. cleric of Toul: benefice provision in church of Toul
122	30-Mar	Lateran	Bishop of Toul: monastic reform
123	30-May	Lateran	Church of St. Andrew in Vercelli: solemn privilege
124	29-May	Lateran	Guala SRE card. presb. S. Martin: concession to will property
125	29-Mar	Brescia	To Honorius III from Lombard League: treaty with Emperor
126	9-Jun	Anagni	Bishop of Toul: benefice provision for P. cleric of Toul
127	13-Jul	Anagni	Archbishop of Cashel: judicial mandate in election dispute
128	15-Jul	Anagni	Lords of Sonnino: confirmation of their dispute settlement w/Piperno

The Curia had moved to Anagni at the beginning of June, carrying on some of the business that occupied it during the final days at Rome. Auvray 100, a solemn privilege

confirming the rights and holdings of the Benedictine monastery of S. Croce in Sassovivo, is the first letter to be issued from Anagni. It is also the first solemn privilege to be recorded in Gregory's registers, and its registration was likely paid for by the monastery itself.⁶⁶¹ Thereafter come three letters (Auvray 101-3) relating to the transfer of Pelagius to become bishop of Salamanca, who had only been recently elected bishop of the Levantine see of Lydda (now Lod), and was current collector of the crusading tithe in several Iberian provinces.⁶⁶² Although Pelagius was appointed while the court was still in Rome, as shown by the dating of Lateran the negotiations continued after the move, as it was only on June 9 that Gregory wrote to the deacon and chapter of Salamanca to announce the appointment. The drawing out of this process explains the chronological break in the register, as the relevant letters were only copied in a group once the details of the transfer had been worked out. Pelagius (or his representative) was probably involved as well with the exemption granted to the bishop of Oresne (Auvray 107), as Pelagius had a connection with this Galician see.⁶⁶³ The exemption prevented the papal provision of any benefice from the church of Oresne that did not mention the

Rome, 2001) p. 395. It should be noted that this letter only survives in a copy made in 1359.

⁶⁶¹ For a good account of the forms of solemn privileges in this period, see: Sayers, *OPD*, pp. lxi-lxiv. With the beginning of a new pontificate, it was normal for religious establishments to renew the confirmation of their rights and properties through a solemn privilege, which the papacy itself found useful as a way to strengthen ties to religious houses. This was a lavish and costly document, which in addition to enumerating all of the impetrating institution's holdings, required the signatures of the vice-chancellor of the papal chancery and those cardinals who could be rounded up. The formulae for such privileges at this time were: "Religiosam vitam eligentibus," "In eminenti apostolicae," "In eminenti sedis," and "Quotiens a nobis." Registration was not automatic and presumably had to be paid for, as shown by the lack of registration of the two (and possibly a third) earliest solemn privileges known to have been issued by Gregory: Potthast 7895 (issued May 7 for the Cistercian monastery of S. Maria de Ferrara); Potthast 7899/Zöll. *Weimar*, no. 6 (issued April 19 for the Benedictine monastery of Oldisleibe); and possibly: Zöll. *Magd.*, no. 40 (issued Apr. 19 for the monastery of the SS. Peter and Paul in Erfurt), which is known only from a copy that mangled the dating clause, but which Zöllner reconstructed as having been issued on this date.

⁶⁶² Linehan, *Spanish Church*, p. 19.

⁶⁶³ *Ibid.*, p. 19.

fact that an exemption had been granted, a safeguard against the excessive drain of the church's financial resources through the unwitting papal assignment of too many benefices.⁶⁶⁴

After the move to Anagni, the pope became occupied with the affairs of the German church, as evidenced by the block of documents in the register having to do with this region (Auvray 105-6; 108-16).⁶⁶⁵ The first of these is another solemn privilege issued on June 12 for the Convent of SS. Maria, Peter and Cyriac in Gernroda, Thuringia (Auvray 105), though whether this privilege had any connection to the more reform oriented letters to the German church that followed – other than geographical proximity – is unclear. Its appearance is in line with the increased numbers of such documents being issued at this time, as representatives from religious houses came pouring into the Curia to have their rights confirmed by the recently elected pontiff. The reason why it would have preceded the string of documents issued the week prior can probably be explained by circumstances similar to those that delayed the registration of the letters concerning the election of Pelagius. The three matters at hand were the disputed episcopal election at Regensburg (Auvray 106; 114-5), the preaching and pastoral mission of Rudolph of Hildesheim to a group of reformed prostitutes (Auvray 110-2; 116), and the commissioning of Conrad of Marburg to pursue issues of reform and heresy in German dioceses (Auvray 108-9; 113). While all three subjects were in process on or before June

⁶⁶⁴ The letter acknowledged the fact that Honorius had overburdened Oresne by the steep number of provisions he had awarded. This type of exemption was becoming more common under Gregory, as Rome's *ad hoc* cobbling together of a system of salaries, stipends and scholarships competed more and more with local efforts to control their own resources. For the issue of provisions in the thirteenth century, see: Barraclough, *Papal Provisions*, chs. 1-3.

⁶⁶⁵ For a study of Gregory's dealings with the German church, including discussions of some of the events that occasioned the release of the letters being discussed, see: Paul Pixton, *The German Episcopacy and the Implementation of the Decrees of the Fourth Lateran Council, 1216-1245: Watchmen on the Tower* (Leiden, 1995) *passim*.

12th, with the exception of the mission of Rudolph they were still being handled over the course of the next week, likely delaying the immediate registration of the letters. Why the documents relevant to Rudolph's mission – the last one dated June 11th (Auvray 116) – would have been registered slightly later is unknown. In any case their presence is not wildly out of order, and probably just reflects the register scribe working in reverse order to enter a group of documents received shortly after June 16th (Auvray 107-112), as well as the decision to form a larger block of letters related to the German church.

After clearing out the backlog of letters, the register once again becomes current with Auvray 117, a judicial mandate issued on Jun 23 to the deacon of Cranthom and his co-judges in a marriage case in the diocese of Canterbury. Thereafter, intrudes a string of letters going back to the Curia's residence in Rome. Auvray 118 provided on May 17th a benefice to Phillip of Foligno in the cathedral church of Tripoli as recompense for his labors on behalf of the Patriarch of Antioch. The reason for this letter having been carried over to Anagni is immediately evident through the presence of Auvray 119, which on June 9th informed the bishop and chapter of Tripoli of Phillip's provision. The same factors operated for the three letters related to Toul. These concern three separate issues: the fulfillment of a promise made by Honorius III to provide a benefice for a cleric of Toul identified only by his initial T. (Auvray 121, issued April 6); an order to the bishop of Toul to remove abbots in his diocese who had not themselves professed vows (Auvray 122, issued March 30; and the basis for X 1.6.49); and the provision of another benefice in the diocese for a certain Petrus in appreciation for his work for the bishop (Auvray 126, issued June 9). The three issues are almost certainly linked, however, and were probably handled by the same representative, who may have been the Petrus provisioned

in Auvray 126.⁶⁶⁶ Both the letters for Tripoli and for Toul again explain some of the chronological peculiarities of registration, as letters related to the same case or handled by the same person were not entered into the register until the affairs had been settled.

The other anomalies in the run of letters being examined are Auvray 120 and Auvray 123-5. Auvray 120 is a solemn privilege granted on May 23 to the abbess and nuns of the church of Querculus confirming their possessions and the establishment of the Rule of Augustine as practiced in the Abbey of St. Victor in Paris as their *ordo canonicus*. There are no additional letters from the time, either in the register or other sources, which have any obvious connection to this otherwise unknown religious house.⁶⁶⁷ The best that could be said to explain the later registration is that the delays attending the final issue of these costly and careful documents could be significant if they were found in need of correction or additional language.

The later registration of Auvray 125 does not admit of a ready explanation either. This letter was addressed to Pope Honorius on March 29, 1227 by the rectors of the Lombard League, who had not yet heard of the pope's death and Gregory's election. The letter contains the obligations agreed to by the League in settling their conflict with Frederick. Although the rubric in the register is *litterae imperatoris*, Auvray 125 transmits the exact same text as Auvray 12, dated March 26, which had been received by

⁶⁶⁶ "Inde est quod pro dilecto filio Petro clerico Tullensi cuius nota et experta providentia te debuit ad providendum ei nullis expectatis iussionibus induxisse, fraternitati tue per apostolica scripta precipiendo mandamus, quatenus cum idem aliquandiu tibi servierit fideliter et devote, et pro negotiis tuis laborando se multis exposuerit periculis et fere omnia bona sua expenderit insistendo scolasticis disciplinis, eidem prebendam auctoritate nostra in ecclesia Tuellensi quamcito se facultas obtulerit conferas et assignas," Reg. Vat. 14, fol. 21r.

⁶⁶⁷ There is no link to the Victorines other than through the use of their rule: "in primis siquidem statuentes ut ordo canonicus qui secundum deum et beati Augustini regulam atque institutionem ecclesie Sancti Victoris Parisiensis in eadem ecclesia instituitur esse dinoscitur perpetuis etc., usque observetur," Reg. Vat. 14, fol. 19r. There is no church of that name listed in *Gallia Christiana* or Cottineau (*Répertoire topographique des abbayes et prieurés*, 2 vols. (Mâcon, 1939).

the Curia in early April.⁶⁶⁸ Other than the date, the only other differences come in the address formula – Auvray 12 lists the individual rectors, while Auvray 125 just groups them together – and in the closing witness lists and notarial attribution. While there is some crossover between the witnesses of the two letters, the lack of inclusion of certain names may just have been due to scribal selection.⁶⁶⁹ The letters were, in fact, by two different scribes: Auvray 12 was written by Gerardus Spalla, self-described notary of Piacenza; and Auvray 125 was drawn up by Johannes Savalensis, an imperial notary (*notarius sacri palatii*).⁶⁷⁰

Why would the register record essentially the same letter a second time, especially so many months after the events took place? One possibility is that this second copy was the one demanded by Gregory on April 16th, in a letter he sent to the rectors after he received the initial copy recorded in Auvray 12, and realized that it did not

⁶⁶⁸ Printed in: Pertz, *MGH, Leges*, vol. 2, p. 259. The compromise had been drawn up in Rome under Honorius, and brought there by the Dominican and future bishop of Brescia Guala, who became Gregory's main diplomatic envoy in future negotiations with Frederick. The settlement of the conflict was perhaps Gregory's first priority upon becoming pope, and on it depended his hopes to rescue the floundering Catholic armies and territories in the East, as well as his desire to stem the tide of heresy he felt was rising at home, despite the winding down of the Albigensian campaign. The compromise worked out a cost and troop-sharing agreement between the emperor and the Lombards for a new crusade, and bound the northern towns to support the imperial and ecclesiastical legislation aimed at rooting out heretics and their supporters. Within days of his coronation he sent a warning to the rectors of the League not to use the change in pontiffs as an excuse to delay (Auvray 4; March 27), apparently unaware that the compromise had already been signed the previous day. Auvray 4 is printed in: Rodenberg, *Epistolae saeculi XIII*, no. 345.

⁶⁶⁹ The lists of names in both letters ends with: "multis aliis [aliis multis: Auvray 125] testibus rogatis [ad postulationem fratris Gualde de ordine predicatorum fungentis in hac parte vice domini pape: *add.* Auvray 12]," Reg. Vat. 14, fol. 3v; 21v.

⁶⁷⁰ Johannes Savalensis has not left a trace in any other surviving imperial document. Gerardus Spalla, on the other hand, is known to have worked as a notary for the podestà's court in Piacenza, recording a sentence handed down in August of 1219 by the podestà's assessor: G. Levi, "Documenti ad illustrazione del Registro del Card. Ugolino d'Ostia, legato apostolico in Toscana e Lombardia," *Archivio della Real Società Romana di Sotioria Patria* 12 (1889), p. 315, doc. 12. It is perhaps a coincidence that Gregory was present at this time in Piacenza to deal with the election of a new podestà as part of his legatine mission as Cardinal Ugolinus, one of the reasons that Levi included the document written by Spalla in his collection.

contain the seals of a number of key signatories to the document.⁶⁷¹ Eager to settle the affair once and for all, Gregory went ahead and sent word to Frederick that the deal had been signed (Auvray 30, April 16th), but passed over in silence the fact that he was still awaiting a fully authenticated copy. The pope included only the general tenor of the compromise in his letter to the emperor, but promised to send the actual document sometime later.⁶⁷² It could be that Auvray 125 is the record of that fully authenticated copy, though this would require several hypothetical bridges and pose additional unanswered questions.⁶⁷³ Auvray 125 could also represent a more programmatic use of the register. Having initiated some movement toward reform and the prosecution of heresy in the German church, Gregory was on the cusp of opening up another front in Northern Italy.⁶⁷⁴ Perhaps the second copy of the letter from the rectors was copied into the register as a proof-text for the commitments they had made to support papal and

⁶⁷¹ Auvray 28, Potthast 7868; printed in: Rodenberg, *Epistolae saeculi XIII*, no. 349. "Notavimus quod licet [littere] confecte fuerint secundum formam vobis ab apostolica sede transmissam, fuit tamen in sigillorum appositione defectus, cum nobilis viri marchionis Montisferrati et quamplurimum civitatum de ipsa societate sigilla non fuerint in eisdem," Reg. Vat. 14, fol. 5r. There was a scribal error in the dating that has caused scholars to assign the letter a number of different dates. The date was written "XVI Kal. Aprilis," which would fall even before Gregory was elected pope. The easiest correction is to assume that the scribe substituted April for May, thus giving the date of April 16th, which would accord with the expected timeline between the signing of the agreement in Brescia and its receipt in Rome.

⁶⁷² Auvray 30, Potthast 7869; printed in Rodenberg, *Epistolae saeculi XIII*, no. 351. "Noverit tua serenitas Rectores societatis Lombardie...litteras direxisse, scriptas per publicam manum et diversorum sigillorum appensione munitas, quarum tenorem sublimitati tue sub bulla nostra destinamus inclusum. Litteras ipsas, que ab eis tue celsitudini diriguntur, tibi per competentem nuntium transmissuri, cum eas latori presentium non duxerimus comittendas," Reg. Vat. 14, fol. 5v.

⁶⁷³ The most obvious problem is the chronology, as the date of March 29 for Auvray 125 would make it impossible for it to be a reply to Gregory's mid-April letter. It is certainly possible, however, that the authenticated copy would have been backdated, so as not to create any discrepancy between the reported occurrence and the record of the event. Accepting this would still require a further supposition that the backdating was done incorrectly, substituting March 29 for the date of March 26 in Auvray 12. Given medieval travel times and the fact that the seals of the rectors had to be collected all over again, it is reasonable that the reply to Gregory's mid-April letter would not have come back to him in Anagni until mid-June. All of the above still leaves open the question of function, however, since the register gives no indication of the seals on the letter, other than what is said in the body of the text in both Auvray 12 and Auvray 125: "per manum publicam scribi fecimus et sigillorum nostrorum appensione muniri," Reg. Vat. 14, fols. 3v; 20v.

⁶⁷⁴ See below in the discussion of the changes in the register to Auvray 129.

imperial measures defending ecclesiastical liberty and to undertake the prosecution of heresy.

Another solemn privilege for the Church of St. Andrew in Vercelli was issued on May 30 in Rome, but was not copied into the register until Auvray 123.⁶⁷⁵ This privilege is followed immediately by a curious two-line entry in the register dated a day earlier (May 29), which granted Guala, the cardinal priest of St. Martin, permission to pass on his possessions as an inheritance.⁶⁷⁶ It is the only document of its kind recorded in Reg. Vat. 14, though doubtless not the only one granted. This sort of cursory permission was a formality, meant to ensure that no goods associated with a cardinal's office were funneled through a will out of the Roman church's patrimony. Its appearance after the Vercelli church's solemn privilege turns out not to be an accident, however. First among the properties confirmed by the privilege are those that were given to the church by its founder – none other than the cardinal priest Guala – as well as those that would come thereafter through his will. The original coordination of these two documents and the fact that they were not registered until the Curia had moved to Anagni reflects the cardinal's declining health and eventual death on June 30th.⁶⁷⁷ When the religious house at St. Andrew came to Rome to renew their privileges following Gregory's election, they evidently had a consultation with their founder. No doubt realizing the gravity of his illness, Guala decided to turn his passing into an act of continuing benefaction to St. Andrew's, and secured papal permission to make an inheritance of his estate. This

⁶⁷⁵ Potthast 7924; printed in: G. Pennotus, *Generalis totius sacri ordinis clericorum canicorum historia tripartita* (Rome, 1624) p. 674.

⁶⁷⁶ "Testandi de bonis tuis liberam tibi auctoritate presentium concedimus facultatem. Dat. Laterano iiiii Kal. Junii, pontificatus nostri anno primo," Reg. Vat. 14, fol. 20v.

⁶⁷⁷ Conrad Eubel, *Hierarchia Catholica Medii Aevi sive summorum pontificum, S. R. E. cardinalium, ecclesiarum antistitum series*, vol. 1 (Münster, 1913) p. 44.

permission undergirded the clause confirming his future inheritance to the house in the subsequently issued solemn privilege. The appearance of the documents side by side in the register coincides with remarkable precision to the date of Guala's passing. Assuming ongoing registration, the previous most "current" letter would have been Auvray 117, issued June 23. With a casual pace of registration, including days in which no letters were entered, Auvray 123-4 could easily have been copied within days of Guala's death.

5.4.6 Anomalies in chronological ordering

Starting with Auvray 127-8 (July 13 and 15) the register again becomes current, and continues in an orderly chronological sequence up through the end of August until Auvray 146 (August 28). Thereafter, the regular pattern of registration seems to break down, and there is a good possibility that the registers were kept up only sporadically until the following year or even the beginning of Gregroy's second pontifical year. The sequence below shows just how unsystematic the order became.

Table 5.6. Irregular registration at the end of Year 1, Reg. Vat. 14

Auvray	Date	Year	Place	Auvray	Date	Year	Place
145	28-Aug	1227	Anagni	164	1-Dec	1227	Lateran
146	28-Aug	1227	Anagni	165	16-Nov	1227	Lateran
147	30-Jun	1227	Anagni	166	Dec.	1227	Lateran
148	10-Jul	1227	Anagni	167	23-Dec	1227	Lateran
149	9-Jul	1227	Anagni	168	10-Jan	1228	Lateran
150	18-Jul	1227	Anagni	169	11-Jan	1228	Lateran
151	7-Sep	1227	Anagni	170	11-Jan	1228	Lateran
152	20-Oct	1227	Velletri	171	11-Jan	1228	Lateran
153	4-Sep	1227	Anagni	172	12-Jan	1228	Lateran
154	13-Sep	1227	Anagni	173	21-Jan	1228	Lateran
155	13-Nov	1227	Lateran	*174	5-Mar	1185	Castellarano
156	30-Nov	1227	Lateran	*175	5-Jul	1185	Annone
157	1-Dec	1227	Lateran	*176	16-Nov	1209	NA
158	30-Nov	1227	Lateran	177	3-Dec	1227	Lateran
159	27-Nov	1227	Lateran	178	10-Oct	1227	Anagni
160	6-Dec	1227	Lateran	179	8-Oct	1227	Anagni
161	16-Sep	1227	Anagni	180	16-Feb	1228	Lateran
162	16-Sep	1227	Anagni	181	Mar.	1228	Lateran
163	30-Nov	1227	Lateran	*182	Jun.	1227	NA

* indicates non-papal letter

The break beginning on fol. 29 is illustrated in *fig. 9*. This folio has the last lines of Auvray 146, followed by Auvray 147. The remaining 13 lines of the page are blank as are last two folia in the quire (fols. 30-1). Despite its contemporary dating (June 30, 1227), it is immediately apparent that Auvray 147 was a later addition, meaning the original gap in the text began after Auvray 146. Auvray 147 is a dispensation granted to Nicholas, identified as a papal subdeacon and chaplain, as well as a nephew of the pope. Renewing a dispensation granted by Honorius, Gregory grants his nephew the ability to receive clerical promotion, to obtain benefices, and even to become a bishop should he be called to the episcopate.⁶⁷⁸ Auvray 147 marks the only other appearance of Hand B in the register after the first few folia. Its presence by the time the first year was completed can be doubted, since it only received numeration by an early-modern hand, and was not listed in the table of contents at the front of the register. A logical starting point for narrowing down the time frame for the insertion of the letter would be to discover if Nicholas was promoted to bishop – but seven years later we find him still bearing the title of papal subdeacon and chaplain.⁶⁷⁹ There is no way of determining, therefore, whether the dispensation was truly granted on this date, or why it was inserted so long after the fact, other than the obvious nepotism.

⁶⁷⁸ "Nos eius [Christi] licet immeriti vicarii constituti libenter dispensationis gratiam impartimus...super tuorum defectu natalium, quem multipliciter studens redimere, dignum favore te reddis et gratia speciali. Cum etiam pie memorie Honorius papa predecessor noster sciens impedimentum originis tue tecum duxerit misericorditer dispensandum, de solita sedis apostolice clementia dispensamus, devotioni tue auctoritate presentium concedentes, ut impedimento non obstante predicto, ad ordines et beneficia spirituales actus, et honores tamquam legitimus admittans, recepturus etiam libere dignitatem episcopalem, si ad eam contigerit evocari," Reg. Vat. 14, fol. 29v.

⁶⁷⁹ Auvray 1946; May 30, 1234. The letter asks a Premonstratensian abbot acting as the pope's representative to confirm the transfer of possession of a church in Nottingham from Nicholas to an impoverished Cluniac priory. This is the only other time Nicholas is mentioned in the registers.

The gap of two folia that follows Auvray 147 to the end of the fifth quire is also a puzzle. One possible explanation is that the scribe elected to move on to a new quire to make it easier to transcribe the next series of letters (Auvray 148-50), consisting of three papal confirmations of privileges granted to the bishop of Zagreb by various kings of Hungary.⁶⁸⁰ The royal privileges being confirmed were written out in full in each of the letters, and it must have taken a substantial amount of time to fill up the 11 folios in the register that they cover (fols. 32r-42v). Since registration in this case was likely done from the fully engrossed papal confirmation, or even the original royal privileges, perhaps there were some special circumstances involved in the registration that necessitated using a whole new quire. The evidence for registration from either the royal or papal original can be seen in *fig. 10* (Reg. Vat. 14, fol. 37r). The stylized initial "T[enor]" and "I[n]" were added by the scribe himself and differ from the type of initialing used elsewhere in the register for papal letters. Registration from an original is, incidentally, another good argument for ongoing registration. After the party seeking a solemn privilege, or confirmation of an existing privilege had departed, the distinctive forms present in the original would no longer be available to the register scribe, since the drafts produced by the *abbreviatores* usually did not transmit them.⁶⁸¹

It is possible that the register remained current after the two blank folia and the privilege confirmations for the bishop of Zagreb. Auvray 151, issued on September 7, could still have been registered roughly contemporaneously.⁶⁸² By mid-September, however, registration was put on hiatus. The next letter to appear was issued October

⁶⁸⁰ Auvray 148 = Potthast 7960. Auvray 149 = Potthast 7959. Auvray 150 = Potthast 7967.

⁶⁸¹ See below for additional evidence of registration from originals.

⁶⁸² Potthast 8031.

20th in Velletri (Auvray 152) while the Curia was en route to Rome, and the register leaps forward very quickly from that point.⁶⁸³ This break in registration could be due to preparation for the voyage back to Rome or reflect the actual drop-off in papal business while the Curia was on the road for most of October.⁶⁸⁴ Why registration remained sparse thereafter until the end of Gregory's first year is a mystery, however. This is the one place in the register where one might be tempted to argue for registration after the close of the pontifical year, were it not for the additional evidence for ongoing registration.

5.4.7 Registration from the original

Registration on the basis of an engrossment and/or original has already been mentioned in the case of the confirmation of royal privileges granted to the bishop of Zagreb (Auvray 148-50). Hageneder made much of this practice in Innocent's registers to argue for ongoing registration.⁶⁸⁵ There are two ways in which one may infer the use of an original for registration. The first, and perhaps most taxing way, is only possible when the original actually survives, so that a direct comparison can be made with the register version. The other way obtains only for those letters that would leave some discernible trace of their distinct orthography in the registers, such as solemn privileges or confirmations of previously-issued privileges that were brought to the Curia by their recipients. Since the initial drafts for these sorts of documents did not usually contain the calligraphic flourishes characteristic of their engrossment, the presence of their distinct

⁶⁸³ Potthast 8047.

⁶⁸⁴ Letters were still being issued in late September, though less so than in previous months. September (31), October (14) and November (34) were the three sparsest months for Gregory's correspondence, which averaged 40 letters per month during his first year. See the appendix for the tables.

⁶⁸⁵ Hageneder, "Die päpstlichen Register," pp. 65-6.

writing style in the register would signal registration from the letter actually issued to the recipient. This is perhaps the weakest of all the available evidence for ongoing registration, however, for it is entirely conceivable that multiple copies would have been made of particularly important privileges or originals brought to the Curia by those seeking their confirmation. These copies could then have been deposited in the archives to serve as the basis for registration at any point in the future.

A minute comparison of surviving originals with their register counterparts is beyond the scope of the present research. As for the presence of paleographically distinct letters in the register, one example besides Auvray 148-50 can be mentioned. Auvray 246 confirms a privilege to the bishop and chapter of Naumberg originally granted by John XIX and renewed by Innocent II, and is one of the few surviving examples of the papal chancery's employment of *litterae tonsae*, a highlighting script similar in appearance to the uncial characters used in older papal documents.⁶⁸⁶ The comparison of the paleography of the surviving original of Auvray 246 with the register was done admirably by Hermann Krabbo, and it remains only to summarize his conclusions for what they reveal about the nature of registration in Reg. Vat. 14.⁶⁸⁷ The petitioner from Naumberg brought with him the two privileges that the church sought to be renewed, and requested specifically that the renewal be executed in the script of the originals. This Gregory gladly assented to, and rather than just granting a simple confirmation of the older privileges, decreed that the copy executed by his chancery was to have the same

⁶⁸⁶ Reg. Vat. 14, fol. 92r-v; Potthast 8277; November 8, 1228. The original privilege is calendared as JL 4087, and the renewal by Innocent II as JL 7866. *Litterae tonsae*, the actual medieval term for this script, was not used for the full document, but involved rather the capitalization and decoration of a single letter or letters of selected words.

⁶⁸⁷ Hermann Krabbo, "Die Urkunde Gregors IX für das Bistum Naumburg vom 8. November 1228," *Mitteilungen des Instituts für österreichische Geschichtsforschung* 25 (1904) pp. 275-93.

authority as the original.⁶⁸⁸ The result was not actually a papal-approved forgery, since the original privilege was contained within the body of Gregory's letter. It remains, however, an interesting case where the preservation of the older form resulted from more than just an antiquarian interest, with the painstaking reconstruction of both the original text *and* appearance was justified "ne jus ecclesie vestre deperire valeret." This letter is clearest example there is of registration from an original. *Fig. 11* (Reg. Vat. 14, fol. 92r) illustrates how the register reproduces the *litterae tonsae* as stylized capitals. While it is certainly possible that a draft of this kind of document might have included notation of which letters to decorate, the fact that the register also includes the gaps found in the body of the surviving letter makes it almost a certainty that the original was the source. Even an extra copy produced by the chancery and archived for later registration would probably not contain the same spacing, which was dependent upon highly individual factors that varied from letter to letter, such as the size and ruling of the parchment, as well as the breadth of the script. This example thus provides a convincing indication of ongoing registration in Reg. Vat. 14.

5.4.8 Gaps in the register

Other types of evidence for ongoing registration come in the form of gaps and corrections in the text. While there is not a plethora of such occurrences in Reg. Vat. 14 – as compared, for example, to those in Innocent III's registers – the ones that do appear are in line with ongoing registration practices.⁶⁸⁹ Moreover, these gaps and corrections

⁶⁸⁸ "Destinati ad nos ex parte vestra dilecti filii L. prepositus et A. canonicus ecclesie vestre, exhibitum nobis bone memorie Johannis pape, predecessoris nostri, privilegium in papiro conscriptum, cum ex quadam parte foret pre nimia vetustate consumptum, et alterius forme ipsius littera quam moderna, petierunt suppliciter innovari. Nos autem, eodem privilegio diligenter inspecto, ne jus ecclesie vestre deperire valeret, illud de verbo ad verbum, quatenus colligi potuit, duximus presentibus adnotandum, tribuendo ei auctoritatem, quam originale noscitur habuisse," Reg. Vat. 14, fol. 92r.

⁶⁸⁹ Hageneder, "Die äusseren Merkmale," pp. 308-21.

also allow us to see the function of the papal register in action, and are highly suggestive of the sometimes obscure deliberative process behind the decisions made at the Curia.

Two examples of gaps will illustrate the point. When multiple copies of a letter were sent to different recipients, there was often a notation after the registration of the full letter: "I[n] e[odem] m[odo] scriptum est..." The details concerning the additional recipients of these *a-pari* letters were normally added at the time of registration, meaning such information was obviously available to the register scribes. Sometimes a letter was registered, however, before the additional recipients were known, or perhaps even decided upon. Such was the case with Auvray 324, which condemned Frederick II's successful negotiation with the Sultan Mahomet for Christian access to Jerusalem in 1229.⁶⁹⁰ The letter was addressed to the Duke of Austria and ends leaving one line blank on fol. 131r. On the next page, fol. 131v, are recorded the other recipients of the letter, which covers practically every ecclesiastical province and major secular power within the Roman obedience. As seen in *fig. 12* (Reg. Vat. 14, 131v), the list takes up only 21 lines of the page, with the remaining eleven left blank. The double column layout suggests the scribe expected to start another letter on this page, but then decided to leave room for additional recipients whose names were not available to him at the moment. The break probably occurred right after the mention of the Croatian king (*Colomanno Regi*). After this comes the name of a brother Guala, the Dominican and future bishop of Brescia who often represented the papacy in negotiations with Lombardy and the emperor.⁶⁹¹ It is credible that Guala would have received the letter, given his involvement with the diplomacy, but his name seems out of place here among the list of royal dignitaries. It is

⁶⁹⁰ Potthast 8431; printed in: Rodenberg, *Epistolae saeculi XIII*, no. 397.

⁶⁹¹ Guala became bishop in late 1229. The last letter referring to him as *frater* is Auvray 352.

likely that his name was added some time later, a conjecture supported by the physical appearance of the name in the list – it is written slightly below the line, a tell-tale sign that the name was added after the scribe had put down his pen for some time. There is a one-line gap after Guala's name, followed by a list of secular rulers of ducal rank.

Notably included is the Duke of Austria, to whom the original letter was addressed according to the rubric on fol. 130. This kind of repetition would make more sense if the scribe had taken a break from writing, and did not double-check the original rubric before he transcribed the duke's name again.

There is another gap earlier in the register that not only provides further evidence for ongoing registration, but also highlights the use and function of the registers. As seen in *fig. 13*, on fol. 65v there is a sixteen-line gap near the beginning of the second year of the register between Auvray 188 and 189. Auvray 188, dated April 7 1228, is addressed to King Henry II of England and transmits Gregory's announcement of Frederick II's excommunication on March 23 at a Roman synod. Fol. 65 is not at the end of a quire, and so there would be no reason for the scribe, in anticipation of the loss of writing space, to put down his pen to start a new quire. The more likely explanation is that this space was reserved to record *a-pari* letters to other recipients, as was often done with letters related to the conflict, including the above discussed Auvray 324. In this case, however, the additional addressees were never added. However, we do find another copy of the letter – curiously out of place – at the end of the first year of the register on 56v-57r. Auvray 181 is addressed to the prelates of Apulia,⁶⁹² and is identical in all respects to Auvray 188, save the lack of a date and the addition of a closing sentence

⁶⁹² Potthast 8162; printed in: Rodenberg, *Epistolae saeculi XIII*, no. 371.

specific to the Apulian bishops' ritual performance and promulgation of the Frederick's sentence of excommunication. Hand C was responsible for Auvray 181 and rubricated the letter himself, as was this scribe's practice for most of the other letters.

Auvray 181 is the last full letter appearing in the first year of Gregory's pontificate. The three remaining lines after the end of the letter on fol. 57r have been left blank, as well as the whole of 57v. The last entry for year one is an unfinished letter on the first 9 lines of 58r (*fig. 14*). Lacking both a rubric and an initial capital, Auvray 182 is actually an incomplete version of Auvray 134, which starts off the fifth quire on 24r (*fig. 15*). Auvray 134/182 is a petition from the cathedral chapter of Paris asking Gregory to review the burdensome tithe imposed upon them and other sees by the cardinal legate of St. Angelo in support of King Louis VIII's Albigensian campaign. Although undated in the register, previous scholarship utilizing outside sources triangulated it to June 1227.⁶⁹³ It is one of the rare instances of a petition being recorded in Gregory's registers. The most plausible explanation for Auvray 182 is that when Hand C began the fourth quire, for whatever reason he abandoned the initial sheet upon which he had started Auvray 134. This abandoned sheet was then recycled to become fol. 58.

Having determined the origin of Auvray 182, it remains to explain the appearance of Auvray 181, for the inclusion of a letter from Gregory's second year in the first year register would constitute an argument against ongoing registration. It is almost certain, however, that Auvray 181 is a later addition. It lacks a Roman numeral, and is listed in the table of contents for year one by a different hand (Hand E) than the one that had composed the table up to that point (Hand D), as can be seen in *fig. 16*. Thus, it was not

⁶⁹³ See the citations at the end of the summary for Auvray 134 (Auvray, *Les Registres*, vol. 1, col. 72).

present when the table of contents was first drawn up. Hand E's subsequent indexing work also suggests a *terminus ante quem* for the insertion of Auvray 181. The only other portion of the register composed by Hand E is the table of contents for the first 28 letters of the second pontifical year (59r), as shown in *fig. 17*. Perhaps in preparing to write the table for the second year, the scribe went back to year one as a model, and finding no indication of Auvray 181 and 182, he added these himself. Only after he had assigned a roman numeral to Auvray 182 in the table must he have realized that it was not a proper letter, and therefore did not attempt to give an inscription. The latest that Auvray 181 would have been added, therefore, is the end of the second pontifical year in March 1229.

Why would another copy of Frederick's excommunication have been inserted into the first year of the register? The fallout with Frederick had burst into public view by the Autumn of 1227, as Gregory began to send letters detailing Frederick's alleged failure to fulfill his promise of assistance for the crusade Gregory had been pushing since he was cardinal bishop of Ostia. Auvray 178 and 179 from early October laid out Gregory's complaints to a number of German and southern Italian bishops, warning that he was on the verge of excommunicating Frederick should the emperor not comply. Perhaps in order to include the denouement for the conflict that was so consuming the pope's attention, the register scribe went back and inserted the excommunication decree at the end of the first year at Auvray 181. This would have been especially appropriate for a letter addressed to the bishops of Apulia, who were among the recipients of Auvray 179. The insertion must have happened close in time to when the decree was published, soon after the scribe recorded Auvray 188 in the register for the second year. Such a marked

concern for a full record of events would make less sense as the events became more distant.

All of these discrepancies provide a crack through which we can peer at the compilation process of the register. If the conjecture is correct, *viz.*, that Auvray 181 was added soon after the letter was published in early April, then the table of contents must have been drawn up almost immediately after the close of the pontifical year. Hand D, who otherwise does not appear in the register, was given the responsibility for the table. The fact that it was created so soon after the completion of the first year indicates a significant advance in registration practices at the Curia. As was pointed out earlier, the tables of contents that survive for Innocent's and Honorius' registers were only drawn up in the fourteenth century. Taking the time to make an immediate catalogue of the register's contents shows a concern for being able to find documents when needed, and at least in theory opened them up for broader use. By the third year of Gregory's pontificate, this form of indexing was no longer an afterthought, and became the responsibility of the scribe who had composed the register.

5.4.9 Corrections to the register

Reg. Vat. 14 contains very few corrections. The majority that do occur are cancellations of incorrect words or phrases, using a dotted underscore followed by the correct text, as can be seen in the expunction of the wrongly placed *commisit* in the sixth line of Auvray 82 seen back in *fig. 5*. Erasures, while not entirely absent, are somewhat less common. These sorts of corrections were applied immediately at the time of writing, and were a standard part of chancery practice for correcting the mistakes that even the best scribes made on a routine basis. However, there is one example of a correction in the first year of the register that does not follow the normal pattern. We are in a fortunate

position to be able to set a copy of the original alongside the register version. A comparison of the two provides compelling evidence for ongoing registration. This comparison also affords an extraordinary glimpse at the deliberations behind the formulation of papal policy vis-à-vis the role of the Dominicans in Gregory's initial pursuit of reform at the diocesan level.

The letter in question is Auvray 129 (*Ecce venit deus*) dated July 14th, 1227, and addressed to the archbishops and bishops of Lombardy.⁶⁹⁴ This letter explicitly invokes the reforms of canon 10 of the Fourth Lateran Council, which mandated that bishops appoint suitable individuals to carry out the pastoral duties that bishops could not conduct personally, including preaching, hearing confession and assigning penance.⁶⁹⁵ Auvray

⁶⁹⁴ Following a long *arenga*, Gregory writes: "oportet omnes qui assumpti sunt ad agrum dominicum excolendum, granum a palea flagello debite correctionis excutere, et a fruge dominica zizania separare, ne electos contagium tante corruptionis inficiat, et filios deo cum filiis mundi huius, hora repentine calamitatis involvat. Quocirca fraternitati vestre, in virtute obedientie per apostolica scripta districte precipiendo mandamus, quatenus omni mora et occasione postpositis, primo incipientes a vobis ipsis torporem desidie et negligentie teporem omnimodo deponentes, ne bovis stercore lapidatos incipiat vos Dominus vomere de ore suo, arma spiritualia gladium et ignem viriliter assumentes, incipiatis parietem fodere, ut appareant genimina viparium, et radius lucis vibretur interius, et ad vindictam exigat umbram mortis, moniales et monachos et clericos seculares efficaciter corrigentes, tam in capite quam in membris. Cum autem prelati ecclesiarum, sepe propter occupationes multiplices seu occasiones alias, non sufficiant ministrare populo verbum dei, et statutum ob hoc fuerit in generale concilio, ut ad sancte predicationis officium salubriter exequendum, viri assumantur idonei, potentes in opere ac sermone, qui plebes sollicitate visitantes, eas verbo edificent et exemplo. Nos ad exequendum plenius officii vestri debitum [dilectos filios fratres: *exp.*] aliquos de fratribus [aliq. de frat.: *add. in margine*] ordinis predicatorum, ex quorum approbata religione, magnus in ecclesia dei fructus iam pervenisse dinoscitur, [destinamus: *exp.*] curabimus destinare [cur. dest.: *add. in margine*]. Qui viri cooperatores et coadiutores in quibus expedit existentes, tam verbo predicationis quam visitationis officio, vobis suffragium convenienter impendant, ut vestra et ipsorum sollicitudine, muri Jerusalem et Templum Domini reparentur. Si vero quicquam difficultatis emersit, quod videatur per vos expediri non posse, illud ad sedem apostolicam referatis. Nos enim in hiis prout oportuum fuerit, vobis efficaciter assistemus, et necessarium impendemus auxilium et favorem. Quod si super hiis que mandamus fueritis negligentes, cum securis ad radicem infructuose arboris sit ponenda, gravem penam poteritis, tamquam qui ex hoc vos redditis nimis culpabiles, non immerito formidare. Quare volumus et mandamus ut per vos et fratres eosdem, ad nos quecumque feceritis, plenius referantur. Dat. Anagnie II Idus Julii, pontificatus nostri anno primo," Reg. Vat. 14, fols. 22r-v. See below for a discussion of the marginal corrections.

⁶⁹⁵ "We therefore order that there be appointed in both cathedral and other conventual churches suitable men whom the bishops can have as coadjutors and cooperators not only in the office of preaching but also in hearing confessions and enjoining penances and in other matters which are conducive to the salvation of souls," Tanner, et. al, *Decrees of the Ecumenical Councils*, vol. 1 (Washington, D. C., 1990) p. 240.

129 is an expansive call to reform at the diocesan level. With language more ominous than the Lateran canon, Gregory reminds the bishops that:

it behooves all those who have been appointed to cultivate the lord's field, to shake out the wheat from the chaff with the lash of suitable correction, and to separate the tares from the lord's grain, so that the contagion of so great a corruption not infect the elect, nor the unexpected hour of destruction overtake the sons of God together with the sons of this world.

The unnamed specter of heresy looms over Gregory's admonitory descriptions of the dangers of an untended flock.⁶⁹⁶ Gregory prescribes a two-fold remedy for the Lombard bishops to undertake. They should first enact a thorough reform (*tam in capite quam in membris*) of the clergy and religious of their diocese. It followed as a function of the hierocratic lens through which Gregory viewed the role of the clergy in society, that heresy flourished where there was a corrupt clergy. In this he echoed the words of Innocent III, who in a sermon to shame those assembled at the fourth Lateran Council, used the potent and frequently deployed *corruptela* as a cypher to describe the consequences of his audience's inaction: "Omnis in populo corruptela principaliter procedit a clero."⁶⁹⁷ But even a clergy free from vice was not enough if they did not have the time or capacity to fulfill their pastoral obligations to the people. Gregory, therefore, recalled the words of the Lateran canon to remind the bishops of their duty to appoint suitable men to carry out the office of preaching, and to assist in the hearing of confessions and administration of penance. As a preemptive measure Gregory announces that he has taken the initiative of appointing and sending out to Lombardy certain Dominicans to aid the bishops in their task. The bishops are urged to stay in close

⁶⁹⁶ Raynaldus printed a fragment of the letter extracted directly from the register (*Annales*, vol. 23, 1227 § 63), presenting Gregory's call for reform as an extension in other regions of his efforts to combat the Albigensian heresy.

⁶⁹⁷ *Sermo VI in concilio generali Lateranensi habitus*; printed in: *PL*, vol. 217, col. 678.

communication with the pope, both by seeking clarification on any difficulties that may arise, and by making a full report, together with the friars, of all their activities: "per vos et fratres eosdem, ad nos, quecumque feceritis, plenius referantur."

At the point in the letter where the Dominicans are introduced, the scribe has made two corrections in the margin linked to symbols in the text. The words to be removed are also underlined, as may be seen in *fig. 18* (Reg. Vat. 14, fol. 22r). The changes are as follows:

[Orig.]: Nos ad exequendaum plenius officii vestri debitum, dilectos filios fratres ordinis predicatorum, ex quorum approbata religione, magnus in ecclesia dei fructus iam pervenisse dinoscitur, destinamus.

[Change]: Nos ad exequendaum plenius officii vestri debitum, **aliquos de fratribus** ordinis predicatorum, ex quorum approbata religione, magnus in ecclesia dei fructus iam pervenisse dinoscitur, **curabimus destinare**.

Papal letters used *dilectus filius* when addressing or referring to a specific ecclesiastic lower than episcopal rank, and a gap was deliberately left between *filios* and *fratres* to insert the initials of the Dominicans commissioned for the task.⁶⁹⁸ The change to the indefinite *aliquos de fratribus ordinis predicatorum* – "some individuals from the order of preachers" – backs away from a specific commission, leaving vague the identity of those designated for the mission. The second change alters the time frame, substituting *curabimus destinare* – "we will make sure to send" – for a simple *destinamus* – "we are sending." The original form of the letter suggests that the Dominicans had already been (or were on the verge of being) selected for the mission, and would arrive in Lombardy contemporaneous with the papal orders. The changes separate the mission into a sequence: the letter would announce the call to reform, and then at some point in the

⁶⁹⁸ For a discussion of address formula at the chancery see: Herde, *Audientia Litterarum Contradictarum*, vol. 1, pp. 197-8.

future a group of Dominicans would arrive to assist in the pastoral duties outlined by Gregory.

No originals of Auvray 129 survive, but two copies made it into formularies compiled later in the 13th century.⁶⁹⁹ The copies are addressed to a bishop N. (Baerwald) or N. N. (Bodmann) of Lombardy (*Insubriae*).⁷⁰⁰ Both follow Auvray 129 up to the portion where the corrections were introduced into the register. At this point, instead of the passage asserting the pope's prerogative to appoint the Dominicans as coadjutors in the execution of the bishop's pastoral office, the letter advises him to select certain clerics from his diocese to fulfill the requirements of the Lateran statute.⁷⁰¹ Absent, too, is the closing line of Auvray 129, which mandated that both the bishops and the Dominicans were to render full account of the progress of their mission to the pope.⁷⁰² The register carries no explicit record of this new language. However, there are some marks in the register text that could have been keyed to the new passage recognizing episcopal

⁶⁹⁹ The letter appears in the sole manuscript of an epistolary collection made up primarily of letters of the German Emperor Rudolf I (1291, *ob.*): Francis Bodmann [ed.], *Codex epistolaris Rudolphi I. Romani regis* (Leipzig, 1806) p. 225 [= Bod.]. According to its editor, this collection was assembled at the turn of the fourteenth century. In the early fourteenth century the *Ecce venit deus* also found its way into a collection in the *Ars dictaminis* tradition assembled at the Cistercian convent at Linz, also preserved in just a single manuscript: Hermann Baerwald [ed.], *Das Baumgartenberger Formelbuch* (Fontes Rerum Austriacarum, Diplomataria et Acta 25: Vienna, 1866) p. 134 [= Baer.].

⁷⁰⁰ Immediate dependence of either collection on the other for this letter can be ruled out. Each letter transmits additional language not found in the other:

"Dominus qui fundavit terminos terrae," Bod.

"Dominus qui fundavit terminos orbis terrae," Baer. [*concordat cum Reg.*]

"declinandos sempiternos ardores, aut cruciatus aeternos, oportet omnes," Bod. [*concordat cum Reg.*]

"declinandos sempiternos ardores, oportet omnes," Baer.

"cum fillis mundi, huius hora repentinae calamitas involvat" *Reg.*

"cum fillis mundi, huiusmodi hora repentinae calamitas involvat" Bod.

"cum fillis huius mundi hora repentinae calamitatis involvere compellantur," Baer.

⁷⁰¹ "Viri assumantur ydonei, potentes in opere et sermone, qui plebes sollicite visitantes, eas verbo edificent et exemplo: aliquos de clericis tue dyocesis tecum associare procures, qui coadiutores et cooperatores in quibus expedit existentes..." Baerwald, *Baumgartenberger Formelbuch*, p. 135.

⁷⁰² Both letters end at the second to last sentence with "...non immerito formidare."

competence in choosing partners from among their own clergy. Examining *fig. 18* again, we can see in the text that in addition to the symbols linked to the marginal additions, there is another mark – two diagonal dashes – that appears in front of the word *viri* and then after *destinamus*. These two identical marks do not signal anything in the margin, and in terms of the overall register, are highly unusual. If they are understood not as designating individual words, but rather as marking out the beginning and end of an entire passage, then it becomes clear that the highlighted portion contains the section of the letter where the formulary copies diverge from the register. The correspondence is not complete, as the initial part of the marked passage does make it into the formulary copies (*viri...exemplo*). But it seems very probable that these marks do relate to an additional round of changes introduced into the letter.

We are led to the conclusion that *Ecce venit Deus*, as it was recorded in the register, was not the letter sent to the Lombard bishops.⁷⁰³ The three stages of the letter raise more questions than they answer, but as with the earlier example textual gaps, they allow us to glimpse a topography in an otherwise even landscape. When the letter was composed, Gregory had in mind or had already selected specific, individual Dominicans who were to proceed to Lombardy to undertake pastoral duties the bishops were too busy to fulfill. When the letter was registered, a scribe left a space to later enter their names. A decision was soon made, however, to postpone the immediate dispatch of the Dominicans, and the register was corrected to reflect the now pending nature of the

⁷⁰³ This divergence has heretofore been noted, but was attributed to a misreading on the part of Auvray: "voir le texte complet de cette bulle [*Ecce venit deus*] dans H. Baerwald, etc...qui permet de rectifier l'interprétation de L. Auvray pour qu'il s'agirait des frères prêcheurs," Augustin Fliche, Christine Thouzellier and Yvonne Azais, *La Chrétienté romaine, 1198-1274 (Histoire de L'Église depuis les origines jusqu'à nos jours*, edd. A. Fliche and V. Martin, vol. 10: Paris, 1950) p. 305, n. 2. Auvray did not print the full text of the letter nor make a note of the marginal corrections, and so Fliche, *et al.*, could only rely on

mission. The policy was then shifted completely, and it was decided that the reform measures should be overseen by the bishops alone, trusting their competence to appoint worthy partners in administering their pastoral duties. Perhaps it was at this point that the symbols demarcating the critical passage were introduced, as a way of indicating which passage had been or was to be changed. All of this suggests a very close connection between the register and papal policy as it was being formulated in the Curia and set in writing by the chancery.

5.5 *Ecce venit deus* and early papal deployment of the Dominican Order

Before summarizing the evidence for successive registration, it is worthwhile to take a moment to explore the implications of the changes to *Ecce venit deus*. The register version of *Ecce venit deus* sought to accomplish several things in the context of combating heresy and the continuing implementation of the decrees of the Fourth Lateran Council: 1) it mandated thorough reform of both secular and regular clergy; 2) it formally charged certain Dominicans with carrying out pastoral and sacramental duties; and 3) it established a quasi-bipartite commission made up of the friars and the local bishop to report back to the pope concerning the progress of the reforms and the Dominican mission. Particularly in its second and third aspects, this letter would have represented a new stage in the evolution of the relationship between the Dominican Order and the papacy, a relationship that cannot but be viewed in light of the imminent involvement of Dominicans in establishing the inquisitorial procedures known to contemporaries as the *negotium fidei contra hereticos*.

the summary he provided. This is yet another example of the necessity of controlling the Écoles françaises d'Athènes et de Rome register editions with the manuscripts, if not of a new edition.

Ecce venit deus came in the midst of Gregory's initial press for reform through the commissioning of the former crusade preachers Rudolf of Hildesheim and Conrad of Marburg.⁷⁰⁴ The nature of Conrad of Marburg's mission in particular was an implicit challenge to episcopal authority, in so far as it invested Conrad with powers normally reserved to the ordinary, such as the provisioning of benefices (Auvray 108) and the prosecution of clerical concubinage (Auvray 113). Conrad's commission to investigate heresy (Auvray 109) would lead in October 1231 to his assignment of extraordinary powers as the first non-episcopal inquisitor.⁷⁰⁵ Gregory's appointment of Conrad shows an impatience to circumvent what was felt to be episcopal intransigence in bringing reform at the local level, and was the logical extension of the recent legatine mission of the cardinal bishop of Porto and S. Rufina.⁷⁰⁶ Legatine missions were not enough, since the impetus for reform could dissipate as soon as the papal legate departed. Conrad was a permanent local presence who could follow up the legatine statutes, and offered the advantage of being a charismatic preacher who could shape and direct popular sentiment

⁷⁰⁴ For the purposes of this discussion, Gregory's statements about the spread of heresy in Lombardy are taken at face value. There is a long standing discussion, however, about the complicated faces of heresy in Northern Italy as they relate to the competing powers of the towns, the emperor, and the pope, particularly given the latter's seigniorial claims in certain parts of the region. For a recent summary of the debate, see: Helmut Walther, "Ziele und Mittel päpstlicher Ketzerpolitik in der Lombardei und im kirchenstaat, 1184-1252," in *Die Anfänge der Inquisition im Mittelalter*, ed. Peter Segl (Bayreuther Historische Kolloquien 7: Köln, 1993) pp. 103-30.

⁷⁰⁵ For the text of the letter, see: D. Kurze, "Anfänge der Inquisition in Deutschland," in *Die Anfänge der Inquisition*, pp. 190-3. On Conrad's mission, see: Alexander Patschovsky, "Zur Ketzerverfolgung Konrads von Marburg," *Deutsches Archiv für Erforschung des Mittelalters* 37 (1981) pp. 641-93; and: Peter Segl, "Dominikaner und Inquisition im heiligen römischen Reich," in *Praedicatores, Inquisitores: Acts of the 1st International Seminar on the Dominicans and the Inquisition, February 23-25, 2002* (Dissertationes Historicae 29: Rome, 2004) pp. 211-48.

⁷⁰⁶ Gregory was explicit in connecting Conrad of Marburg's mission to the work of the powerful cardinal-bishop Conrad of Urach: "volentes igitur ut hoc per te qui decorem diligis domus dei et quem commedit zelus eius prout expedit corrigantur, discretioni tue per apostolica scripta mandamus, quatenus predictos presbyteros et alios in sacris ordinibus constitutos, ad abiciendas a se penitus concubinas, iuxta ea que statuit venerabilis frater noster Portuensis Episcopus contra tales dum in theutonia legationis officio fungeretur," Auvray 113: Reg. Vat. 14, fol. 18r.

against the perceived corruption among the clergy that was blamed for the unchecked spread of heresy.

Prior to *Ecce venit deus*, Gregory had already chastised the people and the collective civil authorities of Lombardy vociferously for allowing heresy to spread, in his words, like a disease in their territory. Besides freeing up energy and resources for a renewed campaign in the Holy Land, the goal of the papal-brokered peace between the northern Italian cities and the emperor was to get both secular and ecclesiastical authorities lined up behind Gregory's reform initiatives, meaning the full implementation of the Lateran statutes, the protection of ecclesiastical liberties, and the prosecution of heresy. These were explicit provisions of the peace agreement twice recorded in the register (Auvray 12, 125).⁷⁰⁷ Only a few weeks after he had received the first copy of the agreement, the register records Gregory already calling the Lombard towns to task for failing to live up to their obligations as outlined in the peace (Auvray 54; April 29th, 1227).⁷⁰⁸ Gregory reiterated his call for the towns to meet their obligations, and

⁷⁰⁷ "Constitutiones vero leges et statuta ab ecclesia Romana et Romanis Imperatoribus ac specialiter a clementia domini Frederici Romanorum Imperatoris semper Augusti et Regis Sicilie contra hereticos, receptatores, defensores, credentes et fautores eorum hactenus promulgata, vel in posterum promulganda, recipiamus et observamus inviolabiliter et efficaciter exequamus...[Civitatum autem aliorumque locorum Potestates, Consules et Rectores] statuta lateranensis concilii et constitutiones a vobis et domino Imperatore super hiis editas observent et iurent in posterum observare," Auvray 125, Reg. Vat. 14, fol. 20v.

⁷⁰⁸ "Vos vero, sicut audivimus ab aliis et experti sumus aliquando per nos ipsos...vos non solum negligenter in predictorum morborum curatione proceditis, sed etiam fraudulenter...Cum enim vel vestrorum exhortationibus prelatorum vel apostolicis comminationibus excitamini ad procedendum contra hereticam pravitatem...facitis statuta vestra de expellendis hereticis et eorum fautoribus puniendis, nec non de conservanda ecclesiastica libertate, ipsaque statuta [tamen] superficialiter exequentes, hereticos ipsos a finibus vestris expellitis, qui post tempus modicum revertuntur," Reg. Vat. 14, fol. 8v; printed in: Rodenberg, *Epistolae saeculi XIII*, no. 355. Gregory's reference to having experienced Lombard duplicity personally (*expertus sumus aliquando per nos ipsos*), probably recalls his time as legate to the area in the 1220s. The main goals of this mission were virtually identical to those he continued to pursue as pope, showing the long-standing nexus between clerical reform, heresy, ecclesiastical liberty, and crusading. For these legatine activities as Ugolinus of Ostia, see: C. Thouzellier, "La légation en Lombardie du cardinal Hugolin," *Revue d'histoire ecclésiastique* 45 (1950) pp. 508-42.

threatened drastic (if vague and unspecified) consequences should they fail to do so.⁷⁰⁹

Together with the German commissions, this letter provides the important backdrop to *Ecce venit deus* as part of Gregory's pursuit of a reform and anti-heresy agenda in the Lombard towns.

The other critical piece of *Ecce venit deus* is the formal designation of certain Dominicans – at least before the corrections were introduced – as official instruments for implementing Gregory's policies at the diocesan level. While often overshadowed by his intimate involvement with the foundation and expansion of the Franciscan Order, Gregory's early support for the Dominicans as Cardinal Ugolinus also ran deep. This continued upon his assumption of the papal throne, with multiple issues of *Quoniam abundavit iniquitas*, which Gregory made a standard letter of introduction and protection for the Order as it continued to spread throughout the dioceses of Europe.⁷¹⁰ As evident in the incipit, *Quoniam abundavit iniquitas* lauded the evangelization efforts and the *vita apostolica* of the Dominicans as the antidote to the contagion of heresy and other deadly perversions.⁷¹¹ The letter instructed the prelates receiving it to do all they could to facilitate the ministry of the Order in public preaching, hearing confessions, and

⁷⁰⁹ "Si nostris in hoc salubribus monitionibus et preceptis neglexeritis obedire, et contra ea presumpseritis per adinventiones quaslibet hereticis vel eorum fautoribus favorem indignum impendere, vestrosque prelatos aliasve personas ecclesiasticas in prenotatis articulis aggravare, nos contra presumptionem huiusmodi ea excogitare curabimus, per que eadem comprimi debeat, et vos a vestris perversitatibus ad viam rectitudinis revocari. Provideatis igitur, sicut viri sapientes et providi, ne contra eos, quorum salutem paterno zelamur affectu, grave aliquid cogitare cogemur, culparum vestrarum immensitate compulsi," Reg. Vat. 14, fol. 8r-9v.

⁷¹⁰ The letter began under Honorius in 1220: Potthast 6246, 6508. Its importance to both Gregory and the Order as a formal declaration of papal support is evident in the fact that Gregory issued it at least five times before July 1227: Potthast 7880 (April 21), 7896 (May 10); SB 802 and 804 (May 14), 821 (June 19), 827 (June 25).

⁷¹¹ From Potthast 7880 (April 21, 1227): "quoniam abundavit iniquitas, et refriguit caritas plurimorum, ecce ordinem dilectorum filiorum fratrum predicatorum dominus suscitavit, qui non que sua sunt, sed que sunt Christi querentes, tam contra profligandas hereses, quam contra pestes alias mortiferas extirpandas, se

administering penance.⁷¹² While this letter is certainly indicative of the special relationship already developed between Rome and the Dominicans, and of the important link between efforts to combat heresy and the Order's preaching and pastoral mission, it was in no way a specific commission either for the Dominicans or the recipients.⁷¹³

Quoniam abundavit iniquitas served to ease the introduction of the Order into a new diocese, reassuring the ordinary that the Dominicans operated with a papal mandate to exercise pastoral functions that were traditionally, if not in fact, reserved for the bishop and parish clergy. It was part of a barrage of similar protections issued on behalf of the Order to address the predictable conflicts created as it carved out a new place that cut across the existing parochial, diocesan and monastic power structures.⁷¹⁴ Set alongside *Quoniam abundavit iniquitas*, the register version of *Ecce venit deus* represents a new kind of formal collaboration between the Dominicans and the pope to intervene at the local level.

Gregory's first employment of a Dominican in his campaign against heresy occurred a month prior to *Ecce venit deus*, when on June 20th he commissioned the Dominican prior of Santa Maria Novella in Florence, Johannes of Salerno, to reconcile

dedicarunt evangelizationi verbi dei in abiectioe voluntarie paupertatis," A. Boczek, *Codex diplomaticus et epistolaris Moraviae*, vol. 2 (Olmütz, 1836) no. 174.

⁷¹² "Fratres predicatorum pro reverentia divina ad officium predicandi ad quod deputati sunt, recipiatis benigne ac populos vobis commissos, ut ex ore ipsorum verbi dei semen devote suscipiant, et confiteantur eisdem, cum auctoritate nostra liceat confessiones audire, ac penitentias iniungere, sedulo admonentes, pro nostra apostolice sedis reverentia in suis eis necessitatibus liberaliter assistatis," *ibid.*

⁷¹³ For a discussion of *Quoniam abundavit iniquitas* and the later Dominican role as inquisitors, see: Peter Segl, "Quoniam abundavit iniquitas," *Rottenburger Jahrbuch für Kirchengeschichte* 17 (1998) pp. 53-65.

⁷¹⁴ For a case study of how the Dominicans negotiated these conflicts in southern France, see: Ramona Sickert, "Dominikaner und Episkopat. Zur Etablierung des Predigerordens in südfranzösischen Bischofsstädten, 1215-1235," *Die Bettelorden im Aufbau* ed. Gert Melville and Jörg Oberste (Vita regularis: Ordnung und Deutungen religiösen Lebens im Mittelalter, vol. 11: Münster, 1999) pp. 295-319.

the former Cathar bishop located in the town and his followers.⁷¹⁵ This commission was narrow in scope, however, and in no way authorized Johannes to undertake a hunt for heretics in the city. It simply authorized the Dominican prior – through his powers as a confessor – to impose suitable penance on heretics that had already been captured. The plan outlined in *Ecce venit deus*, on the other hand, represented an open-ended commission for the Dominicans who would have been charged had the letter been sent as it was written in the register. While not specifically authorizing the pursuit of heretics, *Ecce venit deus* would have closely associated Dominicans with the pastoral work and clerical reform held up to be a bulwark against the spread of heresy, and would have created an open line of communication with the pope to monitor the ongoing progress of the mission. The changes to the letter show that this combining of Dominican and episcopal labors was put on hold and ultimately jettisoned, and that the reforms and pastoral work were left in the hands of the local Lombard bishops and their clergy. There is no evidence what became of these local initiatives, but several years later, in 1233, Gregory once again appointed individual Dominicans to assist Northern Italian bishops in their fight against heresy, this time with inquisitorial powers.⁷¹⁶

Ecce venit deus became something of a prototype for Gregory's initial attempts to effect reform at the local level. Additional copies are recorded for the archbishop of Bourges only a month and a half after the letter to Lombardy,⁷¹⁷ and again the following

⁷¹⁵ The best account of this incident, known only from the brief details of a document preserved in the archives of Santa Maria Novella, is given in: Henry Charles Lea, *A History of the Inquisition in the Middle Ages*, vol. 1 (New York, 1888; repr. 1958) pp. 326-7. The letter has apparently been printed only once, in: Vincenzo Fineschi, *Memorie storiche, che possono servire alle vite degli uomini illustri di Santa Maria Novella* (Florence, 1790).

⁷¹⁶ Walther, "Ziele und Mittel päpstlicher Ketzerpolitik," p. 125.

⁷¹⁷ Potthast 8025: Sept. 2, 1227; printed in: *Gallia Christiana*, vol. 2, *instr.*, coll. 21-2.

year to the bishop of Passau.⁷¹⁸ These letters follow the version preserved in the formularies, leaving it to the local bishops to select pastoral assistants from within their own clergy, and they also retain the closing line requesting updates on the mission's progress.⁷¹⁹ Further research could perhaps determine the forces behind the abandonment of the plan, and whether it was the result of protest from interested parties or their representatives at the Curia. The critical point here is what even this abortive attempt reveals about the Dominicans' relationship to Rome. It shows that Gregory, distrusting either the will or the capacity of local bishops to deal with heresy, was considering a formal deployment of Dominicans as a systematic response to the problem from the beginning of his pontificate.⁷²⁰ *Ecce venit deus* would have harnessed the preaching and pastoral activities of the Dominicans already taking place, and directed them to spur local action. In this respect it confirms recent research on the inquisition that has viewed Dominican involvement more as an outgrowth of their role as preachers and confessors than of any special juridical competence.⁷²¹ The reporting requirements outlined at the end of the letter also add another dimension to similar information-gathering initiatives taking place at the time. Conrad of Marburg's commission to investigate the extent of heresy in Germany has already been mentioned – to this we can add the synodal boards constituted by the provincial council of Narbonne in 1227 to inquire after heresy and

⁷¹⁸ Potthast 8208: June 13, 1228; printed in: *Monumenta Boica*, vol. 28, pt. 2 (Munich, 1847) p. 151-2.

⁷¹⁹ "Quare volumus et mandamus, ut per te ac eosdem clericos, ad nos quaecumque facta fuerint plenius referantur," *Gallia Christiana*, vol. 2, *instr.*, col. 22.

⁷²⁰ Although less emphasized now, Raymond of Penyafort was for a long time regarded as the instigator of Gregory's decision to commission members of the Dominican order with the *inquisitio haereticae pravitatis*. His time as papal chaplain and penitentiary coincides with the first inquisitorial commissions in the first half of the 1230s.

⁷²¹ This was one of the principal threads running through the many papers presented at the 2002 seminar in Rome chronicled in: *Praedicatores Inquisitores* (see above, n. 705).

other crimes at the parish level;⁷²² and the more formal bodies set up two years later by the legatine council of Toulouse, which for the first time were charged with reporting heretics to the local authorities for punishment.⁷²³

5.6 Summary of evidence for ongoing registration

The close scrutiny of Reg. Vat. 14 points to the practice of ongoing registration. The chronological breaks, which for Friedrich Bock were absolute proof for registration at some later date, are usually explainable in terms of the course of business at the Curia. The registration of all the documents related to a particular case might be held up until the affair was entirely settled, as evident in Pelagius of Lydda's transfer to Salamanca (Auvray 101-3), or the monastic reform and orders of provision directed to the bishop of Toul (Auvray 121-2, 126). Facts on the ground could dictate the timing of registration as well, as seen in the timing of the registration of documents concerning the inheritance of Cardinal Guala's possessions and his actual death at the end of June 1227 (Auvray 123-4). If this sort of evidence serves only to establish the possibility of ongoing registration, then the physical evidence from the register offers solid testimony in the affirmative. The initial variation in the ruling and writing of the registers gives way to a consistent scribe and form, suggesting a period of experimentation until a desirable format was achieved.

Another piece of evidence for ongoing registration is the direct copying of engrossed

⁷²² Canon 14: "volumus insuper, et districe mandamus, ut ab episcopis testes synodales in singulis instituantur parochiis, qui de haeresi, et de aliis criminibus manifestis diligenter inquirant, postmodum episcopis quod invenerint relaturi," Mansi, *Sacrorum conciliorum*, vol. 23, col. 24.

⁷²³ Canon 1: "statuimus itaque, ut archiepiscopi et episcopi in singulis parochiis, tam in civitatibus quam extra, sacerdotem unum et duos vel tres bonae opinionis laicos, vel plures si opus fuerit, sacramento constringant, qui diligenter, fideliter et frequenter inquirant haereticos in eisdem parochiis...et si quos invenerint haereticos, credentes, fautores et receptatores, seu defensores eorum, adhibita cautela ne fugere possint, archiepisepo vel episcopo, dominis locorum, seu balivis eorundem, cum omni festinantia studeant intimare, ut animadversione debita puniantur," *ibid.*, col. 194. Canons 2 and 3 enjoined local abbots and secular lords to conduct a similar inquiry. All of the canons related to heresy from this council have been

papal letters rather than drafts, or originals provided by the recipient. These would only be available to the register scribe so long as the recipient was still at the Curia to provide them. Perhaps the most compelling testimony, however, is the presence of gaps and corrections in the text. These untidy seams bring us face to face with the registration process itself, and make sense only in the context of ongoing registration, with an incomplete or obsolete record supplemented or changed through later additions. These alterations point to the register as a living, breathing record, and in the case of Auvray 129, offers a dynamic view of how papal policies took shape.

Scholars have rightly pointed out that there is a difference between creating an archive and actually consulting that archive for the purposes of administration.⁷²⁴ The systematic use of archives was a separate stage of development from their actual assembly (an observation that applies in many ways to canon law collections as well). The immediate indexing of the register through a table of contents, as well as the issue specific dossiers intercalated between many of the years, shows that the registers were moving quite explicitly toward becoming administrative records. The registers still reflected a multiplicity of concerns beyond those of the Curia's, as evidenced by the number of documents whose presence is likely due to the payment of a registration fee rather than curial initiative. Nonetheless, this information became readily available for the general use of Curial administration with their numeration and summary in the table of contents at the front of each pontifical year. It also must have made Raymond of Penyafort's task somewhat easier as he was selecting documents to use for the Decretals.

reprinted in: Kurt-Victor Segle, *Texte zur Inquisition* (Texte zur Kirchen- und Theologiegeschichte 4: Gütersloh, 1967) pp. 30-4.

⁷²⁴ Clanchy, *From Memory*, pp. 168ff.

5.7 Dating the Decretals

Until a detailed study of Gregory's remaining registers can be performed, the assumption that they followed Reg. Vat. 14 in being kept on an ongoing basis must remain provisional. However, when the results of the present study are combined with the most current research on the registers of Gregory's predecessors, the assumption of ongoing registration should be the default. A cursory overview of the dates of the letters in the succeeding register volumes does nothing to disturb this view, as there are no disruptions of the chronological sequence to suggest later compilation, such as a letter of significantly later date appearing among earlier letters. If anything, the sequence of letters becomes more regular, along with a significant increase in the number of letters being registered:

Table 5.7. Total Registration for Reg. Vat. 15-17

Reg. Vol.	Pontifical Year	Auvray Number	Registered Letters ⁷²⁵
Reg. Vat. 15	Yr. 4 (1230-1)	Auvray 432-581	150
	Yr. 5 (1231-2)	Auvray 582-783	202
Reg. Vat. 16	Yr. 6 (1232-3)	Auvray 784-1194	411
Reg. Vat. 17	Yr. 7 (1233-4)	Auvray 1195-1838	644
	Yr. 8 (1234-5)	Auvray 1839-2481	643

If ongoing registration is assumed, then the pattern of Raymond's use of the register may provide clues to when the *Decretals* was actually put together. Closing in on a date of compilation could eventually help not only to illuminate the original motivations for the collection's genesis, but also clarify the reasons for some of Raymond's changes to the texts. In addition, it will can clarify one of the important

⁷²⁵ As noted above, the numbers for the later pontifical years (years 6-8) are somewhat inflated because of Auvray's sudden decision in year 6 to begin counting *a-pari* letters as separate entries. Even discounting for this inflation, however, the total number of letters is still greater in these later years, as shown in Table 1 of the appendix.

questions that has hovered over the *Decretals* in regard to its relationship to the competing consolidation of the law completed by Frederick II in 1231 – the *Liber Augustalis*.⁷²⁶ If, as will be argued below, Raymond began to work on the *Decretals* after Frederick had already issued his collection, then some of the peculiar features of Raymond's treatment of secular law in the *Decretals* would take on much more significance.⁷²⁷ Moreover, this would open up a new field to contrast some of the specific measures that were added to the *Decretals* that clashed with portions of Frederick's recently promulgated legislation.

The latest extract from the register is Auvray 1987, dated June 26, 1234, slightly over two months before the promulgation of the *Decretals* on September 4, 1234. Our knowledge of the amount of time it took to assemble a canonical collection is limited, but even the smallest collections like 4-5Comp are estimated to have taken at least three months.⁷²⁸ Such a massive undertaking like the *Decretals* would have taken significantly longer. As was shown in chapter three, Raymond did not just pour the contents of his formal sources into the new collection, but carefully reordered the decretals by grouping them according to pontificate and transposing almost 8% (134) of the capitula derived

⁷²⁶ For a discussion of the sources for Gregory's alleged reaction to the *Liber Augustalis*, see: Kenneth Pennington, "Gregory IX, Emperor Frederick II, and the Constitutions of Melfi," in *Popes, Teachers, and Canon Law in the Middle Ages*, eds. James Sweeney and Stanley Chodorow (Ithaca, 1989) pp. 53-61.

⁷²⁷ In addition to his total elimination of Frederick's constitutions on heresy and ecclesiastical liberty that Tancred had included in 5Comp, Raymond edited out most of the references in his sources that called upon the corroborative authority of secular law. One example will suffice at the moment to illustrate the point. In X 1.26.3, Raymond removed an appeal to human law (as well as to conciliar approbation) from among the corroborating authorities listed by Pope Gregory the Great to grant churches full possession of property they had held for more than 30 years: "Sanctorum Patrum sanctiones et humanae leges irrefragabiliter statuentes confirmaverunt, et nos in praesenti concilio cum omnibus, qui sunt nobiscum, irrefragabiliter confirmamus, ut..."

⁷²⁸ Three months separate the last datable letter for 5Comp (January 30, 1226) and its promulgation on May 2 of that year. Stephan Kuttner came up with a slightly longer estimate for the time it took Johannes Teutonicus to compile 4Comp: "Johannes Teutonicus, das vierte Laterankonzil und die Compilatio quarta," in *Miscellanea Giovanni Mercati*, vol. 5 (Studi e Testi 125: Vatican City, 1946) p. 627.

from the 5C to different titles. The selection and organization of the texts were just the prelude, however, to their meticulous reworking under Raymond's pen. Adding to this the time it would also take to compose the new Gregorian constitutions, a picture emerges of a project that could have taken the better part of a year, and likely longer.

The table at the beginning of the chapter shows a fairly consistent pattern of extraction up through early July 1232 (Auvray 805, 810; X 4.13.11, 5.31.18). Except for the first pontifical year, there is never a gap of more than a month or two between the letters Raymond selected up until mid-1232. Yet a break occurs after Auvray 810, with a full five months separating it from the next letter in line, Auvray 988 (December 9, 1232; X 1.16.3). In fact, Raymond only used six letters dated later than July 7, 1232 (Auvray 805), transforming these into nine separate capitula in the *Decretals*, owing to the dismemberment of Auvray 1324 into four parts (X 3.40.9-10, 3.49.9, 5.39.55). There are two possible explanations for this pattern of extraction. The first would allow Raymond to have started as late as Autumn of 1233, with no special significance accorded to the five month break after July 1232. Raymond's pause at this point, and the lack of any significant presence of later texts, would merely reflect that he had found Gregory's previous registers adequate to provide the sources he needed.

The alternative explanation seems more compelling, *viz.*, that Raymond began his work in mid- to late-Summer 1232. The fact that Raymond did not derive more texts from 1233-4 was because the registers were not yet written, or in the case of Reg. Vat. 16, only half-finished. August typically being the nadir of activity at the curia, including the registration of letters, perhaps Raymond began to work through the registers while they were not heavily in use. After gathering the bulk of the Gregorian material from the

time prior to July 1232, Raymond thereafter only took selected items to fill in some remaining gaps. Whether he began working on the texts from the 5C prior to the Summer of 1232 is impossible to know. There are instances where the editing of the earlier material was clearly done in light of the new information from a Gregorian text taken from the register, strongly suggesting that the Gregorian material was not merely tacked on at the end after everything else was in place.⁷²⁹ On the other hand, some of the Gregorian text composed specifically for the collection – as opposed to the enregistered decretals -- seem custom-tailored to resolve specific problems in the older tradition.⁷³⁰ This last point, however, does not exclude a late-Summer 1232 start date.

An examination of the documents related to Raymond's service at the papal curia supports – or at least does not contradict – this chronology. The earliest direct communication between Gregory and Raymond occurred in November of 1229, when Gregory commissioned Raymond and other Barcelonan Dominicans to preach a crusade in the dioceses of Aragon and Narbonne to support the recently launched campaign of Jaime I against Mallorca.⁷³¹ Raymond was chosen presumably on the recommendation of the cardinal legate John of Abbeville, who had recently returned to the papal court following his reform mission to the Iberian church for which Raymond had served as his

⁷²⁹ For example, the list of heresies in Gregory's *Excommunicamus et anathematizamus* (X 5.7.15; Auvray 539) repeats almost verbatim that originally given in Lucius III's *Ad abolendam*, included by Raymond at X 5.7.9. In order to avoid repetition, Raymond cut the list from *Ad abolendam*, which he would have presumably only done in light of the later Gregorian text.

⁷³⁰ There was confusion in the canonical tradition over whether and how much Jews should be recompensed who were forced by law to liberate their Christian slaves. X 5.6.1, a text from a sixth-century council, recommended an indemnity of 12 solidi to a Jew releasing his Christian slave. On the other hand X 5.6.2, a letter from Gregory the Great's register, seemed to command release without indemnity. Raymond ended up composing a Gregorian constitution specifically for the title (X 5.7.19, *Nulli Iudaeo baptizatum*) that set the release payment at 12 solidi, and specified some additional conditions for the release of Christian slaves held in Jewish service.

penitentiary.⁷³² The sequence of events over the next few years – for example, when Raymond himself made it to the papal court, and when he began to serve as papal penitentiary and chaplain – is entirely without contemporary documentation. To fill in the gaps one has to rely instead on late-thirteenth and early-fourteenth century Dominican chronicles and *vitae* produced as part of an early effort after Raymond’s death to have him canonized.⁷³³ These accounts describe his initial service in the papal court as a penitentiary for the indigent.⁷³⁴

It is actually not until 1234 that Raymond appears again in papal documents, this time with a number of direct commissions as Gregory’s penitentiary. The first of these is dated February 8th, 1234, and was written to a number of judges delegate overseeing the case of a disputed benefice provision in a church in the diocese of Laon.⁷³⁵ Gregory directed the judges to lift their sentence of excommunication against one of the parties in the dispute, who had travelled to Rome and been absolved by Raymond as papal penitentiary. The next letter to mention Raymond, dated May 10, 1234, shows him performing essentially the same function, absolving a cathedral canon of Trent who had

⁷³¹ Potthast 8471. The text can be found in: F. Balme, et al., *Raymundiana seu documenta quae pertinent ad S. Raymundi de Pennaforti vitam et scripta*, vol. 2 (Monumenta Ordinis Praedicatorum Historica 6.2: Rome-Stuttgart, 1901) doc. 8, p. 12; and: Ripa, *Documentación*, doc. 164, p. 236.

⁷³² See above, chapter one § 1.6 Raymond of Penyafort, p. 50ff.

⁷³³ This effort was not successful, however, and Raymond was ultimately not canonized until 1601.

⁷³⁴ The fullest account of Raymond’s service in the papal court comes from an anonymous *vita* originally composed sometime in the first half of the fourteenth century, which survives only in a 1351 transcription. Given the lack of similar detail among earlier chroniclers, the anonymous account should be viewed with caution: “dominus autem Gregorius ipsum benigne suscipiens, considerata eius conversatione sancta, sciencia probata et providentiae ipsius capellanum et penitenciarium instituit, et in confessorum suum specialem inter alios preelegit. Qui domino Pape frequenter injungebat loco penitentiae, ut pauperes habentes in curia diversa negotia, qui propter indigentiam quandoque ab aliquibus repelluntur, misericorditer expediret, et in suis justis petitionibus exaudiret,” *Raymundiana*, vol. 1, p. 23.

⁷³⁵ Auvray 1775; Potthast 9396. Printed in: *Raymundiana*, vol. 2, doc. 10, p. 17.

been excommunicated by his bishop.⁷³⁶ Whereas both of these letters describe Raymond only as *penitentiarius*, the next and last letter in which he appears prior to the issuance of the *Decretals*, dated June 8, 1234, calls Raymond both *penitentiarius* and *capellanus*.⁷³⁷ In addition, while the earlier letters had shown Raymond performing his duties as penitentiary at a relatively low level of the ecclesiastical hierarchy, the June 8 letter has him absolving from excommunication the bishop of Laon. Whether this new designation as papal penitentiary *and* chaplain reflects an actual change of Raymond's status between May 10 and June 8 is uncertain, however, since additional documents related to his role as penitentiary, and issued after *Rex pacificus*, again designate him solely as *penitentiarius*.⁷³⁸

If Raymond were wholly devoted to his task of compiling the *Decretals*, it is not surprising that there are no records of his commissions as penitentiary prior to February 1234. That does not mean that he was inactive, but merely that he was not distracted with some of the higher profile commissions he would eventually receive starting in 1234. If the late-Summer 1232 starting point is accurate, then Raymond spent the end of 1232 and all of 1233 putting together the *Decretals*. When the project had reached a relatively advanced stage of completeness, Raymond again began discharging his duties as penitentiary more regularly, though he continued to work on the completion of the *Decretals*, as shown by the addition of a single decretal from June 1234.

⁷³⁶ Auvray 1899. Printed in: *Raymundiana*, vol. 2, doc. 11, p. 19.

⁷³⁷ Auvray 1944. Printed in: *Raymundiana*, vol. 2, doc. 12, p. 21.

⁷³⁸ Auvray 2119 (Oct. 16, 1234) and 2221 (Nov. 23, 1234). Printed in: *Raymundiana*, vol. 2, docs. 15-6, pp. 25, 27. For 2119, Auvray reasoned that because of the sole designation as penitentiary, the *frater R.* discussed in the letter could refer to another contemporary penitentiary known as Raynaldus (*Registers*, vol. 1, col. 1141, note 1). In Auvray 2221, however, the name is clearly Raymundus, and he is called simply *penitentiarius* and not also *capellanus*.

All told there is a good deal of evidence pointing to mid-1232 as the starting point, and this date can serve as a safe starting point for future contextual examinations of the material chosen for inclusion in the *Decretals*, as well curial politics around that time. At the very least, the foregoing discussion of the dating of the collection will hopefully put to rest the oft-repeated but entirely unsubstantiated claim that work on the *Decretals* began in 1230.⁷³⁹

By way of conclusion, an interesting correlation between Gregory's registration practice and work on the decretals should be pointed out. As may be seen in the appendix (Tables 5.8 and 5.11) registration prior to July of 1232 had been fairly low, rarely exceeding more than twenty decretals per month except at the beginning of Gregory's pontificate and a brief uptick in the spring of 1231. Starting in June and July of 1232, however, the number of decretals entered into the register doubles and even triples over what had been the average for any particular month in years prior.⁷⁴⁰ Registration would thereafter remain consistently high through the rest of the time period covered (early 1235). The fact that it was registration that was being increased, rather than just the total output in letters, can be gauged by looking at the number of Gregory's surviving unregistered letters over the same period (Tables 5.9-11). For these, there is a remarkable stability in the numbers between 1228 and early 1235, thus showing that the increased number of letters in the register was a conscious change of policy.

⁷³⁹ The origin of making 1230 the date for the beginning of Raymond's commission is not clear. It shows up as fact, without documentation, in places like the Catholic Encyclopedia and even Cardinal Stickler's history of canon law (*Historia juris canonici*, p. 252).

⁷⁴⁰ Because the curia followed the natural rhythms of the summer sun and humidity, it is important to compare chancery output month to month in addition to looking at yearly totals. August and September were historically the lowest points of activity for papal business, and thus registration. The totals for August and September of 1232 were accordingly higher than previous years, but not quite double.

Perhaps in directing Raymond to use the register as a source for his decretals, Gregory then decided to increase the number of letters that they recorded. Maybe this was to capture as much relevant material as possible so that Raymond, after picking over the register prior to July 1232, could have additional resources to add in the later stages of compilation. Perhaps Gregory simply gained a greater appreciation for the register's value as a repository of his decisions, and wished to expand its reach. We will probably never know for sure one way or another. In any event, the increased registration after mid-1232 is strongly suggestive of a continuing correlation between the papal registers and canonistic activity, despite the registers' eclipse as the preeminent guarantor of authenticity it once enjoyed under prior pontiffs.

5.8 Character and content of the Gregorian capitula

Eighty-eight of the 195 Gregorian capitula in the *Decretals* can be found in the Gregory IX's papal registers, and the total number of enregistered decretals rises to eighty-nine if one includes the decretal found on the last folio of Honorius' final register.⁷⁴¹ Thus, slightly over half of the Gregorian texts came from outside of the register. Judging by the form of these texts (presence of an inscription, curial diplomatic formulae, etc.) a minimum of thirty-three of these texts were rescripts that Gregory had issued prior to 1234, though there has never been any independent documentary confirmation of their existence, either via an original, transcript, or cartulary copy.⁷⁴² This leaves as many as

⁷⁴¹ For the full list of capitula, see chapter five, Table 5.1. Gregorian Capitula taken from the Registers, pp. 317f. The Honorius III text attributed to Gregory, X 3.5.38, is found in: Reg. Vat. 13, fol. 174r (Pressutti 6244; Potthast 9632).

⁷⁴² What looks like a possible Spanish original is likely not in the case of X 3.26.20, *De his quae*, a Gregorian constitution ordering that the customary canonical portion – normally subtracted from a pious bequest for use by the parish church or bishop – should be forgone if the bequest was left specifically for funding ritual celebration (*in ornamentis, vel pro eis, seu fabrica, luminaribus, anniversario, septimo, vigesimo, tricesimo die, sive aliis ad perpetuum cultum divinum*). The entire text of this short constitution is contained in the opening of a *vidimus* copy of a 1227 privilege granted by Gregory to the Cistercian

seventy-two constitutions (including four marginal cases) that were composed specifically for the collection, as shown in the following table:

Table 5.8. List of Gregorian capitula not found in the registers

* = Texts whose formal features leave some doubt over whether they are constitutions or decretals

<i>Decretals</i>	Pothast	Rescript/ Constitution	<i>Decretals</i>	Pothast	Rescript/ Constitution	<i>Decretals</i>	Pothast	Rescript/ Constitution
1.03.37	9532	Rescr.	2.09.5	9592	Rescr.	3.24.10	9643	Const.
1.03.38	9533	Rescr.	2.10.4	9593	Const.	3.26.19	9646	Rescr.
1.03.39	9534	Rescr.	2.11.1	9594	Const.	3.26.20	9647	Const.
1.03.40	9535	Rescr.	2.13.19	9595	Rescr.	3.28.14	9648	Rescr.
1.03.41	9536	Const.	2.15.4	9597	Const.	3.30.35	9649	Const.
1.03.42	9537	Const.	2.17.3	9598	Const.	3.32.21	9654	Const.
1.03.43	9538	Rescr.	2.20.53	9600	Rescr.	3.39.26	9657	Rescr.
1.04.11	9539	Const.	2.20.54	9601	Const.	3.39.27	9658	Rescr.
1.06.58	9547	Const.	2.20.55	9602	Const.	4.01.31	9662	Const.
1.06.59	9548	Const.	2.20.56	9603	Const.	4.01.32	9663	Const.
1.06.60	9549	Const.	2.22.13	9605	Const.	4.05.7	9664	Const.
1.11.17	9550	Rescr.	2.22.14	9606	Const.	4.07.8	9665	Rescr.
1.13.2	deest	Const.	2.22.15	9607	Rescr.	4.14.9	9668	Const.
1.29.39	9554	Const.	2.22.16	9608	Const.	4.20.8	deest	Const.
1.29.40	9555	Rescr.	2.24.35	9610	Const.	5.03.45	9671	Const.
1.29.41	9556	Const.	2.24.36	9611	Rescr.	5.03.46	9672	Rescr.
1.29.42	9557	Const.	2.25.12	9614	Const.	5.06.19	9674	Const.
1.29.43	9558	Const.	2.25.13	9615	Const.	5.07.16	9676	Const.
1.30.09	9560	Const.	2.25.14	9616	Rescr.	5.11.1	9677	Rescr.
1.30.10	9561	Const.	2.27.25	9617	Const.	5.12.25	deest	Rescr.
1.31.20	9562	Const.	2.27.26	9618	Const.*	5.19.19	9678	Rescr.
1.32.2	9563	Const.	2.28.70	9622	Const.	5.26.2	deest	Const.
1.35.8	9568	Rescr.	2.28.71	9623	Rescr.	5.27.10	9679	Const.
1.37.3	9569	Rescr.	2.28.72	9624	Const.	5.32.4	deest	Rescr.
1.38.12	9572	Rescr.	2.28.73	9625	Const.	5.33.32	9682	Rescr.
1.38.13	9573	Const.	3.02.10	9626	Const.*	5.33.33	9683	Rescr.
1.38.14	9574	Const.	3.04.17	9628	Const.*	5.36.9	9684	Const.
1.38.15	9575	Const.*	3.05.37	9631	Rescr.	5.38.16	9685	Const.
1.40.7	9576	Rescr.	3.14.3	9633	Const.	5.39.54	9686	Const.
1.41.09	9578	Const.	3.15.1	9634	Const.	5.39.56	9687	Const.
1.41.10	9579	Const.	3.16.2	9635	Const.	5.39.57	9688	Const.
1.43.14	9583	Const.	3.17.7	9636	Const.	5.39.58	9689	Const.
2.02.18	9585	Rescr.	3.18.3	9637	Const.	5.39.59	9690	Const.

monastery of Morerueta, located in the diocese of Zamora. The copy was made in 1235 on behalf of the monastery by the Italian bishop of Motula and the abbots of two Spanish monasteries, who certified that the original 1227 privilege was authentic. The text of X 3.26.20 is the very first thing given in the copy, followed by the testimonial to the authenticity of the privilege, and finally the privilege itself, though the reasons for adding X 3.26.20 to the preface are obscure. The letter is calendared (along with a transcription of the text of X 3.26.20 and the authenticity information) in: Ripa, *Documentación*, doc. 51.

2.02.19	9586	Rescr.	3.18.4	9638	Const.	5.39.60	9691	Const.
2.02.20	9587	Const.	3.22.5	9640	Const.			
2.07.7	9590	Rescr.	3.23.4	9642	Const.			

5.8.1 Legislation by constitution or statute? X 3.31.23, *Statuimus novitios* and X 3.31.24, *Ne religiosi*

One, perhaps surprising result of the collation of the registers is that for all of the shortening, excerption and other editorial changes applied to the material, Raymond rarely altered the textual form of a decretal in order to present it as if it were one of the Gregorian *constitutiones* first seeing the light of day in the collection. In formal terms, this meant that even when Raymond only preserved one or two sentences of a letter, he would always begin with the opening words of the incipit, followed by an *et infra*.⁷⁴³ This speaks to the tremendous, widespread acceptance of the decretal as a direct, legislative vehicle over the previous decades. The two exceptions to this rule are instructive, and will serve as a useful pivot to point out future directions of research.

The consecutive pair of texts X 3.31.23, *Statuimus novitios*, and X 3.31.24, *Ne religiosi* are found in the main title on monasticism in the *Decretals*: X 3.31 “On regular clergy and those going into religious life (*De regularibus et transeuntibus ad religionem*).” Both texts take the form of unsolicited constitutions, insofar as they lack incipits, addressees, or any other indication of having been issued to settle a specific case, and they both employ the dispositive verb *statuimus* normally used in conciliar legislation and papal decrees (*decretum*). X 3.31.23, *Statuimus novitios*, establishes a one-year probationary period for all religious orders, during which time novitiates shall be allowed to renounce their monastic habit without penalty if they discover that they are not suited

⁷⁴³ See, for example, the collation of X 3.32.19, *Gaudemus in Domino* (chapter five, appendix B, no. 139) originally a letter to Rudolf of Hildesheim regarding his mission to reformed prostitutes in Germany (Reg. Vat. 14, fol. 17r; Potthast 9652). This letter is discussed further below in the context of Raymond’s editing of material related to religious life, p. 392.

for religious life.⁷⁴⁴ Furthermore, in order to remove any opportunity for confusion novitiates should be clearly distinguished in their dress from those who have taken full vows. This was a remarkable exercise of papal authority, standardizing the disparate practices of the dozens of religious orders in existence at the time.

The second statute, X 3.31.24, *Ne religiosi*, opens with an expression of concern over the risk that regular clergy will imperil their souls when they leave the confines of the monastery.⁷⁴⁵ With this in mind, Gregory orders that during the annual general chapter the heads of each order shall summon back any of their members who have left their monasteries, whether their departure was voluntarily or because they were forced out. If the wandering brother has violated the discipline of the order in such a way to make reinstatement in his original monastery impossible, then he should be sent to another religious house to perform the penance appropriate to his transgression. Those who refuse to heed such a summons are to be publicly proclaimed as excommunicated.

Both texts are to be found in the register, but in each case they constitute merely an excerpt of a longer source filed under a different incipit, an important difference given

⁷⁴⁴ X 3.30.23 (see below for a partial translation of the text): “Statuimus, novitios in probatione positos ante susceptum religionis habitum, qui dari profitentibus consuevit, vel ante professionem emissam, ad priorem statum redire posse libere infra annum, nisi evidenter appareat, quod tales absolute voluerint vitam mutare et in religione perpetuo Domino deservire, cum quilibet renuntiare valeat ei, quod pro se noscitur introductum. Nichilominus statuentes ad omnem ambiguitatem penitus amovendam, quod cum in quibusdam locis religiosi novitiorum habitus non distinguatur ab habitu professorum, professionis tempore benedicantur vestes, que profitentibus conceduntur, ut novitiorum habitus a professorum habitu discernatur.”

⁷⁴⁵ X 3.31.24 (see below for a partial translation of the text): “Ne religiosi, vagandi occasionem habentes, salutis propriae detrimentum incurrant, et sanguis eorum de praelatorum manibus requiratur: statuimus, ut praesidentes capitulis celebrandis secundum statutum concilii generalis, seu patres, abbates seu priores fugitivos suos et eictos de ordine suo requirant sollicitate annuatim. Qui si in monasteriis suis recipi possunt secundum ordinem regularem, abbates seu priores eorum monitione praevia per censuram ecclesiasticam compellantur ad receptionem ipsorum, salva ordinis disciplina. Quod si hoc regularis ordo non patitur, auctoritate nostra provideant, ut apud eadem monasteria in locis competentibus, si absque gravi scandalo fieri poterit, alioquin in aliis religiosi domibus eiusdem ordinis ad agenda ibi poenitentiam talibus vitae necessaria ministrentur. Si vero huiusmodi fugitivos vel eictos inobedientes invenerint, eos

the practice of identifying letters by their opening words.⁷⁴⁶ X 3.31.23, *Statuimus novitios*, was taken from an undated, uninscribed register entry found at Reg. Vat. 15, fol. 59v, though the March dates of the surrounding texts place it sometime around mid-March, right around the transition from Gregory's fourth to fifth pontifical years. The register entry is not a decretal, however. Rather, it is written as a papal decree promulgated in consultation with the cardinals (*de fratrum nostrorum consilio*).⁷⁴⁷ The full register text begins with a prologue describing the background for Gregory's decision. It notes that the probationary periods that have obtained in the past have been of varying duration, all based upon sound authority and precedent, but that the diversity

excommunicant, et tandiu faciant ab ecclesiarum praelatis excommunicatos publice nunciari, donec ad mandatum ipsorum humiliter revertantur.”

⁷⁴⁶ X 3.31.23 (chapter five, Appendix B, no. 137) = Auvray 572; Potthast 8682/9650; Reg. Vat. 15, fol. 59 (incipit: *Quia nonnullos loca*). X 3.31.24 (chapter five, Appendix B, no. 138) = Auvray 1667; Potthast 9651; Reg. Vat. 17, fol. 120v (incipit: *Simon pauper monachus*). The initial Potthast number for X 3.31.23 does not refer to an actual copy of the letter, but rather is based upon the printing of the undated register entry in the *Bullarium Romanum*, where it has been incorrectly assigned a date of March 18th based upon the dating information of the previous enregistered letter (Auvray 571): *Bullarum diplomatum et privilegiorum Sanctorum Romanorum Pontificum Taurinensis editio*, ed. A. Tomassetti, vol. 3 (Turin, 1858) p. 452.

⁷⁴⁷ See below for a partial translation. The entire prologue is as follows, and may also be found in collated form (with critical apparatus) in the chapter five Appendix: “Quia nonnullos loca religiosa absque protestatione intrare contingit, et infra tempus probationis exire, ad seculum redeuntes apostasie criminis arguuntur, super quo fuit hactenus a pluribus dubitatum. Quia cum tempus probationis concessum continere in se videatur liberam optionem eligendi alterum e duobus, vel ut in monasterio tales remaneant, aut abscedant liberi, etiam post promissam de stabilitate perseverantiam, sicut in beati Benedicti regula continetur, varia quoque probationis tempora, ex diversitate personarum, causarum et conditionum, fuerint instituta. Quibus quandoque triennium in habitu seculari, quandoque biennium fuit statutis canonicis ac sanctione legalis provisionis indultum, et tandem ex prefata regula et beati Gregorii pape prohibitione nichilominus interdictum, ne ante unius anni probationem aliquis in monachum admittatur. Persone huiusmodi apostate non videntur, presertim cum a predecessoribus nostris pluries dicatur esse responsum, novitios ante susceptum religionis habitum in probatione positos, ne ad statum pristinum redire valeant, [non] prohiberi. Licet autem predecessores nostros super hoc diversa sensisse aliquibus videatur, credendum tamen non est, quod inicere voluerint laqueum animabus, que a diversis et variis irruentibus mortis occasionibus sunt potius eruende, cum ex imperitia seu negligentia in hoc simpliciores maxime facile caperentur. Et quod de protestatione facienda scriptum est, consilii esse potius creditur quam precepti, quia etsi videatur alicubi omissa protestatio presumptionem conversionis inducere, ne liceat omittere illam ad seculum postmodum remeare, non tam protestationis omissio quam assumptio habitus religionis, qui datur professis de quo mentio specialiter habetur ibidem, facultatem adimit ad seculum redeundi. Nos autem animarum saluti providere volentes et amovere materiam scandalorum, de consilio fratrum nostrorum presenti decreto statuimus, novitios...,” Reg. Vat. 15, fol. 59v-60r.

of practice has created problems.⁷⁴⁸ Raymond left all of this out however, choosing instead to start the excerpt at the point where the dispositive portion of the text began. To illustrate Raymond's transformation of the original text, a translated portion of the decree is given below, including an abridged version of the prologue and the first part of the excerpt that Raymond used for the *Decretals* (italics indicate *partes decisae*):

It has happened that some enter religious houses without formal declaration, and when they depart within the probationary time-period they are accused of the crime of apostasy upon returning to the world, such that there has been doubt among many about what is proper in this situation. Since the allotted time of probation seems to contain within itself the free choice of selecting one of two paths – either that they remain within the monastery, or that they freely withdraw, even after steadfastness in their vow of stability has been promised – according to what it says in the rule of blessed Benedict a variety of lengths to the time of probation were established, depending upon the people, motivations and situations involved. The continued wearing of the secular habit during the probationary period has sometimes been set for three years, at other times canonical statutes and legal sanctions have determined it to be two years, and lastly, according to the previously mentioned Rule and the prohibition authored by Blessed Pope Gregory, it was forbidden that anyone be received as a monk prior to a probation of one year...[intervening discussion of previous papal efforts to fix the probationary period]....Wishing to provide for the salvation of souls and to remove any opportunity for scandal, on the advice of our brothers we establish through the present decree that novitiates during the period of probation prior to taking up the religious habit – which is customarily given to those making their religious profession or just prior to vows – are allowed for up to one year to return freely to their previous worldly status...

Quia nonnullos loca religiosa absque protestatione intrare contingit, et infra tempus probationis exire, ad seculum redeuntes apostasie criminis arguuntur, super quo fuit hactenus a pluribus dubitatum. Quia cum tempus probationis concessum continere in se videatur liberam optionem eligendi alterum e duobus, vel ut in monasterio tales remaneant, aut abscedant liberi, etiam post promissam

⁷⁴⁸ Whoever authored the decree at the curia was a canonist intimately familiar with the commentary tradition on the rules governing religious life. The phrase “quibus quandoque triennium in habitu seculari, quandoque biennium,” borrows directly from the formulation of Johannes Teutonicus’ gloss on 3Comp 3.24.2, which highlighted the different lengths of the probationary period: “*unius anni*...quandoque statuitur biennium, ut xviii q.iii. *Monasteriis* [C. 19, q. 4, c. 6]; *quandoque triennium, ut xvii, q. ii, Si quis incognitus* [C. 17, q. 2, c. 3]; *quandoque vi menses, ut supra, eodem, c. i, lib. i* [1Comp 1.27.1],” *Apparatus ad 3Comp 3.24.2* (<http://faculty.cua.edu/pennington/>). Johannes’ comments are essentially the same as Tancred’s ordinary gloss, including the *quandoque...quandoque* construction, though Johannes has added an extra citation to the two-year probationary period. This reference is absent from Tancred’s commentary, at least from the copy found in BAV, lat. 1377, p. 181.

de stabilitate perseverantiam, sicut in beati Benedicti regula continetur, varia quoque probationis tempora, ex diversitate personarum, causarum et conditionum, fuerint instituta. Quibus quandoque triennium in habitu seculari, quandoque biennium fuit statutis canonicis ac sanctione legalis provisionis indultum, et tandem ex prefata regula et beati Gregorii pape prohibitione nichilominus interdictum, ne ante unius anni probationem aliquis in monachum admittatur....[intervening discussion of previous papal efforts to fix the probationary period]...Nos autem animarum saluti providere volentes et amovere materiam scandalorum, de consilio fratrum nostrorum presenti decreto statuimus, novitios in probatione positos ante susceptum religionis habitum, qui dari profitentibus consuevit, vel ante professionem emissam, ad priorem statum redire posse libere infra annum...

X 3.31.23, *Statuimus novitios*, is another example of how Raymond's editing actively shaped the language employed to justify and express the law, as previously discussed at the end of the first chapter.⁷⁴⁹ Raymond not only removed mention of the consultative role of the cardinals, but also eliminated the self-referencing of the text as a papal decree (*presenti decreto*). He additionally dispensed with any appeal to authority beyond the text of the decree itself – in this case the Rule of St. Benedict and the determination of Gregory the Great, both of which had fixed the minimum probationary period at one year.⁷⁵⁰ What is left in the *Decretals* is a purely dispositive statement initiated solely on the basis of Gregory's unaided judgement. With regard to the decretal/constitution distinction under discussion, however, it should be noted that Raymond did not transform the text into something it was not. Rather, he preserved its essential character as an unsolicited statute. The *Decretals* in this case served as a practical vehicle for publicizing more broadly this far-reaching exercise of papal authority over religious life. That X 3.31.23 was intended as a change to, or at least a standardization of the laws governing the novitiate in religious orders is apparent from

⁷⁴⁹ Chapter one § 1.11 The Language of Law, pp. 84ff.

⁷⁵⁰ “Tandem ex prefata regula et beati Gregorii pape prohibitione nichilominus interdictum, ne ante unius anni probationem aliquis in monachum admittatur,” Reg. Vat. 15, fol. 60r.

Raymond's treatment of an earlier Alexander III letter. Among other general guidelines for new members, 1Comp 3.1.27, *Ad petitionem vestram*, had set the probationary period for those joining the crusading order of St. John of the Hospital at six months. It was a text cited by jurists prior to Raymond both for its admonition that the abbot or prior should be in charge of admitting new members, and for its precedent of a novitiate of less than a year's duration.⁷⁵¹ X 3.31.23, *Statuimus novitios*, and 1Comp 3.1.27, *Ad petitionem vestram*, were mutually exclusive, and so Raymond suppressed the latter by leaving it out of the *Decretals*.

Unlike the previous c. 23, X 3.30.24, *Ne religiosi*, is taken from an actual decretal, dated in the register to December 23, 1233. The full letter in the register appears under the incipit *Simon pauper monachus*, and was sent to officials charged with conducting supervisory visitations in the Archdiocese of Reims of monasteries exempt from local episcopal oversight.⁷⁵² The original letter dealt with the case of a monk from the Benedictine Abbey of St. Landelin of Crespin in the diocese of Cambrai, whose abbot had taken an intense dislike to him and thrown him out of the house. Even after an archdiocesan official had secured the monk's return to the monastery, the abbot and other members of the house continued to torment him, to the point where he resigned his habit

⁷⁵¹ 1Comp 3.1.27, *Ad petitionem vestram* (JL 13972; KE 70a). In this extract, part of a longer letter confirming various aspects of the Hospitallers' rule (cf., 1Comp 3.28.8; X 1.32.8), Alexander set forth some basic guidelines regulating how members should make their profession to join. At the end of the canon, he advised that they should set a six month probationary period for new members, before they could be confirmed by the prior general: "nullus vestrum alii vobiscum esse volenti crucem tribuat, sed per medium annum integrum vobiscum in probatione permaneat et tunc maiori priori presentetur, ut ab ipso, non ab alio crucem suscipiat." This is one of the citations included by Johannes Teuronicus and Tancred in their previously-mentioned glosses on 3Comp 3.24.2 discussing the varying lengths of the monastic probationary period; see above, note 748. Johannes also adduced 1Comp 3.1.27 in his commentary on 3Comp 3.24.1, *Sicut tenor* (X 3.31.25), to establish that newly professed religious should only receive the habit from the hands of the abbot.

⁷⁵² The original inscription in the register is: "visitatoribus monasterium exemptorum per Remensem provinciam constitutis," Reg. Vat. 17, fol. 120v.

and left religious life altogether, an illegal act in direct contravention of his vows.⁷⁵³

Raymond began his excerpt after the narration of the facts of the case, but made some additional key edits as follows (italics indicates *partes decisae*):

Therefore, lest monks, who having occasion to wander cause the loss of their own salvation, and their blood be charged to the hands of their superiors, recently we have established with the advice of our brothers that the presiding heads...

Ne igitur religiosi vagandi occasionem habentes, salutis proprie detrimentum incurrant, et sanguis eorum de prelatorum manibus requiratur, nuper de fratrum nostrorum consilio statuimus, ut presidentes...

The text of *Ne religiosi* isolated by Raymond in X 3.31.24 turns out, therefore, to have been a recently passed decree tucked inside of a decretal. As there is no evidence from this period for a local Roman council, the excised *nuper de fratrum nostrorum consilio statuimus* must refer to a decision reached by Gregory sitting *in camera* with the cardinals discussing monastic reform measures, the likely genesis – in form though likely not in chronology – for the previous decree, X 3.31.23.⁷⁵⁴ Since the statute dealt in part with monks who had been expelled involuntarily from their monasteries, the Crespin

⁷⁵³ The entire prologue is as follows, and may also be found above (with critical apparatus) in chapter five, Appendix B, no. 138: “Simon pauper monachus monasterii Sancti Landelini de Crispinio, Cameracensis diocesis, sua nobis insinuatione monstravit, quod cum olim abbas suus, animi contra eum rancore concepto, quorundam, ut dicitur, emulorum suorum nequitia faciente, ipsum de monasterio per violentiam eiecisset. Idem tandem, licet per annum et amplius, ad ostium stans in habitu monachali et pulsans cum lacrimis, ab abbate et conventu dicti monasterii veniam postulasset, ipsi tamen clausis pietatis visceribus indebite contra eum, quanquam nulla rationabilis culpa processerit, ipsum recipere recusarunt, salva etiam ordinis disciplina. Cum autem officialis Remensis, decanus Sancti Gaugerici Cameracensis, metropolitani sui auctoritate mandasset, ut qua de causa eiectus fuisset idem monachus, inquireret plenius veritatem, dicti abbas et conventus, inquisitionis non expectato examine, obtulerunt quod parati erant eum recipere, quia nullam iustam in eo causam invenerant, ob quam esset actum taliter contra eum. Quo demum ad monasterium de prefati decani mandato reverso, etsi eum dicti abbas et conventus, ut promiserant, recepissent, ut tamen in effectum transiret depositio cordis sui, ceperunt nequius agere contra eum, tamdiu ipsum, arte custodie mancipatum, diversis penarum cruciatibus, opprobriis et verberibus immaniter affligentes, donec vi metuque coactus, monachatum et ordinem quem professus fuerat, de facto, cum de iure nequiverit, resignavit. Ne igitur religiosi vagandi...,” Reg. Vat. 17, fol. 120v.

⁷⁵⁴ Neither Mansi nor Hefele-Leclercq, the main conciliar historians, include any evidence for a local Roman synod to which one could pin these texts: J. D. Mansi, *Sacrorum conciliorum nova et amplissima collectio*, vol. 23 (Venice, 1779); C.-H. Hefele and H. Leclercq, *Histoire des conciles d’après les documents originaux*, vol. 5, pt. 2 (Paris, 1913).

Abbey case gave Gregory the opportunity to publicize it more broadly. Raymond's transmutation of the letter mirrors that of X 3.31.23, insofar as he took what had originated as an unsolicited decree and included it in the *Decretals*, albeit shorn of the advisory role played by the cardinals and the chronological note (*nuper*) that called attention to the formal act of promulgation. Last of all, and again like X 3.31.23, the *Decretals* served as a vehicle for a broader dissemination of the statute that stood behind X 3.31.24.

The practical question of how Gregory and his near predecessors used the unsolicited decree as a vehicle of legislation is a potentially fascinating one, though it is a topic that must be reserved for a future study. The papal *decretum* as a legislative and diplomatic phenomenon resides somewhere in the interstices between conciliar canons and chancery rescripts, and as a result has not benefited from a dedicated study. In the specific cases of the decrees behind X 3.31.23, *Statuimus novitios*, and X 3.31.24, *Ne religiosi*, the papal chancery seems to have been charged with publicizing them by inserting the text of the statutes into decretals, similar to how the enregistered letter *Simon pauper monachus* was outfitted with *Ne religiosi*. The evidence for this comes from an unedited formulary originating in Gregory's reign, in which both decrees appear inside of model letters.⁷⁵⁵ Set in this light, the function of the *Decretals* as a vehicle for

⁷⁵⁵ The formulary is found on fols. 60r-102v in a privately held manuscript: Paris, Collection Paul Durrieu, no. 5. The contents have been described in: Herde, *Audientia litterarum contradictarum*, vol. 1, pp. 37ff. The text of X 3.31.23 was integrated into no. 21 of the formulary (fol. 64r), a decretal originally sent to a bishop concerning the case of a cleric who had joined one of the Mendicant orders, but before the time of probation was over had left due to his having found their way of life too difficult. The cleric was seeking restitution of the property he had given over to the order upon entering, and Gregory directed the bishop to comply on the basis of the *Statuimus novitios* decree that fills out the rest of the letter. No. 22 (64v), also directed to a bishop, advocates for a monk who was refused reentry to his house by the other brothers after the abbot who had sent him to the curia on business had passed away. The *Ne religiosi* statute then follows, coupled with an admonition that the bishop secure the return of the monk to his house. The text and wording of both *Statuimus novitios* and *Ne religiosi* is that of Raymond, rather than the register's, and their consecutive placement means that the formulary was put together after 1234. It is possible that the

new statutes took shape as part of a larger effort during Gregory's pontificate to legislate outside of the usual conciliar channels.

5.8.2 Gregorian texts related to the religious orders

Raymond's fashioning of the Gregorian material to create X 3.31.23, *Statuimus novitios*, and X 3.31.24, *Ne religiosi*, are just two examples of the rich field of investigation opened up by situating Gregory's decretals and constitutions in their original context. Gregory's legislation covered the entire range of canon law, and future research should take care to analyze both the canonistic and historical context of the material. Given Raymond's status as a Dominican and future General of the Order, not to mention Gregory's own significant involvement as cardinal and pope with established groups as well as the newer Mendicant orders, a good place to start an investigation are those Gregorian capitula relating to monastic affairs. The Gregorian material related to the religious orders is found all over the *Decretals*, and is not limited only to titles devoted specifically to religious life, like the above-discussed *Statuimus ut* and *Ne religiosi* (found in X 3.31, *De regularibus et transeuntibus ad religionem*).

Gregory's pontificate was a crucial one for the development of religious life in Europe. To name but a few of the changes in which Gregory had a hand, his reign saw the transition of the Franciscans and Dominicans from charismatic to institutionalized leadership;⁷⁵⁶ the appearance of many new, smaller orders – particularly for women –

letters precede the *Decretals*, however, and that they were reworked when included in the formulary so that their language reflected the regulations as currently written. The formulary letters introduce both statutes as decrees promulgated *in camera*: no 21: *cum igitur nos de fratrum nostrorum consilio duxerimus statuendum*; no. 22: *nuper autem de fratrum nostrorum consilio duximus statuendum*. My thanks to the Institut de recherche et d'histoire des textes in Paris for making the microfilm of the Durrieu manuscript available for an extended period of time.

⁷⁵⁶ On the transformation of the Franciscan Order, see: Lawrence Landini, *The Causes of the Clericalization of the Franciscan Order* (Chicago, 1968). On the Dominicans in the generation after

along with a sharper delineation between heretical and orthodox religious movements;⁷⁵⁷ and the reform of established orders like Cluny (1233), as well as the Benedictines more generally (1235, 37), which imposed more centralized and transnational structures of governance.⁷⁵⁸ Raymond's editing stands right at the intersection between these developments and Gregory's efforts to give them greater juridical definition. What follows are a few cases where Raymond introduced significant changes to material taken from Gregory's register related to the religious orders and religious life.

5.8.2.1 The Legal construction of the Mendicant Orders: X 5.31.16-7, *Nimis iniqua* and *Nimis prava*

As Gert Melville has observed, the *Decretals* offered what can be considered the first uniform set of regulations of religious life – guidelines that could be applied regardless of order to the internal workings of a monastery as well as its external relations with other ecclesiastical institutions.⁷⁵⁹ The *Decretals* was by no means intended to supersede the rule of any given order, as the insertion of the *salva ordinis disciplina* exception into several of the texts implies, but the collection did seek consistency for certain certain common features of religious life. The statutes analyzed above, *Statuimus*

Dominic, see the relevant sections of the still indispensable general history of the order: William Hinnebusch, *The History of the Dominican Order*, 2 vols. (New York: 1986).

⁷⁵⁷ In general, see: Grundmann, *Religious Movements*, *passim*.

⁷⁵⁸ For Gregory's participation in the Cluny reforms, see: Marcel Pacaut, *L'Ordre de Cluny, 909-1789* (Paris, 1986) pp. 335ff. With regard to the Benedictine reforms, there are actually two recensions in Gregory's register of the statutes outlining the reform measures, one set from 1235, which was later cancelled out with a *va—cat*, and the other from 1237. Auvray has helpfully edited both sets side by side to highlight the differences (Auvray 3045, 3045*bis*, vol. 2, 319-32).

⁷⁵⁹ Gert Melville, "Zum Recht der Religiösen im *Liber Extra*," *ZSRG*, kan. Abt. 118 (2001) pp. 165-90. The recent work of Lars-Arne Dannenberg on the canon law covering religious orders was discovered too late to be fully assimilated into this study: *Recht der Religiösen in der Kanonistik des 12. und 13. Jahrhunderts* (Vita regularis: Ordnungen und Deutungen religiösen Lebens im Mittelalter 39: Berlin, 2008). Dannenberg focuses more on the commentary tradition rather than the actual production of papal legislation, but his work will be particularly valuable in establishing the canonical context in which Raymond operated.

novitios and *Ne religiosi*, are representative in this respect, insofar as they imposed greater uniformity of practice on the novitiate and on how to handle wayward monks – an institution and a problem every order had to deal with.

Without taking away from Melville’s important characterization, it is worth noting, however, that Raymond purposefully carved out a special legal space for the Mendicant Orders, specifically when it came to the protections they should enjoy from local prelates. These protections are laid out in two consecutive texts (X 5.31.16-17, *Nimis prava/Nimis iniqua*).under the title on the excesses of prelates (X 5.31, *De excessibus praelatorum*). Although they have slightly different incipits, with X 5.31.17 substituting *prava* for *iniqua* after the initial *Nimis*, they are in fact from the same letter in the register, which was a bull of protection issued on behalf of the Franciscans and directed by Gregory to the archbishops of Tours, Rouen and the bishop of Paris.⁷⁶⁰ The original bull was a list of approximately two dozen exemptions offered to the Franciscans from the obligations and oversight normally exercised by the diocesan over the local clergy – such as the right to be buried in their own churches, to hear their own confessions, and to provide the cultic paraphernalia for their churches without having to pay the bishop. In addition to dividing the bull into two, Raymond changed the identity of the order receiving the exemption, with X 5.31.16 referring generically to *religiosi viri* and X 5.31.17 identifying both the Dominicans *and* Franciscans as the recipients of the letter’s protections (*fratres Praedicatorum et Minores*).⁷⁶¹ Last of all Raymond altered the

⁷⁶⁰ For the collated text, see chapter five, Appendix B, nos. 178-9. The incipit of the register text is *Nimis iniqua*: Auvray 707; Potthast 8786a/8788; Reg. Vat. 15, fol. 119r. The earliest *Decretals* manuscripts confirm the different incipits for c. 16 and 17, leading one to wonder whether Raymond had deliberately wanted to represent them as having different sources.

⁷⁶¹ See the collation of the letters in the Appendix for the full details of Raymond’s editorial changes. For X 5.31.16, the change in the privilege’s beneficiaries was made by substituting *religiosi viri* for the original

inscription, which had destined the letter to the prelates of France, and instead directed it to the entire prelature of the Church (*universis ecclesiarum praelatis*), perhaps in order to underscore the universal nature of the privilege.

It is not clear why Raymond would have gone to the trouble of specifying the applicability of the exemptions in X 5.31.17, *Nimis prava*, to both Franciscans and Dominicans, while only opting for the more generic term *religiosi viri* in X 5.31.16, *Nimis iniqua*. Early commentators filled in the blank, however, and made clear that X 5.31.16, *Nimis iniqua*, should be interpreted as referring to both Mendicant Orders, just as X 5.31.17, *Nimis prava*, did so explicitly.⁷⁶² Through Raymond's editorial changes to the original bull, therefore, we see an emergent concept of a unified Mendicant status, sharing a common set of privileges and protections within the institutional-legal framework of the Church.

5.8.2.2 Monasteries as site for lay penance: X 5.32.19, *Gaudemus in Domino*

Raymond's editing also focused on the interactions between religious orders and the laity. A good example is X 3.32.29, *Gaudemus in Domino*, found under the title on the conversion of spouses to formal religious life, *De conversione coniugatorum*. *Gaudemus in Domino* puts forth a general recommendation that women who have committed adultery, whose husbands refuse to take them back, should be confined to

reading of *dilecti filii fratres Minores*. For X 5.31.17, Raymond prefaced the second half of the letter with a new sentence modeled on the opening phrases of the original bull, and added therein the broader application to the Dominicans and Franciscans as well as an assurance that their rules had been approved by the Apostolic See: "Cum quidam viri religiosi, utputa fratres Predicatores et Minores, quorum ordinem et regulam sedes apostolica noscitur approbasse, in arctissima paupertate Christo pauperi famulentur..."

⁷⁶² So, for example, Sinebaldus Fieschi: "*cum religiosi*]...Nos credimus hoc speciale privilegium fratrum praedicatorum et minorum, vel aliorum, qui in his specialiter sunt privilegiati, unde bene sequitur contra regulam," *Commentaria*, fol. 517rb.

convents to perform lifelong penance under the supervision of that house's religious women. Here follows the text of the canon as it appears in the *Decretals*:

Gaudemus in Domino (*et infra*:) But those women, who having abandoned the marriage bed have fallen away due to the sinfulness of the flesh – if their husbands, after having been exhorted by you, should still not wish to take them back once they have been turned toward the virtue of a more moral life – you should, for the sake of God, endeavor to place [them] in convents with religious women, so that there they may perform perpetual penance.

Gaudemus in Domino (*et infra*:) Mulieres vero, quae relicto maritali toro lapsu carnis ceciderunt, si mariti earum, a te diligenter commoniti, eas ad frugem melioris vitae conversas noluerint recipere, propter Deum in claustris cum religiosis mulieribus studeas collocare, ut perpetuam poenitentiam ibi agant.

While the legally-enforced cloistering of women convicted of adultery had a long tradition, one that goes back at least as far as Justinian's collections, *Gaudemus in Domino* is still remarkable insofar as it created a general policy for a practice that had previously had only local instantiations.⁷⁶³ What makes the provision more surprising, however, is that Raymond fashioned it from a decretal that originally had a very limited application for a unique set of circumstances.

The source for the X 3.32.19, *Gaudemus in Domino*, which can be found in the register at Auvray 110, was a letter directed by Gregory to Rudolph of Hildesheim, a canon of the local church of St. Moritz.⁷⁶⁴ Rudolf had been the chaplain of the Cardinal-Bishop of Porto and S. Rufina, Conrad of Urach († Sept. 30, 1227), during the latter's legatine mission in Germany (1224-7) to reform the German church and preach a new

⁷⁶³ For a summary of contemporary canonistic thought on adultery, see: Brundage, *Law, Sex and Christian Society*, pp. 385ff. When glossing *Gaudemus in Domino*, the early commentators actually assumed that Gregory was drawing directly from Justinian's *Novellae* (Nov. 134.10), which contained a very similar provision for the confinement of adulteresses. A condensed version of this provision, with the incipit *Sed hodie*, was also inserted as an *authentica* in the medieval version of the Codex after Cod. 9.9.29. See further below for the canonists' attempts to relate *Gaudemus in Domino* with Roman Law.

⁷⁶⁴ Auvray 110; Potthast 9652; Reg. Vat. 14, fol. 17r. For the full collated text, see chapter five, Appendix B, no. 139; and below (with critical notes inserted within the body of the text), note 769.

crusade.⁷⁶⁵ Whether as a direct part of this mission or as a parallel effort, Rudolph had also begun an effort to convert prostitutes and provide for their reintegration into society, either by finding them husbands (and dowries) or through their placement in religious houses.⁷⁶⁶ His efforts were successful enough such that a religious order was eventually founded specifically for these former prostitutes: the Penitential Order of St. Mary Magdelene.⁷⁶⁷ During the first year of his pontificate, Gregory encouraged this particular aspect of Rudolph's preaching with several letters – including the source for X 3.32.19 – that were sent both to Rudolph and to various German bishops exhorting them to support his efforts.⁷⁶⁸

Gregory's overall purpose in writing the letter was to grant Rudolph the ability to hear confessions and impose penance on the women with whom he was involved in his ministry.⁷⁶⁹ Rudolph was empowered to compel pimps to allow their women to meet

⁷⁶⁵ On Conrad's legatine mission, see: Pixton, *Watchmen on the Tower*, pp. 321ff and *passim*. Details on the life of Rudolph, who is occasionally also referred to as Rudolph of Worms, are scant.

⁷⁶⁶ For a general survey of contemporary attitudes towards prostitution, though focused on Southern France, see: Leah Lydia Otis, *Prostitution in Medieval Society: The History of an Urban Institution in Languedoc* (Chicago, 1985) *esp.* ch. 1.

⁷⁶⁷ The most thorough study of the order is: André Simon, *L'Ordre des Pénitentes de Ste-Marie-Madeleine en Allemagne* (Freiburg, 1918). These nuns were also known as the *Weisse Frauen* or the *Reuerinnen*. Following the approval of their rule early in his pontificate, Gregory's continued attention to the order is evident in the series of privileges he issued on its behalf in 1232, which are grouped together in the register at Auvray 898-902, 912.

⁷⁶⁸ Auvray 110-1, 116, 122. The part of the register in which these letters appear was discussed earlier (p. 344) in connection to ongoing registration throughout the year. Gregory's interest was great enough that a simple benefice provision for Rudolph in the Strassbourg cathedral chapter was recorded in the register (Auvray 116, *Etsi omnes*). It was rare for this kind of standard-issue document to be enregistered except for those with powerful connections at the Curia or those involved in missions of particular importance.

⁷⁶⁹ Auv. 110 collated with X 3.32.19 (*italics indicate partes decisae*): "Gaudemus in Domino † *et tue sollicitudinis studium commendamus, quod quasi vocatus a Domino, de mandato venerabilium fratrum nostrorum C. Portuensis episcopi, tunc apostolice sedis legati, et archiepiscopi Maguntini, ad sancte predicationis officium te convertens, et hominum piscator effectus rete plenum piscibus extrasisti. Dum illas miserrimas mulieres, que humani generis hostis suggestione seducte in lutum ceciderunt, fete libidinis involute de lacu miserie, ne ipsas desperationis absorberet, puteus eduxisti. Sicque factum est, quod multis ex ipsis nuptui traditis, alie facte de meretricibus moniales, et de prostibulo fugientes, ad claustum servare voverunt Domino castitatem. Potes inquam et tu letari in Domino, cum et ipse chorus angelicus gaudeat ex hoc facto, sed ut tantum a te gaudium nemo tollat, indefessa vigilare sollicitudine te oportet, ac instare*

with him freely, and he also received the authority to excommunicate any clergy or laymen who profited from the trade, presumably as panderers or by accepting payments to look the other way. Having noted Rudolph's success in assisting former prostitutes, whether through finding them husbands for a proper marriage or through facilitating a formal profession of religious vows and entry into a convent, Gregory then discussed Rudolph's efforts to rehabilitate women who had committed adultery, recommending that those whose husbands refused to take them back should be placed in the previously-mentioned convents Rudolph had established for former prostitutes. It is this section that Raymond chose to include in the *Decretals* at X.3.32.19, but by excluding the larger context of Rudolph's mission, Raymond gave general force to what was a local, *ad hoc* penitential practice.

Raymond also made a small but critical change to the language of the decretal that underscored his intention for a broader application of *Gaudemus in Domino*. Gregory's

viriliter, ne hostis ille antiquus et callidus conversionem mulierum ipsarum penitentiam agentium sue possit calliditatis astutia impedire. Quocirca discretionem tuam monendam duximus et hortandam per apostolica tibi scripta mandantes, et in remissionem peccaminum iniungentes, quia sumens intrepidus auctoritate nostra tam pium predicationis officium ad conversionem mulierum talium prudenter intendas, et conversas salubribus monitis in castitate ac religione conrobore et confortes, ut autem comissum tibi a nobis predicationis officium possis liberius et utilius exercere, auctoritate presentium tibi concedimus potestatem, ut confessiones huiusmodi mulierum audire valeas et eis de commissis iniungere penitentiam salutarem. Illos vero qui mulieres huiusmodi causa lucri tamquam patroni turpidinis manutinent et fovent, quod eas ad audiendum vocem predicationis tue libere venire permittant, et conversionem et salutem earum nullatenus impedire presumant, diligenter moneas et inducis. Mulieres vero, que relicto maritali thoro, lapsu carnis ceciderunt, si mariti earum a te diligenter commoniti, eas ad frugem melioris vite conversas noluerint recipere, propter Deum in claustris ipsis cum religiosis [Reg: "praedictis conversis" instead of "religiosis"] mulieribus studeas collocare, ut perpetuam penitentiam ibi agant. Prius tamen viris ipsis iniungens in remissionem peccaminum, ut easdem uxores suas recipiant, divine intuitu pietatis. Alias autem viros solutos salubribus exhortationibus moneas et inducas, et eis, si expedire videris, in remissionem peccatorum iniungas, ut aliquas ex huiusmodi mulieribus, que castitatem servare nequiverint, dummodo solute fuerint accipiant in uxores. Ad hec quia, sicut audivimus, quidam clerici et laici de pretio scorti lucrum captantes, ex quadam prava consuetudine vel potius corruptela, questum accipere turpitudinis non verentur, licentiam tibi concedimus, ut sub pena excommunicationis inhibeas, ne quisquam decetero exigat vel recipiat huiusmodi turpem questum. Tu igitur tamquam vir prudens ita modeste concessa tibi potestate utaris, quod opera tua, divina favente gratia, Deo et hominibus sint accepta, securus utique quod si viam mandatorum nostrorum cucurreris, eterne felicitatis bravium dante domino comprehendes. Datum Anagnie, VI Idus Iunii, anno primo," Reg. Vat. 14, fol. 17v.

original recommendation was for repentant adulteresses – whose husbands no longer wished to remain with them – to be placed in the convents mentioned earlier in the letter that were set up by Rudolph for reformed prostitutes, where the women would then stay in perpetuity to perform penance. For X 3.32.19, Raymond removed the demonstrative article referring back to the convents in the now deleted portion of the letter. He then replaced the phrase *praedictis conversis* with the generic term *religiosis*. A comparison of the two formulations reveals the effect of the changes:

Reg.: in claustris ipsis cum praedictis conversis mulieribus studeas collocare, ut perpetuam penitentiam ibi agant.

X 3.32.19: in claustris cum religiosis mulieribus studeas collocare, ut perpetuam penitentiam ibi agant.

Reg.: You should endeavor to place [them] in those convents with the aforesaid women who have been converted, so that there they may perform perpetual penance.

X 3.32.19: You should endeavor to place [them] in convents with religious women, so that there they may perform perpetual penance.

Did Raymond and Gregory intend for such women to become full members of a monastic community? Cloistering as a form of penitential discipline appears three other times in the *Decretals*, but exclusively in connection with secular and regular clergy: as punishment for a nun who has entered her order simoniacally, and who must then move to a convent with an *arctior regula* (X 5.3.40; Lat. IV c. 64); for priests who have committed a *magnum scelus* (X 5.37.7); and again for priests who have publicly revealed a confession they have heard (X 5.38.12; Lat. IV c. 21).⁷⁷⁰ These other instances, and the

⁷⁷⁰ There is arguably a fourth occurrence – in the previously-discussed Gregorian statute against heresy, X 5.7.17, *Excommunicamus et anathematizamus* – where the recommendation is for perpetual imprisonment (*in carcere*) for repentant heretics. Later commentators analogized the punishment to those of simoniacs being confined to monasteries, but there is ambiguity as to whether *carcer* was to be taken as a religious or a secular institution.

fact that Raymond placed *Gaudemus in Domino* in the title on the conversion of spouses to religious life rather than in the title on adultery (X 5.16), would seem to suggest that full entry into an order for a repentant adulteress was intended.

Perhaps due to the existence of Roman Law precedents, commentators initially accepted without much comment the main, punitive thrust of *Gaudemus in Domino*, and even suggested that Gregory had lifted the provision directly from a Justinianic *novella* (Nov. 134.10). To the extent that they discussed the fate of the women leading up to their cloistering, it was limited to a concern whether a formal process had been followed to secure a conviction of adultery.⁷⁷¹ Judging by Bernard of Parma's ordinary gloss, the first generation of commentators were instead primarily focused on the burden that the convent would bear by having another mouth to feed. As to the question of whether these women should be considered as full members of the community, Bernard's thinking evolved over the course of his revisions to his commentary. Below is a collation of the main part of the ordinary gloss on X 3.32.19, showing the differences between the earliest version as found in Laurenziana, S. Croce III sin.9, and the final recension, as transmitted by the *Editio Romana*. Later additions appear in *italics*, and further variations found in the Florentine manuscript (*FBL*) are noted in the critical apparatus.

Bernard of Parma, *Glossa ad X 3.32.19, Gaudemus in Domino*, s.v. in claustris

⁷⁷¹ “*Mariti*] Non delinquentes ante accusationem nec post, ut infra, de adulteriis tua fraternitas; infra, de divortiis, ex litteris. Unde ab ipsarum consortiis per iudicia ecclesiastica separati,” Gottfried of Trani, Vienna, ÖNB, cod. vind. pal. 2197, fol. 102vb. The same comment appears in Vincentius Hispanus' gloss commentary (Madrid, BM 30, fol. 198ra).

In claustris: Et ita mulier de adulterio condempnata, vel publice deprehensa, detrudatur in monasterium^a ad agendam perpetuam penitentiam, si eam emendatam vir recipere noluerit, tamen infra^b biennium potest eam recipere si vult. Si vero noluerit^c eam recipere, vel si prius moriatur quam eam recipiat, *tunc tondeatur, et habitum monachalem recipiat* ibi perpetuo moratura, ut expresse habetur in Auth., ut nulli iudic. li. ha. loci. ser. § si quando vero adulterii crimen,^d coll. 9,¹ unde sumpta fuit haec decretalis; et C., de adulter., Auth. sed hodie.² *Et cum rebus suis, ne sit onerosa monasteria, ut in Auth. illa, sed hodie, continetur. Non propter hoc erit monacha, nisi amplius processum fuerit.* Et sic quandoque propter culpam suam aliquis compellitur intrare monasterium,^e 50. dist., si ille;³ et 16. q. 6, de lapsis;⁴ 27. q. 1, si quis rapuerit.⁵ *Et idem videtur dicere decretum 32. q. 1, de benedicto;⁶ et 2. q. 1, in primis, vers. princ.;⁷ et 34. dist., fraternitatis, in fi.⁸ Olim vero alia poena puniebantur adulterae, quia lapidabantur convictae de adulterio secundum legem Mosaicam, 33. q. 5, haec imago;⁹ et C., de adulte., castitati, ubi legitimis poenis subiicitur. *Sed haec poena non imponitur cum non agitur criminaliter, supra, de procurat., tuae.**

^a monasterio: *FBL* ^b intra ^c Si vero vir noluerit: *FBL* ^d si vero quando adulterii crimen: *FBL* ^e ad penitentiam peragendam: *add FBL*

¹ Auth. 127 (Nov.134).10 ² Cod. (Auth. post) 9.9.29 ³ D.50 c.58 ⁴ C.16 q.6 c.4 ⁵ C.27 q.1 c.30 ⁶ C.32 q.1 c.5 ⁷ C.2 q.1 c.7 ⁸ D.34 c.7 ⁹ C.33 q.5 c.13 ¹⁰ Cod. 9.9.9

The bulk of Bernard's gloss uses language pulled from Justinian's *Codex* and *Novellae*, and as indicated above, he assumes that Gregory himself was drawing upon the latter when writing the decretal (*ut expresse habetur in Auth[entico]...unde sumpta fuit haec decretalis*). The material added to the later recensions of the gloss (at what stage is still unclear) includes the caveat that the woman's property should also go to the convent so that she is not a burden to the community; an additional allegation from the Decretum (C.32 q.1 c.5); and a rationale for why an adulteress is no longer stoned according to the Mosaic law.⁷⁷² Bernard also supplemented the first recension with two

⁷⁷² As indicated by the gloss, the second comment merely reported the words found in the *authentica* added to the *Codex*: "et cum rebus suis, ne sit onerosa monasteria, ut in Auth. illa, sed hodie, continetur." The last line of the gloss, which states that adultery is not a criminal penalty, may actually have been corrupted in transmission. The *Correctores* report that "in antiquis codicibus ita: *sed haec poena non imponitur cum agatur civiliter...*" *ER*, vol. 2, col. 1272. Indeed, the allegation given at the end by Bernard from the title on procurators, X 1.38.5, which has a rubric discussing the hearing of adultery as a civil case (*coram iudice saeculari ad poenam legalem*) would seem to support the *Correctores* reading. The reading in Munich,

statements regarding the women's monastic status, which at first glance appear to be in opposition. The first states that she should be tonsured, and receive the monastic habit (*tunc tondeatur, et habitum monachalem recipiat*). The second, however, remarks that she should not be considered a nun, unless there is a further process of making a formal profession (*non propter hoc erit monacha, nisi amplius processum fuerit*). The origin of these additions is almost certainly Bernard's subsequent reading of Sinebaldus Fieschi's commentary, who focused exclusively on the question of these women's monastic status in his brief gloss on X 3.32.19, in which he denied them recognition as nuns.⁷⁷³

One way to resolve Bernard's two statements is to take the tonsuring and assumption of monastic garb as merely an outward sign of a severe penance, but that full regular status depended upon an additional profession of vows – an interpretation put forward by Hostiensis.⁷⁷⁴ Whatever the resolution, however, it is clear that Raymond and Gregory's insertion of this decree touched off a debate among canonists on the role of the monastery as a site of penitential discipline for the laity. Hostiensis would declare that rather than being a strict borrowing from Roman Law, Gregory had in fact created a new

BSB, clm 26301, which contains one of the earliest versions of the final recension of the gloss, only adds to the mystery. Here the reading seems to have been “cum non agatur criminaliter,” but the *non* has been purposefully and thoroughly scraped off (fol. 155va). As indicated by the later commentaries of Hostiensis and Johannees Andreae (see immediately below), the propriety of enforced clostration is rather dependent upon how adultery was classified as an offense, and so future research should seek to determine the precise reading of Bernard's gloss.

⁷⁷³ “*Ad frugem*] Non tamen intraverunt religionem, nec fecerunt votum. *Collocare*] Non tamen erit monachus, sed poenitens, licet non solemniter, 50 dist., si ille; in Auth., ut nulli iudi. § si vero quando ad,” Sinebaldus Fieschi, *Commentaria*, 427va.

⁷⁷⁴ Hostiensis notes that the women are in effect treated as if they are in a probationary period, which will last up to two years in case their husbands change their minds and wish to take them back. He correctly notes, however, that this would not be in conformity with X 3.31.23, the previously discussed *Statuimus novitios*, which standardized the probationary period at one year: “*in claustris*]...in hoc ergo casu, mulier monasterium intrans non profitetur infra biennium, ne marito volenti ipsam reconciliare praeiudicium fiat, et ita patet, quod tempus probationis annale prorogatur, ex causa ut et nota supra, eodem, ex publico [X 3.32.7]; et supra, [tit. prox.], ad apostolicam [X 3.31.16], et c. statuimus [X 3.31.23],” *Lectura*, vol. 3, fol. 121vb.

canonical penalty with *Gaudemus in Domino*, since traditionally enforced clostration was only applied by secular authorities.⁷⁷⁵ This sentiment was echoed by Johannes Andreae a century after the *Decretals* was published, and the expanded list of authorities he ranged on both sides of the issue demonstrates that it was a divisive one.⁷⁷⁶

Did Raymond edit *Gaudemus in Domino* to be a strictly punitive measure, or did the canonists reinterpret what was intended to be a rehabilitative entry into religious life? More research is needed to resolve this question. In considering the issue, it is worth asking whether Raymond's status as a Mendicant did not play some role in his choice of traditional monasteries as sites of penitential discipline. The Mendicant orders were in the process of defining themselves as the true practitioners of the itinerant, evangelical life, whose public identity rested not on a penitential death to the world, that would contribute vicariously to the salvation of the rest of society. Rather, theirs was an active missionary call to others to repent. In this respect one should note another Gregorian text selected by Raymond, X 5.7.14, *Sicut in uno*, which was originally a decretal sent to the Archbishop of Milan prohibiting any further public preaching by the laity.⁷⁷⁷ Issued against the backdrop of the religious ferment in the towns of Lombardy, where Mendicants preached side by side with heretical groups and unaffiliated laymen to an

⁷⁷⁵ “*Ut perpetuam*] ergo ex quo ibi collocatae sunt sententia lata, cum mariti diligenter moniti ipsas reconciliare noluerint, de cetero ipsas inde extrahere non poterunt, **et haec est nova pena...Et est hic unus casus, in quo quis cogitur religionem intrare,**” *ibid.*, fols. 121vb-122ra; emphasis added.

⁷⁷⁶ “*Collocare*] Hunc versum ponderavit Pe[trus Sampson], quia non dicit *intrudere*, dicens quod poena inclusionis in monasteria est legalis, et cum de adulterio criminaliter agitur, et sic loquantur leges, quas allegavit glossa. Quando vero agitur in foro ecclesiastico ad separationem tori non est locus illi poenae, per quod dicit illam non cogendam. Per haec verba idem videtur tenere Abb[as antiquis], qui dicit poenam intrusionis esse secularis, et non ecclesiastici iudicis, remit.[itur?] ad notulam per Innocentiam, de procur., tuae [X 1.38.5]. **Sed Hostien[is] intelligit, quod haec sit nova poena iuris canonici**, scilicet, quod lata sententia divortii, si maritus saepe monitus uxorem sibi reconciliare non vult, collocabitur in monasteria, ubi profitebitur, et manebit perpetuo,” Johannes Andreae, *Novella*, vol. 3, fol. 165ra; emphasis added.

⁷⁷⁷ Auvray 219; Potthast 9675; Reg. Vat. 14, fol. 83r. For the collated text, see chapter five, Appendix B, no. 168.

urban population eager for religious instruction, *Sicut in uno* rendered lay preaching a heresy, and would help ensure the Mendicant orders exclusive title to the *officium praedicationis*.⁷⁷⁸

The above-mentioned capitula, as well as others relating to religious life, form a good starting point for analyzing Raymond's shaping of the sources from Gregory's register. Further investigations should also broaden the focus to include Raymond's other literary output like his penitential handbook, the *Summa de casibus*. Those capitula where Raymond's editing introduced significant changes into the text go well beyond just this class of material, however. From ecclesiastical elections, to judicial procedure, to the administration of the Church, the investigation of Raymond's handling of the Gregorian material will ultimately result in a better understanding of the compilation process behind the *Decretals*.

⁷⁷⁸ On the debate over lay preaching in this period, focusing especially on northern Italy, see: Rolf Zerfass, *Der Streit um die Laienpredigt* (Untersuchungen zur Theologie der Seelsorge 2: Freiburg, 1974).

Chapter 5 Table of illustrations

- Fig. 1:** Reg. Vat. 14, fol. i^v. Index for the first pontifical year.
- Fig. 2:** Reg. Vat. 17, fol. 162r. Table of contents for the eighth pontifical year.
- Fig. 3:** Reg. Vat. 14, fol. 2v. Changeover of Hand A to Hand B at Auvray 11, *Causam offense quam* (letter of rectors of Lombard League).
- Fig. 4:** Reg. Vat. 14, fol. 4v. Changeover of Hand B to Hand A at Auvray 24, *Venerabilis frater noster*.
- Fig. 5:** Reg. Vat. 14, fol. 12v. Changeover of Hand A to Hand C at Auvray 83, *Reverendo domino et* (letter of Henry III).
- Fig. 6:** Reg. Vat. 12, fol. 7r. Hand A in Honorius III's register.
- Fig. 7:** Reg. Vat. 14, fol. 147r. Later development of Hand C; Auvray 380, *Innotuit nobis*.
- Fig. 8:** Reg. Vat. 12, fol. 27v. Hand C in Honorius III's register.
- Fig. 9:** Reg. Vat. 14, fol. 29. Addition of Auvray 147 by Hand B.
- Fig. 10:** Reg. Vat. 14, fol. 37r. Registration from an original; Auvray 149, *Dignum est*.
- Fig. 11:** Reg. Vat. 14, 92r. Registration from an original; Auvray 246, *Destinati ad nos*.
- Fig. 12:** Reg. Vat. 14, 131v. Gap left for later entry of *a-pari* letter recipients; Auvray 324, *Inter alia flagitia*.
- Fig. 13:** Reg. Vat. 14, 65v. Gap left between Auvray 188 and 189.
- Fig. 14:** Reg. Vat. 14, 58r. Unfinished letter at end of first year of register; Auvray 182, *Sanctissimo in Christo* (same as Auvray 135).
- Fig. 15:** Reg. Vat. 14, 24r. Finished version of *Sanctissimo in Christo* at beginning of fifth quire; Auvray 134, (same as Auvray 182).
- Fig. 16:** Reg. Vat. 14, iii^v. Additions to first year index of Auvray 181-2 by Hand E.
- Fig. 17:** Reg. Vat. 14, 59r. Index for year two by Hand E.
- Fig. 18:** Reg. Vat. 14, 22r. Marginal corrections in Auvray 129, *Ecce venit deo*.

lxvij.	Magistro. h. pposito Claromontē sup officio am ministratiōis eccle Clare montē sibi commissio	lxxxv.	Magistro. G. elico. sup officio natalium.
lxviii.	Episcopo Claromontē sup eodem.	lxxxvi.	Abbatē Cantuariē sup cause cogitione eccle de Cathedi. collate p patronos. B. de Seta scripti dñi pp.
lxix.	Vniuersis feudatariis eccle Claromontē sup eodē	lxxxvii.	Procuratori et populo Munitē. comitū cis custodia castroz Carpi. et Montis ba ronzōy ad romanā eccliam pinctum.
lxx.	Archiepiscopo Bituricensi ut dicitur ppositi in diaconū. et et pbrim debeat ordinari.	lxxxviii.	Littere regis Anglie. sup reuocatiōe fratris arch iepiscopi Cantuariē in Angliam.
lxxi.	Littere regi francoz. sup scribitis regalis eodem pre posito amministratori eccle Claromontē.	lxxxix.	Regi Anglie sup eodem.
lxxii.	Regine francoz sup eodem		
lxxiii.	Abbatē senonē sup eodem.		

Fig. 1: Reg. Vat. 14, fol. i^v. Index for the first pontifical year.

clxxij

lxxij.	Archiepiscopo viennensi. ut suscipiat legationem p r.
lxxiii.	Episcopo ut corrigat excessus exceptor.
lxxv.	Baronibus Regni francoz. ut monent Regem ad impletum mactatu apitum.
lxxvii.	Archiepiscopo Senonensi. Sup eod.
lxxviii.	Preposito sancti Danuani. Sup eod.
lxxix.	Archiepiscopo viennensi ap. se. le. ut utatur palleo in legatione sua.
lxxx.	No. mulien. et in. de Sull. Sup constructione castroz eius sancti Danuani.
lxxxii.	Preposito sancti Laurentii hoyen. Sup confirmatione unionis.
lxxxiii.	Episcopo Londoniensi. Sup quatuor pensionibus. dacta.

Fig. 2: Reg. Vat. 17, fol. 162r. Table of contents for the eighth pontifical year.

ne omnis eius regibus potius dicitur. Cuius in ipso filium. Archiepō Nycosien.
 .X. Cum bo. me. h. pp̄ predecessori nro olim insinuauis. qd̄ k̄na in ipso filium. Archiepō Nycosien.
 . Illustris Regina Cypr̄. 2. Mo. tur. v. fili' cōtas t̄rpolitān̄ qd̄ d̄m̄ cū eos dies quarto affinitatis gan
 du ad iuncta se ottingere. ac qd̄ intendm̄ ecclie matrimonialit̄ iūcti erat. t̄ ut sup̄ hoc t̄ dicit scripta
 sua. ex parte ipoz̄ corā te d̄t̄ de p̄positū qd̄ te habebat̄ n̄l̄t̄p̄t̄ r̄e suspectū. t̄ cū arbitros vtrā quib;
 suspiciōis cas̄ p̄barēt̄ quas corā p̄curatores ad sedē ip̄ destinari p̄posuerūt p̄tmodū corā nob̄. cū mlt̄m̄ta
 p̄tulisset. q̄a eos sibi q̄cedē denegabas iudē ad. se. app̄. applicāt. Cum aū dē p̄curatores missi ad app̄llōnē
 huiusmodi p̄sequēdā ritus fore p̄clōsū assererēt. si hoc sub suspicō iudice litigāre p̄uidi dū instānt̄ et
 suppliciter p̄tulānt. nos sic p̄uidere uolētes ut p̄sone tue declinet̄ suspicio. t̄ negotiū nō remaneat
 indiscussū. f. t. p. a. s. m. q. sig. forsan qd̄ illos p̄t̄ app̄llōnē huiusmodi statim reuocās p̄ te ipm̄ in eodē
 negotio ulterī non p̄cedas. cū. ven. f. n. . patriarche Ierl̄imitān̄. t̄. q̄o acconēn̄ dān̄ negotiū dixerim
 omittend. Dat̄ Litrān̄. Non April.
 In. e. m. scriptū est illis uerbis q̄petent̄ mutatis usq; negotiū nō remaneat̄ indiscussū. f. uē p. a. s. m.
 q̄m̄ reuocato in statu debitū q̄q̄ p̄t̄ huiusmodi app̄llōnē qd̄ eos inuenitis at̄p̄tātū in negotio ip̄o uir
 p̄dā p̄decessoris nū mandati tenore app̄. tr. ut p̄ua p̄cedatis. Dat̄ ut supra.
 Tenor litterarū sp̄. Imp̄atoris quas idē t̄n̄sistit bone memorie. h. pp̄ predecessori nro s̄t̄ facto Lombardorum.
 Sāssimo in xp̄o patri d̄no. h. uē ḡtā. 7. c. Fredericus eadē ḡtā Romanorū Imp̄ator semp̄ Aug. 7. c.
 .XJ. Cūm offēnsē quā nup̄ quidam de Ciuitatib; locis t̄ personis de Lombardia. Marchia. t̄ Romanola uidelicet que
 diolanum. Placentia. Verceil. Bononia. Faenza. Alexandria. Taurin. Auda. Pergamū. Braxia. Matua.
 Verona. Padua. Vicenza. Terusium. Crema. . Marchio Montisferati. Comes Gōtfridus de Blandia
 to. t̄ quehbet alie p̄sone de locis p̄dictis cōtra maiestatem n̄m̄ t̄ n̄m̄ Imp̄atoris omiserunt. quia uidebat̄
 impedimentum asserre negotio t̄re s̄c̄. in p̄uidencia t̄ dispositione n̄rā ac fr̄m̄ uirōȳ venerabilium Cardi
 naliū. p̄sumus absolute. N̄rā n̄rā p̄uisione sup̄ hoc plēn̄ intellectu. p̄ renūciā d̄n̄r̄ t̄ ip̄i terre s̄c̄ nego
 tio uniuersis t̄ singlis sup̄radictis. t̄ imata nob̄ clemētia remittimus oēm̄ rancorem. malignitatem. in

Fig. 3: Reg. Vat. 14, fol. 2v. Changeover of Hand A to Hand B at Auvray 11, *Causam offense quam.*

morato. qd inde feceris p tuas nob littas intimare peures. Dat. Lateran. iij. Non. Apl.

Postulatiōem canonicam quā de te Capitlm Lugdunē fecerunt. de spe . . . Archiepō Lugdunē. .
 ciali grā duxim admittendam. te ab ecclie Claramontē regimine absoluto tibi palleum p Ve. f. n. .
 Cabilonē Ep̄m. cui p dil. fil. W. de Salute p̄positum. sc̄i Thome. G. de Cros. . Terricum Lugdu
 nē canōicos illud transmisiū concedentes. Dat. ut sup. Ve. f. Ep̄s Suffraganeis ecclie Lugdunē.
Venerabili fr̄i n̄r. . quonā Claramontē Ep̄ n̄ Archiepō Lugdunē ab ip̄i regimine absoluto p
 stulatiōem canonicā quā Capitlm Lugdunē de ip̄o fecerit de speciali grā duxim admittendam. Idiq. m.
 q. citē tāq. Archiepō ur̄o deuote ac humilit̄ intendentes. debita sibi obediētiam . . . reuerētiam curētis sine
 difficultate q̄lib. exhibē. Nam cum item ī minori. ostitūt officio in cūctis se ut accepim gesserit p dei grām
 circūsp̄tum. sp̄m q. circūsp̄ctiōe se gerere debeat in maiori. Dat. Lateran. vij. Id. Aprile . . .
 . . . sc̄i Andre. . . sc̄i Jacobi priorib; . . . Decan̄ de Norhanton̄ Lincolnē dioc̄e.

Carissimus in x̄po fili n̄r. h. rex Anglor̄ illustris p n̄inos suos exposuit corā nob. qd cū presentano ecclie de
 Lek spectet ad ip̄m. Nic. die Eboraē dioc̄e fili illi q. primo in eadē ecclia ministrat in eā temere se
 intradi. p̄cūas ip̄am detinet occupatā in eidē Regis p̄iudiciū . . . Quocirca. dis. u. p. a. f. m. q.
 mgstra sup̄his diligent̄ uitate si rem inuenitis ita eē d̄m clicū ab eadē ecclia sicut iustū fuit amo
 uentes eam ad presentatiōem ip̄i Regis canōice ordinis. Contradictores p c̄suā eccliaistica ap̄. p̄posi
 ta p̄f̄c̄d̄. Qd si non om̄s r̄. duo ur̄m r̄. Dat. ut sup̄. . . magis . . . fr̄ib; dom̄ milite Tenpli

Venerabilis. f. n. . Exomē Ep̄s crucifignat̄ sua nob̄ affectōe monstrauit.
 qd. cla. me. . . bruer̄ auuncle ei in parib; Anglicis die claudēs extremū ei quatuor milia mācu
 quas penes uos fiduciale deposuerat in ultima uolūtate reliq̄t. Cum ḡ idē Ep̄s zelo fidei x̄ane succen
 sis t̄iam sc̄am p̄sonali uisitas pecuniā ip̄am. p̄ sue ac auunculi aīx remedio in eidē t̄re subsidium
 disponat expende. dis. u. p. a. f. m. q. si est ita ip̄as sibi sine difficultate qualibet assignetis. ita qd fides
 ur̄a defūcti fiducia comitata d̄o . . . reddat̄ accepta. . . nos sinceritatē tuā debeam merito omen
 dare. Dat. Lateran̄ viij. Id. Apl̄is. . . Ep̄o Concordiē. . . Abbi Gosacē. . . Preposito de Caruech Aquile

Venerabilis. f. n. . Curē Ep̄s in m̄a p̄posuit p̄sentia ḡstituit. qd cū ab ip̄a fundatōe gen̄ dioc̄e.
 Curē ecclie ab Imp̄atorib; q fuerūt p tēpora d̄. . . Archiepi Salzbürgen metropolitani loc̄ . . . quor̄dam

Fig. 4: Reg. Vat. 14, fol. 4v. Changeover of Hand B to Hand A at Auvray 23, *Carissimus in Christo*.

Sedis aplice promētia. pūde pensatis cās locorū 7 tēporū. 7 diligent attendes merita tūctorū nūc qui nūm
 ostēderūt in ei deuotōe p̄sistere uberi ḡstent grām exhibē. ut 7 deuotas sibi beneficiis reddat magis obno
 xios. 7 illorū exēplo ad deuotōem suā puocat uideuotos. Hinc est qd̄ do. me. h. pp. pd. n. recōles sincere deu
 otōis affectū quē hacten̄ habuit ad eccliam Romanā ciuitas continē. 7 attendēs obsega que s̄ exhibē potit
 in futurū. Carpi 7 mōtis baronzon castia que fuerūt. cla. me. Comūsse matildis cū curtib; 7 aliis p̄mē
 nis suis uob̄ ip̄r suo custodienda omisit sub certa forma omisit. Nos q̄ ur̄is supplicatōib; inclinati
 similit̄ custodiēda uob̄ omittim̄ castia p̄cedā. ita uidelicet qd̄ ex illis ad mandatū n̄m̄ guerra faceris
 7 pacē. 7 ap̄. se. legatos recipietis honorifice ac honeste tractabitis in eisdē. 7 tractabitis in eisdē. 7 rano
 nabiles 7 antiquas ostētiōnes q̄b; hoīes ip̄or locorū usq; ad hec tēpora sūt ḡniti. seruabitis illabatas. De
 mos aut̄ nō cogētis eos in emutat̄ facē. quos etiā si ad hoc obligastis eisdē ab obligatōe huiusmodi se
 uentis. qd̄ si extra p̄cedā uel aliqd̄ eorū feceritis inueneris t̄retay marcau penā. ad quā uos nob̄ 7 se. ap̄.
 obligastis. In sup̄ Camere n̄r̄ sexaginta libras. p̄ueniē senat̄ in festo beati michael̄ ōsis septēbr̄ soluetis
 census n̄r̄ annuatim. Nulli q̄ 7c. n̄r̄ ḡssionis 7c. Sigs̄ aū 7c. Dat̄ Lateran̄. Id̄. man. Littere Regis

Reuendo dño et patri in x̄po sanctissimo. h. dei grā summo pontifici. Anglie.
 h. eadem grā Rex Anglie. Vñs hybernie dux Normannie. Aquitan̄. 7 Comes Andegauie. Sāt̄ et tam deuotā
 quā debitam tanto dño et patri reuerentiā. Qm̄ venerabil̄ pat̄. S. Cantuarien̄ Archieps̄ cūra nob̄ adū
 sancta uirilt̄ excludere et omnia nob̄ p̄futura p̄o posse suo sataget̄ p̄uare. ei⁹ satisfacē. desideris libent̄
 uolumus et debemus. Intellexim⁹ siquidem qd̄ si fr̄s sui maḡi. S. de quo si multū cogitet̄ nō ē m̄itū q̄p̄
 presentia fr̄uerē. et dies suos in minorū molesta qd̄ multū uellem⁹ duceret et agendis n̄ris libiore. n̄o nichil
 geret. Licet igit̄ dicat̄ fr̄at̄ ei⁹ dicat̄ nos aliquando offendisse. q̄ tam tūc eū ut auduim⁹ nō monit̄ a
 lia temptatō quā humana. pietatis intuitu et confidentiōe obsequi dicti pat̄s q̄m̄qd̄ in nos deliquit⁹ ei
 penitus condonam⁹. Unde nolimus qd̄ occasione n̄ri ei ingressus in Angliam diuti⁹ denegēt̄. Immo p̄o eo
 p̄tūntati n̄r̄e quantū scm̄⁹ affectuosi⁹ supplicam⁹. quatinus affectōem circa nos ip̄ius Archiepi attendentes
 ip̄i fr̄atri suo plenam ueniendi in Angliam et morandi uelut̄ concede. libitatē. t̄ meip̄o ap̄d Westm̄. Sep
 timo die Decemb̄. Anno Regni n̄ri Secundo. Illustri Regi Anglie.

Pro dicto filio maḡi Symone de Langeton̄ Subdiacon̄ n̄r̄o ut sedes aplice et concedere licentiā reuer
 tendi in Angliam et ibi morandi bone memorie. h. pp. p̄d̄ n̄r̄o excellentia tua durex̄ litas in hunc
 modum. Reuerendo dño et patri in x̄po sanctissimo. h. et c. ut sup̄ usq; in fine. Quia ergo dictus
 p̄d̄ n̄r̄ hoc nō potuit facere morte preuentus. nos annuēt̄ tuis supplicatōib; in hac parte. p̄d̄o
 maḡo cum tibi placuit̄ redeundi in Angliam morandiq; ibidem. libim̄ concedim⁹ facultatē. Dat̄
 Lateran̄. xuy. kt. Jm̄i. Anno Primo. Maḡo Symoni de Langeton̄ Subd̄ n̄r̄o.

Fig. 5: Reg. Vat. 14, fol. 12v. Changeover of Hand A to Hand C at Auvray 83, Reverendo domino.

castigandam. Ne igitur istoy iusticia p̄t illi^o cauillola diffugia deperire contingat. dis. v.
 p̄ iterata scripta firmit̄ precipiendo mandauimul. q̄. exceptoē huiusmodi nō obstantē. in eadē
 negotio iuxta formam uob̄ traditam sine mōe dispendio iustōe preuia procedat̄. Qd̄ si
 non om̄l. duo iur̄. 7c. Dat̄ P̄f̄u. iij. kl. Decemb. An̄o Tertio. . Dec̄m. a. agro. f.
 Innotuit nob̄ Sc̄ab̄tes cauere lanco conquerente. de Persona 7 h̄iuḡ Canonici s̄a Petri
 qd̄ cum oluerat lanco Arub̄tey d̄icē ip̄m sup̄ quadam Duacēn̄ Arcebat̄en̄ d̄icē.
 summa pecunie quā falso dicebat eundem ab ip̄o p̄ priuitate usuratam extorsisse oīa
 .. Dec̄m̄ Insulēn̄ et com̄diach̄; fuit̄ auctoritate ap̄lica ouent̄; tandem fuit̄ a partib̄
 de assensu iudicū eor̄dē in duos ita qd̄ quilibet unū elegerit tamquā in arbitrio a
 micabil̄ compromissum. sic tam̄ qd̄ si forsan illi duo ad inuicē discordantē. cām̄ ip̄am
 nō possent equo arbitrio terminare tertū addent̄ iudices nōtati. retenta penes se com
 pellend̄; partes ad obsequandū arbitriū p̄ dōs arbitros p̄mulgandū nichom̄m̄ potesta
 te. Cumq̄ tertius arbiter a iudicib̄; p̄d̄c̄ electus cū eo quē p̄ se cepat̄ par̄ adūsā
 ip̄m absentē nō p̄ contumaciā arbitro penit̄ eisdem ḡempto in quadam summa pe
 cunie p̄f̄ato. h̄. p̄ iniquū arbitriū ḡdempt̄; idē ex eo se sentent̄ a sep̄d̄c̄ iudi
 c̄; iniuste grauari. qd̄ ip̄m ad obseruandē h̄iuḡm̄ arbitriū ḡra iusticiā compellebat
 nām̄ audient̄ appellauit. s̄ ip̄i legitima eē app̄llone ḡrepta / excoic̄atōis tulerūt
 suam̄ in eisdē. Ideoq̄. m̄. q̄. si ē ita. maxie cū legali sit̄ prouisiōe statutū ut cō
 p̄missum de incerta p̄sona in arbitriū assuenda nō teneat. dec̄m̄ excoic̄atōis finem
 denuntiantes penit̄ nullam eē. ac reuocato in statu debitū quicq̄ p̄ app̄llone h̄iuḡ
 tenere inueniet̄ attemptū. in cā ip̄a iuxta prior̄ conueniā lit̄az / ap. re. 12. pre.
 p̄cedat̄. Alioquin p̄ntel. 7c. App̄llantem 7c. Testes aut̄ 7c. Qd̄ si nō om̄l. duo iur̄
 7c. Dat̄ P̄f̄u. iij. kl. Decemb. Pont̄ m̄i Anno Tertio.

Fig. 7: Reg. Vat. 14, fol. 147r. Later development of Hand C; Auvray 380, *Innotuit nobis*.

nichominus restituis nō obstante qđ narratōi eoz aliqua sint adiecta que
tunc fuerūt negligent̄ omīssa . ul' que p̄anos emerferūt in negotio ip̄o ruti
one p̄ena procedat̄ iuxta prior̄ continentiam lit̄az . Dat̄ lateran̄ . k̄. febr̄.

Pont̄ n̄ri Am̄ Septimo . . . Cantor̄ . . . Cancellario . 7 . . . Succentor̄ Parisien̄ .
e parte Conuentus Monialiu 7 Canonicoz Jorven̄ ecclie oelden̄ dioc̄ fuit nob̄
humilit̄ supplicatū . ut cū sollempnit̄ in eoz Capitlo talis constitutō fea fuit
et iurim̄to firmata . qđ uidelicet Abbissa ip̄ius loci quacūq; fore grangeret
bis in quolibet anno Decemul uo 7 alii Balui singlis duob; mensib; semel de
receptis et expensis om̄ib; redderent rationē . presentib; duodecim monialibus
electis a Capitulo 7 Canonial qui uellent hūmōi ratiocinio intereē . consti
tutionē ip̄am faceremus tanquā ip̄i monastio ualde utilem obtinere debitam
firmitatē . Joop̄ . dis . v . p . a . s . m̄ . q̄ . constitutōem ip̄am sicut p̄uide fea ē
faciat̄ inuolabil̄ obseruari . Contradictores siqui fuerūt ul' rebelles . p . cē .
ec . ap . p̄t̄ . compescentes . Qđ si non om̄s r̄ ē . Dat̄ lateran̄ viij . Jo . february .

Pont̄ n̄ri Am̄ Septimo . . . Treceñ Ep̄o . 7 . . . Abbi Clauualien̄ cisterciē ordinis Ling
vmbeta nobis dilecti filii . . . abbis monasterii s̄i lupi Treceñ petitis gr̄m̄etur . qđ cū
toem monastium graui p̄mat̄ onere debitoz dispositionē rerum temporalium
ip̄ius monasterii de sui Conuent̄ assensu p̄ouidentie ur̄e commisit . sp̄ans illo
p̄ ur̄am inoustrā a debitoz onere facilius releuandum . Nos igitur ur̄am spec
tione ip̄ius dignis in domino laudib; commendantes . dis . v . p . a . s . m̄ . q̄ . cō
missam uobis dispositōem taliter gerere studeatis qđ ad utilitatē p̄oueniat
monasterij . et nos diligentia ur̄am possimus merito commendare . Dat̄ lateran̄
viii . Jo . febr̄ . Pont̄ n̄ri Am̄o Septimo . . . Abbi 7 Conuentu Bellecour̄ cisterciē

Fig. 8: Reg. Vat. 12, fol. 27v. Hand C in Honorius III's register.

CXLVII

gramina releuari. auctoritate uobis presentium indulgemus. ut per huiusmodi lites nequaquam
 ueniri possitis. nec etiam teneamini a correctione cessare. nisi serie fieri contineatur. et plena
 de ipso fuerit mentione. Nulli ergo etc. nostre concessiois infringere. Siquis autem etc. Dat.
 Anagnini. v. kt. Sept. anni primo. Nicolao Subd. Capllano et Nepoti nro.

Quia dei bonitati nihil possit officere. illicita conuictio personarum. etiam etiam frequenter in locum dege-
 neret et auerfas. non est quis laudandus de uirtute parentum. uel eorundem uitio culpandus.
 sed suis usque decoratur operibus. et meritis decoratur. quia et honesta gentitura non est
 ulla delinquentium defensio. gentitorum nec nubentium. ples iniqua. et tamen aliq. nuptiarum.
 Quia ergo eis quos uirtutibus dominus decenter adornat. tanquam ab ipso misericordiam consecutus.
 nos eius licet unmeriti. uicarij constituti. libenter dispensationis gratiam impetimus. cum
 ubi largus est dominus dispensator non debeat esse paruus. super tuorum defectu natalium. que
 multipliciter studens redimere. dignum fauore te reddis. et gratia speciali. cum etiam pie
 memorie. h. pp. predecessor nre sciens impedimentum originis tue tecum dixisset misere-
 ricorditer dispensandum. de solita sedis aplice elementia dispensamus. deuo. t. ant. p.
 concedentes ut impedimento non obstante predicto. ad ordines et beneficia. spuales act.
 et honores tanquam legitimus admittaris. recepturus etiam libere dignitatem epalem si
 ad eam te contigerit euocari. Nulli ergo etc. nostre dispensationis et concessiois. etc. Siquis
 autem etc. Dat. Anagnini. ij. kl. July. Anni primo.

Fig. 9: Reg. Vat. 14, fol. 29v. Addition of Auvray 147 by Hand B.

Dignum est et conueniens ut his que . . . Preposito et Capitulo Zagabrien .
 a Regibus, et principibus christiani pro ecclesiarum utilitatibus statuuntur, sedes apostolica que tenet profecti-
 uis ipsarum prospicere fauore exhibeat ut ea maneant inconuulsa diligenti debeat solli-
 tudine providere. Sane dilecti in domino filii insinuamus uobis didicimus quod inclite recordationis
 Reges Regni Hungarie necnon et alii christiani fideles Regni eiusdem, predia, possessiones, et redditus. In
 zagabrien ecclesie pietatis intuitu gaudium, ac dare memorie Henricus Rex Hungarie, quasdam
 indulgentias libertates et immunitates ipsi eiusdem ecclesie sicut apparet per priuilegium Carissimi quoque in
 christo filii nostri, A. Rex Hungarie illustri eiusdem populi quasdam libertates et immunitates indulgentias.
 Qui etiam quod predicti Reges et alii fecerant approbavit. Concessit quedam infra et specialia su-
 per hiis edidit instituta, sicut in eius priuilegio minutis sigillo cereo et bulla aurea continetur.
 Veni. quod fuit in Stephano Zagabrien Episcopo ad augmentacionem in se ipsius ecclesie puenit decimarum
 Curie saluet Zagabrien parrochie, ac decimas de Gerba quibusdam exceptis necnon duce-
 tos pascos et ducentos cubulos uini, ac etiam quandam curiam cum omnibus domibus existe-
 ribus in eadem, pia uobis libertate concessit sicut in eius priuilegio continetur. Nos ergo deuotionis ue-
 strarum precibus inclinati, quod a predictis super hiis est pietatis obtentu factum, auctoritate apostolica confirmari
 et pre. scilicet. per. cor. Ad maiorem autem cautelam tenores priuilegiorum ipsorum de uerbo ad uerbum pre-
 sentibus diuinitus inserendos. Tenores autem priuilegii Henrici Regis Hungarie talis est. In nomine sancte Tri-
 unitatis et indiuidue unitatis. Henricus dei gratia rex. usque in fine priuilegii. **Rea retro in**
 principio huius quaterni. Tenores autem priuilegii Andree Regis Hungarie talis est. In nomine sancte Tri-
 unitatis et indiuidue unitatis. Andreas dei gratia Hungarie, Dalmatie, Chacie, Rame, Seruie, Galie,
 Londonieque Rex in christum. Venerandi Regie stirpis successores tam diligenter tam circumspecta

Fig. 10: Reg. Vat. 14, fol. 37r. Registration from an original; Auvray 149, *Dignum est*.

nri anno secdo. . . . Ep̄o ⁊ Capitulo de Nuemburgh.
Destinati ad nos ex parte nra dilecti
 filii. I. Prepositus et. A. Canonicus eccleie nre exhibitu nob bone memorie Johis pp.
 predecessoris nri priuilegiu in scripto conscriptu. cum ex quadam parte foret pre
 nimia uetustate consumptu. et alterius forme ipsius lita qua moderna peruenit
 supplicat mouari. Nos aut eode priuilegio diligenter inspecto. ne ius eccleie nre
 deperire ualeret. illud de uerbo ad uerbum quatenus colligi potuit. diximus presen
 tib; adnotandum. tribuendo ei auctoritate qua originale noscitur habuisse. ac supplen
 do in quibusdam dictionib; sillabas quasdam et litas que conueniebant eisdem. ⁊ fuisse p
 sumebantur in illis. maxime cum bone memorie JHPPOLITUS. pp. secchi predecessoris nri
 priuilegiu nob ostensum fide fecerit. ad supplementum huiusmodi in quibusdam dictionibus
 faciendum. ppter qd causa discretiois sillabas ipsas et litas mandauimus in hac pagina
 tonis litteris exarari. Johes eps seruus seruoz dei. JHVVardo Ep̄o Citicen eccleie.
 ppetuam in domino salt. Si exaratis priuatisq; psonis aplica suffragia quanto
 elegantius agitur si sancte eccleie eis egesset impuri pmpio ad studium lucri
 pmissum premium apud Quiditorem omnium deum in etheris arcib; pmereri.
 ceterdimus quibusdo loca ad meliore pcedubio per nos sunt statim pducta. Igitur
 quia filius nri xpianissim⁹ Imperator Cumadus feruens hoc desiderio petuit
 sua lita ac nuntius rogans licentia QUA inconlulta aggredi tantum
 opus nolebat uideret uobis ac sibi Alius intuitu. prouidentia. ac moderatione
 erat mllatum ep̄atum Citicen ad honore sanctoz aploz Petri et Pauli conse
 cratum JHburgu locum munitu et ab hoste solito depreddari. cu remorum
 transmutare que locu sanctu heres cuiusdam Richardi Ducis cotidiana desolatōez
 illius et depreatione dicti Imp̄atoris non ferens sancte eccleie Citicen perpetuo iure
 otulit inclinata premissis consuetis nri. H. Magdeburgen Archiepi et heredu
 dicti Richardi uidelicet Hermannis Ganchonis et germani sui Gikardi consilio omniu
 ep̄oz et clicoz nroz licentiam demus ac inde transmutari et in Numburgo extru
 et in perpetuo mansere apostolica auctoritate iudicamus. et eunde locum cum
 omib; pertinentis sancte Citicen eccleie ad honore sanctoz aploz Petri et Pauli conse
 cratum omib; q; reb; ⁊ possessionib; quas modo habere uidetur et que inantea

Fig. 11: Reg. Vat. 14, fol. 92r. Registration from an original; Auvray 246, *Destinati ad nos*.

131v

In. e. m. Sarpai e. Rothomagen Archiep
 et Suffraganeis ei. Senonen Archiep
 Suffraganeis ei. Remen Archiep Suff' ei.
 .. Binnacen Archiep Suff' ei. Burdegalen
 Archiep Suff' ei. Turonen Archiep Suff'
 ei. Ebreduen Archiep Suff' ei.
 .. Compostellan Archiep Suff' ei. Tolitano
 Archiep Suff' ei. Nardonem Archiep et
 Suff' ei.
 .. Cantuarien Archiep Suff' ei. Eboracen
 Archiep Suff' ei.
 .. Coloniem Archiep Suff' ei. Treueren
 Archiep Suff' ei. Bremen Archiep Suff'
 ei. Augment Archiep Suff' ei. Magde
 burgen Archiep Suff' ei. Salzeburgen Ar
 chep Suff' ei. Argentinen Ep.
 .. Ep. Pitauen. Ep. Ratisponen. Ep. Gu
 tinen aplice. se. le. Ep. Sabmen. ap. se. le.

O. Sa Nicol in Carcere tullian. ap. se. le.
 Colocen Archiep Suff' ei. Sargonien
 Archiep Suff' ei. Ep. Pragen. Duci
 arche Aquilegen. Suff' ei. Graden Sic
 arche Suff' ei. Archiep. Potestatu
 Januen. Rectorib; Lombardie. Marchie
 Romanole. Parmen. Alexand. Creno
 nen. Tarantasiem Archiep Suff' ei.
 Aquen Archiep Suff' ei. Suballen Arch
 ep Suff' ei. Hydrosien Archiep Suff' ei.
 G. c. Sa Guci pbro Card aplice. se. le.
 in Lombardia.
 Regi Portugalen. Regi Legionen. Regi Ca
 stelle. Regi Navarre. Regi Aragonu.
 Regi France. Regi Anglie. Regi scotte. Re
 gi Dacie. Regi Vngarie. Regi Bele. Regi
 Boemie. Colomanno Regi. Sic Guale.
 Duci Bavarie. Duci Carnthie. Duci Austrie.
 Ducalle Austrie. Duci Norwagie. Duci Vene
 tozz. Langegruiu.

Fig. 12: Reg. Vat. 14, fol. 131v. Gap for later entry of *a-pari* letter recipients; Auvray 324, *Inter alia flagitia*.

precepta clementi nulla auctoritate persolvere cohibent. Et si non cessauerit ab oppressioe
 pupilloz. orphanoz. & iudicaz. seu nobiliu & alioz hominu Regni uel ei destructioe qd ad
 Romanam ecclesiam spualiter noscitur pertinere: pro quo etiam predecessoz: nris et ecclesie Romanam
 iuramentum fidelitatis exhibuit & homagium prestitit merito poterit formidare se iure feudi
 pruarioru. Hec aut regie celsitudini duxim⁹ intimanda. ut agnosces zelum & feruore quo
 inspirante domino ad terre sce subsidiu aspiramus. ad id total affectu accendaris in ecclesie
 Romanam deuotioe inflexibili pcurando. quia cum meli⁹ sit confidere in dno qua in hoie si num
 qua illuc transiret Impator potens e dñs auxilium alunde sicut & fidem⁹ ministrare.
 Dat Rom apud Sanpetrum viij. Id. April. Pont nri Anm Secdo.

Sinceritate tuam in dno commendam. - Nobili uiro. - Comiti Sabaudie.
 qd semp fuiti aplice sedis deuotus. & in deuotioe humilior
 otinus crescere studuisti. Nunc etiam te deuotioe exultens ex deuoto Romanam ecclesiam matrem
 & unam desideris spualem hre. paratus fidelis et vassallus ipius fieri. & dare tibi Castellum Auillan^e
 qd iuris tui proprietatis existit et illud in feudum recipere ab eadem. Quare nos tuis desiderijs
 annuimus. Oil fil nro. G. t. sancti marci pbro Card ap. se. le. nris dnmul latis inman
 tans. ut ecclesie Romanam noie a te tam iuramentum fidelitatis qua dictum Castellum sine pre

Fig. 13: Reg. Vat. 14, fol. 65v. Gap left between Auvray 188 and 189.

Lm

Cū summo in xpo patri ac domino. G. misericordie diuina summo
 et vniuersali Pontifici. deuoti et humiles ei famuli .p. Decanus totumq; Capitulum ecclesie Pari
 siensi subiectionis deuotiois et totius obedientie plenitudine. Si populo suo seruauiss. om̄s alte
 rum Jeremia sanctificū ab utero qui sic ille planxisse legit sciret plangere captiuitate pp̄ sui
 nō tantū quadrupla s; multiplica si possi plangeret alfabeto. 7 merito iuxta nouitatem
 flagiti nouū excogitaret genus lamenti. Ille plangit transfugatoem pp̄ sui ab hostibus
 factam meritis peccoz inflicta. iste plangit calamitate uo ueteris popli. s; inchoe syon de
 qua dictū ē. Diligit om̄s portas syon / sup om̄ia tabernacula iacob. calamitate plangit n̄ ab
 externis 7 inimicis immissa. s; ab eis quoz eet p̄regē

Fig. 14: Reg. Vat. 14, fol. 58r. Unfinished letter at end of first year of register; Auvray 182, Sanctissimo in Christo (same as Auvray 134).

Littere Capituloy Regni France.

Summo in xpo pat̄ ac dno. G. misericordie diuina summo 7
 vniuersali Pontifici. deuoti et humiles ei famuli .p. Decan' totumq; Capitulum ecclesie Parisiensis sub
 iectiois deuotiois 7 totius obedientie plenitudine. Si pp̄ suo seruauiss. om̄s aliter Jeremia sancti
 ficū ab utero. qui sic ille planxisse legit sciret plangere captiuitate pp̄ sui. Non tantū quadru
 pla s; multiplica si possi plangeret alfabeto. et merito iuxta nouitate flagiti nouū excogi
 taret genus lamenti. Ille plangit transfugatoem pp̄ sui ab hostib; factam meritis peccoz inflic
 tam. Iste plangeret calamitate nō ueteris pp̄ s; inchoe syon de qua dnm ē. Diligit om̄s portas syon
 sup om̄ia tabernacula iacob. calamitate plangit nō ab externis 7 inimicis immissam. s; ab
 eis quoz eet p̄regere nō opprimere p̄uicia. Calamitate plangit que nō meritis reddit. s; pot
 ex insolentia dominatoris infert eoz quib; dicit. prudentes nō coacte s; spontanee. neq; ut do
 minantes in clero s; forma s̄i gregis ex animo. Veritas quide ita se h̄t. qd̄ a domino legato toti
 legatoris sue oratio Buiroen quareto Capituloy ibide unum p̄ albigen negotio ouenerūt.

Fig. 15: Reg. Vat. 14, fol. 24r. Finished version of *Sanctissimo in Christo* at beginning of fifth quire; Auvray 134, *Sanctissimo in Christo* (same as Auvray 135).

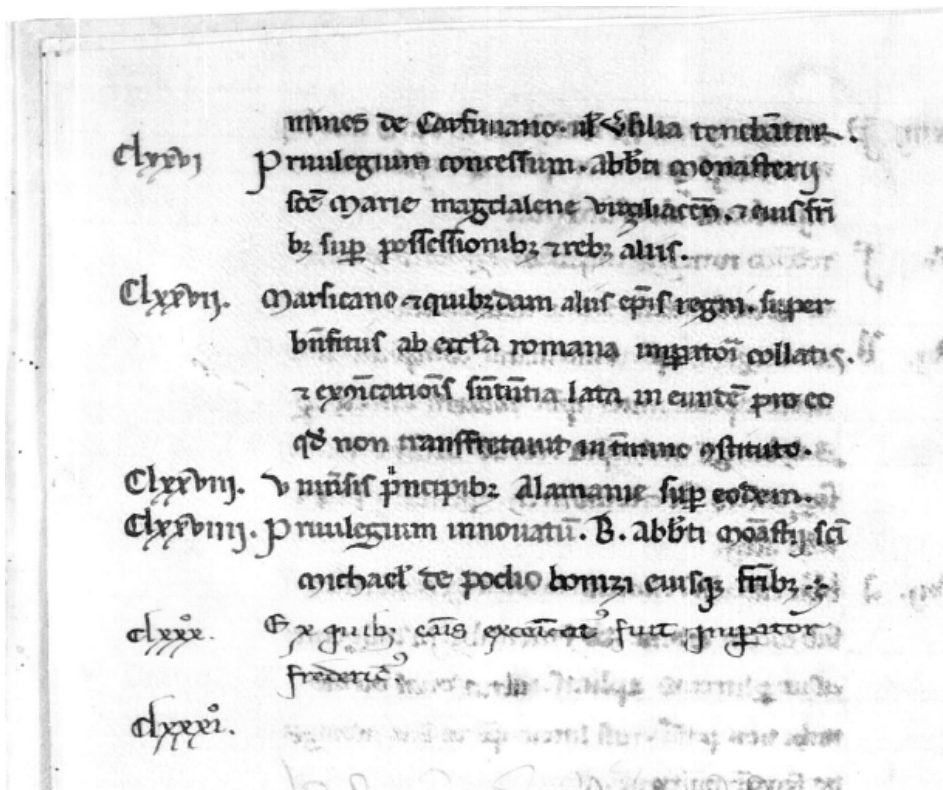


Fig. 16: Reg. Vat. 14, fol. iii^v. Additions to first year index of Auvray 181-2 by Hand E.

	Line		
j.	Incipit liber ecclesie Registorum domini Gregory pp. viii. anno ei scd. . archi epo viennens. et abbi de fertate cisterci en ord. babilonen dioc. sup electioe bi suntan archiepi	xvi.	Truacten ep; ut possit dispensare cu. m. clencis.
ij.	capitulo cumant sup electioe tra in eade ecclia.	xvij.	Puor et conuent. dunemen sup dispen satioe tra eis.
iiij.	puor ord predicatorum de ungaria sup ma tendis fr; ad cumanos.	xviii.	Dit. fil. v. abbi monast. scie marie de cralla cig; fr; ta p. q; tra. re. iii. pro. mppm.
v.	B. nato huius in xpo filii nri. Illustis reg. Sengar. sup eodem.	xix.	Abbi et con. monast. crallen sup innova tioe puit coroli.
vj.	Stragonien archiepo apo. sed. le. sup eode.	xx.	Magis in theologia parisi regentib; sup noutatib; quoda uboy q; pl; dit nature q; gte dimittendis.
vii.	M. nri. non matie sup excoicatioe lata i	xxi.	archiepis et epis. al'ny puoris; decanis archid et aliis ecclie prelati p regnum.

Fig. 17: Reg. Vat. 14, fol. 59r. Index for year two by Hand E

ubi dicitur inter. et ad iudicia exigit umbram mortis. monachos. et clericos recitari euntes
 corrigentes tam in capite qua in membris. Cum aut prelati ecclesiarum sepe propter occupaciones multiplices
 seu occasione alias non sufficiant ministrare populo verbo dei et statutu ob hoc fuit in generali concilio
 ut ad se predicacionis officiu salubriter exequendu iuri assumant idonei potentes in ope ac sermone.
 qui plebes sollicitè uisitant. eas uerbo edificent et exemplo. nos ad exequendum plenus officii iuri de
 bitum. dilectos filios fratres uicinis predicatores ex quoz approbata religioe magnus in
 ecclesia dei fructus tam puenisse dimoscat destinam. qui iuri cooperatores et coadiutores in quib; expedit
 existentes tam uerbo predicatores qua uisitatoris officio uob suffragiu uenient impendant. ut ita et
 ipoz sollicitudine marty jectin et Templum domini reparent. Si uo quiscumq difficultatis emerterit.

aliquos de frater

curabim desinar

Fig. 18: Reg. Vat. 14, fol. 22r. Marginal corrections in Auvray 129, *Ecce venit deus*.

Chapter 5 Appendix A: Numerical Breakdown of Gregory's Correspondence

Table 5.9. Registered letters for the first eight pontifical years contained in Reg. Vat. 14-17⁷⁷⁹

Registered											
	1227	1228	1229	1230	1231	Monthly Average through 1231	1232	1233	1234	1235	Monthly Average 1232-34/5
Jan.	NA	6	6	13	17	10.5	11	54	74	48	46.8
Feb.	NA	1	10	5	18	8.5	16	66	65	16	40.8
Mar.	10	9	13	5	27	13.5	9	55	19	22	26.3
Apr.	59	5	6	13	56	27.8	7	66	51	NA	41.3
May.	36	2	12	18	25	18.6	4	73	40	NA	39.0
Jun.	19	14	14	8	9	12.8	18	71	46	NA	45.0
Jul.	17	14	9	7	22	13.8	39	38	43	NA	40.0
Aug.	6	1	7	5	11	6	12	27	34	NA	24.3
Sep.	5	2	13	13	19	10.4	19	11	23	NA	17.7
Oct.	2	14	12	14	9	10.2	58	58	62	NA	59.3
Nov.	6	10	17	2	8	8.6	25	15	51	NA	30.3
Dec.	7	8	5	9	7	7.2	46	67	39	NA	50.7
Undated			1	1			1	2	2		
Total per calendar year	167	86	125	113	228	143.8⁷⁸⁰	265	603	549	86	472.3⁷⁸¹
Total number of Gregory's letters:				2308							

⁷⁷⁹ Non-papal and *a-pari* letters have not been counted, thus explaining the difference between the figure here of 2308, and the 2481 letters assigned an Auvray number for Reg. Vat. 14-17.

⁷⁸⁰ This average counts 1227 as one year, even though Gregory's pontificate began near the end of March. The lack of pro-rating is counter-balanced by the large number of decretals sent out in the first few months of his reign.

⁷⁸¹ This average does not include any of 1235

Table 5.10. Unregistered letters for the first eight pontifical years⁷⁸²

Unregistered									
	1227	1228	1229	1230	1231	1232	1233	1234	1235
Jan.	NA	23	18	16	14	17	17	17	17
Feb.	NA	50	22	7	8	18	19	22	19
Mar.	6	21	23	14	17	31	20	14	16
Apr.	12	29	27	36	31	16	23	22	NA
May.	46	22	23	30	20	14	32	11	NA
Jun.	38	32	12	16	10	28	16	15	NA
Jul.	36	28	12	12	20	22	11	17	NA
Aug.	43	13	12	8	8	5	5	15	NA
Sep.	26	8	3	19	16	14	16	15	NA
Oct.	12	6	9	7	13	9	18	24	NA
Nov.	28	5	6	1	9	14	11	13	NA
Dec.	40	27	11	9	7	17	14	28	NA
Total per year	287	264	178	175	173	205	202	213	52
Total number of letters:	1749								

Sources:

- Battelli, Giulio. *Schedario Baumgarten*. Vol. 1: Innocenzo III-Innocenzo IV. Vatican City, 1965.
- Hilger, Wolfgang. *Verzeichnis der originale spätmittelalterlicher Papsturkunden in Österreich, 1198-1304*. Fontes Rerum Austriacarum, 2 Abteilung: Diplomataria et Acta, vol. 83. Vienna, 1991.
- Largiadèr, Anton. *Die Papsturkunden der Schweiz von Innocenz III bis Martin V ohne Zürich*. Vol. 1: *Von Innocenz III bis Benedickt XI*. Zurich, 1968.
- Idem. *Die Papsturkunden des Staatsarchivs Zürich von Innocenz III bis Martin V*. Zurich, 1963.
- Potthast, Augustus. *Regesta Pontificum Romanorum*. 2 vols. Berlin, 1874; repr. Graz, 1957.
- Ripa, Eliseo Sáinz. *La documentación pontificia de Gregorio IX, 1227-1241*. Vol. 1. Monumenta Hispaniae Vaticanae. Sección: Registros. Vol. 11. Rome, 2001.
- Sayers, Jane. *Original Papal documents in England and Wales from the accession of Pope Innocent III to the death of Pope Benedict XI, 1198-1304*. Oxford, 1999.
- Zarotti, Giacomo. *I documenti pontifici dell'Archivio Capitolare di Parma, 1141-1417*. Milan, 1960.
- Zöllner, Walter. *Die jüngeren Papsturkunden des Staatsarchivs Magdeburg*. Studien zur katholischen Bistums- und Klostergeschichte: vol. 23. Series eds., Franz Sonntag and Franz Schrader. Leipzig, 1982.
- Idem. *Die jüngeren Papsturkunden des Thüringischen Hauptstaatsarchivs Weimar*. Studien zur katholischen Bistums- und Klostergeschichte: vol. 40. Series ed., Franz Schrader. Leipzig, 1996.

⁷⁸² The tabulation has been made from the unique entries provided by each source that do not appear in the register, e.g., a decretal listed in both Potthast and Baumgarten is only counted once.

Index Actorum Romanorum Pontificum

Vols. 1-3/1: Barbiche, Bernard. *Les Actes pontificaux originaux des Archives nationales de Paris*. Vol. 1: 1198-1261. Vatican City, 1975.

Vol. 4: Schwarz, Brigide. *Die originale von Papsturkunden in Niedersachsen, 1199-1417*. Vatican City, 1988.

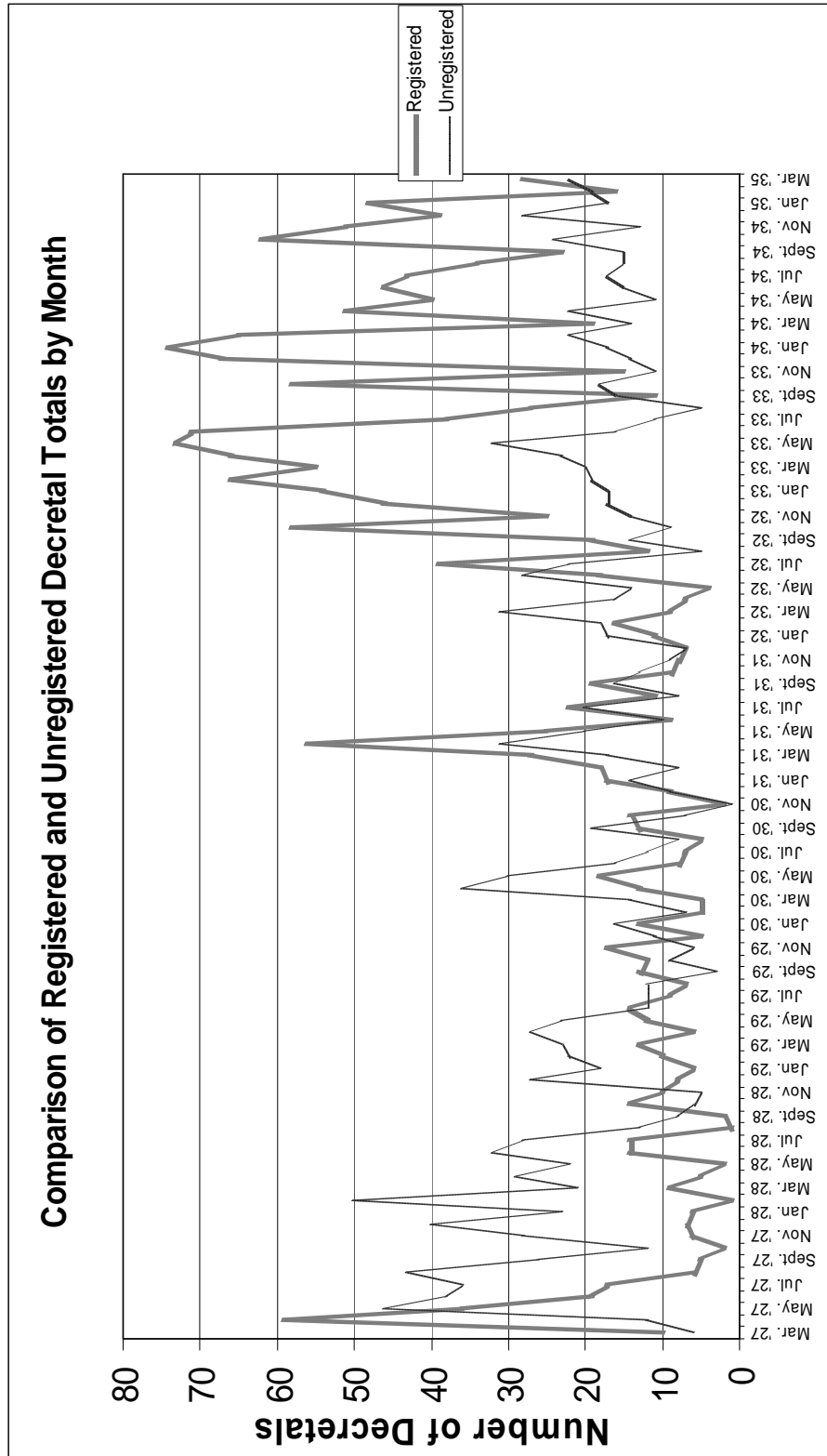
Vol. 6/1: Schmidt, Tilmann. *Die Originale der Papsturkunden in Baden-Württemberg, 1198-1417*. Vol. 1: 1198-1341. Vatican City, 1993.

Vol. 7: Idem. *Die Originale der Papsturkunden in Norddeutschland (Bremen, Hamburg, Mecklenburg-Vorpommern, Schleswig-Holstein), 1199-1415*. Vatican City, 2003.

Table 5.11. Comparison of average number of registered and unregistered letters issued each per month

	1227	1228	1229	1230	1231	1232	1233	1234	1235
Registered	18	7	10	9	19	22	50	46	33
Unregistered	31	22	15	15	14	17	17	18	19

Table 5.12. Graph comparing number of registered and unregistered decretals per month for the first eight years of Gregory's pontificate



Chapter 5 Appendix B: Collation of the registers of Gregory IX with the Gregorian texts of the Decretals

Abbreviations

<i>Auvray</i> =	Lucien Auvray, <i>Les registres de Grégoire IX</i> , vol. 1: Années I à VIII, 1227-35 (Paris, 1890-6).
<i>ER</i> =	<i>Decretales D. Gregorii papae IX, suae integritati una cum glossis restitutae</i> (Rome, 1582).
<i>Fried.</i> =	Emil Friedberg, <i>Decretales Gregorii Noni</i> , in: <i>Corpus Iuris Canonici</i> , vol. 2 (Leipzig, 1959; repr. Graz, 1959).
<i>Pressutti</i> =	Pietro Pressutti, <i>Regesta Honorii papae III</i> , ed. Pietro Pressutti, 2 vols. (Rome: 1888-95).
<i>Reg.</i> =	Rome, ASV, Reg. Vat. 13-17.

Collation

1. X 1.2.13

Auvray 670; Potthast 9526
 Reg. 15 (103v): an. 5, no. 85
Rieti: June 16th, 1231

[*Rubr.*: Constitutio futura respicit, et non preterita, nisi in ea de preteritis caveatur.]

Gregorius IX. archipresbytero S. Marie maioris de Urbe.¹

[X]
 Quoniam constitutio apostolice sedis omnes adstringit et nihil debet obscurum vel ambiguum continere, declaramus, constitutionem, quam nuper super preferendis in perceptione portionis maioribus et consuetis servitiis, a minoribus exhibendis, edidimus,

[Reg.]
Licet verba constitutionis quam pro clero Urbis nuper edidimus satis apertum² habeant intellectum, ut tamen ad omnem dubitationis scrupulum removendum consultationi vestre breviter satisfiat, tenore presentium declaramus constitutionem ipsam

non ad preterita, sed ad futura tantum extendi, cum leges et constitutiones futuris certum sit dare formam negotiis, non ad preterita facta³ trahi,⁴ nisi nominatim in eis *etiam* de preteritis caveatur. *Et qui maior est ordine, etiam si postea sit receptus, in portione percipienda esse volumus potioem, ac minores facere servitia consueta. Per hanc autem responsionem nostram aliis questionibus vestris plene credimus satisfactum. Datum Reate, XVI Kalendas Iulii, pontificatus nostri anno quinto.*

¹ Sancte Marie Maioris et Sanctorum Cyri et Iohannis de Urbe archipresbyteris: *Reg.*

² aptum: *Auvray* ³ facta preterita: *Reg.* ⁴ trahi] revocari: *Reg.*

2. X 1.3.32

Reg. 14 (80v): an. 2, no. 30

Auvray 213; Potthast 9527

Perugia: July 19th, 1228

[*Rubr.*: Receptus per litteras apostolicas, licet prebendam exspectet, per alias litteras hoc supprimentes in alia ecclesia recipi non debet. Hoc dicit inherendo verbis littere.]

Gregorius IX. archiepiscopo Mediolanensi.¹

In nostra proposuisti presentia *constitutus*, quod nonnulli clerici *tam civitatis quam diocesis Mediolanensis, benignitatis nostre improbi abusers*, a sede apostolica plures litteras, non tamen alias de aliis mentionem facientes,² impetrant fraudulenter, ut in pluribus ecclesiis admittantur, sicque aliquando in aliis recepti, licet nondum in eis ecclesiasticum beneficium sint³ assecuti, alias ecclesias super receptione sua nichilominus impetunt et molestant. † *Ne igitur patrocinetur fraus propria fraudulentis, vel aliis sit dampnosa, fraternitati tue per apostolica scripta mandamus*, quatinus eos clericos⁴ ecclesiis, in quibus recepti sunt, faciens esse contentos, non permittas alias ab eis occasione litterarum *nostrarum* huiusmodi⁵ *temere* molestari, nisi de receptione forte⁶ sua expressam fecerint mentionem. *Molestatores per censuram ecclesiasticam, appellatione postposita, compescendo. Datum Perusii, XIII Kalendas Augusti, pontificatus nostri anno secundo.*

¹ Mediolanensi archiepiscopo: *Reg.* ² facientes: *deest Reg.* ³ sint: *deest Reg.* ⁴ clericos: *deest Reg.* ⁵ huiusmodi: *deest Reg.* ⁶ nisi forte de receptione: *Reg.*

3. X 1.3.33

Auvray 397; Potthast 9528

Reg. 14 (152v-153r): an. 3, no. 111

Perugia: January 31st, 1230

[*Rubr.*: Non valet rescriptum, quod procurator revocatus et de hoc certificatus extra iudicium impetravit; secus tamen, si in iudicio, dummodo revocatio ad notitiam adversarii vel iudicis non pervenerit. Hoc dicit secundum lecturam magis communem.]

Idem episcopo Silvanectensi, et abbati Caroliloci.¹

Ex parte *dilectorum filiorum* decani et capituli Laudunensis fuit propositum² *coram nobis*, quod cum ipsi auctoritate apostolice indulgentie, *qua³ in malefactores suos, qui communia eorum bona pervadunt, censuram possint ecclesiasticam exercere*, in nobilem virum I. *dominum Cociaci* excommunicationis, *et in terram eius interdicti* sententiam⁴ protulissent, procuratoribus *tandem* partium propter hoc ad sedem apostolicam accedentibus, et lite *ibidem* super diversis articulis contestata, nos causam *super hoc* vobis commisimus terminandam, hoc⁵ *adiecto litteris nostris*, ut non obstarent littere preter assensum partium *a sede apostolice* impetrate. *Coram quibus* dictus autem⁶ nobilis citatus proposuit, quod per illas litteras procedendum non erat, ex eo quod V.,⁷ qui

easdem litteras impetraverat, falsus extiterat procurator, cum ipse ante impetrationem litterarum ipsarum, propter suspicionem quam contra eundem conceperat, mandatum sibi traditum revocasset. Eis igitur⁸ proponentibus ex adverso, quod ad nos vel ad ipsos huiusmodi revocatio non pervenit, vos *auditis hinc inde propositis*, quod deberetis per litteras ipsas procedere, per quamdam interlocutoriam protulistis. †⁹ Petente itaque procuratore ipsorum, *inter alia*, ut inspiceretis predictam indulgentiam, *prout vobis datum fuerat in mandatis*, procurator ipsius nobilis ex adverso respondit, quod non erat per iamdictas litteras procedendum, exhibens alias quasdam¹⁰ posterius impetratas, inter alia continentes, ut si de partium voluntate procederet, causam terminaretis eandem. Alioquin ipsam sufficienter instructam remitteretis ad sedis apostolice¹¹ examen cum indulgentia memorata. Quas litteras ipsi ex eo non valere dicebant, quia per eundem V.¹² et post revocationem mandati fuerant impetratae. *Sed nondum vobis per quas earum deberetis procedere declarantibus, iidem ad apostolice sedis remedium recurrere sunt coacti*. Quia vero, iuxta generalis statuta concilii, apostolice littere,¹³ quas sine speciali mandato domini¹⁴ quis impetrat, valere non debent, nisi sit de illis personis, a quibus non est exigendum de iure mandatum, *discretioni vestre per apostolica scripta mandamus*, quatinus si revocatio mandati ad procuratorem pervenit,¹⁵ cum minus valere debeant littere, que impetrantur ab illo a¹⁶ quo mandatum dominus revocavit, in negotio iuxta priorum continentiam litterarum, non obstantibus posterioribus, *sublato¹⁷ appellationis obstaculo, ratione previa*, procedatis. *Testes autem etc. Quod si non omnes, tu frater episcope, cum eorum altero etc. Datum Persusii, II Kalendas Februarii,¹⁸ pontificatus nostri anno tertio.*

¹ Episcopo Silvanectensi, abbati Compendiensi, Suessionensis diocesis, et magistro I archidiacono Parisiensi: Reg. ² fuit proposuit: Reg. ³ quam: Reg. ⁴ sententias: Reg. ⁵ hoc: *deest* Reg. ⁶ autem: *deest* Reg. ⁷ W.: Reg. ⁸ ergo: Reg. ⁹ *nulla verba Registri in hoc loco omissa sunt* ¹⁰ quasdam alias: Reg. ¹¹ apostolice sedis: Reg. ¹² W.: Reg. ¹³ apostolice sedis littere: *Auvray* ¹⁴ domini mandato: Reg. ¹⁵ si...pervenit] si est ita: Reg. ¹⁶ a: *add. Fried.* ¹⁷ submoto: *Auvray* ¹⁸ XII Kal. Febr.: *Auvray*

4. X 1.3.34

Auvray 434; Potthast 9529

Reg. 15 (1v): an. 4, no.3

Lateran: March 25th, 1230

[*Rubr*: Rescriptum, impetratum contra hominem alicuius diocesis, non extenditur ad hominem eiusdem nominis alterius diocesis.]

Idem Decano et Magistro G. Canonico Leodiensi.¹

Significante *dilecto filio* V.,² *burgensi Dionensi*, nos noveritis accepisse, quod cum R.³ *clericus Remensis*, contra V.,⁴ Remensis diocesis, super quibusdam pannis et aliis⁵ ad iudices⁶ a nobis litteras impetrasset, *ac iamdictus R. eundem Waltherum, auctoritate litterarum ipsarum, coram eisdem iudicibus traxisset in causam*, idem V.⁷ excipiendo proposuit, quod cum idem non de Remensi, sed de Leodiensi diocesi existeret, *prout erat probare paratus*, per huiusmodi litteras *contra prefatum W., qui de diocesi Remensi existit, obtentas*, cum de diocesi Leodiensi non facerent aliquam mentionem, conveniri de

iure non⁸ poterat, nec debebat. Et quia *prefati iudices* exceptionem huiusmodi admittere *contra iustitiam* denegarunt, *idem ex hoc sentiens indebite se gravari*, nostram audientiam appellavit. Ideoque, *discretioni vestre per apostolica scripta* mandamus, quatinus si est ita, revocetis⁹ in irritum¹⁰ etc.¹¹ *quicquid inveneritis post appellationem huiusmodi temere attemptatum, cause supersedeatis eidem. Alioquin partes ad priorum iudicum remittatis examen. Appellantem etc. Testes etc. Datum Laterani, VIII Kalendas Aprilis, pontificatus nostri anno quarto.*

¹ Decano et magistro G canonico Dionensibus, Leodiensis diocesis: Reg. ² Waltero: Reg. ³ Rigaldus: Reg. ⁴ W.: Reg. ⁵ et aliis: *deest* Reg. ⁶ iudices] abbatem Sancti Nicasii et suos coniudices: Reg. ⁷ W.: Reg. ⁸ nec: Reg. ⁹ revocato: Reg., *Fried.* ¹⁰ irritum] statum debitum: Reg. ¹¹ etc.: *deest* Reg.

5. X 1.3.35

Auvray 591; Potthast 9530

Reg. 15 (67v): an. 5, no. 7

Lateran: April 3rd, 1231

[*Rubr: Per rescriptum, impetratum contra homines diocesis, non possunt conveniri homines civitatis.*]

Idem Priori Sancti Laudinensis, et Succentori Rothomagensi.¹

Rodulphus² *de Hurme* clericus, rector ecclesie Sancti Christophori, de civitate Sagiensi,³ sua nobis insinuatione monstravit, quod cum magister R.⁴ *Cornutus, canonicus Suessionensis*, eum per quasdam litteras contra *venerabilem fratrem nostrum* episcopum Sagiensem et quosdam alios Sagiensis⁵ diocesis super redditibus et rebus aliis impetratas a nobis, coram iudicibus⁶ super eadem ecclesia, per generalem clausulam "quidam alii" convenisset, idem rector proposuit excipiendo,⁷ quod cum esset de civitate⁸ Sagiensi, et sub eadem clausula nullus de civitate ipsa⁹ intelligitur¹⁰ inclusus, conveniri non poterat per eandem, *nec tenebatur super eadem ecclesia respondere per litteras memoratas, que super minoribus et levioribus tantum fuerant impetrate.* Et quia dicti iudices exceptionem¹¹ huiusmodi *contra iustitiam* recusarunt admittere, *sentiens indebite se gravari*, nostram audientiam appellavit. Ideoque *discretioni vestre per apostolica scripta* mandamus, quatinus si est ita, revocetis¹² in irritum¹³ etc., *usque attemptatum.*¹⁴ *Alioquin partes ad priorum iudicum remittatis examen. Appellantem etc. Testes etc. Quod si non omnes etc. Datum Laterani, III Nonas Aprilis, pontificatus nostri anno quinto.*

¹ Priori Sancti Laudi Succentori, et Stephani de Boholon canonico Rothomagensibus: Reg. ² Rad.: Reg. ³ de civitati Sagiensi: *deest* Reg. ⁴ Robertus: Reg. ⁵ Sagiensis] Lexoviensis et Carnotensis: Reg. ⁶ iudicibus] Priore de Camborciaco eiusque collegis: Reg. ⁷ excipiendo proposuit: Reg. ⁸ diocesi: Reg. ⁹ civitate ipsa] ipsa diocesi: Reg. ¹⁰ intelligeretur: Reg. ¹¹ exceptiones: Reg. ¹² revocato: *Auvray* ¹³ irritum] statum debitum: Reg. ¹⁴ usque attemptatum: *deest* *Auvray*

6. X 1.3.36

Auvray 626; Potthast 9531

Reg. 15 (83r): an. 5, no. 42

Lateran: April 22nd, 1231[*Rubr: Si conveniendus per clausulam moriatur re integra, successor conveniri non potest.*]Idem Abbati Sancti Iacobi.¹

Significavit nobis *nobilis mulier* comitissa Namutensis,² quod cum mortuo *quondam Namucensi* comite, fratre suo, ipsa in eius successerit comitatu, G. et B.³ *et quidam alii socii eorum, mercatores Senenses*, per quasdam litteras apostolicas contra *venerabilem fratrem nostrum* Tullensem episcopum et quosdam alios clericos et laicos impetratas, eam coram iudicibus,⁴ ad quos obtente fuerant,⁵ super quadam summa pecunie, quam eidem fratri suo se mutuasse dicebant, per illam generalem clausulam "quidam alii," quia in predicto comitatu successerat, convenerunt. Excipiente itaque procuratore suo, quod cum adhuc *dictus* frater eiusdem mulieris viveret, quando eedem littere impetratae fuerunt, nec per ipsas, dum viveret, fuerat ad iudicium evocatus, earum auctoritate non poterat *per illam generalem clausulam* conveniri, et⁶ quia iudices⁷ *talem* exceptionem non admittebant⁸ ipsius, nostram audientiam appellavit. † *Cumque procuratorem suum tempore legitimo ad appellationem miserit prosequendam apud sedem apostolicam, debitum carnis solvit. Unde humiliter postulavit, ut non obstante quod interim ex hac causa tempus prosequende appellationis effluxit, cum ipsam, quantum in ea fuit, extiterit prosecuta, procuratorem, quam cito scivit, prout debuit, super hoc ad sedem apostolicam destinando, casuam eandem aliis committere dignaremur. Ideoque, discretioni vestre per apostolica scripta mandamus, quatinus si est ita, revocato in irritum⁹ etc., usque attemptatum, audiat causam, et appellatione remota, usura cessante, quod iustum fuerit statuatis, facientes etc. Alioquin partes ad ipsius decani remittatis examen. Appellantem etc. Testes etc. Quod si non omnes etc. Datum Laterani, X Kalendas Maii, pontificatus nostri anno quinto.*

¹ Abbati Sancti Iacobi, priori Sancti Angulfi, et decano Sancte Marie de Valle Pruviniensium, Senonensis diocesis: *Reg.* ² Namucensis: *Reg.* ³ Bonocuntrus Rogeri, Scoctus Boni Domini, Bonventura, Boncompannus: *Reg.* ⁴ iudicibus] decano Trecensi: *Reg.* ⁵ ad... fuerant: *deest Reg.* ⁶ et: *deest Reg.* ⁷ iudices] idem decanum: *Reg.* ⁸ admittebat: *Reg.* ⁹ irritum] statum debitum: *Reg.*

7. X 1.3.37*Deest Registro; Potthast 9532***8. X 1.3.38***Deest Registro; Potthast 9533***9. X 1.3.39***Deest Registro; Potthast 9534*

10. X 1.3.40*Deest Registro; Potthast 9535***11. X 1.3.41***Deest Registro; Potthast 9536***12. X 1.3.42***Deest Registro. Potthast 9537***13. X 1.3.43***Deest Registro; Potthast 9538***14. X 1.4.11***Deest Registro; Potthast 9539***15. X 1.6.49***Auvray 122; Potthast 9540**Reg. 14 (23r-v): an. 1, no. 122**Lateran: March 30th 1227*

[*Rubr: Non professus in abbatem eligi non potest.*]

Gregorius IX.¹

Cum in magistrum assumi non debeat, qui formam discipuli non assumpsit, nec sit proficiendus qui subesse non novit, nos, intellecto per te, quod in quibusdam regularibus domibus, iure tibi diocesano subiectis, sunt quidam in abbates non professi ordinem regularem assumpti, *fraternitati tue per apostolica scripta* mandamus, quatinus cum tales abbates esse non debeant, qui per professionem monachi et regulares canonici non fuerint,² ad amotionem eorum, quos tales inveneris, sublato appellationis impedimento, procedas, *prout de iure fuerit procedendum. Contradictores per censuram ecclesiasticam, appellatione postposita, compescendo. Datum Laterani, III Kalendas Aprilis, anno primo.*

¹ Episcopo Tullensi: *Reg.* ² fuerunt: *Reg.*

16. X 1.6.50*Auvray 184; Potthast 8152**Reg. 14 (63v-64r): an. 2, no. 2**Lateran: March 21st, 1228*

[*Rubr: Electio facta a non maiori parte capituli et ommissa collatione non valet.*]

Idem Cumanensi Capitulo.¹

Cumana ecclesia pastoris solacio destituta, et congregatis die ad celebrandam electionem prefixa, qui presentes erant de Cumanis canonicis, ac tribus abbatibus, *videlicet Sancti Habundi, Sancti Carpofoi et Sancti Iuliani Cumani*, qui vocem in electione habere noscuntur. Capellani et clerici civitatis electioni se debere interesse dicentes, sub huiusmodi protestatione admissi fuerunt, quod vox eorum, qui non deberent interesse de iure vel consuetudine, non valeret. Tandem premissis iuxta formam concilii generalis scrutinio, septem de canonicis, unus abbatum, undecim capellani et novem clerici in eiusdem ecclesie archipresbyterum convenerunt; novem canonicis, uno de abbatibus, uno capellano² et undecim clericis in ipsius ecclesie archidiaconum dirigentibus vota sua. † *Cumque super electione utriusque procuratores eorum ad nostram presentiam accessissent, dilectum filium nostrum O. Sancti Nycolai in Carcere Tulliano diaconum cardinalem eis deputavimus auditorem, qui cum ea que fuerunt proposita coram ipso nobis fideliter retulisset.* Cum decem et octo fuerint canonici, tres abbates, viginti clerici et quatuordecim capellani, neutram electionem³ comperimus ad maiorem partem totius capituli pervenisse, nec probatum fuerat *ab eisdem procuratoribus*, quod clerici admitti debuerint, nec quod capellani admissi fuerint de consuetudine vel de iure. Nam etsi capellani duabus electionibus episcoporum interfuerint, et scrutatores dederint voluntatum, non tamen inquisita vota sua fuisse, vel eos aliquos elegisse probatur. Sed etsi inquisita fuissent vota, vel ipsi aliquos elegissent, per hoc tamen non constitit, id eis de iure competere, vel ex consuetudine iam prescripta. Unde nos electiones ipsas presumptas etiam contra formam concilii generalis, cum collatio in communi obmissa fuerit, que post publicationem scrutini fieri debuisset, de fratrum nostrorum consilio sententialiter duximus irritandas, *et electores hac vice eligendi potestate privantes,*⁴ *providentie nostre ordinationem ipsius ecclesie reservantes. Ceterum, ne ecclesia ipsa pro defectu pastoris dispendium pateretur, nos dilectum filium archipresbyterum Vercellensem, subdiaconum nostrum, virum utique eminentis scientie honestum, providum et discretum, ex officio nostro de fratrum nostrorum consilio vobis et eidem ecclesie in episcopum duximus providendum. Cum igitur personam vobis in pontificem prefecerimus, per quam potest in spiritualibus et temporalibus eadem ecclesia suscipere incrementum, universitati vestre per apostolica scripta mandamus, quatinus sibi decetero tamquam electo, vestro et patri ac pastori animarum vestrarum plene ac humiliter intendatis, et exhibeatis eidem obedientiam et reverentiam debitam et devotam, suscipiendo salubria eius monita et mandata et inviolabiter observando. Alioquin sententiam quam idem rationabiliter tulerit in rebelles, ratam habebimus et faciemus, auctore Deo, firmiter observari. Datum Laterani, XII Kalendas Aprilis, pontificatus nostri anno secundo.*

¹ Capitulo Cumano: Reg. ² uno capellano: *deest* Reg. ³ neutram electionem] neutram predictarum electionum: Reg. ⁴ privavimus: Reg.

17. X 1.6.51

Auvray 221; Potthast 9541

Reg. 14 (83v-84r): an. 2, no. 37

Perugia: October 25th, 1228

[*Rubr:* Per compositionem factam cum prelato et capitulo non potest ius eligendi competere laico, etiam patrono in ecclesia collegiata.]

Idem Abbati Cluniacensi.

Sacrosancta Romana¹ ecclesia † *quam decet quicquid est reprehensibile devitare, sustinere alicuius compositionis pretextu non debet in preiudicium libertatis ecclesiastice, laici ultra sibi vendicent in ecclesiis quam iura permittunt, cum sic trahi compositionis compendium ad iniquum dispendium pateretur.* Sane proposuisti in nostra presentia,² quod super ordinatione prioris monasterii Sancti Pancratii, ad Cluniacensem ecclesiam pertinentis, cum *nobili viro comite de Varenna*³ patrono ipsius, quidam predecessor tuus de consensu capituli sui, *ut asseritur, a triginta annis infra,* compositionem quandam, inivit⁴ iuri contrariam et ecclesie ipsi dampnosam, videlicet ut in optione sit ipsius comitis assumere ad prioratum dicti monasterii, Cluniacensi et de Caritate prioribus dumtaxat exceptis, unum de duobus melioribus totius Cluniacensis ordinis, quos abbas duxerit nominandos. † *Cuius compositionis pretextu monachi eiusdem monasterii de priore illud ordinari ab abbate Cluniacensi minime patiuntur, nec alium, nisi qui ab eodem comite assumitur modo predicto, volunt recipere in priorem. Propter quod priori et monachis prioratus predicti contra Cluniacensem ecclesiam datur rebellionis materia, cum videant quasi per comitem de priore suum monasterium ordinari. Suppliciter ergo a nobis et humiliter postulasti, ut quia talis compositio de iure tenere non debet, cum secundum statuta canonica patroni consensus electioni faciende in collegiatis ecclesiis nequaquam requirendus existat, ordinandi prioratum eundem, non obstante compositione predicta, tibi deberemus concedere facultatem.* Attendentes itaque, quod ius eligendi in collegiata ecclesia non cadit in laicum, et ideo⁵ id esset perniciosum exemplo,⁶ et redundaret⁷ in dispendium ecclesiastice libertatis, *nos super hoc providere volumus,*⁸ *et amputare materiam monachis prioratus eiusdem contra Cluniacensem ecclesiam rebellionis calcaneum erigendi, tuis supplicationibus inclinati, devotioni tue presentium auctoritate concedimus, ut dictum prioratum libere possis, non obstante compositione ipsa, sicut alios prioratus tibi subditos ordinare, denunciando ordinationem factam*⁹ *patrono, ut suum, si voluerit, honestum impertiat assensum. Nulli ergo etc., nostre concessionis infringere.*¹⁰ *Si quis autem etc. Datum Perusii, VIII Kalendas Novembris, pontificatus nostri anno secundo.*

¹ Romana: *deest Reg.* ² Sane...presentia] In nostra sane proposuisti presentia constitutus: *Reg.* ³ Varenna: *Reg.* ⁴ inihit: *Reg.* ⁵ quod ius...ideo: *deest Reg.* ⁶ hoc esse perniciosum [pernicioso: *Auvray*] exemplo: *Reg.* ⁷ redundare: *Reg.* ⁸ volentes: *Reg.* ⁹ denuncianda ordinatione facta: *Reg.* ¹⁰ Nostre concessionis infringere: *deest Auvray*

18. X 1.6.52

Reg. 14 (101r-v): an. 2, no. 90
 Auvray 274; Potthast 8343/9542
 Perugia: February 20th, 1229

[*Rubr:* Si per Papam mandatur habentibus eligere, quod eligant cum consilio aliquorum, alioquin conciliarii provideant, eligentes debent consilium requirere in tractatu electionis, et congruo tempore exspectare responsum; alias electio non tenet.]

Idem Decano et Capitulo S. Ioannis et Sancti Stephani Bisuntinensis.¹

Cum in veteri lege † *panes propositionis supra mensam positi de sabbato in sabbatum servarentur, sublatisque veteribus, alii substituerentur illorum loco recentes, qui tam sapore quam suavitatis odore reficerent, nos de mensa ecclesie Bisuntine, que labium habebat aureum, venerabilem scilicet fratrem nostrum episcopum Sabinensem, quondam pastorem ipsius, ornatum virtutibus quasi lapidibus pretiosis, transferentes ad Romanam ecclesiam, tamquam ad propitiationis altare, ut ibi quanto excellentius, tanto clarius eniteret, alium loco eius deliberavimus providendum, cuius labia custodiant scientiam et ex eius ore lex domini requiratur, et qui tamquam panis, totus ad edificationem et spiritualem refectionem pertineat² subditorum.* Porro iam dudum vobis dedimus nostris litteris in mandatis, ut infra quadraginta dies post susceptionem litterarum nostrarum, cum consilio dilectorum filiorum Sancti Benigni Divionensis et Morismundi abbatum et fratris G. de ordine Predicatorum, elegeritis³ personam idoneam canonice in pastorem. Alioquin dicti consilarii vobis de archiepiscopo⁴ providerent. Verum die ad eligendum prefixa, sex ex vobis potestatem eligendi dedistis,⁵ usque ad consumptionem cuiusdam candele, que ibidem accensa extitit, duraturam. Tandem cum electores huiusmodi convenissent in predictum abbatem Sancti Benigni, et super hoc sociorum eius consilium requisissent, proponente uno ex illis quod deliberato consilio responderent, et differentibus eis festinanter dare responsum, prefati electores, cum candela ipsa deficeret, non expectato ipsorum consilio,⁶ dictum⁷ abbatem *Sancti Benigni, renitentibus illis et invitis, in Bisuntinensem⁸ archiepiscopum elegerunt.* † *Illi vero, habito consilio sapientum, electionem abbatis non credentes tenere de iure, quod de ipso factum fuerat, irritarunt.* Relato ergo ad apostolicam sedem negotio, *et duorum consiliariorum processu a nobis in irritum revocato, venerabili fratri nostro archiepiscopo Viennensi et dilecto filio abbati de Firmitate, Cisterciensis ordinis, Cabilonensis diocesis, per litteras nostras iniunximus, ut si constaret ab eisdem electoribus de electione tractatum⁹ fuisse habitum et requisitum consilium predictorum, ita quod in tractatu electionis predictorum¹⁰ esset consilium requisitum, electionem ipsius abbatis, si persona esset idonea, confirmarent.* Quod si in tractatu electionis non fuisset illorum consilium requisitum,¹¹ licet postea requisitum fuerit non competenti tempore, nec etiam expectatum responsum ipsorum, *cum hoc eis debeat qui tempus sibi artaverant imputari, aut non esset idoneus idem abbas, quod de ipso factum erat tamquam invalidum irritarent.* † *Qui mandatum apostolicum exequentes, inquisita veritate a sex compromissariis et duobus consiliariis, cum per alios eis non posset de ipsa liquere, ad nos tandem negotium cum illorum depositionibus remiserunt.* Magistro itaque G., procuratore dicti abbatis ex parte una, et W. thesaurario Sancti Stephani, ac bone memorie H. de Aioya Bisuntino ex altera, in nostra presentia constitutis, et per dilectum filium O. Sancti Nycolai in Carcere Tulliano diaconum cardinalem, eis concessum auditorem, a nobis plenius intellectis que hinc inde fuerant proposita coram ipso, cum autem¹² compertum non fuerit competenti tempore requisitum consilium de persona predicti abbatis, et quando extitit requisitum, non fuit expectatum responsum nisi modico tempore, *sicut superius est expressum, nec debeat aliis imputari, quod in tantum illi sibi tempus artarant, electionem abbatis ipsius, non persone, que multorum testimonio satis commendabilis apparebat, sed electionis vitio duximus irritandam, nobis provisione Bisuntine ecclesie reservata.* Cum igitur dilectus filius magister Nycolaus de Flavigniaco, Lingonensis decanus, dicatur vas electum a Domino, in cuius pectore magne thesaurus sapientie¹³ requiescit, de quo

multos ditavit pauperes et locupletavit egenos, et ei de vite innocentia et honestate morum laudabile testimonium perhibeatur a multis, ipsum eidem ecclesie preficiendum providimus in archiepiscopum et pastorem, sperantes firmiter, quod ecclesia ipsa sub eius regimine grata suscipere debeat in spiritualibus et temporalibus incrementa. Quocirca universitati vestre per apostolica scripta mandamus, quatinus ipsi tamquam patri et pastori animarum vestrarum, plene ac humiliter intendatis, et exhibeatis eidem obedientiam et reverentiam debitam et devotam, eius salubria monita et mandata suscipiendo devote ac inviolabiliter observando. Alioquin sententiam quam rite tulerit in rebelles ratam habebimus, et faciemus, auctore Deo, usque ad satisfactionem condignam inviolabiliter observari. Datum Perusii, X Kalendas Martii, pontificatus nostri anno secundo.

¹ Decanis et capitulis Sancti Iohannis et Sancti tephani Bisuntinorum ² pertineret: Auvray ³ eligeretis: Reg., Fried. ⁴ archiepiscopo] electione: Auvray ⁵ didistis: Reg. ⁶ responso: Reg. ⁷ dictum: deest Reg. ⁸ Bisuntinum: Reg. ⁹ tractatum de electione: Reg. ¹⁰ illorum: Reg. ¹¹ illorum...requisitum] predictorum requisitum consilium: Reg. ¹² autem: deest Reg. ¹³ patientie: Auvray

19. X 1.6.53

Auvray 454; Potthast 9543

Reg. 15 (14v-15r): an. 4, no. 23

Lateran: May 17th, 1230

[*Rubr:* Si maior pars capituli scienter eligit indignum, valet electio de digno a minori parte, etiam ex eodem scrutinio facta. Hoc dicit secundum veriorom intellectum et intrinsecum.]

Idem Episcopo Silvanectensi.

Congregato Nivernensi capitulo ad electionem futuri pastoris, *ne fieret electio nisi canonica extitit appellatum, appellatione alia interposita ex parte decani, ne quid deberet in dignitatis sue preiudicium attemptari. Tandem consentientibus universis quod scrutinium fieret, et eo facto ac postmodum publicato, per collationem apparuit quod tredecim in decanum et octodecim,¹ computato procuratore cuiusdam absentis, in cantorem ipsius ecclesie convenerunt.² Qui, cum plures in eum et pauciores in alium, sicut apparebat ex eodem scrutinio, sua desideria direxissent, a parte sua electus extitit in pastorem ecclesie Nivernensis. Postmodum, credente parte decani, quod alii plurimum deliquissent eligendo personam scientie litteralis expertem, demum zeli ad zelum et meriti ad meritum collatione prehabita, decanum ipsum qui in eum sua vota direxerant, in suum episcopum elegerunt, ad sedem apostolicam appellantes. Procuratoribus igitur partium in nostra presentia constitutis, petebatur a nobis ut, cassato quod presumptum est de cantore, cum miserum sit assumi eum qui non fuit discipulus in magistrum, et qui scientiam reppulit, sit a sacerdotio repellendus, consideratis studiis eligentium et eminentia meritorum electi, confirmaremus electionem decani, ad cuius electores, propter quod³ illis⁴ secundum statuta Lateranensis concilii, ipso iure eligendi potestate⁵ privatis, potestas eligendi⁶ ad eos⁷ extitit devoluta, decanum ipsum, qui in eum sua vota direxerant, in suum episcopum elegerunt, ad sedem apostolicam appellantes.⁸ †⁹ Reliquis econtra potentibus, ut irritare¹⁰ decani electionem attemptatam a paucioribus, et post*

aliam non cassatam, ac¹¹ confirmare reliquam veluti canonice celebratam a pluribus de pesrsona idonea dignaremur. Nos igitur, *auditis et intellectis hiis et aliis que fuerunt proposita coram nobis, cum de ipsis fieri non potuerit plena fides, de fratrum nostrorum consilio, fraternitati tue per apostolica scripta mandamus*, quatinus si dictus cantor defectum in litteratura non patitur, et alias est idoneus ad regimen pastorale, ipsius electionem procures auctoritate nostra,¹² infirmata reliqua, confirmare. Alioquin, ipsius cantoris electione irrita nuntiata, prenommatum decanum, si nichil ei de canonicis obstiterit statutis,¹³ eadem auctoritate preficias ecclesie memorate. *Datum Laterani, XVI Kalendas Iunii, pontificatus nostri anno quarto.*

¹ decem et octo: *Reg.* ² in...convenerunt] convenerant in cantorem: *Reg.* ³ propter quod: *deest Reg.* ⁴ aliis: *Reg.* ⁵ eligendi potestate: *deest Reg.* ⁶ eligendi potestas: *Reg.* ⁷ ad eos: *deest Reg.* ⁸ decanum ipsum...appellantes: *haec verba supra resecata in hoc loco addidit Raymundus* ⁹ *nulla verba Registri in hoc loco omissa sunt* ¹⁰ irritari: *Reg.* ¹¹ et: *Auvray* ¹² auctoritate nostra procures: *Reg.* ¹³ de canonicis statutis obstiterit: *Reg.*

20. X 1.6.54

Auvray 655; Potthast 8306

Reg. 15 (95r-97v): an. 5, no. 71

Lateran: May 15th, 1231

[*Rubr.*: Habens plures dignitates vel plura beneficia curata, sine dispensatione Pape ineligibilis est. Hoc dic. quoad titulum.]

Idem Silvanectensi Episcopo, et Ioanni de Monte mirabili Archidiacono et Succentori Parisiensi.¹

Dudum ecclesia Rothomagensi pastoris solacio destituta, *et votis canonicorum in diversa divisio, ac quibusdam dilectum filium T., decanum Rothomagensem, in ipsius ecclesie archiepiscopum eligentibus, contra eius electionem, que in eadem ecclesia fuerat celebrata,*² *dilectus filius A.*³ archidiaconus et quidam alii eiusdem ecclesie canonici *propter hoc* ad sedem apostolicam accesserunt. Dicto vero archidiacono pro se ac parte sua, et G.⁴ archidiacono *W[u]lgasini Gallie*, procuratore illorum, qui electionem celebraverant,⁵ in nostra *et fratrum nostrorum* presentia constitutis, *et eis diligenter et sufficienter auditis*, inter alia, que contra *electionem et electum* obiecta fuerant,⁶ archidiaconus proposuit memoratus, quod idem electus,⁷ *modum cupiditati et avaritie non imponens, plures cum decanatu Rothomagensi retinet parrochiales ecclesias contra sacrorum canonum instituta, et post generale concilium archidiaconatum Ambianensem adeptus, ipsum cum pluribus parrochialibus ecclesiis,*⁸ quas ante idem concilium obtinuerat,⁹ retinere presumpsit, *absque indulgentia sedis apostolice speciali*, eoque *processu temporis archidiaconatu dimisso, decanatum recepit eundem, cui cura dicitur animarum annexa*, retinuit ecclesias memoratas.¹⁰ Unde cum in eodem concilio *provide* sit statutum, ut quicumque receperit aliquod beneficium curam animarum habens¹¹ annexam, si prius tale beneficium obtinebat, eo sit ipso iure privatus, et si forte illud retinere contenderit, etiam alio spoliatur, predictus electus¹² contra huiusmodi veniens statuta,¹³ transgressionis notam, necnon cupiditatis vitium, quod in aliis reprobare¹⁴ debuerat, ex pluralitate beneficiorum incurrit. Et retinendo¹⁵ beneficia, que *iam* non

spectabant ad ipsum, cum post receptionem alterius priora beneficia vacaverint ipso iure, rem contrectavit per consequens alienam, et sic furtum commisit quodam modo vel rapinam. In sue quoque salutis et multarum animarum dispendium,¹⁶ predictas parrochiales ecclesias retinebat, cum earum cura, qua iam privatus fuerat ipso iure, ad eum nullatenus pertineret, et sic per ipsum eedem anime dampnabiliter sunt decepte. Verum *dictus* procurator eorum, qui elegerant ipsum,¹⁷ et si pluralitatem beneficiorum huiusmodi coram nobis profiteretur¹⁸ in iure, per concessionem tamen *bone memorie* Rothomagensis archiepiscopi nobis exhibitam, eundem electum¹⁹ nisus est multipliciter excusare. Nos igitur *auditis que de facto fuerunt hinc inde proposita, et de iure insuper allegata, de consilio fratrum nostrorum* dictam excusationem, utpote frivolam, nullatenus admittentes, *quia pro dicto decano nullus comparuit procurator*, vobis dedimus *nostris litteris* in mandatis, ut si *vobis* constaret, quod idem *decanus* post receptum archidiaconatum predictum curam animarum habentem, prefatas parrochiales ecclesias electionis tempore retineret, nec ostenderet secum per sedem apostolicam super hoc²⁰ dispensatum, electionem illius²¹ auctoritate apostolica cassaretis, † *ipsi ecclesie de alia persona idonea providentes. Alioquin eadem auctoritate confirmantes eandem, faceritis electo obedientiam et reverentiam debitam exhiberi.* Partibus ergo propter hoc in vestra presentia constitutis, prestito quoque iuramento de veritate dicenda, et factis positionibus et responsionibus hinc *et inde*, tandem eodem decano pretextu quorumdam gravaminum ad nostram audientiam appellante, vos electionem huiusmodi irritantes, eidem ecclesie de *venerabili fratre nostro* Cenomanensi episcopo providistis, † *prout in litteris vestris patentibus perspeximus contineri. Denique iamdicto decano et memorato archidiacono pro se ac suis comparantibus coram nobis, pars ipsius decani processum vestrum tamquam minus canonicum petiit irritari, parte altera in contrarium respondente, multis super hoc tam de facto quam de iure, pro utralibet partium rationibus introductis. Auditis itaque diligenter que utrimque fuere proposita coram nobis, et actis diligenter inspectis, licet autem²² positiones et responsiones super pluribus articulis facte fuerint coram vobis, quia tamen contestationem litis non invenimus esse factam, cum non per positiones et responsiones ad eas factas,²³ sed per petitionem in iure propositam et responsionem factam contestatio litis fiat, eundem processum de fratrum nostrorum consilio irritum duximus nuntiandum. Tandem archidiaconus *supradictus in presentia nostra* electionem *de ipso decano factam* ex premissa causa²⁴ petiit irritari, *pro eo quod idem decanus tres parrochiales ecclesias, scilicet de Freauvilla, Sancti Aniani et de Bassi cum archidiaconatu Ambianensi curam animarum habente, post concilium generale retinuit, eoque archidiaconatu dimisso, predictas ecclesias electionis sue tempore retinebat, quamquam non sit secum super hoc per sedem apostolicam dispensatum, electo²⁵ respondente predicto, quod non erat eius electio irritanda. Lite vero coram nobis legitime contestata, prestitoque de veritate dicenda²⁶ a partibus iuramento, factis etiam quibusdam confessionibus hinc et inde, idem electus,²⁷ et si confiteretur, se dicta beneficia²⁸ electionis tempore tenuisse, tamen excusare se super hoc nichilominus²⁹ nitebatur. Primo quia *prenominatas parrochiales ecclesias ante generale concilium se canonicè proposuit assecutum, et ideo cum constitutiones et leges futuris certum sit dare formam negotiis, non ad facta preterita revocari, nisi nominatim in eis etiam de preteritis caveatur, predictum dicebat sibi concilium non obstare. Secundo quia videlicet³⁰ dictum archidiaconatum non credebat curam animarum habere, unde statutum prefati concilii se ad beneficia huiusmodi nullatenus extendebat. Tertio quia, et si hec sibi plene sufficere***

viderentur, ad omnem tamen dubitationis materiam amputandam, dispensatum secum super premissis beneficiis per sedem apostolicam asserebat, ad quod probandum diversas species probationum et presumptiones induxit, transcriptum videlicet indulgentie, quam se casu perdidisse dicebat, necnon assertionem dilecti filii magistri Pandulfi, subdiaconi et notarii nostri, quem dicebat dictam indulgentiam notavisse. Inducebat etiam testimonium dilecti filii magistri Petri, dicti Burgundi, subdiaconi nostri, qui se illam impetrasse firmiter asserebat. Quosdam quoque magne auctoritatis viros eandem indulgentiam inspexisse ac legisse dicebat, ex quibus omnibus inferebat ut parti adverse, que, invidie stimulis agitata contra ipsum, materiam discordie suscitare presumpsit, silentium imponere dignaremur. Ceterum hiis omnibus fuit ex adverso responsum, quia cum tam archidiaconatum quam decanatum etiam supradictos post generale concilium fuerit assecutus, non poterat absque transgressionis nota priora beneficia retinere, presertim cum felix recordationis Alexander papa, predecessor noster, hoc ipsum fere in Lateranensi concilio duxerit statuendum. Nec valet ad excusationem ipsius quod eundem archidiaconatum curam negavit animarum habere, cum ex confessionibus suis in iure factis contrarium arguatur, sed³¹ cum enim in iure confessus fuerit,³² quod archidiaconus Ambianensis de consuetudine suspendit, excommunicat et absolvit presbyteros et priores, et parrochiales ecclesias interdicat, necnon archidiaconus³³ visitat, et inquit que viderit inquirenda, et procuraciones ratione visitationis recepit,³⁴ evidenter³⁵ apparet, quod curam habeat³⁶ animarum annexam. Quam si etiam non haberet, negare non potest, quin personatus existat, unde cum idem de personatibus, quod et³⁷ de beneficiis curam animarum³⁸ habentibus, in eodem concilio sit statutum, iudicium sit habendum.³⁹ Nec dispensatio quam a sede apostolica se asseruit habuisse sibi in aliquo suffragatur, cum illa penitus non probetur. Nec assertio predicti notarii ad hoc sufficere creditur, tum quia notarius ipse non dicit hoc assertive, tum etiam quia, et si hoc constanter assereret frequenter, tamen postquam nota per notarium expeditur, corrigitur et mutatur, et ex causa quandoque cassatur in crossa. Nec etiam sufficit testimonium magistri Petri predicti, qui se illam asserit impetrasse, tum quia super hoc deposuit non iuratus, tum quia unius testimonium non auditur, etiam si presidali fulgeat dignitate. Et licet per assertionem aliquorum, qui se illam vidisse asserunt, tenor ipsius forsitan declaretur, per hoc tamen rei geste veritas non probatur. Insuper indulgentiam, quam super hoc asserit se habere, invalidam reputavimus, cum in ea falsitatem suggesserit,⁴⁰ et in tribus suppresserit veritatem, qua tacita vel expressa⁴¹ ipsam nullatenus habuisset. Suggestit enim quod predictas parrochiales ecclesias ante quam fuisset in archidiaconum⁴² assumptus, canonicè fuerat assecutus, cum nullus secundum statuta canonica potuerit plures⁴³ parrochiales ecclesias obtinere, nisi una penderet ex altera, vel unam intitulatam, et alteram⁴⁴ commendatam haberet. Unde cum idem decanus utramque illarum intitulatam haberet,⁴⁵ ipsas nequivit canonicè habuisse, item suggerens,⁴⁶ quod redditus personatus⁴⁷ sui erant adeo tenues et exiles, suppressit quod alios redditus in pluribus ecclesiis noscitur obtinere.⁴⁸ Suppressit etiam, quod plures⁴⁹ parrochiales ecclesias cum pluribus aliis beneficiis in diversis ecclesiis obtineret, cum intentionis nostre non fuerit, secum in tot beneficiis, presertim habentibus curam animarum,⁵⁰ dispensare, et quod ipsas ecclesias cum archidiaconatu predicto per biennium post concilium, et cum decanatu postmodum, eodem archidiaconatu dimisso, per triennium tenuisset, propter quod ipsarum erat ad nos, secundum statuta Lateranensis concilii, donatio devoluta. Nec intentionis nostre fuerit etiam aliquid ei⁵¹ de

novo concedere, sed ut per indulgentiam *sedis apostolice* posset habita licite retinere. † *Ad hec etiam fuit obiectum, quod cum mandaverimus, ut si vobis constaret quod idem decanus post receptum archidiaconatum predictum, curam animarum habentem, predictas parrochiales ecclesias electionis tempore retineret, nec ostenderet secum super hoc per sedem apostolicam dispensatum, electionem ipsius auctoritate apostolica cassaretis, et nullam fecerit mentionem quod per biennium cum archidiaconatu, et per triennium cum decanatu, prefatas parrochiales ecclesias tenuisset, apparet quod super hoc cum eo non extitit dispensatum, cum vitium purgari nequiverit, de quo non fecerat mentionem. Hiis igitur et aliis coram nobis hinc inde propositis plene ac diligenter auditis, et deliberatione cum fratribus nostris habita diligenti, tandem⁵² cum iam ex hiis que acta fuerant non restaret, nisi proferenda sententia,⁵³ idem decanus in presentia nostra et fratrum nostrorum tam iuri, si quod ei competere videbatur, quam liti cessit spontanea voluntate, cuius cessionem nos duximus admittendam. Quia vero interest nostra tam nobili ecclesie preficere virum egregium et insignem, cuius labia custodiant iustitiam, et lex ex ore eius quasi angelus Domini exercituum requiratur, discretioni vestre per apostolica scripta mandamus, quatinus venerabilem fratrem nostrum episcopum Cenomanensem, in cuius pectore magne thesaurus sapientie requiescit, qui de eminentia meritorum et zelo maxime⁵⁴ animarum plurimum commendatur, absolventes a vinculo quo ecclesie Cenomanensi tenetur, et sibi transeundi ad Rothomagensem licentiam tribuentes, preficiatis ipsum auctoritate nostra Rothomagensi ecclesie in pastorem, et ei faciatis obedientiam et reverentiam debitam exhiberi. Contradictores per censuram ecclesiasticam, appellatione postposita, compescendo. Quod si non omnes etc. Tu, frater episcopo, cum eorum altero etc. Datum Laterani, Idibus Maii, pontificatus nostri anno quinto.*

¹ . . Silvanectensi episcopo, et Iohanni de Montemirabili, archidiacono et . . succentori Parisiensibus: Reg. ² que in...celebrata: *deest* Reg. ³ Arnulphus: Reg. ⁴ Gualtero: Reg. ⁵ qui...celebraverant] qui decanum eundem elegerant: Reg. ⁶ fuerunt: Reg. ⁷ decanus: Reg.; electus: *Auvray* ⁸ cum...ecclesiis] cum eisdem ecclesiis : Reg. ⁹ quas ante... obtinuerat: *deest* Reg. ¹⁰ retinuit...memoratas] predictas ecclesias nichilominus retinendo: Reg. ¹¹ curam habens animarum: Reg. ¹² decanus: Reg. ¹³ contra...statuta] contra statuta huiusmodi temere veniens: Reg. ¹⁴ exprobare: Reg. ¹⁵ retinendo] contrectando: Reg. ¹⁶ in...dispendium] in sue quoque salutis dispendium et multarum periculum animarum: Reg. ¹⁷ qui...ipsum] qui decanum eundem elegerant: Reg. ¹⁸ confiteretur: Reg. ¹⁹ decanum: Reg. ²⁰ super hoc per sedem apostolicam: Reg. ²¹ ipsius: Reg. ²² autem: *deest* Reg. ²³ factas: *deest* Reg. ²⁴ ex premissa causa: *deest* Reg. ²⁵ decano: Reg. ²⁶ de dicenda veritate: Reg. ²⁷ decanus: Reg. ²⁸ se beneficia supradicta: Reg. ²⁹ nichilominus] multipliciter: Reg. ³⁰ videlicet: *deest* Reg. ³¹ sed: *deest* Reg. ³² fuerit in iure confessus: Reg. ³³ archidiaconatum: Reg. ³⁴ recipiat: Reg.; recipit: *Auvray, Fried.* ³⁵ et evidenter: *Auvray* ³⁶ habet: Reg. ³⁷ et: *deest* Reg. ³⁸ animarum: *deest* Reg. ³⁹ iudicium...habendum] idem debet esse iudicium in utrisque: Reg. ⁴⁰ Insuper...suggesserit] Insuper extitit allegatum quod, et si vera inveniretur indulgentia huiusmodi, non obstaret, cum in duobus falsitatem suggesserit: Reg. ⁴¹ qua...expressa] que si non fuisset expressa vel tacita: Reg. ⁴² decanum: Reg. ⁴³ plures potuerit ⁴⁴ aliam: Reg. ⁴⁵ utramque...haberet] quamlibet earum ut intitulatam habuerit: Reg. ⁴⁶ suggesit: Reg. ⁴⁷ decanatus: Reg. ⁴⁸ suppressit...obtinere] ut nequaquam

sufficerent [sufficeret: *Auvray*] ad onera annexa huiusmodi dignitati, cum per confessionem suam appareat trecentarum librarum Turonensium et amplius redditus existere decanatus, preter alios redditus quos in pluribus ecclesiis noscitur obtinere: *Reg.*⁴⁹ tres: *Reg.*⁵⁰ curam animarum habentibus: *Reg.*⁵¹ ei: *deest Fried.*⁵² tandem: *deest Reg.*⁵³ sententia proferenda: *Reg.*⁵⁴ maximo: *Auvray*

21. X 1.6.55

Auvray 741; *Potthast* 9554

Reg. 15 (135r-136v): an. 5, no. 155

Rieti: November 10th, 1231

[*Rubr:* Irrita est electio, quam collatio non precessit, vel que facta non est a maiore parte capituli, vel que non fuit communis.]

Idem.¹

In Genesi legitur † quod *Thamar*, receptis anulo armilla et baculo, de *Iuda* concepit, et tempore partus instante, duobus in utero eius geminis apparentibus, unus manum protulit, in qua obstetrix coccinum dicitur ligavisse, illoque retrahente manum, alter *Phares*² videlicet est egressus. *Thamar* enim palma interpretatur, que arbor pulchra est et fecunda, designans *Baiocensem* ecclesiam, que consuevit esse pulchra in decore scientie, et fecunda in bonorum operum ubertate. Hec que in anulo fidem, in armilla operationem, et in baculo pauperum et debilium sustentationem acceperat, de semine veri *Iude* concepit, cum creare sibi proposuit ex inspiratione divina pastorem. Sed tunc tempore partus in eius utero gemini sunt inventi, quando duo apparuerunt in publicatione scrutinii nominati. Obstetrix vero ad manum alterius coccinum non suspendit, quia perfecta liniamenta membrorum non habuit, id est sufficiens in ipsum canonicorum numerus, in scrutinio non consensit. Altero autem, *Phares* videlicet, prodeunte, divisa mater ecclesia *Baiocensis* apparuit habens in utero, parturiebat et clamans ut pareret ad veram obstetricem se contulit, sedem apostolicam, matrem suam, ut manu obstetricante ipsius a partus cruciatu quem patitur, sanaretur. Sane post cessionem venerabilis fratris nostri *R. episcopi quondam Baiocensis*, ecclesia vestra destituta pastore, et votis vestris, cum de futuri pontificis haberetis substitutione tractatum, in diversa divisus, quidam vestrum in *Willelmum de Tankarvilla*, quidam in magistrum *Iohannem de Curia*, et quidam in quosdam alios consenserunt. Cumque super hoc esset ad nostram audientiam appellatum, procuratores partium propter hoc ad sedem apostolicam accesserunt. Quibus in nostra presentia constitutis, procurator eiusdem *Willelmi* proposuit, quod die ad eligendum prefixa, presentibus omnibus qui debuerunt, voluerunt et potuerunt commode interesse, post varios et diversos tractatus, per viam scrutinii incedentes, tres sacerdotes, videlicet *Iohannem succentorem*, magistrum *Herbertum de Andeliaco* et *Silvestrum elegistis de vestro collegio fidedignos*, qui vota cunctorum examinantes secreto et singillatim, prout convenit, diligenter ea in scriptis redacta mox publicarunt, sicut moris est in communi, et cum fuisset, facta de voluntate maioris et sanioris partis capituli collatione, repertum maiorem et saniolem partem vocem in electione habentium in eundem *W.* in scrutinio consensisse, ipsum hii qui in eum consenserant, invocata *Spiritus Sancti* gratia, in pastorem et episcopum elegerunt. Nam licet quadraginta novem, tum per se tum per procuratores, fuerint in capitulo tunc presentes, duo tamen

ipsorum, Guido videlicet et Henricus, quorum alter per se et alter per procuratorem voluit interesse in electione, vocem eo tempore non habebant, cum dictus H. non sit canonicus Baiocensis nec unquam fuerit installatus, licet in divisione cuiusdam prebende pars ipsius sibi fuerit in beneficium assignata, iure canonie integro penes alium remanente. Qui si etiam canonicus vere esset, cum tamen ei de canonicatu questio referretur, ac per hoc penderet per consequens status eius, non erat medio tempore admittendus, quemadmodum si pendeat an filius sit in potestate parentis qui ab hostibus detinetur, interim adversus eum est actio deneganda, presertim cum numquam a toto capitulo pro canonico haberetur, nec unquam habuerit³ pacificam ipsius canonicatus possessionem vel quasi, quin immo in electione decani, ad quam se velit canonicus ingerebat, fuit cum protestatione admissus, prout hec dictus procurator offerebat se probaturum. Guido vero, cum esset adeo a civitate Baiocensi remotus, quod neque de iure communi ad electionem vocandus fuerat, neque de consuetudine speciali, videlicet apud Bellam Villam iuxta Lugdunum, que a civitate predicta per dietas duodecim fere distat, merito non debebat admitti, non obstante si secus aliquando factum extitit abusive, vel aliquis sic remotus vocatus fuit de gratia speciali, quia non ex hoc consuetudo noscitur introducta, nec ius aliis in posterum est quesitum, cum non probetur actus huiusmodi iteratus, nec ad prescriptionem legitimam sit productus. Et sic duobus premissis exclusis de numero, dictus procurator firmiter asserebat, in prefatum W. maiorem partem totius capituli consensisse, presertim cum predicti duo cum protestatione admissi fuerint ab omnibus approbata. Quare nobis humiliter supplicabat, ut cum eadem electio de viro litterato, discreto, provido, et honesto fuerit a maiori et saniori parte capituli canonice celebrata, ipsam dignaremur auctoritate apostolica confirmare. Verum ex parte altera fuit ex adverso responsum, quod cum quadriginta novem canonici fuissent in capitulo, tum per se tum per procuratores idoneos, qui vocem habebant in electione presentes, in prefatum W. non nisi viginti quatuor, in magistrum vero Iohannem de Curia decem et octo, et septem reliqui in quosdam alios consenserunt. Cum autem facta publicatione votorum, nonnullis asserentibus nichil penitus actum esse, predicti W. et I., de voluntate omnium secedentes in partem, diutius de alterius substitutione tractarent diversis modis expressis, quibus de pastore idoneo provideretur ecclesie viduate, ac per hoc electionis tractatu protracto non modico intervallo, tam eligentes quam nominati predicti, ab eo quod factum fuerat recesserint ipso facto, de studiis tamen eligentium et nominatorum meritis collatione non habita, nullus ad electionem habitus est processus, quamquam decanus, qui nec a capitulo super hoc mandatum receperat, nec etiam sibi hoc de consuetudine ecclesie competebat, eundem W. quantum in eo fuit, nomine suo, et quidam alii singulariter in episcopum elegissent, quamvis quedam huiusmodi electionis sollempnitas, presente clero et populo, fuerit subsecuta. Cum ergo in concilio caveatur, ut is collatione habita eligatur, in quem omnes vel maior et sanior pars capituli⁴ consentit, et⁵ in predictum G.⁶ maior pars totius capituli non consenserit,⁷ quamquam maiorem partem habuit⁸ partium comparatione minorum, nec collatio facta fuit, cum nec plene numeri ad numerum, quia utrum iamdicti G. et H., de quibus adversarii referunt questionem, in electione⁹ vocem habuerint, tractatum non extitit nec discussum, nec zeli ad zelum, nec meriti ad meritum collatio facta¹⁰ fuerit, ut debuit subsecuta, nec etiam electio fuit communiter celebrata, quoniam¹¹ licet in eundem G.¹² singulariter singuli¹³ consensissent, non tamen debuit subsequi singularis electio, sed communis, ne vel idem repeti videretur, vel ex hoc sequeretur absurditas, ut tot essent

electiones, quot essent numero eligentes, nec ex singularibus vel¹⁴ particularibus consensibus appareret¹⁵ universalis electio vel communis, licet quilibet singularis veritatem exprimat sue partis, quemadmodum ex singularibus propositionibus, licet veris, universalis propositio non apparet, nisi per signum universale forsitan exprimatur. *Et ideo cum contra canonem fuerit attemptata, non confirmandam sed infirmandam potius pars altera firmiter asserebat.* Nec premissi duo canonici poterant sic excludi, cum primus *viginti annis et amplius* existeret¹⁶ in canonicatus possessione vel quasi, habendo stallum in choro, locum in capitulo, legendo et cantando ut canonicus,¹⁷ et ad tractatus ac electiones dignitatum et personatum, que occurrerunt pro tempore faciende, tamquam canonicus sit vocatus, quamquam hac vice fuerit cum protestatione admissus *a qua per actum contrarium adversarii recesserunt.* Secundus vero esset in tali loco, de quo fuerat ad electionem vocandus, cum de toto regno Francie vocentur absentes de consuetudine ecclesie Gallicane, *prout hec omnia eadem pars offerebat se legitime probaturam. Quare a nobis petebat instanter, ut eadem electione cassata, facultatem vobis eligendi concedere dignaremur.* Nos igitur, hiis et aliis plenius intellectis, de consilio fratrum nostrorum premissam electionem, utpote contra formam concilii attemptatam, decernimus irritam et inanem. *Datum Reate, IIII Idus Novembris, pontificatus nostri anno quinto.*

¹ Capitulo Baiocensi: Reg. ² Phares: *add. sup. linea* Reg. ³ habuit: *Auvray* ⁴ capituli: *deest* Reg. ⁵ et: *deest* Reg. ⁶ W.: Reg. ⁷ consensit: Reg. ⁸ habuerit: Reg. ⁹ in electione: *deest* Reg. ¹⁰ collatio facta: *deest* Reg. ¹¹ quia: Reg. ¹² W.: Reg. ¹³ singuli singulariter: Reg. ¹⁴ seu: Reg. ¹⁵ apparet: Reg. ¹⁶ existens: Reg. ¹⁷ habendo... canonicus] stallum in choro et locum in capitulo habuisset, et sic legerit et cantaverit ut canonicus: Reg.

22. X 1.6.56

Auvray 695; Potthast 9545

Reg. 15 (113r-v): an. 5, no. 109

Rieti: August 4th, 1231

[*Rubr.*: Non valet electio pontificis per laicos et canonicos facta, etiamsi hoc habeat consuetudo. Hoc dic. et quotidie solet allegari.]

Idem Capitulo Massano.

Massana ecclesia pastore vacante, † *canonici eiusdem ecclesie duos ex ipsis, videlicet archipresbyterum et M., ac quidam nobiles, vicedomini nuncupati, qui se in electione Massani pontificis ex longa consuetudine ius habere dicebant, ex suis totidem elegerunt. In quos utrimque sub hac forma extitit compromissum, ut ipsi concorditer, aut unus vel¹ duo, consentientibus tribus reliquis aut duobus, potestatem haberent aliquem in Massanum episcopum eligendi. Committente vero prefato archipresbytero tribus reliquis vices suas, ipsi dilectum filium G., Pisanum canonicum in Massanum episcopum eligentes, electionem ipsam venerabili fratri nostro Pisano archiepiscopo presentarunt. Cumque procurator prefati G. cum instantia postularet electionem de ipso G. factam, et procuratores Massani capituli peterent quandam aliam electionem, quam se postmodum fecisse dicebant, a prefato archiepiscopo confirmari, tandem procuratores ipsi,*

propositis quibusdam recusationibus et appellationibus quibusdam ad nos interpositis, ab audientia memorati archiepiscopi recesserunt. Archiepiscopus autem, illorum recusationes et appellationes frivolas reputans, electionem factam de predicto G. auctoritate metropolitana confirmavit. Partibus itaque apud sedem apostolicam constitutis, et dilecto filio nostro R., Sancte Marie in Cosmidin diacono cardinali, eis auditore concesso, cum coram eo tam per confessiones partium quam per legitima documenta constitisset plenarie de premissis, et idem ea nobis fideliter retulisset, nos attendentes contra generalem et approbatam ecclesie consuetudinem ac sacros canones fuisse presumptam electionem prescriptam, que convincitur multipliciter vitiosa, tam ex personis eligentium quam ex tali forma informi, cum creari episcopum per laicos vel in eos de rebus spiritualibus compromitti non valeat, eo quod eis disponendi etiam de aliis rebus ecclesiasticis, quod est minus, nulla est attributa facultas, quos manet in talibus obsequendi necessitas, non auctoritas imperandi, electionem prefatam, et quicquid est ex illa secutum de fratrum nostrorum consilio penitus irritamus. Ne autem tam detestandi exempli pernities in consequentiam trahi possit, edicto perpetuo prohibemus ne decetero per laicos cum canonicis in predicta ecclesia pontificis electio presumatur. Que si forte presumpta fuerit, nullam obtineat firmitatem, non obstante contraria consuetudine, que dici debet potius corruptela. Nulli ergo etc., nostre prohibitionis infringere. Si quis autem etc. Datum Reate, II Nonas Augusti, pontificatus nostri anno quinto.

¹ aut: *Auvray*

23. X 1.6.57

Auvray 192; Potthast 9546

Reg. 14 (67r-68r): an. 2, no. 9

Lateran: March 22nd, 1228

[*Rubr*: Non sufficit ad confirmationem electionis, quod sit facta a maiori parte capituli, nisi etiam illa pars sit sanior.]

Idem Capitulo Cathalanensi.¹

Ecclesia vestra destituta pastore, ac duobus, qui primo a vobis electi fuerant, nolentibus consentire, demum diem qua terminus ad electionem faciendam deberet constitui, omnes excepto Hugone concanonico vestro, qui cum absens esset, cuidam vestrum vices suas in electione commiserat, prefixistis, et die ipsa,² convenientes in unum, absente G., qui tunc noluit interesse,³ ad celebrandam electionem terminum statuistis.⁴ Veniente vero termino, et dicto G.,⁵ cum absens existeret, non vocato, premissis iuxta formam concilii generalis scrutinio, quatordecim dilectum filium nostrum magistrum G.⁶ tituli Sancte Pudenciane presbyterum cardinalem, concanonicum vestrum, et septemdecim⁷ dilectum filium R., Remensem canonicum, elegerunt, procuratore Hugonis consentiente in magistrum predictum, et prefato G.⁸ postmodum electioni eiusdem R. suum prebente consensum. Tandem eodem magistro a nobis in cardinalem assumpto, et procuratoribus utriusque partis in nostra presentia constitutis, hinc inde fuit apud sedem apostolicam aliquandiu disceptatum, et sufficienter examinatum negotium et discussum. Allegabatur autem pro electione dicti R., quod cum in quatuor excederet aliam, computato G.⁹ predicto, maiorem capituli partem habebat, et per hoc debebat pars sua sanior reputari,

cum ubi maior numerus est,¹⁰ zelus melior presumatur. Pars vero altera electionem eandem multipliciter impugnabat, proponens prenomiatum R. in etate pati defectum, nec esse sufficientis scientie ad ecclesiam supradictam, cum etatis mature et eminentis scientie prefatus cardinalis existat, *et quia hic de propria, ille vero de extranea ecclesia vocabatur, pauciores erant pluribus, cum isti ad ordinarium, illi vero ad extraordinarium auxilium recursum habuerint, merito preferendi. Tunc enim iuxta canonicas sanctiones, prelati est de alia ecclesia, cum in propria non invenitur idoneus, eligendus, et primo reprobandi sunt clerici ecclesie, quam alii de alienis ecclesiis assumantur.* Et cum electores cardinalis alios meritis et auctoritate precellerent,¹¹ habito presertim respectu ad personam electam, meliorem zelum eos habuisse constabat. Dicebatur preterea, *quod post commestionem electio eiusdem R. fuerat celebrata, et quod consensus dicti G.,¹² quem pars eiusdem R. confitebatur fuisse contemptum,¹³ asserente parte reliqua, capitulum potius contemptum ab ipso fuisse, cum non fuerit consensus¹⁴ prestitus in scrutinio, sed post electionem accesserit, adicere nil valebat. † Adiectum insuper extitit, quod etsi dictus R. maiorem habeat numerum, non tamen nisi in modico excedentem, cum nichil, sicut dictum est, adiecerit prefati W. consensus, et procurator Hugonis in magistrum consenserit memoratum. Ceterum, pars ipsius R. respondit econtra, quod defectus etatis sibi oppositus, cum probatum sit in contrarium, non obstabat eidem, et sufficiens ei, etsi non eminens, scientia suffragatur. Clerici quoque, in quorum favorem inductum est, ut de ecclesia sua eligant sibi pastorem, renuntiare possunt iuri quod pro se noscitur introductum, et locum videtur canon habere, quando clericis renitentibus et invitis, extraneus ingeritur ex adverso, propter quod in eodem canone sequitur, ut sit facultas clericis renitendi, si se viderint pregravari. Adiciebatur quoque, quod cum dictum R. ante cibum constet electum, si electores sui eum post commestionem denuo elegerunt, non debet utile quod de ipso prius canonicè factum fuerat per inutile vitari. Preterea electores ipsius inferiores esse aliis auctoritate et meritis negabatur. Ad hec prenomiatum W. parti dicti R. remisit, quod ex contemptu potuisset obicere, et consensit etiam in eundem. Potest enim qui contemptus¹⁵ extiterat non nocere. Et quia tunc per contemptum est electio irritanda, si contempti non curaverint consentire, sed cum contemptum contra partem alteram retinuerit, et constitutio concilii generalis super electionibus edita continere noscatur, quod presentibus omnibus qui debent, volunt et possunt commode interesse, debeat ad electionem processus haberi, et postmodum expressis electionum formis, in constitutione sequatur eadem quod non valeat electio aliter celebrata, prelibati R. valere debet electio, et altera irrita nuntiari. Et quod dictum est de consensu procuratoris Hugonis, qui alteri electioni consensit, ad rem facere non videtur, cum eiusdem concilii statuta prohibeant, ne quis in electionis negotio procuratorem constituat, nisi sit absens in loco de quo debeat advocari, iustoque impedimento detentus venire non possit. Sane pro parte que cardinalem elegerat, fuit in contrarium replicatum, quod non debebat esse in potestate illius qui contemptus existerit, contemptum uni parti remittere, et contra aliam retinere. Aliter enim frequenter hoc procuraretur in fraudem, ut posset electionem quam vellet approbare vel reprobare contemptus, et totius¹⁶ effectus negotii de sue dependeret beneplacito voluntatis. Denique statutum generalis concilii, quod electionem decernit invalidam, cum contra eiusdem concilii formam in electione peccatur, non debet ad contemptum et ad¹⁷ alia, que non sunt de forma referri. Unde quod ibi dicitur, quod aliter electio celebrata non valeat, ea respicit tantum,¹⁸ que attemptantur contra formam concilii memorati, non autem alia, que*

ponuntur ibidem, sicut est istud,¹⁹ quod presentibus omnibus qui debent, volunt et possunt commode interesse, haberi debeat in electione processus, ne cetera que super hoc alibi statuta noscuntur, uno verbo videantur²⁰ everti. Neque enim credendum est Romanum Pontificem, qui iura tuetur, quod alias excogitatum est multis vigiliis, et inventum uno verbo subvertere voluisse. Nos ergo,²¹ que hinc inde fuere proposita plenius intellectis, cum ex Lateranensi concilio in ordinationibus ecclesiarum maior et sanior pars²² capituli exigatur, et statutum generalis concilii contineat inter cetera, ut is eligatur, in quem omnis, vel maior et sanior pars consentit, electionem dicti R. non persone, sed potius *ipsius* electionis vitio, cum maior et sanior pars non consenserit in eundem, de fratrum nostrorum consilio duximus sententialiter²³ irritandam. *Ne igitur ecclesia vestra pro defectu pastoris dispendium patiatur, universitati vestre per apostolica scripta mandamus, quatinus convenientes in unum, Spiritus Sancti gratia invocata, infra quadraginta dies post susceptionem litterarum nostrarum, per electionem canonicam de persona, que tanto congruat oneri et honori, vobis et ecclesie vestre curetis in episcopum provideri. Alioquin dilectis filiis electo I. archidiacono Parisiensi, et magistro P. de Collemedio, capellano nostro, per litteras nostras iniungimus, ut ipsi auctoritate nostra provideant eidem ecclesie de persona idonea in pastorem. Contradictores, si qui fuerint, vel rebelles per censuram ecclesiasticam, appellatione postposita, compescendo. Datum Laterani, XI Kalendas Aprilis, pontificatus nostri anno secundo.*

¹ Capitulo Cathalaunensi: *Reg.* ² ipso: *Reg.* ³ convenientes...interesse] absente Waltero, qui tunc noluit interesse, convenientes in unum: *Reg.* ⁴ ad...statuistis] certum statuistis terminum ad electionem huiusmodi celebrandam: *Reg.* ⁵ W.: *Reg.* ⁶ B.: *Reg.* ⁷ decem et septem: *Reg.* ⁸ W.: *Reg.* ⁹ W.: *Reg.* ¹⁰ ubi maior est [esset: *Auvray*] numerus: *Reg.* ¹¹ precederent: *Reg.* ¹² W.: *Reg.* ¹³ quem... contemptum] quem confitebatur pars sua contemptum: *Reg.* ¹⁴ consensus: *deest Reg.* ¹⁵ contentus: *Reg.* ¹⁶ istius: *Auvray* ¹⁷ ad: *deest Reg.* ¹⁸ tantum respicit: *Reg.* ¹⁹ illud: *Reg.* ²⁰ videbantur: *Fried.* ²¹ igitur: *Reg.* ²² maior pars et sanior: *Reg.* ²³ sententialiter duximus: *Reg.*

24. X 1.6.58

Deest Registro; Potthast 9547

25. X 1.6.59

Deest Registro; Potthast 9548

26. X 1.6.60

Deest Registro; Potthast 9549

27. X 1.11.16

Auvray 740; Potthast 8832

Reg. 15 (134v-135r): an. 5, no. 154

Rieti: November 12, 1231

[*Rubr:* Ordinatus ad sacros extra tempora statuta, ordinem recipit, et post penitentiam cum eo dispensat episcopus.]

Gregorius IX. Archiepiscopo Baranensi.¹

Consultationi tue taliter² respondemus, quod *Greci qui sub hac forma verborum: "baptizetur talis in nomine Patris, et Filii, et Spiritus Sancti," baptizati ab aliquo extiterunt, non sunt, cum non fuerint secundum formam evangelicam baptizati, et ideo tam illos quam decetero baptizandos sub hac forma: "ego te baptizo in nomine Patris, et Filii, et Spiritus Sancti," precipimus baptizari. Eos autem qui extra tempora statuta³ sacros ordines receperunt, caracterem non est dubium recepisse, quos pro transgressione huiusmodi, primo⁴ eis penitentia imposita competenti, sustinere poteris in susceptis ordinibus ministrare, attentius provisurus, ut id decetero fieri in tua provincia non permittas. Crismati vero ut verbis tuis utamur, a simplici sacerdote confirmationis munus minime receperunt, quia de solis apostolis legitur, quorum sunt episcopi successores, quod per manus impositionem Spiritum Sanctum dabant, et ideo tam illi quam confirmandi decetero a solis episcopis consignentur. Illis quoque qui pro altari viatico utuntur panno lineo a Greco episcopo benedicto, studeas firmiter inhibere ne in panno huiusmodi celebrare presumant. Sed id decetero faciant, vel in altari itinerario, vel in altari maiori, secundum ritum ecclesie consecrato. Ad hec quia nonnulli, ut asseris, taliter baptizati se fecerunt et ad maiores et minores ordines promoveri, nos quod tutius est sequentes, eos primo secundum formam superius tibi traditam baptizatos, per singulos ordines precipimus ordinari. Datum Reate, II Idus Novembris, pontificatus nostri anno quinto.*

¹ Archiepiscopo Baranensi: *Reg.* ² taliter] breviter: *Reg.* ³ statuta] constituta: *Reg.*
⁴ prius: *Reg.*

28. X 1.11.17

Deest Registro; Potthast 9550

29. X 1.13.2

Deest Registro; deest Potthast

30. X 1.16.3

Auvray 988; Potthast 9056

Reg. 16 (58r): an. 6, no. 193

Anagni: December 9th, 1232

[*Rubr:* Si in ordinatione presbyteri vel diaconi, manus impositio fuerit pretermissa, statutis temporibus supplebitur.]

Gregorius IX. Archiepiscopo Londonensi.¹

Presbyter et diaconus cum ordinantur,² manus impositionem tactu corporali ritu ab Apostolis introducto recipiunt. Quod si omissum fuerit, non est aliquatenus³ iterandum, sed statuto tempore ad huiusmodi ordines conferendos, caute supplendum quod per errorem extitit pretermissum. Suspendio autem manuum debet fieri, cum oratio super caput effunditur ordinandi. *Datum ut supra [Anagnie, V Idus Decembris, anno sexto].*

¹ Lundensi archiepiscopo: *Reg.* ² ordinatur: *Fried.* ³ aliquid: *Reg.*

31. X 1.17.18

Auvray 800; Potthast 9551

Reg. 16 (6v): an. 6, no. 16

Spoletto: June 23rd, 1232

[*Rubr:* Illegitimus absque dispensatione Pape ad dignitatem, vel personatum, vel beneficium curatum promoveri non potest.]

Gregorius IX. Turonensi Archiepiscopo.¹

Nimis in tua provincia, *sicut accepimus*, ecclesie deformatur honestas, ex eo quod filii sacerdotum et alii non legitime nati *passim* ad dignitates et personatus, et alia beneficia² curam animarum habentia,³ *in provincia ipsa* sine dispensatione sedis apostolice promoventur. Quocirca⁴ mandamus, quatinus predictis⁵ personis a personatibus, et dignitatibus, et huiusmodi beneficiis⁶ prorsus amotis, ea personis idoneis conferri facias, per illos ad quos⁷ collationem ipsorum de iure noveris pertinere. Et ne id decetero *in eadem provincia* presumatur, districtius inhibemus.⁸ *Contradictores etc. Datum Spoletto, VII Kalendas Iulii, anno sexto.*

¹ archiepiscopo Turonensi: *Reg.* ² et alia beneficia: *deest Reg.* ³ habentes: *Reg.*

⁴ Quocirca] Volentes igitur ab ecclesia Dei, que scandalum pariunt, remove: *Reg.*

⁵ predictis] huiusmodi: *Reg.* ⁶ huiusmodi beneficiis: *deest Reg.* ⁷ per illas ad quas: *Reg.*

⁸ inhibemus] interdicas: *Reg.*

32. X 1.18.8

Auvray 712; Potthast 9552

Reg. 15 (124r-v): an. 5, no. 126

Rieti: September 10th, 1231

[*Rubr:* Natus ex patre servo et libera matre liber est, et licite promovetur.]

Gregorius IX. Archiepiscopo Neapolitano.

Dilectus filius G., *dictus Storcimilitis*, diaconus *Neapolitanus in nostra* proposuit *presentia constitutus*, quod I.¹ *Patricii de Cicala* miles, *Nolane diocesis*, ea occasione, quod patrem ipsius *diaconi* hominem suum *pro eo, quod in quodam annuo redditu sibi tenetur* esse proponit, licet mater sua, cuius debet imitari condicionem, libera esse noscatur, ne promoveatur in presbyterum, *indebite* impedire presumit. Quocirca *fraternitati tue per apostolica scripta* mandamus, quatinus si tibi constiterit de premissis, eundem militem *ut ab huiusmodi impedimento desistat, monitione premissa per censuram ecclesiasticam, appellatione remota*, cessare² compescas. *Datum Reate, III Idus Septembris, pontificatus nostri anno quinto.*

¹ Iohannes: *Reg.* ² cessare: *deest Reg.*

33. X 1.29.38

Auvray 512; Potthast 9553

Reg. 15 (40r-v): an. 4, no. 81

Anagni: October 20th, 1230

[*Rubr:* Si delegatus pronunciaverit se iurisdictionem non habere, ipsam etiam de consensu partium non reassumit.]

Gregorius IX. S. Precentori et Magistro N. canonico Ambianensibus.¹

Significantibus M.² muliere et F.³ milite nato eius nos noveritis accepisse, quod cum nobilis mulier I.,⁴ *Rothomagensis diocesis* vidua, mentiens se pauperem,⁵ contra eos super terris et rebus aliis ad iudices⁶ *sub consueta forma* nostras⁷ litteras impetrasset, *dicta nobili terras quasdam, possessiones et redditus, nomine dotis sue, pretextu litterarum ipsarum in quibus de dote mentio nulla erat, sibi ab ipsis restitui postulante*, iidem coram eis excipiendo proponere curaverunt, quod cum dicte littere *veritate tacita et suggesto mendacio* impetrata fuissent, cum predicta Iuliana,⁸ que nobilis est et dives, pauperem *viduam* se dixisset in eis, coram ipsis, nisi requisito prius domino,⁹ sub cuius iurisdictione ipsi consistunt, et¹⁰ coram quo parati erant eidem exhibere iustitie complementum, *super hoc iuxta earundem litterarum tenorem attentius moneretur*, non debebant de iure *nec poterant* per tales litteras conveniri. Unde dicti iudices interloquendo pronunciarunt, se per easdem litteras procedere non debere.¹¹ † *Cum autem postmodum, elapso trium mensium spatio, iidem iudices auctoritate predictarum litterarum iurisdictionem indebite resumentes, partes ad suam presentiam evocassent, ipsi tandem ex legitimo gravamine appellantes ab eis, ad priorem Exonie et suum coniudicem, nostras super hoc litteras impetrarunt. Coram quibus cum fuisset diutius litigatum, demum fuit a partibus in quosdam,¹² eorundem iudicum accedente consensu, tamquam in arbitros taliter¹³ compromissum, quod videlicet si predicti arbitri infra terminum in compromisso expressum causam non deciderent,¹⁴ partes ad eorundem iudicum,¹⁵ ut in negotio procederent secundum quod exigeret ordo iuris, redirent examen. Verum dictis arbitris eandem causam infra terminum in compromisso contentum negligentibus terminare, dicti iudices¹⁶ iurisdictionem per formam compromissi huiusmodi resumpserunt, a quibus iidem se sentientes iniuste gravari, quod super hiis, super quibus ab eis fuerant *sententialiter* absoluti, litigare *minus licite* compellebant eosdem, *contra suam sententiam temere venientes*, ad nostram audientiam appellarunt.¹⁷ *Sed ipsi, legitima eorum appellatione contempta, excommunicationis in eos sententiam promulgarunt. Ideoque discretioni vestre per apostolica scripta mandamus, quatinus si est ita, dictam excommunicationis sententiam nullam esse penitus nuntiantes, revocetis in irritum etc.,¹⁸ quicquid post appellationem huiusmodi temere inveneritis attemptatum. Alioquin partes ad dictorum abbatis et collegarum suorum remittatis examen, appellantes in expensis legitimis condemnando. Testes etc. Quod si non omnes, duo vestrum etc. Datum Anagnie, XIII Kalendas Novembris, pontificatus nostri anno quarto.**

¹ Precentori, officiali et magistro Hugoni de Curtill. canonico Ambianensibus: *Reg.*

² Maragarita: *Reg.* ³ I.: *Reg.* ⁴ Iuliana de Cartiers: *Reg.* ⁵ mentiens se pauperem viduam: *Reg.* ⁶ iudices] abbatem de Cagia et eius coniudices: *Reg.* ⁷ nostras] a nobis:

Reg. ⁸ I.: *Reg.* ⁹ nisi...domino] nisi prius dominus: *Reg.* ¹⁰ et: *deest Reg.* ¹¹ Unde...
debere] Unde dicti iudices ipsos super premissis ab impetitione sepefate [sepedicte:
Auvray] nobilis, cognitis cause meritis, sententialiter absolverunt: *Reg.* ¹²
demum...quosdam] demum in I. presbyterum, rectorem ecclesie de Bui, et collegam
eiusdem, fuit a partibus: *Reg.* ¹³ taliter] tali tamen conditione amicablem: *Reg.* ¹⁴
causam non deciderent] causam ipsam equo non possent aribitrio terminare: *Reg.* ¹⁵
ad...iudicum] ad prescripti abbatis de Cagia et suorum coniudicum: *Reg.* ¹⁶ dicti
iudices] dictus abbas et college [collega: *Auvray*] prefati: *Reg.* ¹⁷ ad...appellarunt] ad
nostram duxerunt audientiam appellandum: *Reg.* ¹⁸ irritum etc.] statum debitum: *Reg.*

34. X 1.29.39

Deest Registro; Potthast 9554

35. X 1.29.40

Deest Registro; Potthast 9555

36. X 1.29.41

Deest Registro; Potthast 9556

37. X 1.29.42

Deest Registro; Potthast 9557

38. X 1.29.43

Deest Registro; Potthast 9558

39. X 1.30.8

Auvray 55; Potthast 9559

Reg. 14 (9r): an. 1, no. 55

Lateran: April 24th, 1227

[*Rubr*: Presente legato de latere minor legatus exsecutionem officii sui dimittere debet.]

Gregorius IX. Patriarche Hierosolymitano.

Volentes † et tuam honorare personam, et per honorem tibi exhibitum aliis providere fraternitati tue¹ legationis officium in provincia tua duximus committendum, fraternitatem tuam in Domino exhortantes, quatinus illud iuxta eam, quam de tua gerimus prudentia et sinceritate fiduciam, secundum Deum laudabiliter studeas exercere. Ita tamen quod si legatum ad partes illas de latere nostro contigerit destinari, executionem ipsius officii, quamdiu legatus ipse ibi fuerit, pro sedis apostolice reverentia omnino dimittas. Eam in omnibus habens diligentiam et cautelam, quod nec fama nec conscientia te accuset, sed sicut crevisti per maioris dignitatis officium sic bonus odor fame tue suscipiat incrementum. Datum Laterani, VIII Kalendas Maii.

¹ fraternitati tue] tibi: *Reg.*

40. X 1.30.9*Deest Registro*; Potthast 9560**41. X 1.30.10***Deest Registro*; Potthast 9561**42. X 1.31.19**

Auvray 551; Potthast 8661/9561 p.

Reg. 15 (52v-53r): an. 4, no. 117

Lateran: February 14th, 1231

[*Rubr:* Per rescriptum, quo Papa mandat ordinario, ut corrigat clericos sue diocesis, non datur ei iurisditio super exemptos.]

Gregorius IX. Episcopo Suanensi.

Grave gerimus *et indignum*, quod cum in ecclesiam¹ Sancte Marie de Orbitello et quasdam alias *ecclesias* in tua diocesi existentes,² ad monasterium Sancti Anastasii de Urbe spectantes, nullam iurisdictionem habeas ordinariam aut etiam delegatam, occasione litterarum nostrarum, quas super correctione clericorum tibi transmisimus, in eas interdicti ac in clericos earundem suspensionis sententias promulgasti, quamquam abbas eiusdem monasterii eos corrigere sit paratus,³ † *prout pertinet ad eundem*. *Quia vero eo minus debemus iniurias ipsius monasterii sustinere, quo specialiter ad nos spectans, nos post Deum sperat precipuos adiutores, fraternitati tue per apostolica scripta firmiter precipiendo mandamus, quatinus si est ita, prudenter corrigens per teipsum, que minus provide attemptasti, predictas sententias infra octo dies post susceptionem presentium sine qualibet difficultate relaxes. Alioquin dilectis filiis Sancti Iusti et Albarensi abbatibus et archipresbytero Sancti Iohannis Montis Alti Tuscanensis, Suanensis et Castrensis diocesum, nostris damus litteris in mandatis, ut ipsi ex tunc easdem sententias auctoritate nostra studeant relaxare. Datum Laterani, XVI Kalendas Martii, pontificatus nostri anno quarto.*

¹ *ecclesiam: deest Reg.* ² *existentes in tua diocesi: Reg.* ³ *paratus sit eos corrigere: Reg.*

43. X 1.31.20*Deest Registro*; Potthast 9562**44. X 1.32.2***Deest Registro*; Potthast 9563**45. X 1.33.13**

Auvray 346; Potthast 9564

Reg. 14 (138r): an. 3, no. 60

Perugia: September 28th, 1229

[*Rubr*: Si metropolitanus a suffraganeo iuramentum exigit ultra formam statutam a canone, in eo quod est ultra, suffraganeus non tenetur.]

Gregorius IX. Patriarche Grandensi.¹

Dilecti filii archidiaconus et capitulum Castellenum suam ad nos querimoniam detulerunt, quod cum a *venerabili fratre nostro* Castellano episcopo exigeres iuramentum preter formam canonicam, quam ceteri suffraganei metropolitanis suis consuevere prestare, iidem conspicientes ex hoc ecclesie sue preiudicium generari, ad sedem apostolicam appellarunt. † *Sed tu ab eodem episcopo extorsisti, ultra formam communem nichilominus iuramentum, adiectis in eo quibusdam articulis, qui servari non possent sine gravi iactura ecclesie Castellane. Quare nobis humiliter supplicarunt, ut quicquid post appellationem eorum legitimam temere est presumptum, dignaremur in irritum revocare.* Cum igitur non deceat alii te fecisse, quod ab alio fieri tibi nolles, *fraternitati tue per apostolic scripta* mandamus, quatinus contentus forma canonica, quam nos a coepiscopis nostris nobis immediate subiectis recipimus, nil amplius a Castellano² episcopo obtentu alicuius consuetudinis exigas, pretextu prestiti iuramenti, sciens nos eundem episcopum ab huiusmodi iuramento, quo ad alios³ articulos absolvisse, vel denuntiasset potius non teneri. *Datum Perusii, IIII Kalendas Octobris, pontificatus nostri anno tertio.*

¹ Gradensi: *Reg.* ² Castellano] predicto: *Reg.* ³ alios] adiectos: *Reg.*

46. X 1.33.14

Auvray 668; Potthast 9565

Reg. 15 (102r-103r): an. 5, no. 83

Lateran: May 26th, 1231

[*Rubr*: Vacante episcopatu capitulum confirmat et infirmat electiones.]

Idem Priori fratrum Predicatorum et archidiacono Rheginensi.¹

Cum olim causa² † *In eodem scriptum est priori fratrum predicatorum Sancti Pauli extra muros Messanenensis, archidiacono et cantori Reginis, usque inviolabiliter observare, verbis competenter mutatis que inter bone memorie archiepiscopum Messanensem et vos, ex parte una, et archimandritam et conventum monasterii Sancti Salvatoris de Lingua Messanensis, ex altera, super subiectione, obedientia et reverentia vertebatur, agitata diutius, per provisionem fuisset sedis apostolice terminata, quia idem conventus tamquam ingrati, factam sibi gratiam in provisione huiusmodi minime attendentes, contra provisionem eandem venire temere presumebant, venerabilis frater noster, Reginus archiepiscopus eiusque college, auctoritate felicis recordationis H. pape, predecessoris nostri, excommunicationis in eos sententiam protulerunt. Quam postmodum bone memorie archiepiscopus Cusentinus et coniudices sui mandaverunt auctoritate apostolica usque ad satisfactionem condignam inviolabiliter observari. Quibus sententiam ipsam pertinaciter contempnentibus, memoratus archimandrita excommunicatione ligatus diem clausit extremum. Ceterum conventus predicti monasterii per venerabilem fratrem nostrum archiepiscopum Capuanum, tunc Pactensem episcopum, iuxta formam ecclesie*

beneficio absolutionis obtento, servata in corde malitia preconcepta, Mathary monachum et confratrem eorum in archimandritam ipsius monasterii eligentes, electionem ipsius examinandam et confirmandam presentare dicto Messanensi archiepiscopo contempserunt, contra provisionem eandem et iuramentum super hoc prestitum temere veniendo. Propter quod venerabiles fratres nostri Militensis et Tropensis episcopi eos auctoritate apostolica in pristinam excommunicationis sententiam reducentes, excommunicatos et periuros publice nuntiarunt. Et licet processus episcoporum ipsorum per dilectum filium abbatem de Nucaria suosque collegas de mandato apostolico fuerit approbatus, ipsi tamen malleum velut stipulam reputantes, contemptis ecclesie clavibus, fere per annum perseverarunt in excommunicationis sententia obstinati, et idem electus, confirmatione electionis sue non habita vel petita, amministrazione eiusdem monasterii se irreverenter ingressit. Quare dictus predecessor noster venerabili fratri nostro Cephaludano episcopo et eius collegis iniuncxit, ut ad monasterium ipsum personaliter accedentes, dicto electo ab eodem monasterio prorsus amoto, mandarent predicto Massanensi archiepiscopo ut de archimandrita ipsi monasterio provideret. Sed ipsis propter malitiam temporis mandatum apostolicum exequi nequentibus, nos ad petitionem conventus eiusdem venerabili fratri nostro Marturanensi episcopo et dilecto filio abbati Sancti Stephani de Bosco nostris dedimus litteris in mandatis, ut personaliter accedentes ad locum, recepta de parendo mandatis nostris ab eodem conventu iuratoria cautione, et eis beneficio absolutionis impenso, vobis postmodum et conventui memorato iniungerent, ut infra duos menses post absolutionem obtentam, per procuratores idoneos ad hoc speciale mandatum habentes, nostro vos curaretis conspectui presentare, mandatum nostrum super premissis humiliter recepturi. Comparentibus igitur dilectis filiis magistro B., Messanensi, et Virgilio, Traynensi canonicis, pro parte vestra, et P. et G., pro predicto conventu procuratoribus coram nobis, dilectum filium nostrum E., Sanctorum Cosme et Damiani diaconum cardinalem, concessimus auditorem. Coram quo dicti procuratores vestri provisionem huiusmodi observari, et prefatos electum et conventum, pro eo quod periuri et excommunicati divina officia celebrarunt, canonica pena puniri, ac eundem electum qui confirmatione non habita per sex annos amministrare presumpsit, in grave preiudicium ecclesie Messanensis, iuxta mandatum predicti predecessoris nostri, amoveri a iamdicto monasterio petierunt. Verum predicti procuratores conventus, negantes se ac conventum divina excommunicatos officia celebrasse, ex adverso dixerunt quod prefata provisio in plerisque capitulis nimium erat dura, nec ipsam poterant aliquatenus observare, cum per hoc derogaretur privilegiis eorundem; unde petebant ipsius duritiam per sedem apostolicam temperari. Cum autem que premissa sunt et alia quedam idem cardinalis nobis et fratribus nostris prudenter et fideliter retulisset, nos de fratrum nostrorum consilio decrevimus prenominatam provisionem firmiter observari, et eundem electum a regimine ipsius monasterii penitus amoveri, predictis procuratoribus, ipsius conventus nomine, sub debito prestiti iuramenti districte mandantes ut provisionem ipsam studeant inviolabiliter observare. Quocirca discretionis vestre per apostolica scripta mandamus, quatinus quod super hoc est diffinitum a nobis faciatis inviolabiliter observari. Et licet conventus eiusdem monasterii Sancti Salvatoris Messanensis³ sint ipso iure hac vice eligendi potestate privati, de gratia tamen eligendi seu postulandi detis ipsis auctoritate nostra liberam facultatem, mandantes eisdem, ut cum ecclesia Messanensis vacet ad presens, electionem suam confirmandam, prout de iure fuerit, vel etiam infirmandam, presentent⁴ capitulo Messanensi.

Contradictores siqui fuerint vel rebelles per censuram ecclesiasticam, appellatione postposita, compescendo. Quod si non omnes, duo vestrum etc. Datum ut supra [Laterani, VII Kalendas Iunii, pontificatus nostri anno quarto].

¹ Priori fratrum Predicatorum Sancti Pauli extra muros Messanensis, archidiacono et cantori Reginis: Reg. ² Cum olim causa: *hoc incipit ex decretale priori (Auvray 667) a Raymundo desumpum est* ³ Sancti Salvatoris Messanensis: *deest Reg.* ⁴ presente: Reg.

47. X 1.33.15

Auvray 645; Potthast 9566
Reg. 15 (92v-93r): an. 5, no. 61
Lateran: May 12th, 1231

[*Rubr: Qui maior est ordine, licet in ecclesia posterius receptus, in loco et portione preferetur. H. d. secundum veram lecturam.*]

Idem Archipresbytero Sancte Marie maioris de Urbe.¹

Ut universalis eccelsie pulchritudo menbris effigiata distinctis, que non eundem actum habentia, invicem sibi unanimi caritate ministrent, non solum servetur integrus, verumetiam officiosius operetur instar curie Regni celestis, ordinum varietate distinguitur et insignitur titulis dignitatum, quibus viri digni decorati decenter secundum differentes datas a Domino gratias, [ut] in ea qua vocantur vocatione digne studeant famulari. Unde ne membrum in corpore scandalum facere videatur, expedit ut qui minores sunt ordine, nequaquam postponi maioribus dedignentur, cum alias ridiculum videretur, si proveci ad ordines altiores in locis inferioribus remanerent. Ut igitur in ecclesiis urbis singula queque locum teneant fortita decenter volentes, ut apostolice sedi cuius sunt menbra, sicut convenit, conformentur, de fratrum nostrorum consilio presenti decreto statuimus, ut decetero in qualibet ecclesia, presbyteri primum locum, diaconi secundum, subdiaconi tertium, et sic de reliquis obtineant ordinatim, etiam si posterius admittantur. Et qui maior est ordine, etiamsi postea sit receptus, in portione percipienda esse volumus potiore, ac minores facere servitia consueta.² Nulli ergo etc., nostre constitutionis infringere. Siquis autem etc. Datum Laterani, IIII Idus Maii, pontificatus nostri anno quinto.

¹ Rectoribus fraternitatis et universo clero Urbis: Reg. ² Et qui...consueta: *deest Reg.;* *haec verba ex Auvray 670 circa finem capituli desumpta sunt (vid. X 1.2.13)*

48. X 1.33.16

Auvray 783; Potthast 8899
Reg. 15 (159r-v): an. 5, no. 197
Rieti: March 20th, 1232

[*Rubr: Si ecclesia sita in aliquo archidiaconatu erigitur in cathedralem, a iurisdictione archidiaconatus eximitur.*]

Idem Archiepiscopo Colocensi.

Cum inferior superiorem¹ solvere nequeat vel ligare, sed superior² inferiorem liget regulariter et absolvat, et satis *indignum et absonum* videatur, ut *maior subditus sit minori et filius potestatem habeat*³ in parentem, miramur *non modicum et movemur*, quod cum tu monasterium de Cheur,⁴ constitutum in Firmiensi archidiaconatu⁵ tue diocesis, ecclesiam erexeris cathedralem, *venerabilem fratrem nostrum Sirmiensem episcopum ad titulum ipsius ecclesie in episcopum consecrando*, archidiaconus Firmiensis⁶ in tantam prorupit⁷ temeritatis audaciam, ut in *eundem* episcopum ibi consecratum⁸ et ecclesiam suam iurisdictionem exercere presumat. *Quare idem episcopus nobis humiliter supplicavit ut cum eodem archidiacono in ipsum et dictam ecclesiam iurisdictionem huiusmodi exercente, ipse in eadem ecclesia episcopus quodammodo non existat, providere sibi super hoc salubriter dignaremur. Nos igitur eisdem episcopo et ecclesie paterno compatiens affectu, ipsos cum omnibus iuribus et pertinentiis eorundem, a iurisdictione ipsius archidiaconi penitus eximentes*, mandamus, quatinus prefato archidiacono, a cuius iurisdictione dictum episcopum denunciamus exemptum, id districte studeas inhibere,⁹ proviso¹⁰ *prudenter* ut, si ex hoc archidiaconi¹¹ Firmiensis¹² iura leduntur, in diocesi tua ubi expedire videris, absque alieni iuris¹³ preiudicio recompensationem illi facias congruentem. *Contradictores etc. Datum Reate, XIII Kalendas Aprilis, anno quinto.*

¹ superiorem] potiore: *Reg.* ² superior] potior: *Reg.* ³ habet: *Reg.* ⁴ Cuher: *Reg.*
⁵ constitutum... archidiaconatu: *deest Reg.* ⁶ Sirminensis: *Reg.* ⁷ prorumpit: *Reg.* ⁸ ibi consecratum: *deest Reg.* ⁹ a cuius...inhibere] ne in eos iurisdictionem aliquam decetero exercere presumat, ex parte nostra districte studeas inhibere: *Reg.* ¹⁰ proviso: *Fried.*
¹¹ archidiaconatus: *Reg.* ¹² Sirmiensis: *Reg.* ¹³ iuris alieni: *Reg.*

49. X 1.33.17

Auvray 790; Potthast 9567
 Reg 16 (2v-3r): an. 6, no. 7
Rieti: March 29th, 1232

[*Rubr:* Compositionem super iure primatie unus solus, cuius interest, poterit impedire.]

Idem Lemovicensi Archidiacono et Priori Sancte Radegundis Pictaviensis.¹

Humilis doctrina magistri² † *humiles instruxit discipulos salem et pacem habere – in se salem, inter se pacem*³ – *ut pacis lenitas salem sapientie mulceat, et sal sapientie pacis condiat lenitatem. Sunt quoque nonnulli, qui zelum amarum*⁴ *contentionibus acuendo, tantum que salis sunt sapiunt, et corda scindente discordia, sub umbra iuris ad iniuriam decidunt, interdum calumpnie ac inimicitiarum puteos fodientes, non considerato quod contentioneis puteis relictis contemptui, fodit Ysaac alium pro quo non contendere pastores, cuius nomen vocatum est latitudo, quia restringitur caritas contentione diffusa, et si artatur contentio, caritas dilatatur. Unde cordibus est reddenda concordia, ut sit opus iustitie pax et silentium cultus eius, presertim in illis qui penne columbe deargentate sibi et subditis debent splendere, pacifici sedentes in pulchritudine pacis, in tabernaculis fiducie ac requie opulenta.*⁵ *Sane vicinos non latuit et ad multos in longinquo pervenit, quantum gravaminis questio de primitia suborta Bituricensi et Burdegalensi ecclesiis earumque*⁶ *prelatis attulerit et afferret in posterum, si duraret ad futurum, tracta de*

preterito coniectura. Consueverunt etenim lites esse prodige sumptuum, liberales laborum, parce modestie, avare quietis, et utinam non commotionis et discordie incentive, eo quod raro litium iurgio lingua silet, et iudiciorum strepitu mens quiescit. Hec autem et animarum pericula, que de ipsorum absentia suis ecclesiis imminabant, venerabiles fratres nostri Bituricensis et Burdegalensis archiepiscopi attendentes, ne invalescente contentione, utraque diutius langueret ecclesia, et quandam mortem videretur ingerere vita cause, humiliter petierunt questionem huiusmodi, quam diuturnitas iudicii prorogabat, acceleratione providentie breviari. Super quo provisioni sedis apostolice omnia iura sibi et suis ecclesiis competentia commiserunt. Nos autem considerantes, quod in tribus que coram Deo et hominibus probata leguntur, concordia fratrum specificatione obtinet primum locum, petitionem oblatam ad gratiam exauditionis admisimus, illorum desideria favore benivolo proseguendo. Verum ne de contingentibus aliquid omittere videamur, de utriusque partis assensu mandamus, quatinus prelatorum Burdegalensis provincie in ea presentium, et cathedralium capitulorum⁷ eiusdem provincie, necnon et Bituricensis capituli, super provisione, quam inter Bituricensem et Burdegalensem archiepiscopos in causa primatie duximus faciendam, requiratis assensum,⁸ quo habito providentiam nostram,⁹ quam vobis sub alia carta mittimus interclusam, solempniter publicetis. Si qui vero, quod non credimus, consensum prestare noluerint, vos supersedentes publicationi predictae, sub expresso peremptorio, quod videritis prefigendum, districte precipiatis eisdem, ut personaliter, si prelati fuerint, vel si alii et ultra quadraginta, per procuratores idoneos nostro se conspectui representent, prosecuturi coram nobis ius, si quod¹⁰ habere contendunt, et responsuri parti alteri super hiis que duxerit proponenda, et satisfacturi nichilominus parti alteri,¹¹ si forte succubuerint in expensis. Quod si non omnes etc. Datum Reate, IIII Kalendas Aprilis, anno sexto.

¹ A. Samathie Petragoricensi, et magistro Durando Lemovicensi archidiaconis, et priori Sancte Radegunde Pictaviensis: *Reg.* ² magistra: *Fried.* ³ salem et...se pacem] salem in se et pacem habere inter se talem: *Auvray* ⁴ animarum: *Auvray* ⁵ humiles instruxit...reque opulenta: *canc. cum va-...-cat Reg.* ⁶ eorumque: *Reg.* ⁷ capitulorum cathedralium: *Reg.* ⁸ super... assensum] super premissis requiratis assensum: *Reg.* ⁹ providentiam nostram] providentiam nostra bulla munitam: *Reg.* ¹⁰ quid: *Reg.* ¹¹ parti alteri: *deest Reg.*

50. X 1.35.8

Deest Registro; Potthast 9568

51. X 1.37.3

Deest Registro; Potthast 9569

52. X 1.38.10

Auvray 16; Potthast 9570

Reg 14 (3v-4r): an. 1, no. 16

Lateran: April 7th, 1227

[*Rubr:* Providere debet iudex, maxime in causa matrimoniali, quod constituens procuratorem gaudeat plena

libertate.]

Gregorius IX. nobili viro Ubaldo Civi Pisano.¹

Accedens ad apostolicam sedem † *nobilis vir comes Rad., socer tuus, pro facto tuo diligenter et fideliter institit, et ut votis tuis satisfaceret sollicite laboravit. Sed cum nobilis mulier Donicella Benedicta procuratorem aliquem apud Romanam ecclesiam non haberet, procedi non potuit super negotio memorato. Quocirca nobilitati tue per apostolica scripta mandamus, quatinus D. nobilem mulierem², que sub tua, ut dicitur, potestate tenetur, plene restituas libertati, faciens ipsam ad castrum de Massa Lucane³ diocesis, per abbatem Montis Christi et plebanum ipsius castri secure perducere, ut existens ibi libera, procuratorem libere ordinare valeat, qui suam coram nobis iustitiam prosequatur. Tu ergo tam super sponsalibus, que inter natam tuam et filium eiusdem nobilis contracta proponuntur, et super hiis in quibus ecclesiam offendisti, quam super aliis que a te petere ipsa voluerit, usque ad proximo venturum festum Sancti Iohannis Baptiste, quod tibi peremptorium terminum assignamus, procuratorem idoneum ad presentiam nostram mittas, qui ad agendum et⁴ respondendum, componendum et recipiendum, quicquid super hiis providere voluerimus, plenam habeat potestatem. Nullo vero modo impediatur seu difficultatem aliquam presumas ingerere, quominus dicte nobili de Regno Calaritano in expensis debeat congrue provideri, mandata nostra taliter impleturus, quod nostre patientie minime videaris abusor, cum sicut mansuetis gratiam, ita perversis intendamus duritiam exhibere. Datum ut supra [Laterani, VII Idus Aprilis].*

¹ nobili viro Ubaldo civi Pisano, spiritum concilii sanioris: Reg. ² D. nobilem mulierem] dictam nobilem: Reg. ³ Lunensis: Reg. ⁴ et: *deest* Reg.

53. X 1.38.11

Auvray 630; Potthast 9571

Reg. 15 (86r): an. 5, no. 46

Lateran: April 26th, 1231

[*Rubr:* Si procuratori generali denegantur inducie ad consulendum dominum, ex causa probabili absentem, poterit procurator appellare.]

Idem Cantuariensi Archiepiscopo.¹

Dilectus filius magister L.,² rector ecclesie de Auna³ *Abbatis*, transmissa nobis petitione monstravit, quod cum R. presbyter, *Cicestrensis diocesis*, contra ipsum, causa studii Bononie commorantem, super eadem ecclesia *quam ad mandatum apostolicum canonice se proponit adeptum* ad iudices⁴ nostras litteras impetrasset, earum auctoritate a iudicibus ipsis eodem rectore citato, procurator ipsius generalis ad omnia eius tractanda negotia, *sentiens ab eisdem indebite se gravari*, pro eo quod competentem terminum, infra quem rectorem ipsum consuleret, utrum deberet contendere vel cedere questioni, sibi concedere⁵ *contra iustitiam* denegabant, pro eodem nostram audientiam appellavit. Quocirca mandamus, quatinus si est ita, revocato in irritum etc.,⁶ *usque attemptatum, in causa ipsa iuxta priorum continentiam litterarum, appellatione remota, ratione previa, procedatis. Alioquin partes ad priorum iudicium etc. Appellantem etc. Testes etc. Quod*

si non omnes, tu frater archiepiscopo, cum eorum altero etc. Datum Laterani, VI Kalendas Maii, anno quinto.

¹ Archiepiscopo Cantuarensi, archidiacono et magistro W. de Sancte Marie ecclesia canonico Londoniensi: *Reg.* ² Laurentius de Sancto Martino: *Reg.* ³ Anna: *Reg.* ⁴ iudices] priorem Sancte Frideswide Oxoniensis et eius coniudices: *Reg.* ⁵ concedere sibi: *Reg.* ⁶ irritum etc.] statum debitum etc.: *Reg.*

54. X 1.38.12

Deest Registro; Potthast 9572

55. X 1.38.13

Deest Registro; Potthast 9573

56. X 1.38.14

Deest Registro; Potthast 9574

57. X 1.38.15

Deest Registro; Potthast 9575

58. X 1.40.7

Deest Registro; Potthast 9576

59. X 1.41.8

Auvray 399; Potthast 9577

Reg. 14 (153r-v): an. 3, no. 113

Perugia: February 7th, 1230

[*Rubr:* Restituitur minor in eo, quod contraxit vel omisit, si probat exinde se lesum, et sit infra tempora restitutionis petende.]

Gregorius IX.¹

Constitutus in presentia nostra² *dilectus filius* magister Guill.³ *de Perona, clericus* pro se ac fratre suo I.⁴ canonico Parrosinensi,⁵ exhibita nobis petitione monstravit, quod eis in minori constitutis etate, ac eorum matre, cuius successores existunt, rebus humanis exempta, quondam Guil.⁶ pater ipsorum quasdam possessiones *et domos* utrique communes *G. Burel et* quibusdam *aliis Noviomensis et Suessionensis diocesis* vendidit pro quadam pecunie quantitate, ac ut huiusmodi venditio robur firmitatis haberet, emancipavit eosdem, et fecit eos⁷ contractui consentire. Quare *nobis humiliter* supplicavit, ut vel venditionem eandem *cui sollempnitas que a iure requiritur non accessit* mandarem nuntiari nullam, *quo ad portionem de predictis rebus ex successione materna contingentem eosdem*, vel cum adhuc existant infra tempus ad obtinendum beneficium in integrum restitutionis indultum, et infra annum et diem a tempore contractus, ipsis tamquam proximioribus competeret super alia portione ius offerendi emptoribus pretium, iuxta municipii Parrosinensis⁸ consuetudinem approbatam,

quod hactenus omiserunt, dignaremur eis super utroque, cum in hoc non modicum lesi noscantur, et emptoribus portionis eiusdem, vel eorum successoribus⁹ pretium sint offerre parati, per idem beneficium subvenire. Quocirca *discretioni vestre per apostolica scripta* mandamus, quatinus *vocatis qui fuerint evocandi*, si premissa inveneritis veritate subnixi, vel venditionem predictam, quo ad partem ex successione materna ipsos contingentem nullam nuntiare curetis, si in ea debita iuris sollempnitas est omissa, vel si forsitan intervenerit, et eos lesos esse constiterit, tam super ea quam super residua portione, dum tamen quod offerunt, duxerint faciendum, auctoritate nostra in integrum restituere studeatis, *super fructibus perceptis ex eis predictis pro rata portionis maternelle quod iustum fuerit facientes. Contradictores per censuram ecclesiasticam, appellatione postposita, compescendo. Nullis litteris veritati et iustitie prejudicantibus a sede apostolica impetratis. Testes etc.*¹⁰ *Quod si non omnes, duo vestrum etc. Datum Perusii, VII Idus Februarii, anno tertio.*

¹ Preposito Sancti Martini et magistris A. scolastico Iprensi, et B. canonico Mech[lin]inensi: Reg. ² in nostra presentia: Fried. ³ Walterus: Reg. ⁴ Iohanne fratre suo: Reg. ⁵ Peronensi: Reg. ⁶ G.: Reg. ⁷ ipsos: Reg. ⁸ Peronensis: Reg. ⁹ vel eorum successoribus: *add. in marg. Reg.* ¹⁰ Testes etc.: *add. in marg. Reg.*

60. X 1.41.9

Deest Registro; Potthast 9578

61. X 1.41.10

Deest Registro; Potthast 9579

62. X 1.42.2

Auvray 393; Potthast 9580

Reg. 14 (151r-v): an. 3, no. 107

Perugia: January 28th, 1230

[*Rubr.*: Clericus causa mutandi iudicium, non debet recipere cessionem a laico.]

Gregorius IX. Abbati S. Nicolai et decano Furnensi, Morinensis diocesis.¹

Ex parte scabinorum *et communis* Hipretis² fuit propositum *coram nobis*, quod inter laicos *contra laicos* eiusdem loci, questionibus emergentibus dirimendis per iudicium seculare, *B. et quidam alii clerici loci eiusdem, Morinensis diocesis*, sibi dono vel pretio ab aliquibus laicorum ipsorum cedi faciunt actiones, ut adversarios ad ecclesiasticum forum trahant, et predam ex huiusmodi commercio assequantur, † *cum ipsi laici, fatigati per eosdem clericos laboribus et expensis, cum eis cogantur componere vel cedere iuri suo. Unde cum per hoc ipsorum eludatur iurisdictio scabinorum, iidem nobis humiliter supplicarunt, ut providere super hoc eis circumspectione apostolica dignaremur.* Cum igitur cessiones et emptiones litium legitime prohibeant sanctiones, ita quod iactura cause afficiant illos, qui sibi potentiorum patrocinium taliter advocare presumunt,³ et ex eo sint etiam odiose, quod ex fonte cupiditatis videntur procedere, *discretionem*⁴ *vestre per apostolica scripta* mandamus, quatinus *auctoritate nostra inhibeatis clericis memoratis,*

ne huiusmodi actiones litium emant vel recipiant cessiones. Quod si presumpserint, clericos memoratos⁵ a presumptione huiusmodi per censuram ecclesiasticam, appellatione remota, veritate cognita, compescatis. Quod si non omnes etc., duo vestrum etc. Datum Perusii, V Kalendas Februarii, pontificatus nostri anno tertio.

¹ Abbati Sancti Nicolai Furnensi, Premonstratensis ordinis, preposito de Le, et decano Furnensi, Morinensis diocesis: *Reg.* ² Ipremsium: *Reg.* ³ ita quod...presumunt: *deest Reg.* ⁴ districte: *Auvray* ⁵ clericos memoratos] eos: *Reg.*

63. X 1.43.12

Auvray 380; Potthast 9581

Reg. 14 (147r): an. 3, no. 94

Perugia: November 28th, 1229

[*Rubr.*: Non valet compromissum factum in duos sive plures, hoc adiecto, ut in casu discordie eligatur tertius per eosdem vel alios. H. d.]

Gregorius IX. Decano et Magistro P. Canonico S. Petri, Atrebatensis diocesis.¹

Innotuit nobis Gulielmo² *Cavere* laico conquerente, quod cum O.³ laicus, *Atrebatensis diocesis*, ipsum super quadam summa pecunie, *quam falso dicebat eundem ab ipso per pravitatem usurariam extorsisse*, coram iudicibus⁴ auctoritate apostolica convenisset, tandem fuit a partibus *de assensu iudicum eorundem* in duos *ita quod quelibet unum elegerat tamquam in arbitros amicabiliter* compromissum, sic tamen quod si *forsan* illi duo ad invicem discordarent,⁵ *causam ipsam non possent equo arbitrio terminare*, tertium adderent iudices nominati, retenta penes se compellendi partes ad observandum arbitrium per dictos arbitros promulgandum nichilominus potestate. Cumque tertius arbiter a iudicibus predictis electus, cum altero duorum⁶ ipsum *absentem non per contumaciam, arbitro penitus eiusdem contempto, in quadam summa pecunie* parti alteri⁷ *per iniquum arbitrium* condemnasset, idem ex eo sentiens se⁸ a sepredictis iudicibus *iniuste* gravari, quod ipsum ad observantiam⁹ huiusmodi arbitrii *contra iustitiam* compellebant, nostram appellavit audientiam.¹⁰ Sed ipsi *legitima eius* appellatione contempta, excommunicationis tulerunt sententiam in eundem. Ideoque mandamus, quatinus si est ita, *maxime* cum legali sit provisione statutum, ut compromissum de incerta persona in arbitrium¹¹ assumenda non teneat, dictam excommunicationis sententiam denunciatis¹² penitus nullam esse, *ac revocato in statum debitum quicquid post appellationem huiusmodi temere invener[i]tis attemptatum, in causa ipsa iuxta priorum continentiam litterarum, appellatione remota, ratione previa, procedatis. Alioquin partes etc. Appellantem etc. Testes autem etc. Quod si non omnes, duo vestrum etc. Datum Perusii, IIII Kalendas Decembris, pontificatus nostri anno tertio.*

¹ Decano, magistro P. de Perona et Hugoni, canonicis Sancti Petri Duacensis, Atrebatensis diocesis: *Reg.* ² Wauberto: *Reg.*; Gulielmo: *Fried.* ³ Oliverus: *Reg.* ⁴ iudicibus] decano Insulensi et coniuudicibus suis: *Reg.* ⁵ discordantes: *Reg.* ⁶ cum altero duorum] cum eo quem pro se ceperat pars adversa: *Reg.* ⁷ parti alteri] prefato H. [=Olivero]: *Reg.* ⁸ se sentiens: *Reg.* ⁹ observationem: *Reg.* ¹⁰ nostram audientiam appellavit: *Reg.* ¹¹ arbitrum: *Reg.* ¹² denuntiantes: *Reg.*

64. X 1.43.13

Auvray 445; Potthast 9582
 Reg. 15 (5r-8r): an. 4, no. 14
Lateran: April 27th, 1230

[*Rubr:* Valet compromissum factum in unum, vel in plures, ut ipsi per se causam definiant, vel per alios, quos ipsi elegerint. H. d. secundum intellectum, quem sensit gloss. hic, et Innocentius in capite precedenti, qui placet mihi. Panorm.]

Idem Abbatisse et Conventui Iotrensi.¹

Cum a nobis petitur † *etc. usque perducatur effectum.* Ex parte *siquidem* vestra fuit propositum,² quod olim inter vos *ex parte una* et *venerabilem fratrem nostrum* Senonensem archiepiscopum *ex altera* questione suborta, super eo quod idem archiepiscopus asserens monasterium vestrum *fratres et sorores ipsius monasterii clerum et populum ville et parochie Iotrensi* metropolitico iure sibi³ subesse, procuraciones et res alias exigebat a vobis. Tandem *post commisiones varias et diversos processus*, in *dilectum filium nostrum* R. Sancti Angeli diaconum cardinalem, tunc apostolice sedis legatum, a partibus concorditer compromisso, et promisso sub certa pena,⁴ quod arbitrio seu ordinationi eiusdem *legati*, vel duorum mediatorum, quos idem super hoc *de partium* deputaret⁵ *assensu* precise parerent, *dilecti filii* magister P.⁶ *de Collemedio* capellanus noster et I. archidiaconus Senonensis, mediatores ab eodem super hoc deputati legato *de beneplacito et voluntate ipsius legati in eius presentia, ut eorum verbis utamur*, ordinando et diffiniendo causam huiusmodi terminaverunt.⁷ *Prout in ipsius legati archiepiscopi et capituli Senonensium et dictorum mediatorum litteris plenius continetur, quorum factum apostolico petistis munimine roborari.* Nos igitur *vestris supplicationibus annuentes*, quod per *eundem cardinalem et predictos*⁸ mediatores super hoc *providere* actum est, auctoritate apostolica confirmamus *et presentis scripti patrocinio communimus.* *Ad maiorem autem rei evidentiam tenores litterarum ipsarum de verbo ad verbum presentibus duximus inferendos....Datum Laterani, V Kalendas Maii, pontificatus nostri anno quarto.*

¹ Hersendi abbatisse ac conventui Iotrensi: *Reg.* ² expositum: *Reg.* ³ sibi iure: *Reg.*

⁴ sub certa pena promisso: *Reg.* ⁵ daret: *Reg.* ⁶ Petrus: *Reg.* ⁷ terminarunt: *Reg.*

⁸ dictos: *Reg.*

65. X 1.43.14

Deest Registro; Potthast 9583

66. X 2.2.16

Auvray 534; Potthast 8656a (*quondam* 8662)/9583 p.
 Reg. 15 (47r-48r): an. 4, no. 102
Lateran: January 27th, 1231

[*Rubr:* Laici usurpantes iura ecclesiastica velut sacrilegi per iudicem ecclesiasticum compelluntur.]

Gregorius IX. Fratri Palmerio Canonico S. Trinitatis.¹

Conquestus est *olim nobis venerabilis frater noster Bononiensis episcopus*, quod potestas et commune² Bononienses temporalem iurisdictionem, que in *Sancti Ioannis in Persiceto, Unciole, Maximatici, Podii, Dulioli, Castri Episcopi* et quibusdam aliis castris et villis ecclesie Bononiensis³ competit pleno iure, et in cuius quasi possessione fuisse ac esse dinoscitur, per violentiam usurpare presumunt,⁴ †⁵ *que[n]dam, qui apud dictum castrum Sancti Ioannis homicidium perpetravit, per eos puniendum a rectore castri eiusdem sibi exhiberi fecerunt, et adhuc tenent in vinculis, ipsum reddere denegantes. Unde per litteras nostras ipsis mandavimus, ut ab ipsius episcopi molestia desistentes, et eidem episcopo restituentes sine difficultate qualibet homicidam, libere ipsum permetterent in dictis locis uti iurisdictione prefata, comparituri coram nobis usque ad festum Omnium Sanctorum proximo preteritum, ad faciendum et recipiendum quod iuris ordo dictaret, si in dictis castris et villis proponerent iurisdictionem aliquam se habere. Qui hoc, sicut dicitur, contempnentes, nec restituerunt sibi malefactorem prefatum moniti diligenter, nec permiserunt episcopum libere uti hac iurisdictione in locis eisdem, neque ad nos responsalem idoneum destinarunt. Sed peccatum peccato potius cumulantes, postquam utriusque partis nuntii ad sedem apostolicam accesserunt, dicti potestas et commune quosdam ex parte sua miserunt ad investigandum et puniendum quoddam maleficium patratum in terra Dulioli, ad iurisdictionem ipsius ecclesie pertinente. Super quo inquisitio facta fuerat per dicti episcopi nuntios, et a malefactoribus pignorum cautiones et alie securitates accepte. Quare nuntii eiusdem episcopi humiliter petierunt a nobis, ut super hiis deberemus indemnitati Bononiensis ecclesie precavere. Quia cum autem⁶ valde sit iniquum et ingens sacrilegium, ut⁷ ea que collata sunt pro remedio peccatorum venerabilibus ecclesiis vel relictis, aut eis iustis modis aliis acquisita, a fidelibus et viris catholicis, a quibus servari ea convenit, aliis usibus applicari, propter quod⁸ merito invasores ipsarum rerum⁹ tamquam sacrilegi, nisi eas restituant, per ecclesiarum rectores, cum ecclesiasticum sit crimen sacrilegii, sunt anathemati usque ad satisfactionem congruam supponendi. †¹⁰ Ecclesiarum quoque favore noscitur introductum, ut malefactores suos venerabilium locorum rectores possint sub quo maluerint iudice convenire. Sed fori exceptione per nuntios vestros opposita, instanter petebatur ab ipsis, ut cum regulariter actor forum rei sequi debeat, relinqueremus questionem huiusmodi iudicio seculari. Super hiis ergo deliberatione cum fratribus nostris habita diligenti, paterna dulcedine ipsos monemus, deposcimus et rogamus, obsecrantes per salutem animarum suarum, et per Dominum obtestantes, quatinus humiliantes se sub potenti manu Dei, cum in hoc longe magis sit vinci quam vincere gloriosum, non abnuant salutarem recipere medicinam, sed nobis hec gratuita liberalitate sub spe mercedis eterne donantes, Deo et ecclesie super premissis debitam satisfactionem impendant. Civitatis enim suorum ecclesie Romane devote sollicita desideramus affectione salutem alligare, curantes quod confractum est et reducere quod abiectum, et cupientes eosdem per patientiam nostram ad penitentiam revocare. Nolentes itaque afflictionem eiusdem ecclesie ad dictorum potestatis et communis periculum, quod versatur in ipsa, dissimulare, ne contra officii nostri debitum veniamus, scientes quod obedire Deo magis quam hominibus nos oportet, discretioni tue per apostolica scripta mandamus, quatinus si tibi constiterit ipsos invadere, aut turbare de¹¹ premissis iura ipsius ecclesie, aut hactenus invasisse vel turbasse, tu diligenti monitione*

premissa, per censuram ecclesiasticam¹² cessare ipsos ab huiusmodi, et satisfacere de preteritis dampnis et iniuriis, appellatione remota, compellas. *Testes etc. Proviso ne in universitatem communis Bononiensis excommunicationis vel interdicti sententias proferas, nisi super hoc mandatum a nobis¹³ receperis speciale. Datum Laterani, VI Kalendas Februarii, pontificatus nostri anno quarto.*

¹ Dilecto filio [dilectis filiis: *Reg.*] fratri Palmerio, canonico Sancte Trinitatis de Campanolis, ordinis Sancti Augustini, Regine diocesis: *Reg.* ² communis: *Auvray*
³ Bononiensi: *Reg.* ⁴ usurpare presumunt] usurpantes et turbantes: *Reg.* ⁵ et infra: *deest Fried.* ⁶ autem: *deest Reg.* ⁷ ut: *deest Reg., Fried.* ⁸ propter quod: *deest Reg.* ⁹ rerum ipsarum: *Reg.* ¹⁰ et infra: *deest Fried.* ¹¹ de] super: *Reg.* ¹² censuras ecclesiasticas: *Auvray* ¹³ a nobis mandatum: *Auvray*

67. X 2.2.17

Auvray 538; Potthast 9584
 Reg. 15 (49r): an. 4, no. 106
Lateran: January 23rd, 1231

[*Rubr:* Privilegiatus ut non teneatur respondere nisi in certo loco. Si in alio loco respondere vel solvere promittit, ibi poterit conveniri, et etiam ubi habet domicilium. Secundum Ioan. Andr.]

Idem Episcopo Dulmensi.¹

Dilecti filii *nobiles viri* I.² et A.,³ cives Romani, sua nobis petitione monstrarunt, quod cum abbati Sancte Genovefe Parisiensis super quadam pecunie summa contra R. predecessorem tuum litteras impetrassent,⁴ *quam [summam] bone memorie R., predecessor tuus, in nundinis Campanie ipsis solvere tenebatur, prout in litteris exinde confectis plenius dicitur contineri, te ad satisfaciendum eis cum iustis et moderatis expensis, et congrua satisfactione dampnorum, usuris omnino cessantibus, appellatione remota, compelleret, tu coram eodem abbate proponi fecisti, quod omnibus Anglicis est a sede apostolica⁵ indultum, ut super causis pecuniariis citra mare conveniri non possint,⁶ propter quod idem abbas in commisso sibi negotio non processit. Verum quia⁷ et si fuisset privilegium tale concessum, non tamen prodesset illis, qui se certo loco respondere vel solvere adversariis promiserunt,⁸ cum et ibi et ubi domicilium habent, valeant conveniri iuxta legitimas sanctiones. Quocirca fraternitatem tuam monemus, et per apostolica tibi scripta firmiter precipiendo mandamus, quatinus eisdem Romanis de pecunia ipsa cum iustis et moderatis expensis, et congrua satisfactione dampnorum, usuris omnino cessantibus, satisfacias, ut teneris. Alioquin eidem abbati nostris damus litteras in mandatis, ut in commisso sibi negotio, proposita ex parte tua indulgentia non obstante, iuxta prioris mandati nostri tenorem, sine dispendio more procedat. Datum Laterani, X Kalendas Februarii, pontificatus nostri anno quarto.*

¹ Episcopo Dunelmensi: *Reg.* ² Iuvenalis Mannetti: *Reg.* ³ Angelus Maialardi: *Reg.*
⁴ super...impetrassent] nostris dederimus litteras in mandatis, ut de quadam pecunie summa: *Reg.* ⁵ a sede apostolica est: *Reg.* ⁶ conveniri non possint] nequeant conveniri: *Reg.* ⁷ quia: *deest Reg.* ⁸ respondere...promiserunt] solvere promiserunt: *Reg.*

68. X 2.2.18*Deest Registro; Potthast 9585***69. X 2.2.19***Deest Registro; Potthast 9586***70. X 2.2.20***Deest Registro; Potthast 9587***71. X 2.3.3**

Auvray 438; Potthast 9588

Reg. 15 (2v-3r): an. 4, no. 7

Lateran: April 13th, 1230

[*Rubr: Non tenetur reus respondere libello in actione personali, si non exprimitur causa petendi.*]

Gregorius IX. Archipresbytero Civitatis Nove et M. Canonico Culmensi.¹

Dilecti filii fratres *et sorores* ecclesie Sancte Marie de Hispida,² sua nobis petitione monstrarunt, quod cum prior et conventus Sancte Marie ad Carceres, *Paduani diocesis*, ipsos super quadam pecunie summa, coram priore Sancte Trinitatis Veronensis auctoritate apostolica convenissent, ex parte ipsorum fuit excipiendo propositum *coram eo*, quod cum dicti prior et conventus nollent exprimere in porrecto libello conventionali, quare sibi dicta pecunia deberetur, super hoc minime respondere³ tenebantur,⁴ et quia dictus iudex exceptionem huiusmodi admittere *contra iustitiam* denegabat, *iidem sentientes indebite se gravari* nostram audientiam appellaverunt.⁵ Ideoque *discretioni vestre per apostolica scripta* mandamus, quatinus si est ita, revocato in irritum etc.,⁶ *quicquid post appellationem huiusmodi temere inveneritis attemperatum, in causa ipsa iuxta priorum continentiam litterarum, appellatione remota, ratione previa, procedatis. Alioquin partes ad prioris iudicis remittatis examen. Appellantes etc. Testes etc. Datum Laterani, Idibus Aprilis, pontificatus nostri anno quarto.*

¹ Archipresbytero Civitatis Nove, et Merlo canonico Clugiensi: *Reg.* ² Ispida: *Reg.*

³ minime respondere] respondere sibi minime: *Reg.* ⁴ tenebatur: *Fried.* ⁵ appellarunt:

Reg. ⁶ irritum etc.] statum debitum: *Reg.*

72. X 2.5.1

Auvray 669; Potthast 9599

Reg. 15 (103r-v): an. 5, no. 84

Rieti: June 18th, 1231

[*Rubr: Non per positiones et responsiones, sed per petitionem in iure propositam et responsionem secutam fit litis contestatio, qua ommissa nullus est processus.*]

Gregorius IX. Abbati S. Ioannis in Vineis.¹

Olim inter *venerabilem fratrem nostrum* episcopum Noviensem² ex parte una, et *dilectos filios* capitulum ecclesie Sancti Quintini *Viromandensis*,³ *Noviomensis diocesis*, ex altera, super quibusdam iniuriis et⁴ excommunicationum sententiis, et quibusdam aliis articulis, orta materia questionis, † *causam ipsam dilectis filiis abbati Sancti Victoris Parisiensis et collegis suis sub eo tenore duximus committendam, ut si de partium voluntate procederet, eam fine debito terminarent. Alioquin ipsam sufficienter instructam ad nostrum remittentes examen, prefigerent partibus terminum competentem, quo se apostolico conspectui presentarent, iustam auctore Deo sententiam recepture. Coram quibus partibus constitutis iudices ipsi, factis quibusdam positionibus et responsionibus ad easdem, auditis etiam que partes voluerunt⁵ proponere coram eis, causam eandem minus sufficienter instructam ad examen apostolicum remiserunt. Procuratoribus igitur partium propter hoc in nostra presentia constitutis, dilectum filium nostrum S. tituli Sancte Marie in Transtiberim presbyterum cardinalem, dedimus auditorem. Coram quo cum fuisset aliquandiu litigatum, et idem cardinalis nobis ea que fuere proposita coram eo prudenter et fideliter⁶ retulisset, quamvis positiones et responsiones hinc inde super pluribus articulis facte fuerint coram iudicibus memoratis, quia tamen litis contestationem non invenimus esse factam, cum non per positiones et responsiones ad eas, sed per petitionem in iure propositam et responsionem secutam litis contestatio⁷ fiat, processum ipsorum de fratrum nostrorum consilio irritum duximus nuntiandum. Tandem dicti episcopi procuratore petente sententiam felicis recordationis Honorii pape, predecessoris nostri, latam pro eodem episcopo contra dictam ecclesiam super subiectione ipsius, que videbatur obscura, per sedem apostolicam declarari, ac procuratore partis alterius respondente, quod iam suo functus erat officio, et super hoc mandatum a capitulo non habebat, processus haberi non potuit ad declarationem huiusmodi faciendam. Finem igitur litibus cupientes imponi, ne fiant nostris temporibus immortales, discretioni vestre per apostolica scripta mandamus, quatinus ad locum idoneum partibus accedentes, tractetis de compositione amicabile inter partes. Que si forte per studium vestrum nequiverit provenire, assignetis tam eidem episcopo quam decano et capitulo predictae ecclesie Sancti Quintini, octavas Epyphanie proximo futuras, quas eis terminum peremptorium assignamus, quo per procuratores sufficienter instructos, tam ad declarationem huiusmodi, prout iustum fuerit, audiendam, quam ad litem super hiis, si necesse fuerit, et aliis que partes hinc inde proponere voluerint, contestandam, et ad alia que super hiis de iure facienda fuerint, nostro se conspectui representent legitime processuri. Quod si non omnes,⁸ duo vestrum etc. Datum Reate, XIII Kalendas Iulii,⁹ pontificatus nostro anno quinto.*

¹ Abbati Sancti Iohannis in Vineis, decano et preposito Suessoniensibus: Reg.

² Noviomensem: Reg. ³ Viromandensis: *add. in marg. Reg.* ⁴ et: *deest Reg.* ⁵ voluere: Reg. ⁶ feliciter: *Auvray* ⁷ contestatio litis: Reg. ⁸ omnes etc.: *Auvray* ⁹ Iunii: *Auvray*

73. X 2.7.7

Deest Registro; Potthast 9590

74. X 2.8.4

Auvray 488; Potthast 9591

Reg. 15 (28r-29r): an. 4, no. 57

Undated; registered between letters dated: Anagni, August 26th and September 11th, 1230

[Rubr: Si citatus in causa ardua de longinquo vocatur pro publica utilitate, etiam ad locum iudicii, ita quod infra terminum citationis deliberare, et alia sibi necessaria ad comparendum explicare non potuit, in termino respondere non cogitur, si reperiatur in loco iudicii, sed habebit novas inducias. H. d. notabiliter.]

Gregorius IX. Abbati Aque Vive, Turonensis diocesis, et Archidiacono Turonensi.

Exposuit nobis *olim venerabilis frater noster* Bituricensis archiepiscopus, † *quod ipse auctoritate primatie, quam in archiepiscopo et provincia Burdegalensibus se habere proponit, pro eo quod citatus ab ipso ad concilium accedere personaliter recusavit, et diligenter monitus noluit revocare inhibitiones, quas subditis suis fecerat, ne ipsum reciperent Burdegalensem provinciam visitantem, ac prolatas propter hoc in eos, si contra presumerent, excommunicationis et interdicti sententias relaxare, ab officio ipsum metropolitico et pontificali suspendit. Sed ipse non solum non servabat huiusmodi suspensionis sententiam, verumetiam non patiebatur servare alios prolatas in ipsos per eundem Bituricensem suspensionis, interdicti et excommunicationis sententias, quia illum recipere contempserunt, ac alias in multis turbando primatie possessionem, vel quasi erat eidem et ecclesie sue iniuriosus plurimum et molestus. Unde ipso humiliter supplicante, ut cum super turbatione possessionis primatie predictae, dampnis et iniuriis Bituricensi ecclesie ac sibi, et quondam predecessori suo, necnon et eius sociis, dum auctoritate primatie Burdegalensem visitaret provinciam, irrogatis, multo tempore inutiliter laboratum, negotio per nos ipsos finem imponere dignaremur. Nos volentes finem imponere litibus, ne immortales existant, ac malitiosis diffugiis obviare, eidem Burdegalensi archiepiscopo nostris districte dedimus litteris in mandatis,¹ ut super iure primatie, quam in eo et in provincia sua dictus Bituricensis archiepiscopus se habere proponit,² ad initium proxime³ preterite Quadragesime, quod ei terminum peremptorium assignavimus, per se aut per⁴ procuratorem idoneum *sufficienter instructum, ad litem contestandam et ad alia omnia peragenda, que decisioni negotii necessaria viderentur, se conspectui nostro⁵ presentaret. Cumque postmodum personaliter vocatus pro ecclesie Romane subsidio, nuper ad nostram audientiam⁶ accessisset, dictus Bituricensis archiepiscopus apud sedem apostolicam constitutus postulavit instanter, ut in eodem negotio procedere deberemus. Idem vero Burdegalensis archiepiscopus ad propria rediens, constituit pro se procuratorem in ipso negotio, qui salvis exceptionibus sibi competentibus in respondendo et defendendo ac aliis, omnia faceret, que in propria erat persona facturus. Instanter petente ergo⁷ archiepiscopo supradicto, ut prefatus procurator in causa huiusmodi responderet eidem, ille die sibi assignato ad omnes dilatorias proponendas, excipiendo proposuit, se ad hoc *aliquatenus* non teneri, cum pro alia maiori causa, pro publica scilicet utilitate dictus Burdegalensis⁸ vocatus, pro absente reputari⁹ debuerat, et revocandi domum privilegium habuisset. Nondum etiam super hoc deliberaverat cum suffraganeis suis et aliis, quorum consilium tam ardua causa requirit, nec tempus habuerat in quo ad utrumque negotium valuerit, sicut expediret, esse paratus. Sed pars altera econtra¹⁰ respondit, quod cum super questione predicta prius fuerit evocatus, nostre intentionis non fuerat primum mandatum per posterius revocare. Temporis quoque spatium habuerat tam prolixum, ut potuisset, si voluisset, super causa deliberare predicta, sicut *et* fecerat cum quibusdam, et comode utrique negotio imminere. † Sane protestatus est procurator predictus in iudicio, die sibi assignato a nobis¹¹ de**

quadam providentia equitatis, ad omnes dilatorias proponendas, tres tantum exceptiones, videlicet excommunicationis, spoliationis, et quod idem Bituricensis archiepiscopus sine assensu suffraganeorum suorum agere non poterat in hac causa, in eventu iudicii infra scripto termino proponendas. Nos igitur, auditis hinc inde propositis, de consilio fratrum nostrorum, usque ad proximum¹² venturum festum Nativitatis dominice, dilationem adhuc sibi duximus indulgendam. Quia vero dissimulare cum honestate nostra non valemus ulterius querelas continuas archiepiscopi supradicti, malitiosis diffugiis obviare volentes, prefato Burdegalensi nostris damus litteris in mandatis, et districte precipimus, ut predicto termino quem sibi peremptorium prefigimus ad predicta, necnon contestationem litis, et alia omnia decisioni negotii necessaria peragenda, deliberatione habita cum quibus sibi visum fuerit expedire, per se aut idoneum responsalem sufficienter instructum compareat coram nobis. Quocirca discretioni vestre per apostolica scripta mandamus, quatinus dictum archiepiscopum ad eundem terminum auctoritate nostra iuxta formam premissam peremptorie citare curetis, et si non poterit inveniri, faciatis ut citationis edictum per vos vel alios apud suam ecclesiam publice proponatur, nobis quod super hiis factum fuerit rescribentes. Quod si non ambo etc., alter vestrum etc. Datum [sine dat.].

¹ mandatis] preceptis: Reg. ² super...proponit: deest Reg. ³ proximo: Reg. ⁴ per: deest Reg. ⁵ nostro se conspectui: Reg. ⁶ audientiam] presentiam: Reg. ⁷ ergo petente: Reg. ⁸ dictus Burdegalensis: deest Reg. ⁹ revocari: Reg. ¹⁰ contra: Auvray ¹¹ assignato a nobis] a nobis assignato iterum: Auvray ¹² primo: Reg.

75. X 2.9.5

Deest Registro; Potthast 9592

76. X 2.10.4

Deest Registro; Potthast 9593

77. X 2.11.1

Deest Registro; Potthast 9594

78. X 2.13.19

Deest Registro; Potthast 9595

79. X 2.14.10

Auvray 353; Potthast 9596

Reg. 14 (139v-140r): an. 3, no. 67

Perugia: September 28th, 1229

[Rubr: Si reus non invenitur, sufficit publice citationem ad ecclesiam suam proponi.]

Gregorius IX. Archiepiscopo Burdegalensi.¹

Venerabilis frater noster † Bituricensis archiepiscopus sua nobis insinuatione monstravit, quod cum auctoritate primatie qua[m] in te et provincia tua se habere proponit, te pro eo

*quod vocatus ab ipso ad concilium accedere personaliter recusasti, et diligenter monitus noluisti revocare inhibitiones, quas subditis tuis feceras, ne ipsum reciperent Burdegalensem provinciam visitantem, ac prolatas propter hoc in eos, si contras presumerent, excommunicationis et interdicti sententias relaxare, tam a metropolitico quam a pontificali officio duxerit suspendendum, tu non solum suspensionis sententiam non observas, verumetiam alios servare non pateris latas in ipsos per eundem Bituricensem suspensionis, interdicti et excommunicationis sententias, quia illum recipere contempserunt, ac alias in multis turbando eiusdem ecclesie primatie possessionem, vel quasi existis eidem et ecclesie sue iniuriosus plurimum et molestus. Unde humiliter supplicavit, ut cum super turbatione possessionis primatie predictae, ac super dampnis et iniuriis Bituricensi ecclesie ac sibi, et quondam predecessori suo, necnon et eius sociis, dum auctoritate primatie Burdegalensem visitaret provinciam, irrogatis, multo tempore sit pene inutiliter laboratum, negotio per nos ipsos finem imponere dignaremur. Volentes igitur finem imponi litibus, ne immortales existant, et parcere laboribus partium et expensis, ac malitiosis diffugiis obviare, fraternitati tue districte precipiendo mandamus, quatinus ad initium proxime venture Quadragesime, quod tibi peremptorium terminum² duximus assignandum, super iure primatie, quod Bituricensis archiepiscopus in te ac in provincia tua se habere proponit,³ per te vel per⁴ procuratorem idoneum sufficienter instructum ad litem contestandam, et ad alia omnia negotia⁵ peragenda, que necessaria decisioni negotii videbuntur, nostro te conspectui representes. Nos vero nichilominus *dilectis filiis* archidiacono Transuigensi⁶ et magistro M., canonico Turonensi, dedimus in mandatis,⁸ *quatinus* ut et ipsi ad eundem terminum auctoritate nostra iuxta premissam formam te peremptorie citare procurent, et si non poteris inveniri, faciant ut citationis edictum per ipsos vel *per* alios apud ecclesiam tuam⁹ publice proponatur, *nobis quod super hiis factum fuerit rescribentes. Datum Perusii, IIII Kalendas Octobris, pontificatus nostri anno tertio.**

¹ Burdegalensi archiepiscopo: *inscriptio non rubricata sed scripta tantum est in marg. Reg.* ² terminum peremptorium: *Reg.* ³ super...proponit: *deest Reg.* ⁴ per: *deest Reg.* ⁵ negotia: *deest Reg.* ⁶ Transvigenensi: *Reg.* ⁷ Martino: *Reg.* ⁸ dedimus in mandatis] per apostolica scripta firmiter precipiendo mandamus: *Reg.* ⁹ tuam ecclesiam: *Reg.*

80. X 2.15.4

Deest Registro; Potthast 9597

81. X 2.17.3

Deest Registro; Potthast 9598

82. X 2.18.3

Auvray 756; Potthast 8846

Reg. 15 (149v): an. 5, no. 170

Rieti: January 21st, 1232

[*Rubr:* Confessio facta in iure per oeconomum ecclesie nocet ipsi ecclesie; potest tamen revocari, si ante finitum negotium doceatur per errorem facti emanasse. H. d.]

Gregorius IX. B. Iudici Viterbiensi.

Ex parte dilectorum filiorum abbatis et conventus monasterii Sancti M.¹ in Monte Viterbiensi Cisterciensis ordinis fuit propositum coram nobis, quod cum inter ipsos ex parte una, et V.² civem Viterbiensem, nomine sue uxoris³ ex altera, super quibusdam alveolis apum et rebus aliis coram te⁴ questio verteretur, tandem in te tanquam in arbitrum fuit a partibus pena interposita compromissum. Cumque coram te lis procederet suo Marte, yconomus monasterii memorati, qui causam prosequebatur eandem, quedam per errorem facti fuit in iure confessus, ex quibus timet⁵ sibi preiudicium generari. Quare super hoc sibi petierunt a nobis congrue provideri. Cum igitur negotio nondum⁶ finito nemini noceat error facti, mandamus, quatinus si predicti abbas et conventus de huiusmodi potuerit⁷ errore docere, super hoc auctoritate nostra provideas, ut nullum sibi super hoc⁸ preiudicium generetur. Datum Reate, XII Kalendas Februarii, pontificatus nostri anno quinto.

¹ Martini: Reg. ² Viterbulum: Reg. ³ uxoris sue: Reg. ⁴ coram te: deest Reg. ⁵ timent: Reg. ⁶ necdum: Reg. ⁷ poterunt: Reg. ⁸ super hoc] ex eo: Reg.

83. X 2.19.15

Auvray 349; Potthast 9599
Reg. 14 (138v): an. 3, no. 63
Perugia: October 6th, 1229

[Rubr: Acta etiam litis ordinaria facta coram primis iudicibus, fidem faciunt coram secundis.]

Gregorius IX. Preposito Sancte Marie Magdeburgensis et Decano Misinensi.¹

Cum bone memorie † H. papa, predecessor noster, venerabili fratri nostro Nuemburgensi episcopo et coniudicibus suis iniunxerit, ut hiis que coram decano Tridentino et eius collega super statu Pigaviensis monasterii, Mersburgensis² diocesis, ac quibusdam articulis, auctoritate felicis recordationis³ I. pape, predecessoris nostri, inter Mersburgensem ecclesiam et idem monasterium acta fuerant, et probationibus aliis que ad instructionem sui negotium requirebat, ab utraque parte receptis, negotium ipsum ad sedem apostolicam remitterent sufficienter instructum, et ad eum quedam acta transmissa fuissent, suspenso tandem negotio propter absentiam venerabilis fratris nostri Mersburgensis episcopi, in subsidium Terre Sancte profecti, et actis eisdem apud sedem apostolicam reservatis, nos postmodum citavimus ad presentiam nostram partes, quarum procuratoribus comparentibus, procurator monasterii acta predicta in dubium revocavit. Cum autem acta⁴ originalia dicantur apud memoratos priores iudices remansisse, discretioni vestre per apostolica scripta mandamus, quatinus ea cum omni diligentia requirentes, ipsa, si potuerint⁵ inveniri, et si qua partes duxerint legitime proponenda, in scriptis redacta ad nostram presentiam remittatis. Alioquin cum non revocetur in dubium de contestatione litis super statu Pigamensis⁶ monasterii, et quibusdam spoliationibus contra abbatem eius⁷ factis a Mesburgensi⁸ episcopo, recipiatis partium probationes de novo, et audientes, si partes audire⁹ voluerint, de compositione tractatum, tam quod super hoc inveneritis, quam causam sufficienter instructam, ad nos remittere procuretis, prefigendo partibus terminum quo procuratores ad apostolicam sedem mittant

sufficienter instructos, compositionem, vel provisionem aut sententiam recepturos. Quod si non omnes etc., duo vestrum etc. Datum Perusii, II Nonas Octobris, pontificatus nostri anno tertio.

¹ Preposito Sancte Marie Magdeburgensis, decano Misnensi, et scholastico Cicensi, Nuemburgensis diocesis: Reg. ² Mesburgensis: *Auvray et seqq.* ³ felicitatis recordationis: *deest Auvray* ⁴ acta: *deest Reg.* ⁵ potuerunt: Reg. ⁶ Pigamensis [Pigaviensis: *recte*]: *deest Reg.* ⁷ eius: *deest Reg.* ⁸ Mersburgensi: Reg. ⁹ audire] habere: Reg.

84. X. 2.20.53

Deest Registro; Potthast 9600

85. X 2.20.54

Deest Registro; Potthast 9601

86. X 2.20.55

Deest Registro; Potthast 9602

87. X 2.20.56

Deest Registro; Potthast 9603

88. X 2.22.12

Auvray 573; Potthast 9604
Reg. 15 (60r-v): an. 4, no. 134
Lateran: March 7th, 1231

[*Rubr: Licito appellatur a iudice, qui parti hoc petenti non facit edi communia instrumenta.*]

Gregorius IX. Priori Sancti Bartholomei et Decano de Arcubus Londoniensibus.

G.¹ perpetuus vicarius ecclesie de Rechan² nobis exposuit, quod cum prior et conventus de Ledis,³ *Cantuariensis diocesis*, eum super decimis, *possessionibus et rebus aliis* coram iudicibus⁴ auctoritate apostolica convenissent, et dictus G.⁵ super similibus coram ipsis reconvenisset eosdem, quia dicti iudices copiam quorundam instrumentorum communium, que habebat pars altera, et per que intendebat intentionem suam super principali fundare, fieri non faciebant, eidem hoc cum instantia postulanti, *sentiens idem indebite se gravari*, nostram audientiam appellavit. Ideoque *discretionem vestre per apostolica scripta* mandamus, quatinus si est ita, revocato in statum debitum etc., *usque attemptatum, in causa ipsa iuxta priorum continentiam litterarum, appellatione remota, ratione previa, procedatis. Alioquin partes ad priorum iudicum remittatis examen. Appellantes etc. Testes etc. Datum Laterani, Nonis Martii, pontificatus nostri anno quarto.*

¹ W.: Reg. et seq. ² Renham: Reg. ³ Ledes: Reg. ⁴ iudicibus] decano Londoniensi et coniudicibus suis: Reg. ⁵ W.: Reg.

89. X 2.22.13*Deest Registro; Potthast 9605***90. X 2.22.14***Deest Registro; Potthast 9606***91. X 2.22.15***Deest Registro; Potthast 9607***92. X 2.22.16***Deest Registro; Potthast 9608***93. X 2.24.34***Auvray 1010; Potthast 9609**Reg. 16 (62v): an. 6, no. 215**Anagni: December 20th, 1232*

[*Rubr:* Si mulier iuravit, aliquem esse suum maritum, et succubuit, quia aliter non probavit, non datur, nec denegatur ei licentia cum alio contrahendi.]

Gregorius IX. Episcopo Cenomanensi.¹

Mulieri que in iure prestito iuramento asseruit, virum talem² in ipsam per verba de presenti matrimonialiter consensisse, probationes alias non habenti, viro ab eius impetitione per sententiam absoluto, non³ debes licentiam dare cum alio matrimonium contrahendi, ne auctor periurii videaris. Nec hoc ei dicimus prohibendum, ne forte si falsum iuraverit,⁴ matrimonium contingat legitimum impediri, sed sue conscientie est potius relinquenda. *Datum ut supra [Anagnie, XIII Kalendas Ianuarii, anno sexto].*

¹ eidem [episcopo Cenomanensi: *ut Auvray 1009*]: *Reg.* ² talem: *deest Reg.* ³ nec: *Reg.*
⁴ iuravit: *Reg.*

94. X 2.24.35*Deest Registro; Potthast 9610***95. X 2.24.36***Deest Registro; Potthast 9611***96. X 2.25.9 et****176. 5.27.9***Auvray 46; Potthast 7882/9611 post**Reg. 14 (6(bis)v-7r): an. 1, no. 46**Lateran: April 22nd, 1227*

[*Rubr:* (X 2.25.9) Si per exceptionem suspensionis, contra quam replicatur de nullitate, ordinatio ecclesie retardatur, fit absolutio ad cautelam.]

[*Rub. (X 5.27.9)*: Suspensus vel excommunicatus ignoranter celebrando nulla indiget dispensatione respectu irregularitatis; alias secus.

Gregorius IX. I. et M. [I.: **X 5.27.9**] Canonicis Pragensibus.¹

(**X 2.25.9**) Apostolice sedis † *gratiosa potestas et iustitie persequitur debitum et favorem gratie non omittit*. Sane vobis *nuper* apud sedem apostolicam constitutis, quedam suspensionis et amotionis a beneficiis sententie fuerunt in modum exceptionis obiecte, quas licet proponeretis² vos posse, nullas esse per testes idoneos et instrumenta probare. Ne tamen ordinationem Pragensis ecclesie, propter quam veneratis, huiusmodi obiectionis obstaculo contingeret retardari, sententias ipsas relaxavimus ad cautelam. (**X 5.27.9**) [Apostolice sedis †] Verum quia *medio* tempore suspensionis³ ignari celebrastis divina, *ne per aliquos quos ignorantia plus debito credulos vel malitia interpretes duros efficeret, vestra saltem de facto propter hoc opinio gravaretur, humiliter supplicastis vobis per sedem apostolicam provideri. Quia vero ut culpe metam pene non transgrediatur excessus, non plus debet extendi vindicta, quam inveniatur in excedente commissum, si premissis veritas suffragatur*, vos reddit ignorantia probabilis excusatos. Ceterum si forte ignorantia crassa et supina⁴ aut erronea fuerit, propter quod dispensationis gratia egeatis, eam vobis de benignitate apostolica indulgemus. *Datum Laterani X Kalendas Maii*.

¹ Iohanni [et] Iohanni, canonicis Pragensibus: *Reg.* ² assereretis: *Reg.* ³ suspensionis] dictarum sententiarum: *Reg.* ⁴ supina] resupina: *Reg.*

97. X 2.25.10

Auvray 302; Potthast 9612
Reg. 14 (116r): an. 3, no. 17
Perugia: May 28th, 1229

[*Rubr:* Excommunicationis exceptione non obstante, valet rescriptum impetratum in causa appellationis, licet de excommunicatione lata post appellationem a gravamine non faciat mentionem. Hoc dicit, et secundum hoc est casus notabilis et singularis, per quem forte posset colligi una regula, quod de innovato post appellationem, etiam ab interlocutoria, non est necesse in rescripto facere mentionem. Panorm.]

Idem Decano Linconiensis.¹

Dilecte in Christo filie priorissa et conventus de Campessia² nobis significare curarunt, quod cum inter ipsas ex una parte, et priorem et conventum de Buccelleia,³ *Norwicensis diocesis*, ex altera, super quibusdam decimis et rebus aliis, pro⁴ quibus conveniebantur ab illis coram abbate Sancti Benedicti *de Hulmo* et eius collegis, auctoritate apostolica questio verteretur, et ipse ad nos ex sufficienti gravamine appellasset, ac⁵ nuntium suum ad appellationem miserint prosequendam, prefati iudices postmodum tulerunt excommunicationis sententiam in easdem. Nostris ergo litteris super appellatione prefata, non facta mentione de excommunicatione,⁶ per eundem nuntium ad priorem de Angles⁷ et suos coniudices impetratis, pars adversa ex eo se appellasse proponens,⁸ quod ipsi⁹ iudices exceptionem excommunicationis predictae contra ipsas,¹⁰ ab eadem parte¹¹ propositam, admittere denegarunt,¹² ad priorem de Gernemoe¹³ et suos coniudices nostras

super hoc litteras impetravit. Coram quibus ex parte ipsarum fuit excipiendo propositum, quod cum post appellationem legitimam dicta sententia lata fuerit, et cuilibet excommunicato defensionis auxilium competere dinoscatur, memorati iudices exceptionem partis contrarie, sicut nec debebant, admittere noluerunt. Sed cum dictus prior de Gernemoe et coniuudices sui talem exceptionem non reciperent earumdem, ipse nostram audientiam¹⁴ appellarunt. Quocirca *discretionem vestre per apostolica scripta* mandamus, quatinus si est ita, revocato in statum debitum quicquid post huiusmodi appellationem inveneris¹⁵ *temere* attemptatum, in eodem negotio iuxta prioris mandati nostri, ad prefatum priorem de Gernemoe et coniuudices suos directi, tenorem previa ratione¹⁶ procedas.¹⁷ *Alioquin partes ad ipsorum remittatis examen. Appellantes in expensis legitimis condemnantes. Testes etc. Quod si non omnes etc. Datum Perusii, V Kalendas Iunii, anno tertio.*

¹ Decano Lincolniensi, et Lincolniensi et de Stowe, Lincolniensis diocesis, archidiaconis: Reg. ² Campesseia: Reg. ³ Bucteleia: Reg. ⁴ super: Reg. ⁵ et: Reg. ⁶ non... excommunicatione: *deest* Reg. ⁷ Angleseia: Reg. ⁸ proponens] confingens: Reg. ⁹ ipsi: *deest* Reg. ¹⁰ ipsos: *Auvray* ¹¹ ab eadem parte] ab ea: Reg. ¹² denegarant: Reg. ¹³ Gernemue: Reg. *et seqq.* ¹⁴ ad nostram audientiam: *Fried.* ¹⁵ inveneritis: Reg. ¹⁶ ratione previa: Reg. ¹⁷ procedatis: Reg.

98. X 2.25.11

Auvray 487; Potthast 9613

Reg. 15 (27v-28r): an. 4, no. 56

Anagni: August 26th, 1230

[*Rubr:* Per exceptionem excommunicationis a prosecutione appellationis, etiam originalis actor repelli non debet. H. d. et est casus singularis, quatinus dicit de actore.]

Idem Abbati Sancti Salvatoris Papiensis et Vercellensi Preposito.¹

Significaverunt² nobis *dilecti filii* capitulum de Tornacensi,³ quod cum *eorum ecclesia vacante archipresbytero P. presbyterum* in suum archipresbyterum⁴ *canonice ac concorditer* elegissent, *venerabilis frater noster* Mediolanensis archiepiscopus presentatam sibi electionem *ipsorum pro sua voluntate* renuens confirmare, *A.* quemdam⁵ *Zepum*⁶ clericum *Mediolanensem* in archipresbyterum instituit ecclesie supradicte *in ipsorum preiudicium et gravamen*. Quare ipsis ad sedem apostolicam appellantes, *bone memorie Honorius papa predecessor noster* preposito Sancti Stephani in *Brolio Mediolanensi et suis coniuudicibus et nos postmodum archidiacono Vercellensi* causam⁷ super hiis dicimur commisisse, qui electionem ipsorum *de predicto P. canonice celebrata, iustitia exigente* confirmans, et pronuntians ius eligendi ad ipsum capitulum pertinere, partem adversam ab impetitione ipsorum⁸ absolvit, a qua sententia partes ad sedem apostolicam appellantes,⁹ causam ipsam vobis *sub certa forma a nobis* obtinere committi. Sed a parte altera *preter alias exceptiones dilatorias*, exceptione excommunicationis *coram vobis* opposita contra capitulum memoratum, *et litigato aliquandiu super hiis*, vos minus provide attendentes, quod pretextu excommunicationis opposite a prosecutione appellationis non debeat quis excludi, cum omnis legitima defensio excommunicato in iudicio reservetur, partem adversam non esse cogendam ad

respondendum eisdem, *sub vestro examine* perperam decrevistis, propter quod dictum¹⁰ capitulum *sentientes indebite se gravari*, nostram audientiam appellarunt. † *Unde fuit ex parte ipsorum nobis humiliter supplicatum ut cum fere quadriennio iam elapso negotium ipsum nequiverit terminari, ex hoc eadem ecclesia nonmodicam lesionem incurrat, providere sibi super hoc misericorditer dignaremur. Volentes igitur ut finis litibus imponatur, discretioni vestre per apostolica scripta precipiendo mandamus, quatinus si est ita, exceptione huiusmodi non obstante, infra duos menses post susceptionem presentium iuxta traditam vobis formam in eodem negotio, ratione previa, procedatis. Si vero infra predictum tempus causa ipsa nequiverit terminari, vos eam sufficienter instructam ad nostrum remittatis examen, prefigentes partibus terminum competentem, quo per se vel procuratores idoneos nostro se conspectui representent, iustam dante Domino sententiam recepture. Quod si non omnes, duo vestrum etc. Datum Anagnie, VII Kalendas Septembris, pontificatus nostri anno quarto.*

¹ Abbati Sancti Salvatoris Papiensi, et Vercellensis et Sancti Georgii de Ligniano, Mediolanensis diocesis, prepositis: *Reg.* ² Significarunt: *Reg.* ³ Cornato: *Reg.*

⁴ archipresbyterum suum: *Reg.* ⁵ dictum: *Reg.* ⁶ Zeppum: *Reg.* ⁷ causam ipsam: *Fried.*

⁸ ipsorum impetitione: *Reg.* ⁹ ad... appellantes] vocem appellationis ad sedem apostolicam emittentes: *Reg.* ¹⁰ dicti: *Reg.*

99. X 2.25.12

Deest Registro; Potthast 9614

100. X 2.25.13

Deest Registro; Potthast 9615

101. X 2.25.14

Deest Registro; Potthast 9616

102. X 2.27.25

Deest Registro; Potthast 9617

103. X 2.27.26

Deest Registro; Potthast 9618

104. X 2.28.67

Auvray 390; Potthast 9619

Reg. 14 (150v): an. 3, no. 104

Perugia: January 18th, 1230

[*Rubr:* Si is qui desit esse tutor, nomine pupilli convenitur invitus, poterit appellare.]

Gregorius IX. Magistro scholarium H. et G. de Rupe, Canonicis S. Andoniani Morinensis diocesis.¹

Ex parte M., domine de Colb.,² *relicte quondam Eustachii, militis eiusdem loci, nobis fuit*

oblata querela, quod cum nobilis mulier domina de Bellebron.,³ *Morinensis diocesis*, super quibusdam terris, *possessionibus, redditibus et rebus aliis, quas ad dotalicium suum spectare dicebat, ipsam postquam ad secunda vota transierat*, nomine filiorum suorum, *quos ex milite predicto susceperat, quorum iam desierat esse tutrix*, coram iudicibus⁴ auctoritate nostra traxisset in causam, eadem in iudicium ipsorum⁵ excipi fecit presentia, quod cum res de quibus in iudicio agebatur, et predicti filii eius sub potestate et⁶ tutela ipsius minime permanerent, cum iam ad secunda vota transisset,⁷ super hiis ei non tenebatur ipsorum nomine, quorum tutrix esse desierat, respondere. Sed quia dicti iudices, hac exceptione neglecta, nichilominus ad hoc *iniuste* compellebant eandem, *ex hoc* ipsa sentiens se gravari, nostram audientiam appellavit. Ideoque *discretionis vestre per apostolica scripta* mandamus, quatinus si ita est, revocato in irritum⁸ quicquid post appellationem huiusmodi *temere* inveneritis atemptatum, audiatis hinc inde proposita etc.,⁹ *et quod iustum fuerit, appellatione remota, fine debito terminetis, facientes etc., usque observari. Alioquin partes ad priorum iudicium etc. Appellantem etc. Testes etc. Quod si non omnes etc. Datum Perusii, XV Kalendas Februarii, pontificatus nostri anno tertio.*

¹ Magistro scholarum Haimundo, et G. de Rupelka [Rupekka: *Auvray*], canonicis Sancti Audomari, Morinensis diocesis: *Reg.* ² Colesber.: *Reg.* ³ Belebron: *Reg.* ⁴ iudicibus] decano de Mosteriolo et coniudicibus suis: *Reg.* ⁵ ipsorum iudicium: *Reg.* ⁶ ac: *Reg.* ⁷ transisset: *Auvray* ⁸ irritum] statum debitum: *Reg.* ⁹ etc.: *deest Reg.*

105. X 2.28.68

Auvray 402; Potthast 9620

Reg. 14 (154v-156r): an. 3, no. 116

Perugia: January 30th, 1230

[*Rubr*: Si iudex de iure dubitans vult consulere superiorem, debet consultationis copiam partibus edere; alias eius verbis consultationis fides non adhibetur.]

Idem Magistro et Fratibus domus Moriensis.¹

Intimasti² † *bone memorie H. pape, predecessori nostro, venerabili fratre nostro episcopo Lingonensi, quod hospitale vestrum, sue diocesis, cum esset in spiritualibus et temporalibus sic collapsum, ut per vos reformari nequiret, dum de die in diem bona dissiparentur eiusdem, nec ibi hospitalitas servaretur, fratribus Hospitalis Ierosolimitani in eorum ordinem convertendum concedere disposuerat, et per eos in statum debitum reformandum, si de beneplacito dicti predecessoris nostri existeret, cuius super hoc assensum benivolum³ imploravit, prefatus⁴ predecessor noster mandavit eidem, ut ad id auctoritate sua, sine iuris preiudicio alieni procederet, eius et Lingonensis ecclesie iure salvo. Cumque audito mandato huiusmodi fuerit contradictum, ne quid immutaretur circa statum hospitalis ipsius, appellatione demum ad sedem apostolicam interposita, de procuratorum utriusque partis assensu, abbati Sancte Genovefe et eius collegis iamdictus predecessor noster iniunxit, ut domum vestram, si nondum esset facta Hospitalariis de ipsa concessio, sed res foret adhuc integra in ordine suo, si posset ex parte vestra hoc fieri, reformarent. Alioquin vocatis qui vocandi essent, causam audirent, sibi finem debitum imponentes. Pronuntiantibus ergo duobus ex predictis⁵ iudicibus rem non esse*

integram, et concessionem ab episcopo fore factam, tertio contrarium decernente, a predictorum duorum sententia extitit appellatum. Procuratoribus itaque partium in nostra presentia constitutis, cum per ea que ex parte Hospitalariorum proposita fuerant, apparuerit evidenter concessionem episcopi nullam esse, et ad officium nostrum, quod late patet, pertinere noscatur errata corrigere et in statum debitum reformare. Nos ex hoc, et ne partes litibus et sumptibus inutiliter laborare ulterius cogentur, concessionem ipsam de consilio fratrum nostrorum ex providentia irritam esse decrevimus, vobis ab impetitione partis alterius absolutis, et iniuncto a nobis venerabili fratri nostro episcopo, tunc canonico, Parisiensi, et collegis eiusdem, ut revocato in irritum quicquid invenirent occasione concessionis ipsius in dicte domus preiudicium esse factum, si viderent reformari eam in ordine suo posse, et hoc infra sex menses post monitionem eorum non fieret, personaliter, si opus esset, accedentes ad locum, id exequi procurarent, ad nos statum domus et omnia que reformationi cognoscerent expedire, si nequiret in suo ordine reformari, fideliter referendo. De magistro vero, quo tunc domus ipsa vacabat, ne reformationi defectus eius obstaret, ei ante omnia ad reformationem spectantia, si ad mandatum eorum infra certum tempus illum prefici non contingeret, providerent. Eisdem quoque super eo quod supradicti duo iudices dicebantur contra formam sibi traditam, admissionem in possessionem de domo et pertinentiis suis, post appellationem legitimam, contempto tertio, processisse, propter quod petebatur eorum processum irritum nuntiari, parte Hospitalariorum illum approbari econtrario⁶ postulante, de assensu procuratorum utriusque partis, per alia scripta mandavimus, ut tam super tali processu quam super omnibus ex ipso secutis, necnon super universis⁷ querelis iam exortis et emergentibus, pendente reformationis negotio, excepto quod super premissis a nobis fuerat ordinatum, audirent hinc inde proposita, quod canonicum existeret statuentes. Ad quos postmodum Hospitalarii, in pluribus suggesta falsitate ac veritate suppressa, litteras apostolicas reportarunt, ut infra certum tempus super predictis omnibus negotium instruente, illud ad nos instructum remitterent, si pars vestra iam monita omisisset, vel post monitionem eorum omitteret domum ipsam infra sex mensium spatium reformare. Sane dictus Parisiensis episcopus et college ipsius, neglectis ex parte vestra eorum monitionibus, et cognito per inquisitionem summarium factam per venerabilem fratrem nostrum archiepiscopum Bisuntinum, tunc decanum Lingonensem, eiusque collegas, quod domus in eodem ordine reformari valebat, abbati Clarevallensi, Cisterciensis ordinis, et collegis suis iniuncxerunt, ut proviso domui primitus de rectore, ac approbatis si qua ibi provide ordinata in temporalibus et spiritualibus reperirent, statuerent et supplerent, que statuenda viderent sive supplenda, referentes eis quod invenirent vel ducerent faciendum. Qui, proviso domui de magistro, eam in ordine suo reformare⁸ curarunt, mandantes inter alia regulam domus ipsius, approbatam a Lingonensi episcopo et a vobis, ibi firmiter observari. Tandem relatione ipsorum, cum delegantibus processus eorum placuerit, ad sedem apostolicam destinata, Hospitalariorum procurator in nostra presentia constitutus, contra ipsam obiecit, quod potestas dictorum delegantium, quoad reformationis articulum revocata fuerat, per ultimas litteras continentes, quod ipsorum monitis super reformatione neglectis, causam instruerent et ad nos remitterent sufficienter instructam. Propter quod reformandi non habuerant facultatem, presertim cum ante receptionem litterarum ipsarum ad monitionem non processerint faciendam. Preterea Hospitalariis ignorantibus, et pendente die assignata, qua⁹ dicerent quando ad inquirendum accederent, inquisitionem fecisse noscuntur, et non facta eis copia de

inquisitionis¹⁰ processu, ad nos relationem *huiusmodi* transmisisse noscuntur,¹¹ cum iuxta legitimas sanctiones quotiens relaturum se iudex quilibet pollicetur, ilico litigatoribus apud acta consultationis exemplum edere teneatur. *Adiciente procuratore prefato,*¹² *quod per ea que facta erant, nec domum reformatam nec reformari posse in suo ordine apparebat. Demum ex parte vestra proposito, quod cum ab Hospitalariorum impetitione fueritis per nostram providentiam absoluti, pronuntiata irrita concessione predicta, eorum non intererat facto huiusmodi se opponere ullo modo, responsum extitit ex adverso, quod ius acquisitum eis erat, tam ex predecessoris nostri mandato facto episcopo Lingonensi, ut ad conversionem¹³ procederet, quam de domo vestra in ipsorum ordinem¹⁴ facere intendebat, quam etiam ex iuramento quod dicebamini prestitisse de stando dispositioni episcopi supradicti, cum videatur in simili casu, propter religionem iusiurandi, felicitis recordationis I. papa, predecessor noster, adiudicasse Hospitale Sancti Elucii, Lucane diocesis, Hospitalariis Sancti Sepulchri Pisanis. Verum mandato et iuramento predictis opponebatur res iudicata per provisionem predictam et predecessoris nostri mandatum directum, approbantibus Hospitalariis, abbati Sancte Genovefe et collegis¹⁵ ipsius, de domo in ordine suo, si res esset integra, reformanda, necnon preceptum nostrum post provisionem destinatum Parisiensi episcopo et collegis eiusdem, ut si fieri posset, in eodem ordine reformarent eandem. Proponerebatur insuper quod etsi fuisset prestitum iuramentum, cum artioris quam illi ordinis existatis, generaliter illud exhibitum de stando dispositioni episcopi Lingonensis, ad recipiendum illorum ordinem vos nullatenus obligaret. Et si iurassetis expresse de convertendo vos ad ordinem eorundem, illicitum et temerarium extitisset, et ideo non servandum, cum nulli ab artiori ad laxiorem ordinem descendere concedatur. Ex tali etiam conversione quedam absurditas sequeretur, dum per hoc contigeret Hospitalarios subici Lingonensi ecclesie contra privilegia et indulgentias libertatis, quibus ad nos nullo pertinent mediante, propter quod eis, etiam sponte si vellent, renunciare non possent. Mandatum quoque nostrum posterius non videbatur obesse, cum sicut superius est expressum, per veritatis suppressionem et suggestionem falsitatis fuisset obtentum. Quod attendentes Parisiensis episcopus et eius college interlocuti fuerunt, eo non obstante, per priores litteras procedere se debere. Nec necesse fuit copiam Hospitalariis facere de processu in relatione mittenda, cum post provisionem eandem et preceptum nostrum de reformanda in ordine suo domo prefata,¹⁶ nichil penitus interfuerit eorundem. Cum ergo ex premissis et aliis coram nobis propositis, liquido constaret, aliquid iuris eosdem Hospitalarios in eadem domo et eius pertinentiis non habere, ac per hoc, ut facto huiusmodi se opponerent sua minime interesse, de fratrum nostrorum consilio perpetuum eis super hiis silentium duximus imponendum. Datum Perusii, III Kalendas Februarii, pontificatus nostri anno tertio.*

¹ Magistro et fratribus domus Mormenti: Reg. ² Intimante: Reg. ³ benevolum: Auvray
⁴ predictus: Auvray ⁵ predictis] ipsis: Auvray ⁶ contrario: Auvray ⁷ vestris: Auvray
⁸ reformari: Auvray ⁹ quo: Reg. ¹⁰ inquisitionis: deest Reg. ¹¹ noscuntur: deest Reg.
¹² predicto: Auvray ¹³ controversiam: Auvray ¹⁴ ordine: Auvray ¹⁵ collegiis: Reg.
¹⁶ predicta: Auvray

106. X 2.28.69

Auvray 511; Potthast 9621

Reg. 15 (40r): an. 4, no. 80
Anagni: October 31st, 1230

[*Rubr: Si ante litem contestatam circa principale negotium iudex aliquid innovat, vel diem assignatam sine causa prevenit, licite appellatur. Et si procurator datus ad impetrandum super appellatione non servavit formam mandati, auditur appellans etiam post annum.*]

Idem Archiepiscopo, Archidiacono et G. Canonico Turonensibus.¹

Significante *venerabili fratre nostro* Aurelianensi episcopo nos noveritis accepisse, quod cum decanus et capitulum Magdunenses, *A[u]relianensis diocesis*, ipsum super eo quod dicebant, *eundem in terra sua in villa Magdunensi, in eorum preiudicium carnes in stallis suis vendi fecisse, ac alibi quam in stallis decani et capituli predictorum, in villa Magdunensi, carnifices facere carnes et vendere aliquatenus non debere, necnon et aliis diversis articulis*, coram iudicibus² auctoritate apostolica convenissent, petentibus tandem decano et capitulo nominatis, iudicum officium implorando, ut cum idem episcopus post citationem, *ut asserebant, emissam*, carnes in stallis aliis vendi fecisset,³ quod per eum super hoc factum fuerat, in statum pristinum revocarent, pro parte ipsius fuit propositum *replicando*, quod cum lis presertim non fuisset super *ipso* negotio contestata, locum *in hac parte* imploratio huiusmodi non habebat, adiciens *insuper*, quod cum de consensu partium coram dictis iudicibus, ad litigandum super ipso negotio certus dies statutus fuisset, et quantum ad illam diem, *qua alii⁴ ad litigandum acceptaverant*, solutum fuisset iudicium eorundem, prevenire diem ipsum ac audire partem adversam in tali imploratione absque consensu partium non debebant. Et quia *prefati iudices* super hiis *contra iustitiam* non audiebant eundem, *idem se sentiens ex hoc iniuste gravari*, nostram appellavit audientiam.⁵ Et licet procuratorem suum infra annum ad huiusmodi appellationem miserit prosequendam, quia tamen dictus procurator, ut creditur, circumventus contra inhibitionem ipsius episcopi, nostras super hoc ad quosdam iudices,⁶ certa *eidem episcopo* ratione suspectos, litteras impetravit, dictus episcopus uti noluit litteris sic obtentis, petens non obstante lapsu anni ad prosecutionem appellationis admitti.⁷ Ideoque *discretioni vestre per apostolica scripta* mandamus, quatinus si inhibitione huiusmodi et premissis causis appellationis vel earum altera constiterit,⁸ revocato in irritum⁹ etc., usque ad¹⁰ attemptatum, in iamdicto negotio iuxta priorum continentiam litterarum etc.,¹¹ *appellatione remota, ratione previa, procedatis. Alioquin partes ad priorum iudicum remittatis examen. Appellantem etc. Testes etc. Quod si non omnes etc. Datum Anagnie, II Kalendas Novembris, pontificatus nostri anno quarto.*

¹ Archiepiscopo, archidiacono et G. de Marreio canonico Turonensibus: *Reg.*

² iudicibus] succentore Parisiensi et eius coniudicibus: *Reg.* ³ in...fecisset] in stallis vendi fecisset predictis: *Reg.* ⁴ alium: *Reg.* ⁵ audientiam appellavit: *Reg., Fried.*

⁶ quosdam iudices] decanum Sancti Salvatoris Blesensis, Carnotensis diocesis et eius coniudices: *Reg.* ⁷ petens...admitti] quare petebatur ab eo sibi super hoc misericorditer provideri ⁸ si...constiterit] si est ita: *Reg.* ⁹ irritum] statum debitum: *Reg.* ¹⁰ ad: *deest Reg.* ¹¹ etc.: *deest Reg.*

107. X 2.28.70

Deest Registro; Potthast 9622

108. X 2.28.71*Deest Registro; Potthast 9623***109. X 2.28.72***Deest Registro; Potthast 9624***110. X 2.28.73***Deest Registro; Potthast 9625***111. X 3.2.10***Deest Registro; Potthast 9626***112. X 3.4.16***Auvray 348; Potthast 9627**Reg. 14 (138r): an. 3, no. 62**Perugia: September 26th, 1229*

[*Rubr:* Si ecclesia patitur ministrorum defectum, privilegiati super absentia per subtractionem proventuum redire coguntur. H. d. et est bonus textus, et potest multum practicari.]

Gregorius IX. Patriarche Antiochie apostolice sedis legato.¹

Cum ad hoc sint ecclesiastica beneficia² deputata, † *ut habeant ecclesie necessarios servitores, profecto indigne illa percipiunt, qui servitium ad quod per hoc astricti sunt, ecclesiis non impendunt.* Sane nobis innotuit, quod *de Antiochene ecclesie consuetudine fuit hactenus observatum, ut nullus eiusdem ecclesie canonicus vel asisius, residentiam in ea non faciens, prebendam vel asisiam percipiat ex eadem, nisi sit absens de speciali licentia Patriarche aut forte capituli, sede patriarchali vacante.* Nunc autem ecclesia Antiochena³ multis ex servitoribus eius absentibus, *qui tamen ubera sua fugunt et lactis ipsius dulcedine confoventur, est fere destituta ministris.* *Quod tanto existit indignius quanto ipsa que principis apostolorum exitit prima sedes, maiori prerogativa gaudet honoris.* Unde nos eidem ecclesie paterno providentes affectu, *cum secundum apostolum, qui non laborat, non debeat manducare, de fratrum nostrorum consilio fraternitati tue per apostolica scripta precipiendo mandamus, quatinus non obstantibus apostolicis indulgentiis et predecessorum tuorum licentia, absentes canonicos et asisios revoces ad residendum in ecclesia supradicta.* Et si non venerint, tu de ipsorum beneficiis dum absentes fuerint, ipsi ecclesie facias congrue deserviri, in utilitatem eiusdem quod ex prefatis beneficiis superfuerit convertendo. *Datum Perusii, VI Kalendas Octobris, pontificatus nostri anno tertio.*

¹ Patriarche Antiochene apostolice sedis legato: *Reg.* ² beneficia ecclesiastica: *Reg.*

³ ecclesia Antiochena] eadem ecclesia: *Reg.*

113. X 3.4.17*Deest Registro; Potthast 9628*

114. X 3.5.35

Auvray 323; Potthast 9629

Reg. 14 (130r): an. 3, no. 37

Perugia: July 17th, 1229[*Rubr:* Pueri et alias beneficiati non sunt idonei ad beneficia consequenda. H. d. inherendo verbis littere.]Gregorius IX. Argentinensi Episcopo.¹

Super inordinata ordinatione † *quinquaginta canonicorum et amplius in ecclesia Pictaviensi presumpta, vobis mandavimus ut tante multitudinis numerum usque ad vicesimum, de quinquaginta predictis implendum, si tot ex ipsis inveniretis² idoneos, alioquin de aliis, auctoritate nostra³ reducere curaretis. Sed cum quidam de institutis eisdem sufficienter beneficiati sint alibi, quorum aliqui ecclesiasticas obtinent dignitates, aliqui vero beneficia que curam habent animarum annexam, et quidam in puerili existant etate, nos consulere voluistis, an tales reputare idoneos debeatis. Cum autem illi sint in ecclesiis idonei reputandi, qui servire possunt⁴ et volunt in ipsis, consultationi tue⁵ taliter respondemus, quod non fuit intentionis nostre, cum super hoc scripsimus, quod⁶ pueri et beneficiati, qui non possunt in eadem ecclesia deservire, in ea non debent idonei reputari.⁷ Datum Perusii, XVI Kalendas Augusti, pontificatus nostri anno tertio.*

¹ Petragoricensi episcopo, abbati de Petrosa, Petragoricensis diocesis, et magistro A. Samathie, archidiacono Petragoricensi: Reg. ² inveneritis: Auvray ³ nostra] apostolica: Auvray ⁴ possint: Reg. ⁵ consultationi tue] vobis: Reg. ⁶ ut: Reg.; quod: Auvray ⁷ in ea debeant idonei reputari: Reg.

115. X 3.5.36

Auvray 672; Potthast 9630

Reg. 15 (104r): an. 5, no. 87

Lateran: May 7th, 1231[*Rubr:* Pro unius prebende integratione alia dividi non debet.]Idem Archiepiscopo et Magistro R. Turonensibus.¹

Cum causam que inter *venerabilem fratrem nostrum Aurelianensem episcopum et dilectum filium I. de Blesis, canonicum Sancte Crucis Aurelianensis*, super integratione prebende ipsius canonici vertebatur, vobis duxerimus committendam, † *vos, frater archiepiscopo ac fili subdecane, te, fili R., excusato legitime, terminare dubitantes eandem, propositiones factas hinc inde per vestras nobis litteras declarastis, petendo a nobis ut vobis dignaremur consulere, qualiter esset vobis in huiusmodi negotio procedendum. Quibus qua debuimus benignitate receptis, venerabilem fratrem nostrum Sabinensem episcopum dicto canonico et dilecto filio Arduino clerico, eiusdem Aurelianensis episcopi procuratori, in nostra presentia constitutis concessimus auditorem. Nos igitur, auditis per Sabinensem eundem dicti negotii circumstantiis universis, consultationi vestre taliter respondemus,² quod nostre intentionis non exitit, ut*

pro integratione prebende supradicti canonici, prebenda de novo aliqua scinderetur.
Datum Laterani, Nonis Maii, pontificatus nostri anno quinto.

¹ Archiepiscopo, I. subdecano, et magistro Radulfo, granetario Beati Martini Turonensibus: *Reg.* ² consultationi...respondemus] discretioni vestre sic [sic: *deest Auvray*] duximus respondendum: *Reg.*

116. X 3.5.37

Deest Registro; Potthast 9631

117. X 3.5.38

Deest Registro Gregorii IX
Pressutti 6244; Potthast 9632
Reg. 13 (174r): an. 11, no. 578
Lateran: February 17, 1227

[*Rubr.*: Si mandatur provideri in ecclesia, non potest de ecclesia provideri.]

Idem.¹

Cum olim *dilecto filio* priori sancte M.² *foris portam Lucanam nostris dederimus litteris* in mandatis, ut *dilecto filio* G.³ diacono *Lucano* in aliqua ecclesia⁴ civitatis vel diocesis Lucane *nondum nostro gravata mandato* auctoritate apostolica provideret, *cathedrali et quibusdam ecclesiis que nuncupantur sedales exclusis*, idem *equo moderamine in statera iudicii suscepta mandati potestatem non libratis, si pro libito violenter inflectens*, praefatum G.⁵ ecclesie sancti Petri de Vico rectorem auctoritate huiusmodi⁶ nisus est designare, in qua rector ab eiusdem ecclesie clericis eligi consuevit, excommunicationis sententiam nichilominus proferens in rebelles. Cum igitur mandatum huiusmodi⁷ se ad talia non extendat, nec ad rectoriam vel dignitatem nostra feratur intentio, cum pro simplici beneficio iussio nostra manat, *discretionem tue per apostolica scripta* mandamus, quatenus tam institutionem huiusmodi *de predicto Uberto in ecclesia prescripta*, quam excommunicationis sententiam propter hoc latam, *auctoritate nostra* denunties non tenere. *Datum Laterani, XIII Kalendas Martii, anno XI.*

¹ [Honorius III] Priori Sancti Fridiani Lucane: *Reg. Hon.* ² Marie: *Reg. Hon.* ³ Vberto: *Reg. Hon.* ⁴ ecclesiarum: *Reg. Hon.* ⁵ V.: *Reg. Hon.* ⁶ huius: *Reg. Hon.* ⁷ huius: *Reg. Hon.*

118. X 3.14.3

Deest Registro; Potthast 9633

119. X 3.15.1

Deest Registro; Potthast 9634

120. X 3.16.2

Deest Registro; Potthast 9635

121. X 3.17.7*Deest Registro; Potthast 9636***122. X 3.18.3***Deest Registro; Potthast 9637***123. X 3.18.4***Deest Registro; Potthast 9638***124. X 3.19.9**

Reg. 15 (133v-134r): an. 5, no. 151

Auvray 737; Potthast 8822

*Rieti: October 20th, 1231**[Rubr: Spirituale cum temporali permutari non potest.]*Gregorius IX. Beton. et Fungin. Abbatibus.¹

Exhibita nobis *dilectorum filiorum* abbatis et conventus *monasterii* Sancti Martini de Pannonia petitio continebat, quod cum super causa, que inter ipsos ex una parte,² et prepositum Albanensem³ ex altera,⁴ super quibusdam decimationibus *et arbitrio quodam super ipsis prolata ex altera* vertebatur, *post diversas commissiones ad dilectum filium C.⁵ subdiaconum et capellanum nostrum, tunc in Hungaria⁶ commorantem, nostras litteras impetrassent, demum ipse ac magister M., archidiaconus de Saswar, in quos utrimque tamquam in arbitros procurante parte altera extitit compromissum, taliter arbitrati fuerunt, quod si dictus prepositus obtineret⁷ decem milia solidorum⁸ regalium, que tenent in Posonio a carissimo in Christo filio nostro illustri rege Hungarie ab ipso concedi monasterio memorato, ita quod in eodem loco ponerent suis expensis prefatos abbatem et conventum in possessionem salium predictorum, ipsi⁹ ab earundem decimationum petitione cessarent.¹⁰ † Postmodum vero licet sales ipsos dicto monasterio rex ipse per litteras suas concesserit, tamen prepositus et capitulum supradicti nec in termino constituto, nec post illum et plures alios exspectati possessionem ipsorum salium dederunt eisdem, quamvis iamdictus abbas protestatione premissa, quod non erat in possessionem inductus ab eis quinquaginta marcas frisaticorum pro redditu salium unius anni, precibus quorundam inductus et compulsus quibusdam minis et terroribus recepisset. Cumque indulto adhuc ipsis anni spatio inutiliter, sicut prius, duxerint expectandum. Demum post querelas multiplices vocem ad nos appellationis emisit, octavas beatorum apostolorum Petri et Pauli proximo preteritas, sibi terminum prefigendo. Qui tandem in nostra presentia constitutus, humiliter supplicavit, ut cum iidem prepositus et capitulum conditioni non paruerint, que in arbitrio continetur, mandaremus, eo non obstante de iamdictis decimationibus eidem monasterio integre responderi. Quocirca discretioni vestre per apostolica scripta mandamus, quatinus si vobis constiterit de premissis, cum permutatio de spiritualibus ad temporalia improbetur, predictum arbitrium et quicquid secutum est ex eo vel ob id, absque more dispendio auctoritate nostra, sublato appellationis impedimento, irritum decernatis, super decimis postmodum dampnis et*

expensis, que hac occasione monasterium ipsum sustinuit, quod iustum fuerit statuentes et facientes quod statueritis, per censuram ecclesiasticam firmiter observari. Testes autem etc. Si vero aliquid difficultatis emerit, quod per vos non valeat expediri, illud ad apostolice sedis remittatis examen, prefigentes partibus terminum competentem, quo per se vel procuratores idoneos compareant coram nobis quod canonicum fuerit recepture. Quod si non omnes etc., duo vestrum etc. Datum Reate, XIII Kalendas Novembris, pontificatus nostri anno quinto.

¹ De Boccon et Simigiensi abbatibus, et priori de Bocon, Vesprimiensis diocesis: *Reg.*
² ex parte una: *Reg.* ³ prepositum Albensem] prepositum et capitulum Albensis ecclesie:
Reg. ⁴ ex altera: *deest Reg.* ⁵ E.: *Reg.* ⁶ Ungaria: *Reg. et seq.* ⁷ dictus... obtineret]
dicti prepositus et capitulum obtinerent: *Reg.* ⁸ salium: *Reg.* ⁹ ipsi] pars monasterii:
Reg. ¹⁰ cessaret: *Reg.*

125. X 3.21.8

Auvray 649; Potthast 9639
Reg. 15 (93v): an. 5, no. 65
Lateran: May 9th, 1231

[*Rubr:* Usufructuarius cavet, quod fruatur rebus immobilibus salva ipsarum substantia, et pecuniam et estimationem mobilium, que consumuntur usu, finito usufructu restituit.]

Gregorius IX.¹

Cum constet *nobilem* I. mulierem² uxorem Ogerii,³ *militis Alatrini*, quo ad usumfructum filio suo successisse in bonis, quorum proprietas ad *nobilem* M. mulierem⁴ uxorem *nobilis viri* C.⁵ *de Sculcula* dinoscitur pertinere, *presentium vobis auctoritate districte precipiendo* mandamus, quatinus eam ad cautionem idoneam exhibendam, quod utatur et fruatur, salva rerum substantia rebus immobilibus,⁶ que usu non consumuntur, ad arbitrium boni viri. Pecuniam vero, si quam habuit⁷ vel habebit, ac extimationem bonorum, que consumuntur usu et in hereditate inventa fuerint,⁸ in morte sua dicte mulieri⁹ vel heredibus eius restituat, *monitione previa*, per censuram ecclesiasticam, *sublato appellationis obstaculo*, compellatis. *Datum Laterani, VII Idus Maii, pontificatus nostri anno quinto.*

¹ Anagnino et Ferentinato episcopis: *Reg.* ² mulierem Iohannam: *Reg.* ³ Ogerii: *Reg.*
⁴ mulierem Mathiam: *Reg.* ⁵ Conradi: *Reg.* ⁶ immobilibus rebus ⁷ habuerit: *Reg.*
⁸ fuerunt: *Reg.* ⁹ mulieri] Mathie: *Reg.*

126. X 3.22.5

Deest Registro; Potthast 9640

127. X 3.23.2

Auvray 775; Potthast 8874
Reg. 15 (157r-v): an. 5, no. 189
Rieti: February 11th, 1232

[*Rubr*: Si prelatus obligat ecclesiam pro alienis debitis, est suspensus ipso facto ab administratione spiritualium et temporalium, et ecclesia non tenetur.]

Gregorius IX. universis ecclesiarum Prelatis.¹

Si quorundam † *prelatorum presumptionem inolitam deo et hominibus exhorrendam iuste pensare vellemus, pene non esset adhibenda dilatio, sed in transgressores celeris vindicte severitas exercenda. Sicut enim ad nos valido et stupendo clamore pervenit, quidam non contenti, quod propriis commodis inherentes et querentes potius que sua sunt, quam que Christi, commissas sibi ecclesias enormiter dilapidant et consumunt, dum novo alienationis et dilapidationis genere adinvento eas presumant alienis debitis onerare. Sigilla sua seu litteras sigillatas de contrahendo mutuo, quibusdam amicis suis clericis et laicis concedendo, quarum occasione predictae ecclesie in tanta obligantur pecunie quantitate, ad cuius solutionem postmodum compelluntur, quod vix aut nunquam liberari possunt ab onere debitorum. Volentes igitur ecclesiarum indemnitatibus paterna sollicitudine providere, presentium auctoritate firmiter inhibemus, ne quis presumat decetero ecclesiam sibi commissam, ut premissum est, pro alienis gravare debitis aut litteras alicui seu sigilla concedere, quibus possent² ecclesie obligari, decernentes si secus, quod non credimus, fuerit attemptatum, ad solutionem talium debitorum ecclesias non teneri. Si quis autem³ contra premissa decetero venire presumpserit, ab amministrazione spiritualium et temporalium noverit se suspensum. Datum Reate, III Idus Februarii, pontificatus nostri anno quinto.*

¹ Archiepiscopis et episcopis, abbatibus, prioribus et aliis ecclesiarum prelatis presentes litteras inspecturis: *Reg.* ² possint: *Reg.* ³ enim: *Reg.*

128. X 3.23.3

Auvray 794; Potthast 9641

Reg 16: 4r (11 an. 6)

Spoleto: May 28th, 1232

[*Rubr*: Si clericus non habeat unde satisfaciat suis creditoribus, non debet excommunicari nec aliter molestari; prestabit tamen cautionem saltem iuratoriam de solvendo, cum venerit ad pinguiorem fortunam.]

Idem Decano et I. Canonico Tullensibus.¹

Odoardus² clericus proposuit *coram nobis*, quod cum P. clericus, D. laicus et quidam alii *Remensis diocesis*, ipsum coram officiali I. archidiaconi Remensis super quibusdam debitis et rebus aliis quas petebant, ab eo non ex delegatione apostolica convenissent, idem in eum recognoscentem³ huiusmodi debita,⁴ sed⁵ propter rerum inopiam solvere non valentem, excommunicationis sententiam promulgavit. † *Cumque postmodum idem clericus ipsa debita recognoscens ac prestans iuratoriam cautionem, que propter paupertatem nimiam ad quam devenerat, solvendo non erat prefatam sententiam a te obtinuerit relaxari. Tandem infra annum prefati P. clericus, D. laicus et alii ipsum eadem inopia laborantem, denuo coram eodem officiali super eisdem debitis convenerunt. Et licet ipse propositam prius in sua presentia inopiam allegaret,*

*nichilominus tamen in pristinam excommunicationis sententiam reduxit eundem. Unde mandamus,⁶ quatinus si constitent⁷ quod predictus O.⁸ in totum vel pro parte non possit solvere debita supradicta,⁹ sententiam ipsam *infra octo dies post susceptionem earum* sine difficultate qualibet¹⁰ relaxetis,¹¹ recepta prius ab eo¹² idonea cautione, ut si ad pinguiores fortunam devenerit, debita predicta persolvat. *Quocirca mandamus, quatinus si dictus officialis mandatum nostrum neglexerit adimplere, vos ex tunc eandem sententiam iuxta premissam formam relaxare curetis. Datum Spoletum, V Kalendas Iunii, anno sexto.**

¹ Decano et Iohanni dicto Vandicio canonico Tullensibus: *Reg.* ² Odardus: *Reg.*
³ recognoscentem: *deest Reg.* ⁴ huiusmodi debita] debita ipsa: *Reg.* ⁵ sed: *deest Reg.*
⁶ mandamus] sibi dedimus nostris litteris in mandatis: *Reg.* ⁷ quatinus si constitent] ut si ei constiterit: *Reg.* ⁸ Odoardus: *Fried.* ⁹ suprascripta: *Reg.* ¹⁰ qualibet difficultate: *Reg.*
¹¹ relaxet: *Reg.* ¹² ipso: *Reg.*

129. X 3.23.4

Deest Registro; Potthast 9642

130. X 3.24.10

Deest Registro; Potthast 9643

131. X 3.26.17

Auvray 697; Potthast 9644

Reg. 15 (114r): an. 5, no. 111

Rieti: July 21st, 1231

[*Rubr:* Episcopus compellit fideicommissarios seu executores testamenti ad exequendas pias voluntates defunctorum, etiamsi testator hoc interdixisset.]

Gregorius IX. Nomon. Episcopo.¹

Tua nobis fraternitas intimavit, quod nonnulli tam religiosi quam clerici seculares et laici *tue diocesis*, pecuniam et alia bona, que per manus eorum ex testamentis decedentium debent in usus pios expendi, *propriis commodis* non dubitant aliis usibus² applicare. *Quare petebas, ut tam saluti eorum qui hoc nequiter attemptare presumunt, quam desiderio testatorum paterna providere sollicitudine dignaremur.*

[X]

Cum igitur in omnibus piis voluntatibus sit per locorum episcopos providendum, ut secundum defuncti voluntatem universa procedant, licet etiam a testatoribus id contingeret interdici,

[Reg.]

Cum igitur nostra intersit obviare periculis animarum et pietatis operibus opem dare,

fraternitati tue per apostolica scripta mandamus, quatinus executores testamentorum huiusmodi, ut bona ipsa fideliter et plenarie in usus predictos,³ ut tenentur, expendant, monitione premissa,⁴ per censuram ecclesiasticam, sublato appellationis impedimento, compellas. Datum Reate, XII Kalendas Augusti, pontificatus nostri anno quinto.

¹ Episcopo Noviomensi: Reg. ² aliis usibus] in animarum suarum periculum: Reg.

³ fideliter...predictos] in usus predictos fideliter et plenarie: Reg. ⁴ previa: Reg.

132. X 3.26.18

Auvray 245; Potthast 9645

Reg. 14 (91r-92r): an. 2, no. 62

Perugia: November 16th, 1228

[*Rubr:* Filius rogatus restituere hereditatem, detrahit tertiam iure nature, et quartam Trebellianicam, in quibus potest legata relinquere, heredes instituere, et poenam imponere.]

Idem.¹

Raynaldus Peponis filius, heres ab ipso institutus hoc modo, ut patris suis *Petro et tibi, Bernadine*, hereditatem restitueret, si absque filiis masculis moreretur, cum eis,² mortuo Pepone,³ super quibusdam bonis hereditatis eiusdem, *videlicet turri, casalinis et casamentis quibusdam positis in regione Sancti Leonardi Urbevetani*, in tres arbitros compromisit, quorum duo, mortuo reliquo, prout ex forma compromissi poterant procedentes, taliter arbitrati fuerunt,⁴ quod neutra pars haberet licentiam transferendi quocumque modo in alium res predictas, nisi in eorum filios masculos ex ipsis legitime descendentes, et quod contra hoc fieret, non valeret. Porro dictus R.⁵ prolem non habens, *positus in extremis*, condidit testamentum in quo medietatem partis sue de rebus predictis quibusdam⁶ avunculis suis, *concivibus tuis*, aliam vero medietatem⁷ et reliqua bona paterna, *quibusdam legatis et relictis exceptis*, uni ex patris suis et eius filiis⁸ legavit,⁹ adiciens ut *eadem bona paterna, et alia* in quibus ex testamento vel ab¹⁰ intestato dicti heredes R.¹¹ possent succedere, si venirent contra legatum dictis avunculis suis¹² debitum, ad ipsos¹³ pro determinatis *superius* portionibus devenirent. Demum eodem R. nature debitum persolvente, ac uno ex patris¹⁴ hereditatem adeunte predictam, *facto a te prius inventario de bonis que inventa fuerant apud ipsum R., tempore mortis sue*, cum dicti avunculi¹⁵ adversus eundem patrum ac filios eius,¹⁶ coram A., *tunc* iudice communitatis¹⁷ Urbenatensis¹⁸ moverunt¹⁹ questionem, petendo pro rata, que ipsos contingit, legatum predictum, et restitui eis, si contra ipsum illi²⁰ venirent,²¹ quecumque occasione testamenti eiusdem R. ad ipsos²² pervenerant vel poterant pervenisse, *que specificata fuerunt in inventario memorato*, prefatus iudex ab illorum impetitione super legato ipsos absolvens,²³ ad restitutionem aliorum bonorum sententialiter²⁴ condempnavit eosdem.²⁵ A cuius sententia cum ambe partes ad²⁶ nostram audientiam appellassent, *nos dilectum filium nostrum S. tituli Sancte Marie in Transtiberim presbyterum cardinalem super hoc concessimus auditorem*, petente utraque parte²⁷ dicti iudicis sententiam infirmari, quatinus contra se fuerat promulgata, et quatinus pro se faciebat executioni mandari. *Lite igitur super huiusmodi petitionibus adinvicem contestata, et prioris iudicii actis exhibitis hinc et inde, cum dictus auditor post disceptationem diutinam profectus fuisset ad Urbem*, dilectus filius noster O. Sancti Nicolai in carcere Tulliano diaconus

cardinalis, *recepto a nobis super eadem questione dirimenda mandato*, lite coram se legitime contestata,²⁸ *habito quoque consilio plurium sapient[is]um*, quoniam idem R. habebat in bonis quondam Peponis, patris sui, tertiam partem debitam iure nature, in qua gravari nequivit, necnon quartam Trebelianicam, quam quilibet extraneus restitutione gravatus deducere potuisset, propter quod in rebus predictis avunculis²⁹ legatis portiones easdem habuit R. prefatus,³⁰ easque potuit in ultima voluntate legare, ac per hoc legatum tenuit usque ad tertiam et quartam prefatas, licet ipsas non expresserit in legando, pronuntiavit, non obstante premissis arbitrio, quod nec³¹ legatum teneret, non poterat impedire, iudicem ipsum, in eo quod super hoc dictum patruum³² in totum absolvit, qui confessus est,³³ se³⁴ pro medietate possidere predicta, perperam iudicasse, condempnavitque ipsum³⁵ ad restitutionem medietatis tertie et quarte partis ipsius legati, pro rata que dictos avunculos³⁶ de ipso contingit, et in residuo prefati iudicis sententiam confirmavit. Ceterum in eo quod idem iudex dictum patruum et eius filios³⁷ totaliter in aliis, que in secundo articulo petita fuerant, condempnarat, male ipsum pronuntiassse decrevit, quia filii eius³⁸ contra voluntatem testatoris non inveniuntur aliquid commisisse, cum nichil de petitis reperti fuerint possidere. Verum in portione, quam patruus habebat³⁹ in bonis illis, ratione quarte et tertie predictorum,⁴⁰ quas R. habuit in bonis eisdem, in quibus eius institutio et legatio ac adiectio pene tenebat, pro rata eosdem avunculos⁴¹ contingente de predicto legato, confirmavit sententiam iudicis supradicti, eodem patruo et eius filiis⁴² in residuo absolutis, et salvo nichilominus ei⁴³ ex iure institutionis beneficio legis Falcidie, in restitutione prefati legati,⁴⁴ si infra tempus legitimum voluntati paruerit⁴⁵ testatoris, cum inventarium fecerit,⁴⁶ et contra voluntatem testatoris lex Falcidia inducatur, *ac salvo dictis P. et M. iure adversus alios, si eos in eiusdem adeptione legati forsitan impedirent*. Nos itaque ipsius cardinalis sententiam, *iustitia exigente prolatam*, ratam habentes, eam auctoritate apostolica confirmamus *et presentis scripti patrocinio communimus*. *Nulli ergo etc., nostre confirmationis infringere*.⁴⁷ *Si quis autem etc. Datum Perusii, XVI Kalendas Decembris, pontificatus nostri anno secundo*.

¹ Nobili viro Bernadino, civi Urbevetano: *Reg.* ² cum eis] tecum et cum eodem Petro: *Reg.* ³ Pepone mortuo: *Reg.* ⁴ sunt: *Reg.* ⁵ Raynaldus: *Reg.* ⁶ quibusdam] nobilibus viris P., M., ac Citadino, fratri eiusdem M.: *Reg.* ⁷ aliam...mediatatem] aliam medietatem legavit: *Reg.* ⁸ uni...filiis] tibi et filiis tuis pro medietate, et prefati Petri filio, cui filios tuos substituit, si sine filiis masculis forte decederet, pro reliqua medietate dimisit: *Reg.* ⁹ legavit: *deest Reg.* ¹⁰ ab: *deest Reg.* ¹¹ Raynaldi: *Reg.* ¹² dictis...suis] eisdem P., M., et C.: *Reg.* ¹³ ad ipsos] ad ipsos et eundem C.: *Reg.* ¹⁴ uno ex patruis] te: *Reg.* ¹⁵ avunculi] P. et M.: *Reg.* ¹⁶ eundem...eius] te ac filios tuos: *Reg.* ¹⁷ communis: *Reg.* ¹⁸ Urbevetani: *Reg.* ¹⁹ moverint: *Reg.* ²⁰ illi] tu et tui filii: *Reg.* ²¹ veniretis: *Reg.* ²² ipsos] te ac filios tuos: *Reg.* ²³ ab...absolvens] te ac filios tuos ab eorum impetitione super legato eodem absolvens: *Reg.* ²⁴ sententialiter: *deest Reg.* ²⁵ condempnavit eosdem] te ac memoratos tuos filios condempnavit: *Reg.* ²⁶ ad: *deest Reg.* ²⁷ petente... parte] coram quo utraque pars petiit: *Reg.* ²⁸ lite...contestata] auditis et intellectis que utrimque proposita fuerant: *Reg.* ²⁹ avunculis] P., M., et C.: *Reg.* ³⁰ predictus: *Reg.* ³¹ ne: *Reg.* ³² dictum patruum] te: *Reg.* ³³ es: *Reg.* ³⁴ se: *deest Reg.* ³⁵ ipsum] te: *Reg.* ³⁶ avunculos] P. et M.: *Reg.* ³⁷ dictum...filios] te ac filios tuos: *Reg.* ³⁸ eius] tui: *Reg.* ³⁹ patruus habebat] tu habebas: *Reg.* ⁴⁰ predictarum: *Reg.* ⁴¹ avunculos] P. et M.: *Reg.*

⁴² eodem...fillis] te ac filiis tuis: Reg. ⁴³ ei] tibi: Reg. ⁴⁴ legati prefati: Reg. ⁴⁵ parueris: Reg. ⁴⁶ feceris: Reg. ⁴⁷ nostre...infringere: *deest Auvray*

133. X 3.26.19

Deest Registro; Potthast 9646

134. X 3.26.20

Deest Registro; Potthast 9647

135. X 3.28.14

Deest Registro; Potthast 9648

136. X 3.30.35

Deest Registro; Potthast 9649

137. X 3.31.23

Auvray 572; Potthast 8682/9650

Reg. 15 (59v-60r): an. 4, no. 133

Undated: registered between letters dated Lateran, March 18th and March 7th, 1231

[Rubr: Infra probationis annum libere quis redit ad seculum, nisi professionem fecerit tacite vel expresse, vel appareat, eum vitam mutare voluisse. Hoc primo. Secundo dicit, quod ad hoc, ut dignoscantur novitii a professis, debet habitus professorum benedici in locis, ubi habitus non est distinctus.]

Gregorius IX.

Quia nonnullos loca religiosa absque protestatione intrare contingit, et infra tempus probationis exire, ad seculum redeuntes apostasie criminis arguuntur, super quo fuit hactenus a pluribus dubitatum. Quia cum tempus probationis concessum continere in se¹ videatur liberam optionem² eligendi alterum e duobus, vel ut in monasterio tales remaneant, aut abscedant liberi, etiam post promissam de stabilitate perseverantiam, sicut in beati Benedicti regula continetur, varia quoque probationis tempora, ex diversitate personarum, causarum et conditionum, fuerint instituta. Quibus quandoque triennium in habitu seculari, quandoque biennium fuit statutis canonicis ac sanctione legalis provisionis indultum, et tandem ex prefata regula et beati Gregorii pape prohibitione nichilominus interdictum, ne ante unius anni probationem aliquis in monachum admittatur. Persone huiusmodi apostate non videntur, presertim cum a predecessoribus nostris pluries dicatur esse responsum, novitios ante susceptum religionis habitum in probatione positos, ne ad statum pristinum redire valeant, [non] prohiberi. Licet autem predecessores nostros super hoc diversa sensisse aliquibus videatur, credendum tamen non est, quod inicere voluerint laqueum animabus, que a diversis et variis irruentibus mortis occasionibus sunt potius eruende, cum ex imperitia seu negligentia in hoc simpliciores maxime facile caperentur. Et quod de protestatione facienda scriptum est, consilii esse potius creditur quam precepti, quia etsi videatur alicubi omissa protestatio presumptionem conversionis inducere, ne liceat omittenti illam ad seculum postmodum remeare, non tam protestationis omissio quam assumptio habitus

religionis, qui datur professis de quo mentio specialiter habetur ibidem, facultatem adimit ad seculum redeundi. Nos autem animarum saluti providere volentes et amovere materiam scandalorum, de consilio fratrum nostrorum presenti decreto statuimus, novitios in probatione positos ante susceptum religionis habitum, qui dari profitentibus consuevit, vel ante professionem emissam, ad priorem statum redire posse libere infra annum, nisi evidenter appareat, quod tales absolute voluerint vitam mutare et in religione perpetuo Domino deservire, cum quilibet renuntiare valeat ei, quod pro se noscitur introductum. Nichilominus statuentes ad omnem ambiguitatem penitus amovendam, quod³ cum in quibusdam locis religiosis⁴ novitiorum habitus non distinguatur ab habitu professorum, professionis tempore benedicantur vestes, que profitentibus conceduntur, ut novitiorum habitus⁵ a professorum habitu discernatur. [Sine dato].⁶

¹ in se: *deest Auvray* ² obtionem: *Reg.* ³ Nichilominus...quod] Ad ambiguitatem omnem penitus amputandam nichilominus statuentes ut: *Reg.* ⁴ religionis: *Fried.* ⁵ habitus: *deest Reg.* ⁶ Nulli ergo etc. Datum.: *add. in fine Auvray*

138. X 3.31.24

Auvray 1667; Potthast 9651

Reg. 17 (120v-121r): an. 7, no. 423

Lateran: December 23rd, 1233

[*Rubr:* Religiosi fugitivi annuatim sunt requirendi, et cogendi, ut at monasterium revertantur.]

Idem.¹

Simon pauper monachus monasterii Sancti Landelini de Crispinio, Cameracensis diocesis, sua nobis insinuatione monstravit, quod cum olim abbas suus, animi contra eum rancore concepto, quorundam, ut dicitur, emulorum suorum nequitia faciente, ipsum de monasterio per violentiam eiecisset. Idem tandem, licet² per annum et amplius, ad ostium stans in habitu monachali et pulsans cum lacrimis, ab abbate et conventu dicti monasterii veniam postulasset, ipsi tamen clausis pietatis visceribus indebite contra eum, quanquam nulla rationabilis culpa³ processerit, ipsum recipere recusarunt, salva etiam ordinis disciplina. Cum autem officialis Remensis, decanus⁴ Sancti Gaugerici Cameracensis, metropolitani sui auctoritate mandasset, ut qua de causa eiectus fuisset idem monachus, inquireret plenius veritatem, dicti abbas et conventus, inquisitionis non expectato examine, obtulerunt quod parati erant eum recipere, quia nullam iustam in eo causam invenerant, ob quam esset actum taliter contra eum. Quo demum ad monasterium de prefati decani mandato reverso, etsi eum dicti abbas et conventus, ut promiserant, recepissent, ut tamen in effectum transiret dispositio cordis sui, ceperunt nequius agere contra eum, tamdiu ipsum, arte custodie mancipatum, diversis penarum cruciatibus, opprobriis et verberibus immaniter affligentes, donec vi metuque coactus, monachatum et ordinem quem professus fuerat, de facto, cum de iure nequiverit, resignavit. Ne igitur religiosi vagandi occasionem habentes, salutis proprie detrimentum incurrant, et sanguis eorum de prelatorum manibus requiratur, nuper de fratrum nostrorum consilio statuimus,⁵ ut presidentes capitulis celebrandis, secundum statutum concilii generalis, seu patres abbates sive priores, fugitivos suos⁶ et eiectos de ordine suo requirant sollicite annuatim. Qui si in monasteriis suis recipi possunt secundum ordinem

regularem, abbates seu priores eorum, monitione previa, per censuram ecclesiasticam⁷ compellantur ad receptionem ipsorum,⁸ salva ordinis disciplina. Quod si hoc regularis ordo non patitur, auctoritate nostra provideant, ut apud eadem monasteria in locis competentibus, si absque gravi scandalo fieri poterit, alioquin in aliis religiosis domibus eiusdem ordinis ad agendam ibi penitentiam, talibus vite necessaria ministrentur. Si vero huiusmodi fugitivos vel eiectos inobedientes invenerint, eos excommunicent et tamdiu faciant ab ecclesiarum prelatibus excommunicatos publice nuntiari, donec ad mandatum ipsorum humiliter revertantur. *Nos itaque, remittentes ad vos monachum supradictum, mandamus, quatinus circa eum iuxta huiusmodi statuti tenorem taliter procedatis, quod propter hoc ipsum ad nos non oporteat laborare, et pro defectu vestro materiam non habeat evagandi. Contradictores etc. Datum Laterani, X Kalendas Ianuarii, pontificatus nostri anno septimo.*

¹ Visitatoribus monasterium exemptorum per Remensem provinciam constitutis: *Reg.*

² licet: *deest Auvray* ³ causa: *Auvray* ⁴ decano: *Auvray* ⁵ statuimus] duximus statuendum: *Reg.* ⁶ suos: *deest Reg.* ⁷ per...ecclesiasticam] censura ecclesiastica: *Reg.*

⁸ eorum: *Reg.*

139. X 3.32.19

Auvray 110; Potthast 9652

Reg. 14 (17r-v): an. 1, no. 110

Anagni: June 8th, 1227

[*Rubr:* Adultera, quam maritus reconciliare non vult, ad agendum penitentiam in aliquo claustro collocatur.]

Gregorius. IX.¹

Gaudemus in Domino † *et tue sollicitudinis studium commendamus, quod quasi vocatus a Domino, de mandato venerabilium fratrum nostrorum C. Portuensis episcopi, tunc apostolice sedis legati, et archiepiscopi Maguntini, ad sancte predicationis officium te convertens, et hominum piscator effectus rete plenum piscibus extrasisti. Dum illas miserrimas mulieres, que humani generis hostis suggestione seducte in lutum ceciderunt, fete libidinis involute de lacu miserie, ne ipsas desperationis absorberet, puteus eduxisti. Sicque factum est, quod multis ex ipsis nuptui traditis, alie facte de meretricibus moniales, et de prostibulo fugientes, ad claustrum servare voverunt Domino castitatem. Potes inquam et tu letari in Domino, cum et ipse chorus angelicus gaudeat ex hoc facto, sed ut tantum a te gaudium nemo tollat, indefessa vigilare sollicitudine te oportet, ac instare viriliter, ne hostis ille antiquus et callidus conversionem mulierum ipsarum penitentiam agentium sue possit calliditatis astutia impedire. Quocirca discretionem tuam monendam duximus et hortandam per apostolica tibi scripta mandantes, et in remissionem peccaminum iniungentes, quia sumens intrepidus auctoritate nostra tam pium predicationis officium ad conversionem mulierum talium prudenter intendas, et conversas salubribus monitis in castitate ac religione conrobore et confortes, ut autem comissum tibi a nobis predicationis officium possis liberius et utilius exercere, auctoritate presentium tibi concedimus potestatem, ut confessiones huiusmodi mulierum audire valeas et eis de comissis iniungere penitentiam salutarem. Illos vero qui mulieres*

huiusmodi causa lucri tamquam patroni turpidinis manuteneant et fovent, quod eas ad audiendum vocem predicationis tue libere venire permittant, et conversionem et salutem earum nullatenus impedire presumant, diligenter moneas et inducis. Mulieres vero, que relicto maritali thoro, lapsu carnis ceciderunt, si mariti earum a te diligenter communiti, eas ad frugem melioris vite conversas noluerint recipere, propter Deum in claustris ipsis cum religiosis² mulieribus studeas collocare, ut perpetuam penitentiam ibi agant. Prius tamen viris ipsis iniungens in remissionem peccaminum, ut easdem uxores suas recipiant, divine intuitu pietatis. Alias autem viros solutos salubribus exhortationibus moneas et inducas, et eis, si expedire videris, in remissionem peccatorum iniungas, ut aliquas ex huiusmodi mulieribus, que castitatem servare nequiverint, dummodo solute fuerint accipiant in uxores. Ad hec quia, sicut audivimus, quidam clerici et laici de pretio scorti lucrum captantes, ex quadam prava consuetudine vel potius corruptela, questum accipere turpitudinis non verentur, licentiam tibi concedimus, ut sub pena excommunicationis inhibeas, ne quisquam decetero exigat vel recipiat huiusmodi turpem questum. Tu igitur tamquam vir prudens ita modeste concessa tibi potestate utaris, quod opera tua, divina favente gratia, Deo et hominibus sint accepta, securus utique quod si viam mandatorum nostrorum cucurreris, eterne felicitatis bravium dante domino comprehendes. Datum Anagnie, VI Idus Iunii, anno primo.

¹ R. presbytero canonico Sancti Mauritii Hildesemensi: Reg. ² religiosis] predictis conversis: Reg.

140. X 3.32.20

Auvray 500; Potthast 9653

Reg. 15 (33v-34v): an. 4, no. 69

Anagni: October 4th, 1230

[*Rubr:* Si coniuges se ad invicem absolverunt continentiam promittendo, et uterque vel alter eorum religionem profitetur, alter alterum repetere non potest.]

Idem I. Moniali monasterii de Plauda.¹

Dudum a C.² laico, *cive Aretino*, mota contra te, quam uxorem suam esse dicebat, et restitui sibi deberi, materia questionis, et ea coram diversis a sede apostolica delegatis iudicibus agitata, procuratori tuo tandem et illi in nostra presentia constitutis, dilectum filium nostrum R. Sancte Marie in Cosmidin diaconum cardinalem dedimus auditorem. Coram quo dictus C. conquerendo proponens, quod indebite recusabas eidem, cuius uxor eras per consensum de presenti et carnis copulam subsecutam, matrimonialiter adherere, te sibi restitui, *ut coniugalem ei affectum impenderes*, postulavit. Ad quod fuit *ex adverso* responsum, quod ipse *non impetuose vel calore iracundie, sed consulte potius et pro anime sue remedio pura et spontanea voluntate*, presentibus duobus religiosis sacerdotibus, et adhibitis quinque testibus fide dignis, omni iuri quod in te habuerat, renuntiavit omnino, resignando illud in manibus alterius ex sacerdotibus supradictis, qui in personam³ ecclesie resignationem huiusmodi recipere procuravit, et quod idem C. se castitatem servaturum promisit, pauperumque hospitalis de Ponte obsequio se devovit, promittens voto sollempni omnia et singula supradicta, et tribuens tibi licentiam ad monasterium transeundi, te versa vice similiter promittente, ac tribuente illi licentiam, et

ius quodlibet resignante, sicut hec omnia dicebantur per publicum instrumentum esse probata, manu B.⁴ notarii Aretinensis⁵ confectum. Verum prenominatus C.⁶ ad evacuandam fidem ipsius instrumenti proposuit, quod predictum B. notarium esse publicum non credebat, adiciens illum tempore instrumenti confecti fuisse ligatum excommunicationis sententia, quam in omnes crucesignatos, qui votum non prosequerentur emissum, venerabilis frater noster Aretinus episcopus promulgavit, et quod eodem B. apud potestatem Aretinam super cuiusdam instrumenti falsitate delato, fideiussores dati ab ipso in quadam fuerunt summa pecunie condempnati. Casu quoque ammisso instrumento prefato, illud in prima persona, quod prius erat in tertia, insertis pluribus in uno aliter quam in alio fuit ab ipso formatum, cui etiam testes ibi⁷ subscripti in multis liquido contradicunt. Ad hec civis ipse tam per instrumenta quam per testes suos et procuratoris tui confessiones factas in iure, probatum esse dicebat, quod et⁸ cum tibi iratus⁹ fuisset, sicut verba et verbera indicabant, nondum calore iracundie quiescente, quidam ipsum deceptorie¹⁰ allegerunt, proponentes eidem quod in hospitali predicto cibis ad libitum posset uti ac proprium retinere, prefato B. sibi nichilominus promittente, quod non solum ardorem, sed etiam appetitum libidinis extingueret in eodem. Propter quod quicquid in hac parte fecisse dinoscitur, iratus, seductus pariter et illectus, et sub spe promissionis, ac sub ea conditione vel modo, si posset continentiam observare, asseruit a¹¹ se factum. Sed ad ista respondebatur econtra, quod dictus B. publicus notarius in partibus illis habetur, et quod sit in veritate tabellio, posset, si esset necesse, fieri plena fides, nec obest in aliquo predicta sententia episcopi Aretini, tum quia generalis extitit,¹² propter quod ipsum B. specialiter non ligavit, tum quia tempore confecti instrumenti quod precessit, eadem sententia per sex annos se pro absoluto gerebat, cuius etiam usus fuit testimonio C. prefatus, quamquam proponat se huiusmodi sententiam ignorasse, tum etiam quia cum eodem B. super voti sui prosecutione dispensavit episcopus memoratus, prout in ipsius litteris continetur, licet ex adverso dicatur, quod eisdem litteris in alterius preiudicium non sit standum, nec obstare poterat, quod prelibato notario fuit vitium falsitatis obiectum, super quo nichil probatum extitit contra eum, cum non qui accusatur reus sit, sed qui convicitur criminosus. An autem tabellio in tertia persona instrumentum conficiat vel in prima, dummodo non mutetur substantia veritatis, nichil interesse videtur. Testes vero in instrumento subscripti nequaquam repugnant eidem, prout intueri potest diligens indagator, nec eiusdem instrumenti fidei derogatur per confessiones aliquas, sive per instrumenta vel testes. Immo per depositiones testium et confessiones¹³ partis adverse ipsius enervatur intentio, etiam instrumenti beneficio circumscripto. Insuper quamvis aliquando spes memorato C.¹⁴ data fuisset, per quam ad hoc¹⁵ se proposuit¹⁶ inductum, eo tamen tempore, quo talia facta fuerunt, pure, simpliciter ac voluntarie, pro amore Dei et remedio anime sue solummodo ad votum et ad alia suprascripta noscitur processisse.¹⁷ Propter quod a consortio secularium hominum debet discedere, vitamque mutare, cum se illius etatis esse proponat, ut sine suspitione incontinentie non valeat in seculo remanere. Nos itaque, auditis per cardinalem eundem que de facto et de iure fuerunt hinc inde proposita, et diligenter examinato negotio per nos ipsos, deliberavimus tandem cum fratribus nostris, et habito fratrum nostrorum¹⁸ consilio, te ab impetitione dicti C. sententialiter duximus absolvendam, perpetuum illi super hoc silentium imponentes. Nulli ergo etc., nostre diffinitionis infringere.¹⁹ Si quis autem etc. Datum Anagnie, IIII Nonas Octobris, pontificatus nostri anno quarto.

¹ Imilge moniale monasterii de Plonta: *Reg.* ² Cap.: *Reg.* ³ persona: *Reg.*
⁴ Boniohannis: *Reg.* ⁵ Aretini: *Reg.* ⁶ C.] civis: *Reg.* ⁷ cui et testes sibi: *Auvray* ⁸ et:
deest Reg. ⁹ iratus tibi: *Reg.* ¹⁰ deceptione: *Auvray.* ¹¹ ad: *Reg.*; ab: *Auvray* ¹² estitit:
Reg. ¹³ confessionis: *Reg.* ¹⁴ civi: *Reg.* ¹⁵ hec: *Reg.* ¹⁶ proponit: *Reg.* ¹⁷ ad votum...
procesisse] votum castitatis emisit, et in presentia religiosorum virorum votum ipsum
recipientium in persona ecclesie sollempnizare curavit, transeundo ad pauperes hospitalis
de Ponte, quorum obsequio se devovit, et eorum habitum assumendo: *Reg.* ¹⁸ fratrum
nostrorum] ipsorum: *Reg.* ¹⁹ nostre diffinitionis infringere: *deest Auvray*

141. X 3.32.21

Deest Registro; Potthast 9654

142. X 3.33.2

Auvray 298; Potthast 8399

Reg. 14 (114r-v): an. 3, no. 13

Perugia: May 16th, 1229

[*Rubr:* Si alter infidelium coniugum venit ad fidem, altero remanente in infidelitatis errore, communis
proles assignatur converso.]

Gregorius IX Argentinensi Episcopo.

Ex litteris tuis accepimus *perlatam fuisse ad synodum tuam huiusmodi questionem*, quod
quidam *videlicet* de Iudaice cecitatis errore ad Christum verum lumen¹ *et viam veritatis*
adductus, uxore sua in Iudaismo relicta, in iudicio postulavit instanter, ut eorum filius
quadriennis assignaretur eidem, ad fidem catholicam quam ipse susceperat perducendus,
asserens quod favore religionis Christiane, et quia puer infra discretionis annos erat,
potius ipsum et fidem suam, quam matrem et eius errorem sequi deberet. Ad quod illa
respondit, quod cum puer adhuc infans existat, propter quod magis materno indiget
solacio quam paterno, sibi que ante partum onerosus, dolorosus in partu, *ac* post partum
laboriosus fuisse noscatur, ac ex hoc legitima coniunctio maris et femine magis
matrimonium quam patrimonium nuncupetur, dictus puer apud eam debet convenientius
remanere,² † *quam apud patrem, ad fidem Christianam de novo perductus,*³ *transire*
debeat, aut saltem neutrius sequi, prius quam ad legitimam etatem perveniat,
voluntatem. *Hinc inde multis aliis allegatis, tu autem predicto puero medio tempore in*
tua potestate retento, quid tibi faciendum sit in hoc casu, nos consulere voluisti. Cum
autem⁴ filius in patris potestate consistat, cuius sequitur familiam et non matris, et in etate
tali⁵ quis non debet⁶ apud eas⁷ remanere personas⁸ de⁹ quibus possit esse suspitio, quod
saluti vel vite insidientur illius, et pueri post triennium apud patrem non suspectum ali
debeant et morari, materque pueri, si eum remanere contingeret apud eam,¹⁰ *facile* posset
illum¹¹ adducere ad infidelitatis errorem, *fraternitati tue* in favorem maxime fidei
Christiane¹² respondemus, patri eundem puerum assignandum. *Datum Perusii, XVII*
Kalendas Iunii, pontificatus nostri anno tertio.

¹ lumen verum: *Reg.*; lumen rerum: *Auvray* ² eam...remanere] matrem convenientius
remanere: *Reg.*, ³ perductum: *Auvray* ⁴ autem] vero: *Reg.* ⁵ tali etate: *Reg.* ⁶ debeat:

Reg. ⁷ illas: Reg. ⁸ persona: *err. ER* ⁹ de: *deest Auvray* ¹⁰ ipsam: Reg., ¹¹ illum
posset: Reg. ¹² Christiane fidei: Reg.

143. X 3.38.31

Auvray 205; Potthast 9655
Reg. 14 (76r): an. 2, no. 22
Perugia: July 3rd, 1228

[*Rubr: Patronus etiam clericus vacantem conferre non potest, et si contulit, potest nihilominus ad illam
presentare.*]

Gregorius IX. Archiepiscopo Eboracensi.

Transmisse ad nos tue *fraternitatis* littere continebant, quod cum capitulum *ecclesie Sancte Marie* Eboracensis ecclesiam de Gameforde vacantem, in qua ius obtinent patronatus, R. clerico concessissent, ipsi postmodum L. clericum tibi ad eandem ecclesiam presentarunt, post appellationem ab eodem R. ad sedem apostolicam interiectam. † *Cumque idem R. institutioni eius, qui tibi presentatus fuerat, se opponens, coram te se assereret ex concessione huiusmodi potioem,¹ tu cum diversi diversa sentirent, in hoc casu dubius quis eorum potior esse debeat, sedem duxisti apostolicam consulendam.* Consultationi tue² taliter respondemus,³ quod cum ex vi iuris patronatus non concessio, sed presentatio pertineat ad patronum, presentatum, si ei aliquid non obsistat, canonicum instituere in ipsa ecclesia poteris, utpote potioem. *Datum Perusii, V Nonas Julii, pontificatus nostri anno secundo.*

¹ potioem: Reg. ² Consultationi tue] Ad quod tibi: Reg. ³ respondimus: Reg.

144. X 3.39.25

Auvray 654; Potthast 9656
Reg. 15 (95r): an. 5, no. 70
Lateran: May 17th, 1231

[*Rubr: Qui iure metropolitano vel legationis visitat provinciam, in provinciales, qui sibi procurationes denegant, potest ferre sententiam.*]

Gregorius IX.¹

Cum nuper *venerabilis frater noster* archiepiscopus Beneventanus *de mandato nostro* Beneventanam provinciam visitaret, † *ad quosdam ecclesiarum prelatos necesse habuit declinare, a quibus cum procurationem sibi debitam postularet, ipsi eam inhumaniter negaverunt, ad sue negationis defensionem hoc solummodo allegantes, quod non meminerint se procurationem huiusmodi predecessoribus eiusdem archiepiscopi exolvisse, nec aliquando fuisse petitam, prout eodem archiepiscopo didicimus referente.* Nos igitur *premissam allegationem eorum nullam penitus reputantes, cum contra procurationem, que ratione visitationis debetur, prescribi nequiverit. Quemadmodum nec contra visitationem ipsam potest aliquo modo prescribi, etsi alius contra eum prescribere possit utramque, universitati vestre per apostolica scripta mandamus,*

quatinus cum eundem archiepiscopum, sive auctoritate propria sive nostra, Beneventanam provinciam contigerit visitare, *ipsum benigne recipientes et honeste tractantes*, procurationes ratione visitationis debitas, iuxta facultates ecclesiarum vestrarum exhibeatis eidem,² *cum secundum legem divinam non sit os bovis trituranis claudendum, et nemo cogatur suis stipendiis militare*. Alioquin sententiam, quam ipse *propter hoc* rite tulerit in rebelles, ratam habebimus et faciemus, auctore Domino, inviolabiliter observari. *Datum Laterani, XVI Kalendas Iunii, pontificatus nostri anno quinto*.

¹ Episcopis, abbatibus et aliis ecclesiarum prelatis per Beneventanam provinciam constitutis: *Reg.* ² procurationes...eidem] ei studeatis in procurationibus et aliis necessariis iuxta facultates ecclesiarum vestrarum congrue providere: *Reg.*

145. X 3.39.26

Deest Registro; Potthast 9657

146. X 3.39.27

Deest Registro; Potthast 9658

147. X 3.40.9 et

148. X 3.40.10 et

149. X 3.49.9 et

189. X 5.39.55

Auvray 1324; Potthast 9203

Reg. 17 (30r-v): an. 7, no. 119

Lateran: May 21st, 1233

[*Rub. X 3.40.9*: Ecclesia polluta per sacerdotem simplicem reconciliari non potest, etiamsi aqua fuerit per episcopum benedicta. *Rub. X 3.40.10*: Ecclesia etiam non consecrata, si polluitur reconcilianda est. *Rub. X 3.49.9*: Qui sub spe immunitatis in ecclesiis vel cimiteriis delinquant, immunitate non gaudent. *Rub. X 5.39.55*: Communicans excommunicato in crimine damnabili incidit in excommunicationem maiorem.]

*Consultationibus tuis taliter respondemus, (X 5.39.55: Idem Astoricensi Episcopo)*¹ si concubine publice clericorum ecclesiastice censure districtione notentur, eosdem concubinos, non est dubium, sententia maioris excommunicationis involvi, qui post latam sententiam communicant in eodem crimine criminosis. (**X 3.40.9: Gregorius IX Astoricensi Episcopo**) Aqua per episcopum benedicta, ecclesiam reconciliari posse per alium episcopum non negamus, per sacerdotes simplices hoc fieri decetero prohibentes, non obstante consuetudine provincie Bracharensis, que dicenda est potius corruptela, quia licet episcopus committere valeat, que iurisdictionis existunt, que ordinis tamen episcopalis sunt, non potest inferioris gradus clericis demandare. Quod autem mandantibus episcopis super reconciliatione factum est hactenus per eosdem misericorditer toleramus. (**X 3.49.9: Gregorius IX Astoricensi**) Ecclesie in qua divina misteria² celebrantur, licet adhuc non extiterit consecrata, nullo iure privilegium immunitatis³ adimitur, quia obsequiis divinis dedicata⁴ nullius est temerariis ausibus prophananda. (**X 3.40.10: Idem eidem**) Si ecclesia non consecrata cuiuscumque fuerit

semine⁵ aut sanguinis effusione polluta, aqua protinus exorcizata lavetur, ne divine laudis *in ea* organa suspendantur. Est tamen, quam citius fieri poterit, consecranda. *Datum Laterani, XII Kalendas Iunii, anno septimo.*

¹ Episcopo Astoricensi: *Reg.* ² ministeria: *Reg.*; misteria: *Auvray* ³ emunitatis: *Reg.*
⁴ dicata: *Reg.* ⁵ semine fuerit: *Fried.*

150. X 3.49.10

Auvray 1987; Potthast 9659
 Reg. 17 (190v): an. 8, no. 135
Rieti: June 26, 1234

[*Rubr:* Qui sub spe immunitatis in ecclesiis vel coemeteriis delinquant, immunitate non gaudent.]

Idem Toletano et Compostellano Archiepiscopis.¹

Immunitatem ecclesiasticam † *ex pia devotione ad salutis remedium introductam, quidam pestilentes ad iniquum trahere dispendium moliuntur, dum sub defensionis fiducia quasi habentes, secundum Apostolum, velamen malitie, libertatem enormia et horrenda flagitia presumunt liberius perpetrare. Insinuante sane karissimo in Christo filio nostro illustri Rege Castelle et Legionensis, nos noveritis accepisse, quod nonnulli regni sui homines, impunitatem suorum excessuum, per defensionem ecclesie obtinere sperantes, homicidia et mutilationes membrorum in ipsis ecclesiis vel earum cimiteriis committere non verentur, qui,² nisi per ecclesiam ad quam confugiunt, crederent se defendi, nullatenus fuerant commissuri. † Super quo idem rex provideri per sedem apostolicam postulavit, ne igitur via liberius aperiatur excessibus et maior delinquendi audacia presumptoribus tribuatur. Cum in eo, in quo delinquit, puniri quis debeat, et frustra legis auxilium invocet, qui committit in legem, mandamus, quatinus publice nuntietis tales non debere gaudere immunitatis privilegio, quo faciunt se indignos. Quod si non omnes etc., quilibet vestrum etc. Datum ut supra [Reate, VI Kalendas Iulii, anno octavo].*

¹ Toletano et Compostellano archiepiscopis, Secobiensi et Astoricensi episcopis: *Reg.*
² que: *Reg.*

151. X 4.1.29

Auvray 719; Potthast 9660
 Reg. 15 (128r): an. 5, no. 133
Rieti: August 29th, 1231

[*Rubr:* In matrimoniis et sponsalibus debet esse libertas, unde in eis promissio pene non obligat.]

Gregorius IX.¹

Gemma mulier *Terracinensis* nobis exposuit, quod cum T. filia eius cum C.,² *conceive suo, legitime* contraxit³ matrimonium, B. de Alferio *concius ipsorum* ea occasione, quod *olim* inter P. filium suum et predictam puellam⁴ infra septennium constitutos, sponsalia contracta fuerunt, penam solvendam a parte, que contraveniret in stipulatione appositam,

ab ipsa nititur extorquere. Cum itaque libera matrimonia esse debeant, et ideo talis stipulatio propter pene interpositionem *a lege* sit merito improbanda,⁵ *discretioni vestre per apostolica scripta* mandamus, quatinus si est ita, eundem B., ut ab extorsione predictae pene desistat, *monitione previa*, ecclesiastica censura,⁶ *appellatione remota*, compellas. *Datum Reate, IIII Kalendas Septembris, pontificatus nostri anno quinto.*

¹ Magistro D. primicerio et Gregorio, dicto Pape, canonico Gaietano: *Reg.* ² Crescentio: *Reg.* ³ contraxerit: *Reg.* ⁴ puellam] T.: *Reg.* ⁵ improbata: *Reg.* ⁶ censura ecclesiastica] per censuram ecclesiasticam: *Reg.*

152. X 4.1.30

Auvray 1009; Potthast 9661
Reg. 16 (62v): an. 6, no. 214
Anagni: December 20th, 1232

[*Rubr:* Sponsalia de futuro transeunt in matrimonium per carnalem copulam subsecutam, sed non per nisum carnalis copule tantum. H. d. cum c. fin. infra eodem.]

Idem Episcopo Cenomanensi.¹

Is qui fidem dedit M.² mulieri super matrimonio contrahendo, carnali copula subsecuta, et si in facie ecclesie³ ducat aliam et cognoscat, ad primam redire tenetur, quia licet presumptum primum matrimonium videatur, contra presumptionem tamen huiusmodi non est probatio admittenda. Ex quo sequitur, quod nec verum, nec aliquod censetur matrimonium, quod de facto est postmodum subsecutum. *Datum Anagnie, XIII Kalendas Ianuarii, anno sexto.*

¹ Cenomanensi episcopo: *Reg.* ² M.: *deest Reg.* ³ ecclesie facie: *Reg.*

153. X 4.1.31

Deest Registro; Potthast 9662

154. X 4.1.32

Deest Registro; Potthast 9663

155. X 4.5.7

Deest Registro; Potthast 9664

156. X 4.7.8

Deest Registro; Potthast 9665

157. X 4.11.8

Auvray 117; Potthast 9666
Reg. 14 (18v): an. 1, no. 117
Anagni: June 23rd, 1227

[*Rubr*: Inter baptizatum et filium baptizantis oritur cognatio spiritualis, impediens et dirimens matrimonium inter eos contrahendum. H. d.]

Gregorius IX.¹

Ex litteris vestris *bone memorie H. pape predecessori nostro directis* accepimus, quod cum M. mulier coram officiali Cantuariensi, Alanum *de Rifdale laicum, Cantuariensis diocesis, non ex delegatione apostolica* peteret in virum,² et se affidatam ab eo ac carnaliter cognitam, per testes idoneos probavisset, dictorum tandem testium depositionibus publicatis, idem A. excipiendo proposuit, quod eam habere non poterat in uxorem, pro³ eo quod ipsum pater mulieris eiusdem,⁴ qui sacerdos extitit,⁵ *ipsum, officium suum exequens, sicut legitime probatum⁶ asseritis*, baptizavit. Sed cum idem officialis, exceptione huiusmodi non admissa, diffinitivam tulerit sententiam contra ipsum, et idem ad sedem apostolicam⁷ appellaverit,⁸ *cognitionem ipsius sententie vobis obtinuit delegari. Vos super hoc ad apostolice sedis oraculum recurristis. Ideoque discretioni vestre per apostolica scripta mandamus, quatinus si est ita, eundem A. super hoc ab impetitione⁹ mulieris absolvatis ipsius, eidem mulieri perpetuum silentium imponentes. Quod si non omnes etc., duo vestrum etc. Datum Anagnie, VIII Kalendas Iulii, anno primo.*

¹ Decano de Cranthom et coniudicibus suis: *Reg.* ² maritum: *Reg.* ³ ex: *Reg.* ⁴ quod... eiusdem] quia [quod: *Auvray*] pater mulieris ipsius: *Reg.* ⁵ extiterat: *Reg.* ⁶ probatum legitime: *Auvray* ⁷ apostolicam sedem: *Reg.* ⁸ appellans: *Reg.* ⁹ impetratione: *Auvray*

158. X 4.13.11

Auvray 805; Potthast 9667

Reg. 16 (11v-12r): an. 6, no. 21

Spoleto: July 7th, 1232

[*Rubr*: Summatum est supr. capitulo proximo (X 4.13.10: Affinitas superveniens non dissolvit matrimonium)]

Gregorius IX. Episcopo Pictaviensi.¹

Iordane mulieris petitio *nobis exhibita* continebat, quod I.² laicus *tue diocesis* cum ipsa, que nondum decimum etatis sue annum compleverat, per verba de futuro contraxit, et ea infra eiusdem anni spatium carnaliter cognita, matrem ipsius I[ordane] sibi matrimonialiter *vel incestuose potius in ecclesie facie* copulare, et³ ad dampnate commixtionis amplexus procedere non expavit. † *Qui licet lapsu temporis reatum priorum recognoscens, ad prenominatam I[ordanam] uxorem suam redierit, et sibi cohabitans prolem suscepit ex eadem. Nunc tamen incestus cum matre commissi horrore perterritus, eidem I[ordane] debitum reddere denegat coniugale. Quare nobis prefata⁴ I[ordana] humiliter supplicavit, ut cum propter iuvenilem etatem et fragilitatem muliebrem carnis stimulis resistere nequeat, sibi, ne iure suo sine sua propria culpa fraudetur, providere salubriter dignaremur. Ea propter⁵ mandamus, quatinus si res ita se habet, utrumque ipsorum ad vovendam perpetuam continentiam attente moneas et inducas, et si ad eam induci nequiverint, memoratum I.,⁶ iniuncta ei primitus pro*

commisso incestu penitentia competenti, ut eidem *I[ordane]* cohabitaret, et coniugale debitum reddat exactus, *monitione previa*, ecclesiastica censura,⁷ *appellatione remota*, compellas. *Datum Spoletio, Nonis Iulii, anno sexto.*

¹ Episcopo Ambianensi: *Reg.* ² Iohannes: *Reg.* ³ ac: *Reg.* ⁴ sepefata: *Reg.* ⁵ Ea propter] Gerentes itaque de tua circumspectione fiduciam: *Reg.* ⁶ Iohannem: *Reg.* ⁷ ecclesiastica censura] per censuram ecclesiasticam: *Reg.*

159. X 4.14.9

Deest Registro; Potthast 9668

160. X 4.20.8

Deest Registro; deest Potthast

161. X 5.1.26

Auvray 787; Potthast 9669

Reg. 16 (1v-2r): an. 6, no. 4

Rieti: April 3rd, 1232

[Rubr: Sententie excommunicationum, suspensionum vel interdicti, late post denunciationem per abbatem denunciatum vel alium pro ipso in monachos denunciantes vel adherentes eisdem, relaxantur. Spoliati restituuntur, et iuramenta de tacenda veritate relaxantur, dicta testium denunciato traduntur, et expense de bonis monasterii monachis denunciantibus ministrantur; et propter hoc ab obedientia abbatis non eximuntur, sine tamen litis preiudicio.

Gregorius IX. Archiepiscopo et Priori Sancte Marie Rothomagensis.¹

Olim *dilectis filiis* I.² V.³ et P.⁴ ordinis Tyronensis † *pro se ac quibusdam aliis prioribus eiusdem ordinis, et Gregorio monacho monasterii Tyronensis, Carnotensis diocesis, abbatis et conventus ipsius monasterii procuratori, in nostra presentia constitutis, venerabilem fratrem nostrum episcopum Sabinensem concessimus auditorem. Cumque multa, que limam correctionis apostolice requirebant, fuissent proposita coram eo, nos ad reformationem prefati ordinis paterna sollicitudine intendere cupientes, eidem abbati dedimus nostris litteris in mandatis, ut vocatis ad se abbatibus et prioribus universis subiectis eidem infra festum Omnium Sanctorum proximo tunc venturum, corrigeret et reformaret tam in monasterio ipso quam etiam membris eius, que secundum Deum, beati Benedicti regulam, dicti ordinis instituta, et antiquam rationabilem et approbatam consuetudinem monasterii antedicti, correctionis et reformationis officio nosceret indigere, nichilominus mandantes eidem, ut prefatos priores per se vel per aliquem non molestaret occasione huiusmodi, nec pateretur ab aliquo molestari, dilectis filiis de Elemosina, de Focardi Monte, Cisterciensis ordinis, et de Ebronio abbatibus de predictorum monachorum, et alterius partis procuratoris assensu, per scripta nostra mandantes, ut eodem abbate in executione mandati nostri cessante, ipsi extunc ad prefatum monasterium personaliter accedentes, et habentes pre oculis solum Deum, mandatum nostrum super hoc sine difficultate qualibet exequi procurarent, contradictores etc., usque compescendo, expresse renuntiatis⁵ a predictis procuratoribus impetratis super hoc litteris, et etiam impetrandis, per quas reformationis posset impediri*

processus, quas dilectus filius magister Andreas, capellanus noster, litterarum nostrarum contradictorum auditor, de ipsorum consensu decrevit aliquatenus non valere. Sed idem abbas, ut inquisitionis negotium impediret, nostras ad abbatem et priorem Beate Marie in Cagia, et officialem Meldensem contra monachos supradictos, super eo quod dicebat ipsos sibi debitam obedientiam denegare, litteras impetravit, nullam de premissis omnibus faciens mentionem. Cum autem predicto abbate de Elemosina legitime excusato, duo reliqui ad ipsum monasterium personaliter accedentes, mandatum vellent apostolicum adimplere, prefatus abbas ad mendicata suffragia se convertens quasdam exceptiones opposuit, per quas predictum mandatum nostrum nullas habere vires penitus asserebat, videlicet quod infra terminum in litteris ad eum directis expressum, iuxta formam litterarum ipsarum correxit et reformavit, tam in eodem monasterio quam in membris ipsius, que secundum Deum, beati Benedicti regulam et Tyronensis ordinis instituta, correctionis et reformationis officio indigebant, et quod impetratores supradicti mandati tempore impetrationis ipsius, per eundem abbatem ac postmodum per iamdictos iudices vinculo erant excommunicationis astricti, quas ipsi iudices utpote frivolas pronuntiantes aliquatenus non obstare. Eidem abbati nichilominus iniunxerit, ut monachis prosequentibus dictum negotium faceret in necessariis de bonis monasterii provideri, propter quod dictus abbas ad sedem apostolicam appellavit. Ne igitur reformatio monasterii per tergiversationes huiusmodi diutius valeat retardari, mandamus, quatinus predictis et aliis monachis eis adherentibus iuxta formam ecclesie absolutis, ac relaxatis excommunicationum seu suspensionum sententiis, si quas idem abbas protulerit, vel per quoscumque iudices promulgari fecit post inceptum negotium in eos,⁶ et adherentes eisdem,⁷ ac eis, sicut iustum fuerit, restitutis, quos idem abbas, negotio ipso pendente, contra iustitiam spoliavit,⁸ in ipso negotio simpliciter et de plano et absque iudiciorum strepitu procedentes, cum talibus maxime in hoc casu non deceat Dei servos involvi,⁹ inquiratis que circa personas et observantias regulares videritis inquirenda, corrigentes et reformantes, tam in capite quam in membris, que correctionis et reformationis officio noveritis indigere, iuramentis, si qua de tacenda veritate abbas extorserat, relaxatis, proviso ut negotio ipso pendente, prefati monachi, ut tenentur, eidem abbati obediant et intendant, ita tamen, quod per hoc prosecutio negotii non valeat impediri. Si vero testes contra eundem abbatem producti fuerint, ditorum ipsorum, prout iustum fuerit, ei copiam faciatis. Predictis autem monachis, expensas¹⁰ factas propter hoc, et tribus vel quatuor ex¹¹ istis, vel aliis, quos idoneos ad dictum negotium prosequendum duxeritis assumendos, faciatis de bonis eiusdem monasterii, et¹² faciendas expensas ad prosecutionem ipsius negotii necessarias, computatis, si qua propter hoc receperunt, de bonis monasterii, cum proprium non habeant,¹³ ministrari. Contradictores etc. Datum Reate, III Nonas Aprilis, anno sexto.

¹ Archiepiscopo et priori Sancte Marie Rothomagensibus: Reg. ² Isimbardo: Reg.
³ Willelmo: Reg. ⁴ Iohanni: Reg. ⁵ renuntiato: Reg. ⁶ eosdem: Reg. ⁷ et...eisdem:
deest Reg. ⁸ spoliavit] dicitur spoliasse: Reg. ⁹ cum...involvi] et habentes pre oculis
solum Deum: Reg. ¹⁰ expensas: *deest Reg.* ¹¹ ex: *deest Reg.* ¹² et: *deest Reg.*
¹³ cum...habeant: *deest Reg.*

162. X 5.1.27

Auvray 52; Potthast 7887

Reg. 14 (7v-8r): an. 1, no. 52
Lateran: April 27th, 1227

[*Rubr: Contra prelatum denunciatum de dilapidatione fit commissio super veritate inquirenda, et pendente negotio debet sibi interdicti potestas alienandi.*]

Idem Episcopo Cister., de Alde. et de Salen. Abbatibus.¹

Prelatorum excessus † *tanto sunt severius corrigendi, quanto plures eorum corrumpuntur exemplo, si remaneant incorrecti.* Sane dilecti filii C., E., H. et quatuor² alii canonici Frisigienses³ *bone memorie H. pape, predecessori nostro,* denunciando monstrarunt, quod *venerabilis frater noster Frisigiensis episcopus bona sui episcopatus, quem, ut dicunt, fuit minus canonicè assecutus, adeo graviter dilapidat et consumit, quod nisi celeriter adhibeatur remedium, episcopatus idem per eum ad irreparabile⁴ dissolutionis⁵ opprobrium deducetur, nec solummodo rerum, verumetiam fame sue prodigus et salutis, vitam ducit enormiter dissolutam, † adeo ut inficiationi eius continentie non sit locus, cum manifeste cohabitationis indicio comprobetur, alias quam modestia pontificalis gravitatis abiecta se dictis et factis sic levem ac irreprehensibilem exhibet, ut eius vita eis sit in laqueum et in scandalum, quibus esse deberet honestatis exemplum. Quia igitur hec sub dissimulatione transire nec volumus nec debemus, sequentes formam litterarum, quas dictus predecessor noster super hoc providerat destinandas, discretioni vestre per apostolica scripta mandamus, quatinus personaliter accedentes ad locum,⁶ inquiratis sollicite veritatem, et eam fideliter conscribentes, sub sigillis vestris nobis transmittatis inclusam, eundem episcopum ad nostram citantes presentiam quauor menium post citationem vestram, eidem episcopo⁷ terminum assignantes, quo nostro se conspectui personaliter representet pro meritis recepturus, potestate obligandi, vendendi,⁸ infeudandi seu quomodolibet alienandi bona ipsius ecclesie, interim eidem episcopo penitus interdicta. *Quod si non omnes etc., tu frater episcopo etc. Datum Laterani, V Kalendas Maii.**

¹ Episcopo Eistetensi et de Aldespare et de Salem abbatibus, Pataviensis et Constantiensis diocesium: *Reg.* ² quidam: *Reg.* ³ Frisingenses: *Reg. et seqq.* ⁴ irreparabilis: *Reg.* ⁵ desolationis: *Reg.* ⁶ ad locum personaliter accedentes: *Reg.* ⁷ eidem episcopo] sibi: *Reg.* ⁸ dandi: *deest Reg.*

163. X 5.3.44

Auvray 736; Potthast 9670
 Reg. 15 (133v): an. 5, no. 150
Rieti: November 4th, 1231

[*Rubr: Recepto in canonicum debetur prebenda et redditus, consuetudine non obstanto, quod non servaverit pravam consuetudinem de aliquo temporali dando ipsis canonicis.*]

Gregorius IX. Priori S. Thome Esculani.

Iacobus canonicus Esculanus *nobis* exposuit *conquerendo*, quod cum ipse in ecclesia Aprutinensi¹ sit *nostrae auctoritate mandati* receptus in canonicum et in fratrem, canonici eiusdem

ecclesie partem proventuum ac prebendam sibi *prout tenentur* assignare recusant, quandam *ad hoc iniquam* consuetudinem pretendentes,² quod prandium habere debeant a canonico recepto de novo. Quocirca *discretioni tue per apostolica scripta* mandamus, quatinus si est ita, dictos canonicos, ut tali³ consuetudine non obstante, sibi sicut uni ex aliis, in proventibus et prebenda⁴ provideant *ut tenentur, monitione previa, per censuram ecclesiasticam*, appellatione remota, compellas. *Datum Reate, II Nonas Novembris, pontificatus nostri anno quinto.*

¹ Aprutina: Reg. ² pretendentes] inducentes: Reg. ³ tali] dicta: Reg. ⁴ in...prebenda] in prebendali beneficio: Reg.

164. X 5.3.45

Deest Registro; Potthast 9671

165. X 5.3.46

Deest Registro; Potthast 9672

166. X 5.6.18

Auvray 733; Potthast 9673

Reg. 15 (131r-132v): an. 5, no. 147

Rieti: October 20th, 1231

[*Rubr: Iudei vel pagani publicis officiis preficiendi non sunt, et, si eis regalia iura vendantur, ad ea colligenda preficiendus est Christianus non suspectus.*]

Gregorius IX. Astoricensi et Lucensi Episcopis.¹

Ex speciali quem erga *carissimum in Christo filium nostrum* illustrem regem Portugalie gerimus caritatis affectu, † *ipsius in annis adhuc minoribus constituti zelamur diligentia paterna salutem, optantes ut adolescentie sue primitias exercens in timore divini nominis et amore, ad eum intuitum suum elevet, qui solus dominatur in regno hominum, deponens de sede potentes et erigens humiles in sublimi, quatinus post presentis vite necessarium exitum, de regno temporali transeat feliciter ad eternum. Sane venerabilis frater noster Ulixbonensis episcopus in nostra et fratrum nostrorum presentia proposuit conquerendo, quod pretextu cuiusdam prave constitutionis, vel destitutionis verius, quam proavus regis eiusdem fecisse dicitur, videlicet ut mulier, cum qua invenitur clericus, capiatur, hac occasione sepe officiales ipsius regis noctu domos clericorum infringunt, et sive inveniant mulieres sive non cum eisdem, ipsos infamant et bona diripiunt eorundem. Propter quod nonnulli ex clericis, coacti redimere vexationem huiusmodi, maxime ne fame sue detrimentum incurrant, certa tributa prestant dictis officialibus annuatim, in gravem ecclesiastici ordinis iniuriam et iacturam. Si quando vero idem episcopus et archidiaconi sui procedunt contra clericum aliquem, puniendo eum iuxta quod excessus eius exposcit, prenominatus rex, illo ad se habente recursum, per occupationem ecclesiasticorum bonorum compellit episcopum et archidiaconos, ut ipsum restituant, aut eum facit per suum portarium integrari, propter quod plurimorum excessus remanent incorrecti. Ad hec episcopatum et bona maioris ecclesie et ecclesiarum episcopatus sui auctoritate propria multotiens occupat, sumpta occasione qualibet contra eos. Quod si*

clericus super possessione aliqua ecclesiastica tractus a laico in iudicio seculari, fori exceptione proposita, ibi experiri recuset, statim in rei petite possessionem ponitur ipse auctor, ut sic clericus velit, nolit, cogatur possessionem ammittere, aut sub non suo iudice litigare. Immo, quod est gravius, tam in criminali quam in civili clerici compelluntur subire iudicium laicorum contra legitimas et canonicas sanctiones. Quod si aliqui sunt precisi per excommunicationis sententiam ab ecclesie unitate, non ita ut expedit et regis honori convenit, devitantur ab ipso, cum inde citius eos reconciliari contingeret, et redire per hoc festinantius ad salutem. Sed et Iudei in episcopatu Ulixbonensi publicis passim preferunter officiis, contra statuta concilii generalis, in obprobrium fidei Christiane et grave scandalum plurimorum. Collectas insuper exactiones et diversas angarias et perangarias per se aut suos, imponit idem rex ecclesiis et personis ecclesiasticis, ab eis, quando vult, pignora extorquendo, et in exercitum, et ad anuduvas et ad atalaias, ut illius terre verbis utamur, clerici ab ipso ducuntur, et tam ad hoc quam ad fabricandas turres et custodiendas, exceptis turribus locorum suorum in quibus habitant, necnon falconarios et canes in domibus retinendos, et ministrandum eis necessaria, per eundem et suos compelluntur inviti, contra ecclesiasticam libertatem. Per eosdem etiam coguntur episcopus et clerici banna et statuta regis et communitatum suarum quecumque, pro sua ponunt voluntate, servare, adeo alias ecclesia Dei et clero afflictis multipliciter et oppressis, ut vix iam respirare² valeant, nisi remedium apponatur. Licet autem regis ipsius procurator super quibusdam ex predictis precise ac absolute litem contestatus fuerit, ac super aliquibus que episcopo et ecclesiis videbantur de iure communi competere, noluerit penitus respondere, quoniam ad ea, ut dicebat, non habebat mandatum, nos tamen, eiusdem regis saluti, quam in Domino affectamus, necnon et fame sue ac ecclesiarum et clericorum indemnitati consulere cupientes, discretioni vestre presentium auctoritate, in virtute obedientie precipiendo mandamus, quatinus ad regem ipsum³ personaliter accedentes, moneatis eum diligentius et sollicite inducatis, ut prohibeat officialibus suis ne infament clericos, nec domos eorum infringant, seu bona eorum modo diripiant prenotato. Et si quando episcopus et archidiaconi contra clericos excessus eorum puniendo processerint,⁴ de iustitia facta sive facienda in clericis se minime intromittat, cum non sit fas eum talibus immisceri. Episcopatum quoque Ulixbonensem vel bona maioris ecclesie et ecclesiarum sui episcopatus, occupare in totum vel in partem auctoritate propria non presumat. Excommunicatos studens artius evitare, ne⁵ in officiis publicis Iudeos Christianis preficiat, sicut in generali concilio continetur. Et si forte, secundum quod responsum ex parte sua extitit, redditus suos Iudeis vendiderit vel paganis, Christianum tunc deputet de gravaminibus inferendis clericis et ecclesiis non suspectum, per quem Iudei sive Sarraceni, sine Christianorum iniuria, iura regalia consequantur. Insuper nec per se nec suos cogat in foro seculari, in criminali vel civili, clericos respondere, contra constitutiones canonicas et civiles. Neque amoveat clericum ab hiis que tenet et possidet, dummodo velit super illis coram suo iudice iustitiam de se conquerentibus exhibere. Caveat etiam ne clericos in exercitum, vel ad anuduvas aut de atalaias ire compellat, seu servare banna et statuta ipsius vel communitatum suarum, sive subire illa servilia opera, que superius sunt expressa. Alioquin cum non sit in preiudicium anime sue alicui deferendum, nec nos Deo debeamus hominem anteferre, vos auctoritate nostra eos cessare a premissis, per censuram ecclesiasticam, appellatione remota, cogatis, facientes nichilominus ipsi episcopo securitatem, quam sibi et suis in personis et rebus prefatus rex ad mandatum

apostolicum prestitit, prout ex ipsius litteris evidenter ostenditur, inviolabiliter conservari. Non obstante constitutione de duabus dietis etc. Quod si non omnes etc., duo vestrum etc. Datum Reate, XIII Kalendas Novembris, pontificatus nostri anno quinto.

¹ Astoricensi et Lucensi episcopis et decano Lucensi: Reg. ² respirare: Auvray ³ ipsum] eundem: Reg. ⁴ processerunt: Auvray ⁵ nec: Reg.

167. X 5.6.19

Deest Registro; Potthast 9674

168. X 5.7.14

Auvray 219; Potthast 9675

Reg. 14 (83r): an. 2, no. 35

Perugia: October 3rd, 1228

[*Rubr: Laici, cuiuscunque professionis sint, predicare non debent.*]

Gregorius IX. Archiepiscopo Mediolanensi.

Sicut in uno corpore † *multa sunt membra que unum et eundem actum non habent, ita sunt ordines in ecclesia, sed non omnes idem habent officium. Cum hoc committendum sit isti, alii non illud, et sicut indecorum est ut in corpore humano alterum membrum alterius fungatur officio, ita nimirum turpe simul esset et noxium, si in ecclesia Dei confusa forent officia, nec per ordines distributa. Cum igitur nonnulli laici in Lombardia predicare presumant, et verendum nimis¹ existat, ne vitia sub specie virtutum occulte subintrent, et angelis sathane in angelum lucis se simulate transformet. Nos attendentes quod doctorum ordo est in ecclesia Dei² quasi precipuus, nec debet sibi quisquam indifferenter predicationis officium usurpare, iuxta illud Apostoli, quomodo predicabunt nisi mittantur, fraternitati tue per apostolica scripta mandamus, quatinus cum alios Dominus apostolos dederit, alios prophetas, alios vero doctores, interdicas laicis universis, cuiuscunque ordinis censeantur, officium predicandi.³ *Contradictores et rebelles per censuram ecclesiasticam, appellatione postposita, compescendo. Datum Perusii, V Nonas Octobris, pontificatus nostri anno secundo.**

¹ nimis: *deest Reg.* ² Dei: *deest Reg.* ³ usurpare officium predicandi: *Fried., ER; in ER verbum 'usurpare' in uncis quadratis [] interclusum est.*

169. X 5.7.15

Auvray 539; Potthast 9675 post

Reg. 15 (49v): an. 4, no. 107

Undated: registered between Lateran: January 23rd and February 6th, 1231

[*Rubr: Hoc cap. usque ad §. Si qui autem. habetur in c. Excommunicamus. supr. eod. tit. in princ., unde summa et declara, prout ibi fuit dictum. – §. 1. Si in heresi deprehensi volunt redire ad fidem, detrudendi sunt in perpetuo carcere ad penitentiam peragendam, et credentes erroribus hereticorum heretici sunt. H.d.]*

Idem.¹

Excommunicamus et anathematizamus universos hereticos: Catharos, Patarenos, Pauperes de Lugduno, Passaginos, Ioseppinos, Arnaldistas, Speronistas, et alios, quibuscumque nominibus censeantur, facies quidem habentes diversas, sed caudas adinvicem colligatas, quia de vanitate conveniunt in id ipsum. Dampnati vero per ecclesiam seculari iudicio relinquuntur, animadversione debita puniendi, clericis prius a suis ordinibus degradatis. Si qui autem de predictis, postquam fuerint deprehensi, redire voluerint,² ad agendam condignam penitentiam in perpetuo carcere detrudantur. Credentes autem eorum erroribus, hereticos similiter iudicamus. [*Sine dato*]

¹ Incipiunt capitula contra Patarenos edita: *Reg.* ² noluerint: *Auvray, Fried.*

170. X 5.7.16

Deest Registro; Potthast 9676

171. X 5.11.1

Deest Registro; Potthast 9677

172. X 5.12.25

Deest Registro; deest Potthast

173. X 5.19.19

Deest Registro; Potthast 9678

174. X 5.22.4

Auvray 686; Potthast 8774/9678 post

Reg. 15 (110v-111r): an. 5, no. 101

Rieti: July 26th, 1231

[*Rubr.*: Absolutio de criminibus illatis per collusionem facta, non impedit facultatem iterum accusandi et inquirendi de illis criminibus.]

Gregorius IX. Barensi Archiepiscopo et Fratri Ioseph Monacho Florentino.¹

In tantum clamor, qui iam dudum frequenter ascendit contra venerabilem fratrem nostrum Acherontinum archiepiscopum invalescit, quod dissimulare ipsum ulterius sine scandalo non valemus, nec sine periculo tolerare. † *Preter alia quippe gravia, que pluries et a multis sunt inculcata de ipso, nuper nostris est auribus intimatum, quod cum multiplicis sit infamie nota respersus, abiecta pontificalis officii gravitate, et deditus illecebris carnalium voluptatum, timore divino et humano pudore prorsus abiectis talia perpetrat, que verecundiam referenti et audientibus stuporem inferunt et horrorem, ut enim de multis aliqua referamus, que subticeri non debent, ecclesie ac alia beneficia que pertinent ad collationem ipsius ita venalia facta sunt apud ipsum, quod per eum plus offerentibus conceduntur. Consecrationes ecclesiarum, clericorum ordinationes vix aut numquam alicui conferuntur, nisi manum impleverit largitoris, et cum dicatur vite*

penitus dissolute ita, ut eius exemplo subditi sui corrupti, ad inhonesta et turpia prolabantur, non solum excessus eorum non corrigit, verumetiam recepta pecunia potius ab eisdem, permittit eos retinere publice concubinas quasdam, etiam moniales, quas adduxit de partibus Orientis in monasteriis sue diocesis collocandas, sicut fama, immo infamia publica detestanda testatur, inhoneste pertractans,² eis apud Brundusii civitatem translatis necessaria subministrat. Et quia nequit sine sumptibus passim voluptatibus indulgere, cum saltem consciis satisfieri sit necesse, ecclesie bona dilapidat, ipsas in usus illicitos convertendo. Idem quoque archiepiscopus tempore clare memorie O., quondam imperatoris officium iustitiaratus exercens, duobus hominibus uni pedem et alteri manum fecit impie mutilari, hec et alia multa committens enormia, que oculos divine maiestatis offendunt et homines graviter scandalizant. Et licet autem³ sedes apostolica⁴ frequentibus clamoribus excitata, inquisitionem quorumdam excessuum suorum duxerit committendam, propter tergiversationes tamen ipsius, ut dicitur,⁵ eodem cum inquisitoribus et examinadoribus colludente, necnon corruptis testibus et inquisitoribus ac examinadoribus supradictis, non solum predicti excessus remanserunt hactenus incorrecti, verumetiam peiora prioribus committere non expavit. † Quare dicta ecclesia in temporalibus diminuta, in spiritualibus est pene penitus deformata, ita quod nisi celeriter succurratur eidem, vix adiciet ut resurgat. Illius itaque sequentes exemplum, qui et si nichil ignorat descendere, tamen voluit et videre utrum clamores Sodomorum, qui ad eum ascenderant, veri essent, discretioni vestre per apostolica scripta mandamus, quatinus habentes pre oculis solum Deum, si de huiusmodi collusionem ac corruptionem constiterit, ex integro super premissis inquiratis et aliis, que inquirenda videritis. Alioquin super novis dumtaxat inquiratis, que videritis inquirenda,⁶ ut ex vestra relatione sufficienter instructi, procedamus prout secundum Deum viderimus procedendum, prefixo eidem archiepiscopo termino peremptorio competenti, quo per se vel per procuratorem idoneum nostro se conspectui representet, attentius provisuri, ne sicut aliis inquisitoribus ab apostolica sede datis, vobis contingat illudi, et interim ecclesia sua per eum maioris dilapidationis dispendium non incurrat. Quod si non omnes, duo vestrum etc. Datum Reate, VII Kalendas Augusti, anno quinto.

¹ Barensi et Regino archiepiscopis, et fratri Ioseph monacho Florensi, Cusentini diocesis: Reg. ² pertractans: Reg. ³ autem: deest Reg. ⁴ apostolica sedes: Reg. ⁵ ut dicitur: deest Reg. ⁶ inquiratis...inquirenda] diligentissime veritatem et que inveneritis nobis per vestras litteras fideliter rescribatis: Reg.

175. X 5.26.2

Deest Registro; deest Potthast

176. X 5.27.9

Vid. 96. X 2.25.9

177. X 5.27.10

Deest Registro; Potthast 9679

178. X 5.31.16 [cf. 179. X 5.31.17]

Auvray 707; Potthast 8786a/8788

Reg. 15 (119r-120r): an. 5, no. 121
 Rieti: August 23rd, 1231

[*Rubr.*: Ponit XV. gravamina, illata religiosis, a quibus precipit prelatos abstinere.]

Gregorius IX. universis ecclesiarum Prelatis.¹

Nimis iniqua † *vicissitudine largitori bonorum omnium respondetur, dum hii qui de Christi patrimonio impinguati luxuriant dampnabiliter in eodem, Christum in famulis suis patenter persequi non verentur, ac si factus sit impotens Dominus ultionum.* Cum enim religiosi viri,² abnegantes salubriter semet ipsos, elegerint in *altissima* paupertate, Christo pauperi ad placitum famulari, tanquam nichil habentes, et omnia possidentes, non desunt plerique tam ecclesiarum prelati quam alii, qui ceca cupiditate seducti,³ proprie aviditati subtrahi reputantes quicquid predictis *fratribus* fidelium pietas elargitur, quietem ipsorum multipliciter inquietant. *Venerabiles quoque fratres nostri archiepiscopi et episcopi et alii ecclesiarum prelati per regnum Francie constituti, qui eos deberent favorabiliter confovere, molestiarum occasiones exquirunt varias contra ipsos.* Volunt namque, *etsi non omnes*, contra regulam a sede apostolica approbatam et sui ordinis instituta,⁴ ipsis invitatis, eorum confessiones audire, ac eis iniungere penitentias, et eucharistiam exhibere, nec volunt ut corpus Christi in eorum oratoriis reservetur, et fratres ipsorum defunctos apud ecclesias suas compellunt sepeliri,⁵ et eorum⁶ exequias celebrari, et si quis decedentium fratrum alibi quam in suis ecclesiis eligat⁷ sepulturam, funus primo ad ecclesias suas deferri cogunt, ut oblatio suis usibus cedat. Nec sustinentes eos habere campanam, vel cimiterium benedictum, certis tantum temporibus permittunt ipsos celebrare divina. Volunt quoque⁸ in domibus eorum⁹ certum numerum fratrum, sacerdotum, clericorum et laicorum, necnon cereorum, lampadarum et ornamentorum pro voluntate sua¹⁰ taxare, ac residuum cereorum, quando noviter apponuntur, exigunt ab eisdem. Nec permittunt quod¹¹ novi sacerdotes eorum alibi quam in ecclesiis suis celebrent primas missas, eos nichilominus compellentes, ut in cotidianis missis, quas in suis locis et altaribus celebrant, oblationes ad opus eorum recipiant et reservent. Quicquid etiam eis, dum celebrant missarum sollempnia, intra domorum suarum ambitum pia fidelium devotione donatur, ab ipsis extorquere oblationis nomine contententes, quod eisdem tam in ornamentis altaris quam in libris ecclesiasticis absolute confertur, vendicant perperam iuri suo [*eos ad synodos...contempnere videantur; vid. X 5.31.17*]. Quocirca mandamus, quatenus¹² universi et singuli a prenotatis *et aliis predictorum* gravaminibus *omnino* desistatis,¹³ subditos vestros ab huiusmodi¹⁴ artius compescendo. *Quocirca fraternitati vestre per apostolica scripta firmiter precipiendo mandamus, quatinus si dicti archiepiscopi, episcopi et alii preceptum nostrum neglexerint adimplere, vos eos ad omnia predicta servanda, per censuram ecclesiasticam, sublato cuiuslibet contradictionis et appellationis obstaculo, compellatis. Non obstante constitutione etc. Si vero nec sic mandatis nostris curaverint obedire, noverint nos super hoc memoratis fratribus aliter, auctore Domino, provisuros. Quod si non omnes hiis exequendis potueritis vel nolueritis interesse, singuli vestrum nichilominus exequantur. Datum Reate, X Kalendas Septembris, pontificatus nostri anno quinto.*

¹ Turonensi et Rothomagensi archiepiscopis, et episcopo Parisiensi: *Reg.* ² religiosi viri] dilecti filii fratres Minores: *Reg.* ³ traducti: *Reg.* ⁴ contra...instituta: *deest Reg.*

⁵ sepiliri compellunt: *Reg.* ⁶ illorum: *Reg.* ⁷ eligit: *Reg.* ⁸ quoque] etiam: *Reg.*
⁹ eorumdem: *Reg.* ¹⁰ sua voluntate: *Reg.* ¹¹ quod] ut: *Reg.* ¹² Quocirca...quatinus]
 Universitatem eorum monemus attente, nostris sibi dantes litteris firmiter in preceptis, ut
 conscientie ac fame sue salubriter consulentes: *Reg.* ¹³ desistant: *Reg.* ¹⁴ subditos...
 huiusmodi] subditos suos ab hiis: *Reg.*

179. X 5.31.17 [cf. 178. X 5.31.16]

Auvray 707; Potthast 8786a/8788

Reg. 15 (119r-120r): an. 5, no. 121

Rieti: August 23rd, 1231

[*Rubr:* Ponit XII. gravamina Predicatorum et Minorum, a quibus precipit prelatos abstinere.]

Idem universis ecclesiarum Prelatis.¹

Nimis prava² † [*vid. X 5.31.16: vicissitudine largitori...perperam iuri suo*] Cum quidam viri religiosi, utputa fratres Predicatores et Minores, quorum ordinem et regulam sedes apostolica noscitur approbasse, in arctissima paupertate Christo pauperi famulentur, plerique prelati et alii³ eos ad synodos suas cogunt⁴ accedere, ac suis constitutionibus subiacere. Nec hiis contenti, capitula et scrutinia in locis fratrum pro hiis corrigendis facturos se comminantur, fidelitatem iuramento firmatam, ab eorum ministris et custodibus exigentes. Eis quoque, ut *in hieme* tam extra civitates quam intra, cum eis processionaliter veniant, ex levi causa mandantes, excommunicationis sententiam fulminant in benefactores ipsorum, et id ipsum fratribus comminantes, eos de locis in quibus Domino famulantur, satagunt amovere, nisi eis obediant in omnibus supradictis. Ad hoc,⁵ ne fratres ad honorabiles civitates et villas, ubi religiose ac honeste valeant commorari, a populis devote vocati accedere audeant inhibentes, tam in accedentes fratres quam in receptatores eorum, presumunt excommunicationis sententiam promulgare. Ab eis etiam de ortorum fructibus decimas, necnon de habitaculis fratrum, sicut de Iudeorum domibus, contendunt redditus extorquere, asserendo quod nisi fratres morarentur ibidem, *eis* ab aliis habitatoribus proventus aliqui solverentur. Et ut ipsos sue subdant totaliter ditioni, eisdem ministros et custodes volunt peficere pro sue arbitrio voluntatis. *Cum igitur ordo predictorum fratrum per felicitis recordationis Innocentium et Honorium, predecessores nostros, et nos ipsos sit sollempniter approbatus, et eorum regula confirmata, ne apostolice sedis statuta, que humiliter suscipere ac reverenter servare tenentur, contempnere videantur, quocirca mandamus, quatenus⁶ universi et singuli a prenotatis et aliis predictorum gravaminibus omnino desistatis,⁷ subditos vestros ab huiusmodi⁸ artius compescendo. Quocirca fraternitati vestre per apostolica scripta firmiter precipiendo mandamus, quatinus si dicti archiepiscopi, episcopi et alii preceptum nostrum neglexerint adimplere, vos eos ad omnia predicta servanda per censuram ecclesiasticam, sublato cuiuslibet contradictionis et appellationis obstaculo, compellatis. Non obstante constitutione etc. Si vero nec sic mandatis nostris curaverint obedire, noverint nos super hoc memoratis fratribus aliter, auctore Domino, provisuros. Quod si non omnes hiis exequendis potueritis vel nolueritis interesse, singuli vestrum ea nichilominus exequantur. Datum Reate, X Kalendas Septembris, pontificatus nostri anno quinto.*

¹ Turonensi et Rothomagensi archiepiscopis, et episcopo Parisiensis: *Reg.* ² in qua: *Reg.*
³ Cum quidam... alii: *deest Reg.* ⁴ eos... cogunt] cogendo eos ad synodos suas: *Reg.*
⁵ hec: *Reg.* ⁶ quocirca... quatinus] universitatem eorum monemus attente, nostris sibi
dantes litteris firmiter in preceptis, ut conscientie ac fame sue salubriter consulentes: *Reg.*
⁷ desistant: *Reg.* ⁸ subditos... huiusmodi] subditos suos ab hiis: *Reg.*

180. X 5.31.18

Auvray 810; Potthast 9680

Reg. 16: 16r-17r (26 an. 6)

Spoleto: June 23rd, 1232

[*Rubr:* Non servans interdictum suspensus est ab officio et beneficio et omni iurisdictione. H. d. secundum verum intellectum.]

Idem Archiepiscopo Bracarensi.¹

Tanta est clavis Petri † *potestas, tantaque clavigeri preminencia potestatis, ut de ipsa valeat vere dici: claudit et nemo aperit; aperit et nemo claudit. Quia quod Petrus solvit, ligare non poterit alius, et quod ipse ligat, alius solvere non valebit. Unde non tam Petro quam Petre in qua et per quam mirabilis ecclesie structura consurgit, illudere nititur, nec in solum clavigerum peccat, sed in clavium etiam largitorem, qui claves contempnit ecclesie, ac in dispensatoriam desipit potestatem. Hec est enim culpa, in qua est relaxare vindictam, et facilitas, que facilitatem venie demeretur; immo iniquitas manifesta, que non ex equitate debet equanimiter tolerari, sed severius potius de iuris severitate puniri. Nam quia tacite arguit de mendacio veritatem, que vel quod Petrus ligaverit pro soluto, vel quod solverit, habet presumptione dampnabiliter pro ligato, cum et a Domino noverit esse dictum: "Quodcumque ligaveris super terram erit ligatum et in celis, et quodcumque solveris super terram erit solutum et in celis." Licet ideo se reddidit indignum, ut per Petrum, cum ligatus fuerit, absolvatur, qui cum solutus fuerat vel verius non ligatus in eo ligandi potentiam pravipendens, ligat improvidus semetipsum, et frustra ut aperiatur ei clavis auxilium invocat, que seipsum inclusit, dum inclusis aperire voluit sine clavi. Ad confusionem igitur² P., episcopi quondam Colubriensis,³ non potest in memoriam non venire, quantum in nos et ecclesiam Romanam deliquerit, despexerit Petri claves, et ecclesiasticam leserit potestatem, cum non solum interdicti sententiam, quam servaverat⁴ ab initio, temere violavit, verumetiam induxit alios, immo compulit non servare, et quos inducere monitis et flectere minis ac terroribus, ad violandam interdicti sententiam nulla potuit ratione, post atroces iniurias, ammissionem bonorum, spoliationem parentum, dignitatibus, prebendis et beneficiis spoliatis, coegit miserabiliter exulare, ea suis in hac parte fautoribus, non absque presumptione temeraria conferendo, que omnia idem episcopus in nostra et fratrum nostrorum presentia publice recognovit. Licet autem memoratus episcopus *non iudicium, sed misericordiam postulans*, in manibus nostris spontanea cesserit voluntate, *et nos simplicitati et senectuti⁵ compatientes ipsius, nondum ad penam eius quam requirit excessus tanti temeritas, duxerimus procedendum.* Nolentes tamen, ut hii qui huiusmodi sententiam interdicti non sunt veriti temeritate propria violare, ac recipere dignitates, prebendas ac beneficia aliorum, qui absque culpa et sine causa rationabili eis fuerant *irrationabiliter* spoliati, *ac illi qui in personas et bona canonicorum, prelatorum et clericorum nolentium interdicti sententiam temerare, manus**

temerarias extenderunt, severitatem effugiant canonice ultionis, cum tanto fortius nervo debeant ecclesiastice discipline constringi, quanto innocentie lora, que in aliis moderari debuerant, in seipsis dampnabilius laxaverunt, nec tante temeritatis audaciam relinquere impunitam, cum secundum Apostolum prompti simus inobedientiam ulcisi, ne facti perversitas transeat presumptoribus in exemplum, auctoritate Dei omnipotentis, omnem institutionem, destitutionem, collationem prebendarum, beneficiorum ac dignitatum presumptas per eundem episcopum, et excommunicationis seu interdicti sententias, in quoscumque hac occasione prolatas ab eo, post interdicti violationem eiusdem, decernimus irritas et inanes. Quia vero ubi magis exceditur, ibi est severius vindicandum, ut quibuscumque culpa fuit in scandalum, pena sit in exemplum, fraternitati tue per apostolica scripta in virtute obedientie districte precipiendo⁶ mandamus, quatinus omnibus, quos predictus⁷ episcopus in supradicta beneficia, prebendas et dignitates intrusit, non solum a beneficiis ipsis, prebendis et dignitatibus, verumetiam ab aliis beneficiis, si qua obtinent, et ecclesiis, non obstante appellatione, quam a vicario tuo interposuisse dicuntur, prorsus amotis, et spoliatis omnibus occasione huiusmodi sine difficultate qualibet plenarie restitutis, tam presumptores eosdem quam omnes alios qui prefatum interdictum dampnabiliter violarunt, suspendas auctoritate apostolica ab officio et beneficio.⁸ Illos quoque quos in personas et res predictorum canonicorum, prelatorum et clericorum manus temerarias constiterit extendisse, denuntiatis excommunicatis primitus iniectoribus manuum in clericos violentis, ad nostram infra quatuor mensium spatium venire compellas presentiam, pro meritis sententiam⁹ recepturos, invocato ad hoc, si opus fuerit, auxilio brachii secularis. Ne autem P. thesaurarius, P. Gonsalvi et Iohannes Fernandi, canonici Colimbrienses, ac alii spoliati mendicare cogantur, in opprobrium ordinis clericalis, presertim pro tam honesta et laudabili causa, unde¹⁰ premium debuerant meruisse, volumus et mandamus, ut donec dignitatum ac beneficiorum suorum pacificam fuerint possessionem adepti, facias eis de bonis Colimbriensis ecclesie congrue provideri. Ceterum quia malus minister consuevit interdum operarios iniquitatis habere, magistrum Gonsalvum et Alfonsum Menendi, consanguineos eiusdem episcopi, quos ipse vicarios suos reliquit, ad reddendam rationem de fructibus episcopatus Colimbriensis, necnon et Alfonsum Menendi de thesauro et instrumentis ecclesie cogere non postponas. Contradictores autem, si qui fuerint¹¹ etc. Nullis litteris obstantibus harum tenore tacito a sede apostolica impetratis.¹² Datum Spoleti, VII Kalendas Iulii, anno sexto.

¹ Archiepiscopo Bracharensi: Reg. ² igitur: *deest Auvray* ³ Colimbriensis: Reg. ⁴ servarat: Reg.; servaverat: *Auvray* ⁵ senectui: *Auvray* ⁶ in...precipiendo: *deest Auvray* ⁷ dictus: Reg.

⁸ suspendas... beneficio] suspensos ab officio et beneficio: Reg. ⁹ sententiam: *deest Reg.* ¹⁰ unum: *Auvray* ¹¹ si qui fuerint: *deest Auvray* ¹² harum...impetratis: *deest Auvray*

181. X 5.32.4

Deest Registro; deest Potthast

182. X 5.33.31

Auvray 475; Potthast 9681

Reg. 15 (21v-22r): an. 4, no. 44

Lateran: June 28th, 1230

[*Rubr:* Privilegium de decimis novalium non solvendis, non comprehendit decimas tempore privilegii impetrati possessas ab aliis, nisi de possessione alterius in privilegio fiat mentio.]

Gregorius IX. Maioris Ecclesie et Christianitatis decano et archidiacono Linconiensibus.

Dudum inter priorem et conventum de Butele ex parte una, et priorissam et moniales de Campese, *Norwicensis diocesis*, ex alia, *coram abbate de Ulmo et coniudicibus suis a sede apostolica delegatis*, super minutis decimis ecclesie de Diam spectantis, ut dicunt, ad ipsos, super quibus possessorium et super decimis cuiusdam molendini loci eiusdem, in quibus petitorium intentabant iudicium lite mota, † cum post plures hinc inde commissiones, obtentas per appellationem ex parte monialum interpositam fuisset, ad examen vestrum questio devoluta, vobis mediantibus, talis inter partes pena centum marcarum utrimque apposita conventio intervenit, quod dicte moniales solverent decimas molendini predicti priori et conventui memoratis. Et quia eedem a bone memorie H. pape predecessore nostro obtinuerant indulgentiam, ut de nutrimentis animalium et novalibus, nullus ab eis decimas exigere vel extorquere presumat, an per eam in qua non erat facta mentio, quod dicti prior et conventus essent in possessione percipiendi decimas memoratas, a prestatione ipsarum existerent, ut dicebant, immunes, in quarum tamen possessione quantum ad nutrimentorum animalium decimas confitebantur eandem extitisse ecclesiam, seque illas usque ad tempus obtente indulgentie exolvisse, sedes foret apostolica consulenda. De ortis quoque et pomeriis ac similibus, necnon et novalibus, decimas solvent, si super hiis indulgentiam nullam habent, et si aliquam obtinent, probata decimarum possessione ex parte ipsorum, nisi eam pars confiteretur adversa, utrum sint privilegiate per talem indulgentiam, nostrum deberet postulari responsum. Quare vos, receptis quibusdam testibus hinc inde productis, causam cum predictam indulgentia et alia simili super ortis et pomeriis a dictis monialibus tempore mote litis a nobis obtenta, necnon et testium depositionibus et aliis actis iudicii, ad nostram presentiam destinastis, procuratoribus itaque utriusque partis in nostra presentia constitutis, dilecto filio I. Spata, subdiacono et capellano nostro, a nobis auditore concesso, procurator prioris et conventus proposuit, quod super decimis nutrimentorum animalium et pomerii, quarum possessionem habebant, sicut confitebatur pars altera et habuerant usque ad tempus indulgentie impetratae, per eam iuri suo preiudicium non fiebat, cum non sit verisimile sedem apostolicam, que ecclesiarum iura tuetur, velle aliorum iura pretextu alicuius indulgentie, que de illis mentionem non faciat absorberi. Sed ad hec procurator monialium respondebat, quod predicte indulgentie, quibus omnis erat decimarum illarum exactio interdicta, satis tuebantur easdem, maxime quia Romanus Pontifex, cum illas indulsit, non potuit quin preiudicium alicui facerent ignorare. Insuper sufficere proponebat ad defensionem earum, concessam iam dudum omnibus religiosis super minutis decimis et novalibus a sede apostolica libertatem, et quod in veteri testamento non legitur, ut levite levitis decimas exolvissent. Sane dictus auditor recepto de veritate dicenda a procuratoribus iuramento, visis quoque et diligenter inspectis eorum confessionibus factis postmodum coram ipso et actis iudicii universis, cum hec et alia nobis fideliter retulisset, nos de consilio fratrum nostrorum decernimus,¹ iuri predictorum prioris et conventus super decimis illis novalium,² in quarum erant possessione tempore illo, quo eedem indulgentie apostolice³ impetratae

fuerunt, a parte altera de decimis novalium non solvendis,⁴ non debere per eas, non facientes de hoc aliquam mentionem, preiudicium generari. *Quocirca discretioni vestre per apostolica scripta mandamus, quod a nobis est super hoc exigente iustitia diffinitum, faciatis per censuram ecclesiasticam, appellatione remota, firmiter observari. Quod si non omnes etc., duo vestrum etc. Datum Laterani, IIII Kalendas Iulii, pontificatus nostri anno quarto.*

¹ decrevimus: Reg. ² novalium: deest Reg. ³ apostolice: deest Reg. ⁴ a parte... solvendis: deest Reg.

183. X 5.33.32

Deest Registro; Potthast 9682

184. X 5.33.33

Deest Registro; Potthast 9683

185. X 5.36.8

Auvray 571; Potthast 8681

Reg. 15 (59v): an. 4, no. 132

Lateran: March 18th, 1231

[*Rubr: Qui iurat statutum super non repetendis damnis, hoc non obstante, expensas repetere poterit. H. d. vel sic: Statutum super damnis non repetendis ad expensas non extenditur.*]

Gregorius IX.¹

In nostra et fratrum nostrorum presentia proposuistis,² quod olim cives Brixienses pro³ restorationibus dampnorum illatorum adinvicem, que propter multas civiles discordias incurrerant, plurimum aggravati, statutum *per venerabilem fratrem nostrum patriarcham Antiochenum, tunc Brixiensem electum, editum, videlicet, de non petendo vel recipiendo in posterum restauraciones huiusmodi, a communi generaliter approbarunt et firmarunt etiam iuramento. † Nuper vero non sine nostro labore et sollicitudine procurasti, quod super discordia, que graviter cives ipsos exagitat, consules et consilium precise ac absolute iurarunt, se mandatis tuis omnibus parituros, quam tamen, nisi per commune Brixiense dampna passis saltim in expensis, quas huiusmodi occasione fecerunt, provideri contingat, perfecte sopire non potes, quin sustineat recidivum, super quo petisti apostolicum remedium adhiberi. Cum igitur aliud sit dampnorum restauratio, quam satisfactio expensarum, et ideo in iuramento exhibito super dampnorum articulo intelligi non debeat, quod factum expensarum fuerit comprehensum, fraternitati tue per apostolica scripta mandamus, quatinus iuramento non obstante predicto, auctoritate nostra provideas, quod dictum commune pro bono concordie, ad expensarum satisfactionem aliquid⁴ contribuat iuxta tue discretionis arbitrium, a te sicut expedierit, moderandum. Datum Laterani, XV Kalendas Aprilis, pontificatus nostri anno quarto.*

¹ Episcopo Brixiensi: Reg. ² proposuistis] fuit ex parte tua propositum: Reg. ³ pro: deest Reg. ⁴ aliquid: deest Reg.

186. X 5.36.9*Deest Registro; Potthast 9684***187. X 5.38.16***Deest Registro; Potthast 9685***188. X 5.39.54***Deest Registro; Potthast 9686***189. X 5.39.55***Vid. 147. X 3.40.9***190. X 5.39.56***Deest Registro; Potthast 9687***191. X 5.39.57***Deest Registro; Potthast 9688***192. X 5.39.58***Deest Registro; Potthast 9689***193. X 5.39.59***Deest Registro; Potthast 9690***194. X 5.39.60***Deest Registro; Potthast 9691***195. X 5.40.33***Auvray 681; Potthast 9692**Reg. 15 (108v-109r): an. 5, no. 96**Rieti: July 9th, 1231**[Rubr: Verbum moderationis diminutionem continet, non augmentum.]*Gregorius IX. Decano et Sacriste Engo.¹

Transmisse nobis *ex parte vestra* littere continebant, quod significantibus *olim nobis venerabili fratre nostro* episcopo, et *dilectis filiis decano, et capitulo* Xanctonensibus, quod quadragenarius canonicorum numerus, institutus *per predecessores suos* in eorum² ecclesia, *ibi* non poterat observari pro eo, quia non sufficiebant *ad hoc ipsius* ecclesie facultates, *et propter hoc nonnulli de canonicis ibidem residere nequibant, unde grave patiebatur in spiritualibus et temporalibus eadem ecclesia detrimentum*, vobis dedimus in mandatis, ut *inquisita super hiis diligentius veritate*, canonicorum et prebendarum numerum iuxta facultates ecclesie moderantes, statueretis eundem firmiter observari, *contradictores per censuram ecclesiasticam, appellatione postposita, compescendo*. Vos

vero *inquisitione diligenti habita de predictis*, invenistis predictae ecclesie facultates³ a tempore statuti numeri adeo excrevisse, quod absque mutilatione prebendarum maior haberi posset numerus in eadem. Quare quesistis *a nobis*, an per “moderationis” verbum, litteris nostris appositum, eundem numerum augmentare vel minuere deberetis. Quocirca *discretionis vestre per apostolica scripta* mandamus, quatinus si veteres non sunt minute prebende, cum moderatio locum non habeat,⁴ ipsarum et canonicorum numerum dimittatis in eodem⁵ statu, in quo hactenus dinoscitur extitisse, in utilitatem eiusdem ecclesie convertentes augmentum suorum reddituum,⁶ donec *de ipso* duxerimus aliter disponendum. *Contradictores per censuram ecclesiasticam, appellatione postposita, compescentes.*⁷ *Quod si non omnes etc., duo vestrum etc. Datum Reate, VII Idus Iulii, pontificatus nostri anno quinto.*

¹ Decano, sacriste, et Helye Geraudi, canonico Engolismensibus: *Reg.* ² eorum: *deest Auvray* ³ facultates ecclesie: *Reg.* ⁴ cum...habeat: *deest Reg.* ⁵ eo: *Reg.* ⁶ in... reddituum] in utilitatem converti eiusdem ecclesie augmentum suorum reddituum facientes: *Reg.* ⁷ *Contradictores...compescentes] Contradictores etc.: Auvray*

6. Conclusion

In conclusion, it will be helpful to review the major findings of the foregoing study, and chart a course forward, both to make immediate use of the data, and broaden the scope of the investigation into related areas.

The project as a whole originated with a simple question about sources: what was the source base from which Raymond of Penyafort derived the 195 Gregorian decretals and constitutions dispersed throughout the *Decretals*. In the process of conducting the research, and particularly after encountering the difficulties posed by the textual tradition of such a widely disseminated collection, it became clear that there were many more unanswered questions about Raymond's sources than just the issue of the Gregorian capitula. Some of these have now been answered, while others have hopefully been more narrowly defined with the precision necessary to bring about a successful conclusion sometime in the future.

6.1 Pre-Gregorian Sources

Among the *demonstrata* is the sourcing of the six texts in the *Decretals* dated to the final years of Innocent III's pontificate that were not derived from 4Comp. Previously, these letters were thought to have been individually selected by Raymond for inclusion in the *Decretals* (perhaps even directly from Innocent's registers).⁷⁸³ As was shown above, these capitula were, in fact, part of a larger group of texts that curial officials continued to extract from the papal registers for compilation into short canonical collections to feed the ongoing appetite for Innocent's legal decisions. From this raw

⁷⁸³ X 3.34.10 *Per tuas nobis litteras*; X 4.14.6 *Quia circa*; X 5.6.14 *Postulasti*; X 5.6.17 *Ad liberandam*; X 5.34.16 *Accepimus*; X 5.39.45 *Contigit interdum*. See above, chapter one § 1.7.2 The Collectio Bambergensis secunda as a source for the *Decretals*, p. 62.

material resulted collections like the Kuttner-identified *Collectio Bambergensis secunda*, which, together with the twenty capitula of the collection proper, and the appended list of the Lateran IV decrees, contains all six of the unaccounted-for, post-3Comp texts.

Whether Raymond used an intermediate collection like the *Bambergensis secunda*, or whether he had direct access to the collection of register extracts, the essential fact is that he was dependent – as he was for the other pre-Gregorian material – upon the work of prior compilers. This is yet another measure of how much Raymond operated within the consensus reached by previous canonists over what constituted the sources of law.

Raymond's conservatism with respect to many – though certainly not all – aspects of the sources taken over from the *5C* was actually a surprising find of this study. The analysis of Raymond's organizational method in chapter three demonstrated that he largely followed the ordering of capitula found in the *5C*, only rearranging the texts of a given title to group together items from the same pontificate, or when select capitula were transposed to another title in order to force a different interpretative emphasis.⁷⁸⁴ The subsequent analysis of the inscriptions – the address portion of a text identifying the papal (or conciliar) author and its recipient – confirmed Raymond's basic faithfulness to the identification of his sources, contrary to the many alterations and errors contained in the text of the 1582 *Editio Romana*, the base text for all subsequent editions of the *Decretals*. Examining the earliest manuscripts of the *Decretals* shows that while Raymond occasionally shortened or removed an inscription, as a rule he preserved those inherited from the particular copy/-ies of the *5C* he employed, even when these transmitted unusual variants that could have been corrected by consulting a wider range

⁷⁸⁴ See especially, chapter three § 3.4 The Organization of Capitula in the *Decretals*, pp. 161 ff.; and § 3.5 Organization and anomaly in the title structure: X 3.30 De decimis, pp. 166ff.

of manuscripts.⁷⁸⁵ Understanding this enables a critical distinction for the study of the *Decretals* as well as the 5C manuscript tradition. Using the *Decretals*, the textual critic can distinguish, on the one hand, variant inscriptions originating in the 5C tradition, and on the other, those produced by scribes either erroneously or by design later on in the transmission of the *Decretals*. A short list of these divergent inscriptions, which were analyzed in chapter three and collected in that chapter's appendix, provide the on-going investigation of the *Decretals'* manuscript tradition with a baseline of significant variants – ones which will be of particular value for sorting through the earliest iteration of the collection's text.⁷⁸⁶ Understanding Raymond's method of organization has also allowed the identification of capitula that became misordered within the titles early on in the *Decretals'* transmission, several of which became the canonical ordering of the material as found in the *Editio Romana*.⁷⁸⁷ These breaks in the internal arrangement of the titles are especially precious for the textual study of the collection, since they are a definitive, irreversible variant around which can be grouped the different lines of transmission.

The analysis of the inscriptions precipitated an additional finding in the area of sources, that is, the particular version of 3Comp (and perhaps 4Comp) from which Raymond derived Innocent III's decretals.⁷⁸⁸ The *Decretals* contains a select number of Innocent III texts whose inscriptions match the original, enregistered version of the letter,

⁷⁸⁵ For example, X 1.11.6 (1Comp 1.4.9), which was a Pseudo-Isidore text attributed to Pope Annitius in most 1Comp manuscripts, but which Raymond treated as a Lucius III decretal – a variant inscription that was only found in BnF NAL 2127 among the 1Comp manuscripts collated for this study. See chapter three § 3.7.1 Variants in 1-2Comp manuscripts as source for divergent inscriptions, p. 190.

⁷⁸⁶ Chapter 3 Appendix: Discordant inscriptions between the *Decretals* and the *Quinque Compilationes Antiquae*, pp. 240ff.

⁷⁸⁷ See chapter three § 3.6 Organization and anomaly in the order of canons: X 3.3.8 *Cum decorem*, X 5.6.5 *Iudaei sive Sarraceni* and X 1.11.14 *Vel non est*, pp. 177ff.

⁷⁸⁸ See chapter three § 3.8 Divergent inscriptions in 3-4Comp, pp. 222ff.

rather than the reading found in most copies of 3Comp (and one instance in 4Comp).⁷⁸⁹ Working off of the previously demonstrated assumption of Raymond's conservative approach to the formal attribution and arrangement of his material, the reprisal of readings from Innocent's register must have derived from Raymond's sources rather than from his own initiative. With one exception (3Comp 1.2.8; X 1.3.18), the collation of 5C manuscripts turned up no precedents for the register inscriptions among normative 3-4Comp manuscripts, i.e., those that circulated in Italian circles.⁷⁹⁰ Neither are any of these capitula – with the exception again of 3Comp 1.2.8/X 1.3.18 – found in Bernardus Compostellanus' *Compilatio Romana*. On the other hand, manuscripts of what is termed the French recension of 3Comp, specifically the two versions examined in the chapter-three collation, Paris, BnF, NAL 2127 and BnF, lat. 3933, provide precedent for slightly less than half of the original register inscription variants found in the *Decretals*.⁷⁹¹

When the French recension was first identified by Kenneth Pennington, its primary distinguishing characteristic was defined as being its supplementation of 3Comp with material from its precursor, Bernardus Compostellanus' *Compilatio Romana*.⁷⁹²

Without displacing this as its principal feature, Steven Horwitz subsequently

⁷⁸⁹ The list where the *Decretals* reprises the inscriptions of Innocent's register – rather than 3-4Comp – is as follows, with the formal source and register citation in parentheses: X 1.3.18 (3Comp 1.2.8; Reg. I.62); X 1.22.3 (3Comp 1.16.2; Reg. IX.252); X 1.38.4 (3Comp 1.22.1; Reg. IX.257); X 2.25.6 (4Comp 2.5.1; Reg. Bal. XII.92); X 3.39.22 (3Comp 3.37.7; Reg. X.76); X 4.13.8 (3Comp 4.9.3; Reg. VI.92); X 5.33.16 (3Comp 5.16.6; Reg. IX.263). There are, in addition, several texts where the *Decretals*' inscription matches neither the standard version of 3-4Comp nor the register, which should be kept in mind for future research on the exact form of Raymond's formal sources: X 2.27.23 (4Comp 2.11.1; Reg. Bal. XV.158); X 4.13.10 (3Comp 4.10.3; Reg. VIII.190); X 5.12.15 (3Comp 5.7.3; Reg. IX.42).

⁷⁹⁰ In Admont, 22, which is otherwise considered to transmit a standard version of 3Comp, the source for X 1.3.18 at 3Comp 1.2.8 preserves the register – and the *Decretals* – inscription (*Idem electo, decano et N. canonico Cameracensi*) rather than the address formula that appears in most other 3Comp manuscripts (*Idem abbati de Alcobratia F. et P. monachis Alcobatiae* [sic]); see above, p. 224.

⁷⁹¹ BnF NAL 2127 contains the register inscription for X 1.3.18 (3Comp 1.2.8), X 3.39.22 (3Comp 3.37.7), X 4.13.8 (3Comp 4.9.3). BnF lat 3933, because it is an incomplete manuscript of 3Comp, only matches at X 1.3.18, while the others belong to sections that are missing from the manuscript.

demonstrated that some manuscripts of the French recension also contained a fuller excerption of the decretal *Tua nobis* at 3Comp 2.1.1, a departure that could not have been due to the *Compilatio Romana*.⁷⁹³ This expanded version of *Tua* is also found in the *Decretals* at X 3.20.25. Clearly, then, certain canonists were incorporating into the French recension additional streams of Innocent III's texts, which included both the expanded 3Comp 2.1.1, *Tua*, and copies of texts like 3Comp 1.2.8, 3Comp 3.37.7, 3Comp 4.9.3 – and probably others – where the inscriptions matched the original reading in Innocent's register.

It has been argued here that the presence of the expanded X 3.30.25, *Tua*, was a result of Raymond simply transmitting what he found in his source for the text at 3Comp 2.1.1, rather than that he constructed a composite version based upon combining the text of 3Comp 2.1.1 with an alternate, later version that appeared at 4Comp 3.9.4. But which source?

We are certainly better situated as a result of this study to rule out sources that were once considered potential candidates to explain the *Decretals*' divergence from the normative text of the 5C. Foremost among these would be the *Compilatio Romana*, to which its editor, Heinrich Singer, attributed influence both over some of the correct register inscriptions in the *Decretals*, as well as certain aspects of Raymond's aggressive editing of Innocent's letters.⁷⁹⁴ It has been shown above that the occasional correspondence between Raymond and Bernardus Compostellanus' editing – including where they chose to excerpt and shorten their sources – is much more likely than not

⁷⁹² Pennington, "French recension." See above,

⁷⁹³ Horwitz, "Reshaping a decretal chapter."

attributable to coincidence, and the fact that both compilers were predisposed toward heavy-handed treatment of the source material. Raymond's editing of those Innocent III letters that are also found in the *Compilatio Romana* is entirely consistent with the way he handled the rest of his sources. Furthermore, given that there is little to no overlap with the *Compilatio Romana* for those Innocent III letters whose original register inscriptions are found in the *Decretals*, it seems safe to discard any further consideration that it exercised any influence whatsoever over Raymond. The exclusion of the *Compilatio Romana* as an ancillary source for the *Decretals* leaves only some iteration of the French recension of 3Comp as a possibility, at least among those collections that have benefitted from a modern identification. However, because the text and arrangement of Innocent III's capitula in the *Decretals* do not otherwise depart from normative versions of 3-4Comp – so far as can be determined given the lack of critical editions for the *Decretals* and its sources – Raymond's consultation of the French recension can almost certainly be ruled out as well.

There are simply too many similarities with French recension manuscripts to be dismissed, however. It is not just the presence of the fuller version of *Tua*, or the overlap with texts whose inscriptions go back to Innocent's register. As demonstrated in the collation of inscriptions in chapter three, the highest number of anomalous inscriptions from 1-2Comp preserved in the *Decretals* are actually found in the 5C manuscript containing the French recension, Paris, BnF NAL 2127.⁷⁹⁵ Perhaps Raymond was working from a version of the 5C related to that used by French canonists not only to

⁷⁹⁴ For the discussion of Singer and the possible influence of the *Compilatio Romana*, see chapter one § 1.10 Bernardus Compostellanus as possible source for Raymond's editing.

⁷⁹⁵ See chapter three, Table 3.7. Discrepancies between the *Decretals* and formal source inscriptions, p. 189.

supplement the hybrid text of the French recension of 3Comp, but also to derive their copies of the earlier compilations. More work is needed to clarify the matter.

Establishing the transmission of variants and their lines of affiliation is ultimately not an end in itself, but will help illuminate the history of mutual influence among canonists in the critical first few decades of the thirteenth century, when the balance of canonical jurisprudence was shifting from Northern to Southern Europe. Whether Raymond was working from texts he had brought with him from his teaching and preaching days in Barcelona and Southern France, or whether his formal sources were collected anew once he went to the papal curia would certainly be worthwhile to know.

6.2 The Gregorian Capitula and the Papal Registers

The collation of the Gregorian capitula with Gregory IX's registers shows that the *Decretals* severed the link that had tied canon law collections exclusively to the papal registers during Innocent and Honorius III's pontificates.⁷⁹⁶ The register was still the dominant source, accounting for roughly 75% of Gregory's previously-circulated material (89 out of 122+ decretals), and slightly under half of the total number when one includes the Gregorian *constitutiones* (89 out of 195). If there were contemporary concerns raised about the authenticity of Gregory's material in the absence of an explicit assurance of prior registration (something which was, in any case, lacking from Honorius' 5Comp as well), they have disappeared from history. Perhaps the centrality of Innocent's reign to the development of canonical jurisprudence has made the linkage between decretal collections and the register seem to subsequent historiography more essential than it actually was. The register-backed guarantee of a decretal's authenticity

⁷⁹⁶ On the importance of the registers to canonical collections, see chapter one § 1.3.3 The *Compilatio Romana* and *Compilatio Tertia*, pp. 35ff; and § 1.4 *Compilatio quinta* and *Novae Causarum*, pp.43ff.

laid out by Innocent in the prefatory bull to 3Comp, *Devotioni vestrae*, seems in hindsight to have marked more of a transitional stage.

The codicological and diplomatic investigation of Reg. Vat. 14, which established that the registers were kept as an ongoing record of papal correspondence throughout the year, laid the necessary foundation for determining their exact relationship to the Gregorian material used by Raymond for the *Decretals*. This study has opened up its own set of questions in relation to the register as a tool of papal administration, both general and specific. Although the physical appearance of Gregory's register does not betray the heavy use to which Innocent's, and to a lesser extent Honorius' registers were put as a repository of canonical source material (marginal notes, editorial and excision marks), the structure is much more amenable to active consultation and exploitation as an administrative device. It is the first (surviving) papal register with a list of rubrics (table of contents) at the front of each year.⁷⁹⁷ The composition of issue-specific dossiers outside of the normal yearly run of letters, which covered topics such as the ongoing conflict with Frederick II (Reg. Vat. 14, fols. 161-8) or the Albigensian mission (Reg. Vat. 19, fols. 87-97), shows an additional degree of administrative precision, but with the advantage of greater flexibility than the massive effort at memorializing that was Innocent III's *Regesta super negotio imperii* (Reg. Vat. 6).⁷⁹⁸ Future research might profit from a comparative examination of other registers from the period, particularly those produced in royal chanceries, to see whether a similar trend toward greater usability is manifest.

⁷⁹⁷ See above, pp. 331ff.

⁷⁹⁸ For a complete list (and partial description of contents) of these proto-secret registers, see: Bock, "Kodifizierung und Registrierung," pp. 40-67.

As for the specific issues arising from the study of Gregory's registers, two can be highlighted here. The first is the marked increase in the percentage of letters being registered starting in the second half of 1232. That this corresponds to the best estimate for the start date of Raymond working on the the *Decretals* may be of significance, but of what exactly it is difficult to speculate.⁷⁹⁹ Perhaps a more fruitful line of inquiry would be to examine whether there are any changes in the balance of types of documents being registered. The relatively high numbers of letters in question after 1232 (almost 500 per year), the greater standardization of chancery products, and the relative ease of doing quantitative analysis might yield some interesting results about shifting emphases over the course of Gregory's pontificate as to what was deemed worth recording. Such an analysis could then be extended both backwards and forwards to make comparison across pontificates possible.

Finally, there are the questions raised by the register form of *Ecce venit Deus* (Auvray 129), and how it relates to the early role of the Dominican Order as official papal instruments of Church reform and soldiers in the war against heresy.⁸⁰⁰ Gregory had directed the letter to the bishops of Lombardy urging them to undertake reform *in capite et in membris* of their clergy, and announced he was sending several members of the Dominican Order to assist in these efforts. Previously unnoticed corrections to the register entry show a curious alteration of the Dominican mission from present to future tense, which in itself might not be significant, but when matched against a copy of the letter that survives in a south-German formulary, which omits entirely the Dominican involvement, it appears as if the participation of the order was ultimately aborted. The

⁷⁹⁹ See above, pp. 381ff.

⁸⁰⁰ See § 5.5 *Ecce venit deus* and early papal deployment of the Dominican Order, p. 366.

evolving forms of *Ecce venit Deus* provide greater granularity to the Dominican role during the first few years of Gregory's pontificate, which were critical in making them into a central pillar in Gregory's fight against heresy and did so much to shape the direction of religious movements, as well as that of the Dominican Order, over the next few decades

Law is a strange alchemy between institutional power, societal reality (both current and desired), communal approbation, and the conventional constraints set by the legal framework itself. In this respect, there is no single overriding purpose for the Gregorian capitula chosen by Raymond to fill out the *Decretals*. Within Raymond's editing, however, may discovered the exact balance between the limits set upon the pope's legal authority (whether by its traditional exercise, societal conditons, or juristic opinion) and the desire to remake the circumstances to which the law was addressed.

The examples analyzed at the end of chapter five can serve as a model for future investigations. The regulations of monastic communities represented by X 3.31.23-4, *Statuimus novitios* and *Ne religiosi*, demonstrate how the *Decretals* codified Gregory's early experiments with statutory legislation.⁸⁰¹ Having already determined to impose uniformity over certain broad aspects of religious life – in this case the probationary period and the treatment of runaway monks – Gregory used the *Decretals* as a vehicle to promulgate these provisions to the entire Church. These efforts were based on the prior general acceptance of the pope's authority to legislate for the Church as a whole. In the case of X 5.31.16-7, *Nimis iniqua* and *Nimis prava*, which transformed a set of legal protections for the Franciscan Order into a separate legal status for Mendicants broadly

⁸⁰¹ See § 5.8.1 Legislation by constitution or statute? X 3.31.23, *Statuimus novitios* and X 3.31.24, *Ne religiosi*, p. 384.

defined, we find Raymond and Gregory using the law to crystallize the burgeoning understanding of the new evangelical orders as distinct from the older, established – and cloistered – orders.⁸⁰² Here the law may have been merely a recognition of certain facts on the ground, but it created a new legal reality for institutionalized religious life.

The moment at which law ceases to reflect societal reality and starts to change it is notoriously difficult to determine.⁸⁰³ The collation of the registers enable us to see, however, the contingency that often lies at the origin of legal transformation. The case of X 3.32.19, *Gaudemus in Domino*, which recommended the cloisteration of women convicted of adultery (and possibly their full acceptance as members of a monastic community), is instructive in this respect. Raymond took a decretal tied to the very particular set of circumstances associated with Rudolph of Hildesheim’s mission to “fallen” women, in which he had established convents for former prostitutes and was now extending his evangelism to women convicted of adultery and rejected by their husbands. These convents were treated by Gregory as a penitential alternative to the considerable hardship and stigma these women would otherwise face in the world. Raymond adapted this decretal to create a general recommendation that any women separated from her husband as a result of their adultery should be moved into a convent where they could spend the rest of their lives in penance. The separation of *Gaudemus in Domino* from its roots effaced the original nature of the convents to which they were to be removed, and elevated the religious house into a penitential site for the

⁸⁰² See § 5.8.2.1 The Legal construction of the Mendicant Orders: X 5.31.16-7, *Nimis iniqua* and *Nimis prava*, p. 393.

⁸⁰³ For a good discussion of this dynamic in the case of Roman Law, see: Alan Watson, *The Evolution of Western private Law* (Baltimore, 2001) ch. 7, “Legal Transplants I: The Cause of the Reception of Roman Law.”

laity. Future research should focus on what practical impact *Gaudemus in Domino* had on religious institutions for women.⁸⁰⁴

The pushback against *Gaudemus in Domino* by later canonists (the exact sequence of which remains to be determined) shows that there were limits to the legal innovation permitted to the papacy. Juristic opinion would remain a key element of constructing the law. The evolution of Bernard of Parma's response in particular should make clear the incredibly fruitful field opened up by the comparison of the different recensions of his ordinary gloss.⁸⁰⁵ The shifting emphasis of his commentary on the Gregorian capitula will help clarify what canonists found particularly new and striking about Gregory's contribution to canon law. No doubt there are gems waiting to be discovered comparing the two recensions on the other decretals of other popes as well.

6.3 Compilation or Codification?

In these final remarks we return to one of the main themes that has run throughout this study: is the *Decretals* a compilation or a codification?

In modern usage, a legal code is a systematic and comprehensive set of legal prescriptions of sufficient generality to cover the maximum number of cases. A code is a collection of regulations in the classic sense of the word *regula*: a rule or standard that sets guidelines and limits to behavior in whatever area the code is designed to cover. The jurisprudence of a codified system of law is primarily deductive, aimed at isolating the already-established rule in order to determine the specific case.

⁸⁰⁴ For a study of the canonistic debate over cloisteration in the period after the *Liber Sextus*, see: Elizabeth Makowski, *Canon Law and Cloistered Women: Periculoso and its Commentators, 1298-1545* (Studies in Medieval and Early Modern Canon Law 7: Washington, D.C., 1997).

⁸⁰⁵ See above, p. 400.

Within a common law system like the decretal-based law of the twelfth and thirteenth-century Church, however, the exercise of legal reasoning was primarily inductive. It was rare for even the most elaborate decretals to ever say more than a sentence or two about the legal foundation of a papal decision, such that it was often left for canonists to intuit the justification. Building off of one another's work, slogging through the *inextricabilis silva* of papal decretals to compare their varying and often contradictory statements, the canonists in the two to three generations prior to Raymond of Penyafort gradually pieced together a workable set of norms that everyone knew existed, yet which they would be hard pressed to find gathered into a single space at the same time.

The work of jurists within a codified system of law is taxonomic, a progressive ramification of the main trunk into smaller subsets of branches. If, on the other hand, one had to visualize the jurisprudence of the medieval canonists, it would resemble something like a vast, interconnected web of nodes, with a decretal at each nodal point receiving and sending out multiple connections to other, sometimes remarkably dissimilar decretals. One is continually struck, when reading the commentary literature, by the unexpected places that one finds discussions of the most crucial legal issues. The classic treatment of papal authority and its relationship to that of secular rulers is not found in the title on constitutions (X 1.2, *De constitutionibus*), but rather in the previously-discussed decretal *Per venerabilem* (X 4.17.13), placed by Raymond – following earlier canonists – in the title on the legitimation of children (X 4.17, *Qui filii sint legitimi*).⁸⁰⁶

⁸⁰⁶ See chapter one, p. 107.

Insofar as most, if not all common law systems exist within some kind of constitutional framework, there will always be a certain amount of deductive work to be done in aligning real world actions with abstract or dated legal traditions. The constitutional order of medieval canon law after the twelfth century was particularly complicated, because of the many streams by which it was watered. Near the turn of the thirteenth century, the canonist Huguccio of Pisa was still trying to make the foundation of all law the *ius naturale*, but he simultaneously, perhaps even knowingly undercut his own attempt by offering five or six different definitions of natural law, without in the end siding with any one in particular.⁸⁰⁷ The fiction that there was a divine law (as manifested particularly, though not exclusively, in Scripture) to which the law of the church was ultimately anchored may have been convenient to maintain, but by Gregory's pontificate this was no longer consistently true of anything but the *forum internum* (law of penance), save the continuing service into which scripture was pressed to justify a hierocratic vision of the church. The constitutional vacuum had been filled instead by things like Roman procedural law and Gratian's *Decretum*. The complicating factor was, of course, the papacy, who in evolving a theory of *plenitudo potestatis* had made the remarkable achievement of establishing a living, breathing constitutional body, expressed in legislation such as the Lateran IV decrees. The whirlwind reaped from the winds sown by the reform papacy was still in the future, however, far off in the pontificates of Boniface VIII and John XXII. For the moment – the one in which Raymond of Penyafort and Gregory IX found themselves – the practice of canon law was still essentially that of

⁸⁰⁷ See the preface to Huguccio's commentary on the *Decretum*: Huguccio Pisanus, *Summa decretorum*, vol. 1: Distinctiones I-XX, ed. Oldřich Přerovský (Monumenta iuris canonici, Series A: Corpus glossatorum, vol. 6: Vatican City, 2006) pp. 7-12.

a common law system, where the unit of measurement was the case rather than the statute.

The *Decretals* was not a code in any modern sense of the word, then. It was, however, a preeminent act of codification. Several things are meant by adopting this term. First, that the era of open expansion of the material base of jurisprudence – the individual decretals and statutes – had come to an end. The door was now closed to the admission of older sources, and the integration of new ones would be a carefully regulated process going forward. The full exercise of papal control over which decisions and statutes deserved canonization was achieved when Innocent IV carefully prepared and redacted the conciliar canons at the Council of Lyon (1245) for inclusion in the *Decretals*.

Another feature of Raymond's codification is that the character of the individual texts in the *Decretals* was changed. This transformation was subtle rather than dramatic, and existed along a continuum. The seventy-odd constitutions composed by Raymond specifically for the collection occupy the furthest end of the spectrum, insofar as they are simple and direct communications of the law. Not too far away are the examples analyzed earlier of X 3.31.23, *Statuimus novitios* and X 3.31.24, *Ne religiosi*, which began life as unsolicited decrees. Their inclusion in the *Decretals* was a natural fit, and in the case of X 3.31.23, it enabled Raymond to suppress an earlier, Alexander III decree that was contradictory to the standardized probationary period that Gregory was seeking to establish across all religious orders.⁸⁰⁸ Further to the middle of the spectrum are those decretals that Raymond edited with vigor to remove any information that was deemed

⁸⁰⁸ See above, p. 389.

unessential to communicating the basic legal premise at work. Gone are the protocols exhorting the recipients to reflect upon the order of offices within the church, and upon the obligations that come with a given position and rank. Gone, too, are many of the individuating details of cases that would set them within a context of human actions and responses.

Also on this spectrum, though considerably distant from the Gregorian constitutions, are the individual decretals where Raymond made considerable changes to the legal language employed, achieved for the most part by leaving out the formulaic elements normally introduced in the chancery's production of the original decretal.⁸⁰⁹ Where normally a major case would be decided with the advice of the cardinals (*de consilio fratrum nostrorum*), Raymond consistently left out this qualification of the papal judgment, almost as if it detracted from the pure expression of the papal will. The habit of justifying a decision, not so much through legal reasoning but with stock appeals to the authority of the canons, either positive (*iuxta canones*) or negative (*contra canonicas sanctiones*), or by the authority of the holy fathers (*auctoritate sanctorum patrum*), was deemed by Raymond as unnecessary in many cases. The law in many ways speaks for itself, and does not need the mediation implied either by references to its physical embodiment in a set of letters (*per apostolicas scriptas*), or to its communication in a particular time and space (*in nostra praesentia; apud sedem apostolicam*).

It will be worthwhile in the future to compare whether the codification achieved, or at least implied by the *Decretals* is an evolutionary stage through which other, similar

⁸⁰⁹ See chapter one § 1.11 The Language of Law, pp. 84ff.

systems of law have passed, and what are the drivers of this process. For now, though, it is enough to point to its existence.

Counterbalancing this tendency toward codification, at least in part, were the interpretative strategies employed by some canonists in the immediate aftermath of the *Decretals*, as was discussed in the fourth chapter at length in connection with the commentary tradition on X 1.6.23, *Bonae memoriae*. Somewhat ironically, it was Innocent IV himself, in his pre-papal incarnation as the jurist Sinebaldus Fieschi, who launched the first salvo. He responded to the closing off of the sources by reaching for the original, enregistered letters of Innocent III to correct some of the misinterpretation caused by the faulty editing and/or copying of Raymond's collection.⁸¹⁰ Innocent III's status as the towering giant of his age was no doubt a key factor as to why this pope's documents, as opposed to Honorius III's or even Gregory IX's, could be reintroduced at select places into the canonical stream. Sinebaldus was followed in his practice of contextualization by Bernard of Parma, the ordinary glossator of the collection, and Hostiensis, who bequeathed perhaps the most impressive commentary in the thirteenth century. To a degree that remains to be fully ascertained, these canonists refused to accept the full implications of Raymond and Gregory's codification, and in their refusal have left a model for modern students of canon law to emulate.

⁸¹⁰ See chapter four § 4.3 The critical mode in Hostiensis and Sinebaldus Fieschi (Innocent IV), pp. 264ff.

Bibliography

Manuscripts

Admont

SB, 22 [1-5Comp]

Bamberg

SB, Can. 19 (*quondam* P.II.6) [1-4Comp]

SB, Can.20 (*quondam* P.II.7) [1-3Comp]

SB, Can.23 (*quondam* P.I.18) [5Comp]

Berlin

SBPK, lat. fol. 7 [Liber extra]

SBPK, lat. fol. 8 [Liber extra]

Florence

BNC, Palatina 157 [Liber extra]

Laurenziana, S. Croce III sin.9 [Liber extra]

Freiburg

UB, 361a [1Comp]

Fulda

LB, D.5 [1Comp]

LB, D.24 [Liber extra]

Göttingen

UB, jurid. 149 [Liber extra]

Graz

UB, 106 [1-4Comp]

UB, 138 [1-4Comp]

UB, 374 [1-5Comp]

Leipzig

UB, 908 [4-5Comp]

UB, 983 [1-3Comp]

UB, Haenel 10 [Liber extra]

Madrid

BN, MS 30 [Vincentius Hispanus, *Apparatus to Liber extra*]

Marburg

UB, C.2 [2Comp and 4Comp]

Munich

BSB, clm 3879 [1-4Comp]
 BSB, clm 6352 [1Comp]
 BSB, clm 6904 [Liber extra]
 BSB, clm 14011 [Liber extra]

Paris

Arsenal, 5215 [Liber extra, Fr. trans.]
 BnF, fr. 491 [Liber extra, Fr. trans.]
 BnF, fr. 492 [Liber extra, Fr. trans.]
 BnF, fr. 493 [Liber extra, Fr. trans.]
 BnF, lat. 3933 [3-5 Comp; Fr. rec. of 3Comp]
 BnF, lat. 15997 [1-5Comp]
 BnF, NAL 2127 [1-5Comp; Fr. rec. of 3Comp]
 Collection Paul Durrieu, no. 5

Rome

BAV, lat. 1377 [1-4Comp]

Vienna

ÖNB, cod. vind. pal. 2197 [Gottfried of Trani, *Apparatus to Liber extra*]

Primary SourcesPrinted Editions of the Decretals

Decretales cum glossa. Heinrich Eggestein [printer]. Strasburg, 1468/71.

Decretales cum glossis. Baptista de Tortis [printer]. Venice, 1491.

Divi Gregorii Pape noni Decretalium compilatio. Ulrich Gering and Berthold Remboldt [printers]. Paris, 1499.

Decretalium Gregorii Papae IX compilatio multis utilibus et ferme necessaria adiunctis examussim castigata. Franciscus Fradin [printer]. Lyons, 1515.

Decretales a Gregorio nono in volumine hoc redacte. Jacob Paucidrapense de Burgofranco [printer]. Pavia, 1517.

Decretales epistolae Gregorij Noni Pontificis Maximi. Claude Chevallon [printer]. Paris, 1537.

Epistolae decretales summorum pontificum a Gregoriano nono pontifice maximo collectae. Ed., Antoine le Conte. Paris, 1560. Reprinted: Antwerp, 1570.

Decretales D. Gregorii Papae IX suae integritati una cum glossis restitutae. In aedibus populi Romani. Rome, 1582.

Corpus iuris canonici Gregorii XIII. Pont. Max. jussu editum a Petro Pithoeo, et Francisco fratre, jurisconsultis. Edd., Pierre and François Pithou. 2 vols. Paris, 1685-7.

Corpus iuris canonici. Ed., Justus Henning Böhmer. 2 vols. Halle-Magdeburg, 1947.

Corpus iuris canonici. Ed., Emil Richter. 2 vols. Leipzig, 1836-9.

Corpus iuris canonici. Ed., Emil Friedberg. 2 vols. Leipzig, 1879-1881. Reprinted: Union, N. J., 2000.

Registers and Calendars

Barbiche, Bernard. *Les Actes pontificaux originaux des archives nationales de Paris.* Vol. 1: 1198-1261. Index Actorum Romanorum Pontificum. Vol. 1. Vatican City, 1975.

Battelli, Giulio. *Schedario Baumgarten.* Vol. 1: Innocenzo III-Innocenzo IV. Vatican City, 1965.

Hilger, Wolfgang. *Verzeichnis der originale spätmittelalterlicher Papsturkunden in Österreich, 1198-1304.* Fontes Rerum Austriacarum, 2 Abteilung: Diplomataria et Acta, vol. 83. Vienna, 1991.

Largiadèr, Anton. *Die Papsturkunden der Schweiz von Innocenz III bis Martin V ohne Zürich.* Vol. 1: Von Innocenz III bis Benedickt XI. Zurich, 1968.

Idem. *Die Papsturkunden des Staatsarchivs Zürich von Innocenz III bis Martin V.* Zürich, 1963.

Potthast, Augustus. *Regesta Pontificum Romanorum.* 2 vols. Berlin, 1874. Reprinted: Graz, 1957.

Ripa, Eliseo Sáinz. *La documentación pontificia de Gregorio IX, 1227-1241.* Vol. 1. Monumenta Hispaniae Vaticanae. Sección: Registros. Vol. 11. Rome, 2001.

Sayers, Jane. *Original Papal documents in England and Wales from the accession of Pope Innocent III to the death of Pope Benedict XI, 1198-1304.* Oxford, 1999.

Schmidt, Tilmann. *Die Originale der Papsturkunden in Baden-Württemberg, 1198-1417.* Vol. 1: 1198-1341. Index Actorum Romanorum Pontificum. Vol. 6. Vatican City, 1993.

Idem. *Die Originale der Papsturkunden in Norddeutschland (Bremen, Hamburg, Mecklenburg-Vorpommern, Schleswig-Holstein), 1199-1415.* Index Actorum Romanorum Pontificum. Vol. 7. Vatican City, 2003.

Schwarz, Brigide. *Die originale von Papsturkunden in Niedersachsen, 1199-1417*. Index Actorum Romanorum Pontificum. Vol. 4. Vatican City, 1988.

Zarotti, Giacomo. *I documenti pontifici dell'Archivio Capitolare di Parma, 1141-1417*. Milan, 1960.

Zöllner, Walter. *Die jüngeren Papsturkunden des Staatsarchivs Magdeburg*. Studien zur katholischen Bistums- und Klostersgeschichte: vol. 23. Series eds. Franz Sonntag and Franz Schrader. Leipzig, 1982.

Idem. *Die jüngeren Papsturkunden des Thüringischen Hauptstaatsarchivs Weimar*. Studien zur katholischen Bistums- und Klostersgeschichte: vol. 40. Series ed. Franz Schrader. Leipzig, 1996.

Individual Sources

Agustín, Antonio [ed.]. *Antiquae collectiones decretalium*. In: *Opera Omnia*. Vol. 4. Lucca, 1769.

Alfonso X (el Sabio). *Las Siete Partidas: The Text and Concordance of Las Siete Partidas de Alfonso X*. Edd., Jerry R. Craddock, John J. Nitti and Juan C. Temprano. Hispanic Seminary of Medieval Studies 60. Madison, 1990.

Baerwald, Hermann [ed.]. *Das Baumgartenberger Formelbuch*. Fontes Rerum Austriacarum, Diplomataria et Acta 25. Vienna, 1866.

Balme, F., C. Paban, and L. Colomb [edd.]. *Raymundiana seu documenta quae pertinent ad S. Raymundi de Pennaforti vitam et scripta*. 2 vols. Monumenta Ordinis Praedicatorum Historica. Vol. 6, pts. 1-2. Rome-Stuttgart, 1900-1.

Baluze, Étienne. *Miscellanea nova ordine digesta*. Ed. J. Mansi. Vol. 3. Paris, 1763.

Baronio, Cesare. *Annales ecclesiastici cum continuatione Raynaldi, notis Mansi etc.* Vol. 23. Lucca, 1759.

“Benonis aliorumque cardinalium schismaticorum contra Gregorium VII. et Urbanum II. scripta.” Ed., Kuno Francke. *Libelli de Lite*, vol. 2. Monumenta Germaniae Historica. Hannover, 1897. Pp. 366-422.

Bernard of Clairvaux. *Five Books on Consideration*. Trans. John Anderson and Elizabeth Kennan. Cistercian Fathers Series 37. Kalamazoo, 1976.

Bernard of Pavia. *Bernardus Papiensis Faventini episcopi Summa decretalium*. Ed., Ernst Adolph Theodor Laspeyres. Regensburg, 1860. Reprinted: Graz, 1956.

Ciron, Innocentius [ed.]. *Quinta compilatio epistolarum decretalium Honorii III*.

- Toulouse, 1645. Reprinted in: Horoy, C. [ed.]. *Honorii III Romani Pontificis Opera Omnia*. Vol. 1. Bibliotheca Patristica Medii Aevi, vol. 1. Paris, 1879. Coll. 95-418.
- Collell, A [ed.]. "Raymundiana." *Analecta Sacra Tarraconensia* 30-1 (1957-8). Pp. 83-90; 341-58.
- Corpus Iuris Civilis*. Edd. Theodore Mommsen and Paul Krueger. 3 vols. Berlin, 1892-1912.
- Denifle, Heinrich [ed.]. "Die Constitutionen des Predigerordens in der Redaction Raymunds von Peñafort." *Archiv für Literatur- und Kirchengeschichte des Mittelalters* 5 (1889). Pp. 530-64.
- The Digest of Justinian*. Trans. Alan Watson. 4 vols. Philadelphia, 1998.
- Emerton, Ephraim [ed.]. *The Correspondence of Gregory VII*. Records of Civilization 14: New York, 1932.
- Feliu, L [ed.]. "Documents inédits sobre Sant Ramon de Penyafort." *Vida Cristiana* 18 (1931). Pp. 296-300.
- Idem [ed.]. "Diplomatari de Sant Ramon de Penyafort: Nous documents." *Analecta Sacra Tarraconensia* 8 (1932). Pp. 101-16.
- Fieschi, Sinebaldus (Innocent IV). *Apparatus in quinque libros decretalium*. Frankfurt am Main, 1570. Reprinted: 1968.
- Friedberg, Emil [ed.]. *Canonessammlungen zwischen Gratian und Bernhard von Pavia*. Leipzig, 1897. Reprinted: Graz, 1958.
- Idem [ed.]. *Quinque Compilationes Antiquae necnon Collectio Canonum Lipsiensis*. Leipzig, 1882. Reprinted: Graz, 1956.
- Gallia Christiana*. 16 vols. Paris, 1715-1874.
- García y García, Antonio [ed.]. *Constitutiones Concilii quarti Lateranensis una cum Commentariis Glossatorum*. Monumenta Iuris Canonici, series A: Corpus Glossatorum. Vol. 2. Vatican City, 1981.
- Gerald of Wales. *De Invectionibus*. Ed., W. S. Davies. *Y Cymmrodor* 30 (1920).
- Idem. *De iure et statu Menevensis ecclesiae distinctiones VII*. *Rerum Britannicarum Medii Aevi Scriptores*, vol 21, pt 3. London, 1863. Reprinted: 1964.
- Gesta Innocentii PP. III.*, *PL*, vol. 214, coll. xvii-xviii.

- Gottfried of Trani. *Apparatus glossarum in Decretales Gregorii IX*. Vienna, ÖNB, cod. vind. pal. 2197.
- Idem. *Summa super titulis decretalium*. Lyon, 1519. Reprinted: Aalen, 1968.
- Gregory VII. *Das Register Gregors VII*. Ed., Erich Caspar. Monumenta Germaniae Historica, epistolae selectae. Vol. 2. Berlin, 1920.
- Gregory IX (Hugolinus of Ostia). *Registri dei Cardinali Ugolino d'Ostia e Ottaviano degli Ubaldini*. Ed., Guido Levi. Fonti per la storia d'Italia. Regesti secolo XIII. Rome, 1890. Pp. 3-124.
- Idem. *Les registres de Grégoire IX*. 4 vols. Auvray, Lucien [ed.]. Bibliothèque des Écoles Françaises d'Athènes et de Rome, ser. 2, vol. 9. Paris, 1896-1955.
- Honorius III. *Regesta Honorii papae III*. Ed. Pietro Pressutti. Rome: 1888-95.
- Hostiensis. *Summa Aurea*. Venice, 1574. Reprinted: Turin, 1963.
- Idem. *In quinque decretalium librum commentaria [Lectura]*. 5 vols. Venice, 1581.
- Innocent III. *Epistolarium Innocentii III Romani pontificis libri XI* (Paris, 1682). Ed., Étienne Baluze. Reprinted in: Migne, J. P. [ed.]. *Patrologia latina cursus completus*. Vols. 214-7.
- Idem. "Sermo VI in concilio generali Lateranensi habitus." *Patrologia latina cursus completus*. J. P. Migne [ed.]. Vol. 217, col. 678.
- Idem. *Die Register Innocenz' III*. 10 vols. Edd., Othmar Hageneder, et al. Publikationen des Österreichischen Kulturinstituts in Rom, II Abteilung: Quellen, 1. Reihe. Vols. 1-10. Rome, 1964-2007.
- Johannes Andreae. *Joannis Andreae in quinque Decretalium libros Novella Commentaria*. 4 vols. Venice, 1581.
- Johannes de Deo. "Das Principium Decretalium des Johannes de Deo." Ed., H. Kantorowicz. *ZSRG*, kan. Abt. 12 (1922). Pp. 418-44.
- Johannes Teutonicus. *Johannis Teutonici Apparatus glossarum in Compilationem Tertiam*. Vol. 1: Bks. 1-2. Ed. Kenneth Pennington. Monumenta Iuris Canonici, Series A, Vol. 3. Vatican City, 1981.
- Idem. *Johannis Teutonici Apparatus glossarum in Compilationem Tertiam*. Bks. 3-5: <http://faculty.cua.edu/pennington/>.

- Levi, Guido [ed.]. "Documenti ad illustrazione del Registro del Card. Ugolino d'Ostia, legato apostolico in Toscana e Lombardia." *Archivio della Real Società Romana di Sotioria Patria* 12 (1889).
- The Liber Augustalis; or Constitutions of Melfi, promulgated by the Emperor Frederick II for the Kingdom of Sicily in 1231.* Trans., James Powell. Syracuse, N. Y., 1971.
- Liber diurnus ou recueil des formules usitées par la chancellerie pontificale du Ve au XIe siècle.* Ed. Eugène de Rozière. Paris, 1869.
- Löfstedt, Leena [ed.]. *Gratiani Decretum: la traduction en ancien français du Décret de Gratien.* 5 vols. Commentationes Humanarum Litterarum 95, 99, 105, 110, 117. Helsinki, 1992-3, 1996-7, 2001.
- Mans Puigarnau, Jaime M. and Juan E. Rucabado [edd.]. *Decretales de Gregorio IX: Versión medieval española.* 3 vols. Barcelona, 1939-43.
- Mansi, J. D. *Sacrorum conciliorum nova et amplissima collectio.* Vol. 23. Venice, 1779.
- Matthew of Paris. *Chronica Majora.* Ed. Henry Luard. Rolls series, vol. 57, pt. 3. London, 1867. Reprinted: Wiesbaden, 1964.
- Migne, J.-P. *Patrologia cursus completus.* Series Latina. 212 vols. Paris, 1849.
- Pritchard, James [ed.]. *Ancient Near Eastern Texts Relating to the Old Testament.* 3rd ed. Princeton, 1969.
- Pseudo-Isidore. *Decretales pseudo-Isidorianae et capitula Angilramni.* Ed. Paul Hinschius. Leipzig, 1863. Reprinted: Aalen, 1963.
- Raymond of Penyafort. *Summa de iure canonico.* Edd., Xavier Ochoa Sanz and Alfonso Diez. Universa Bibliotheca Iuris. Vol. 1, Pt. A. Rome, 1976.
- Idem. *Summa de matrimonio.* Ed. Xavier Ochoa Sanz and Alfonso Diez. Universa Bibliotheca Iuris. Vol. 1, Pt. C. Rome, 1976.
- Idem. *Summa de paenitentia.* Ed. Xavier Ochoa Sanz and Alfonso Diez. Universa Bibliotheca Iuris. Vol. 1, Pt. B. Rome, 1976.
- Reichert, Benedict Maria [edd.]. *Acta capitulorum generalium ordinis praedicatorum ab anno 1220 usque ad annum 1303.* Monumenta ordinis fratrum praedicatorum historica. Vol. 3, pt. 1. Rome, 1898.

- Idem [edd.]. *Chronica et chronicorum excerpta historiam ordinis praedicatorum illustrantia*. Monumenta ordinis fratrum praedicatorum historica. Vol. 7, pt. 1. Rome, 1904.
- Richard of St. Germain. *Chronica*. Ed., Carlo Garufi. *Rerum Italicarum Scriptores: Raccolta degli Storici Italiani*, vol. 7, pt. 2. Bologna, 1938.
- de Riegger, Joseph Anton [ed.]. *Bernardi Praepositi Papiensis Breviarium extravagantium cum Gregorii IX Papae Decretalium collectione*. Freiburg, 1779.
- Rius Serra, J. [ed.]. *San Raimundo de Penyafort: Diplomatario*. Barcelona, 1954.
- Rudolph I. *Codex epistolaris Rudolphi Romani regis I*. Ed., Francis Bodmann. Leipzig, 1806.
- Schilling, B. and C. F. F. Sintenis [edd.]. *Das Corpus Juris Canonici in seinen wichtigsten und anwendbarsten Theilen ins Deutsche übersetzt und systematisch zusammengestellt*. 2 vols. Leipzig, 1834-7.
- Somerville, Robert and Bruce Brasington [edd. and trans.]. *Prefaces to Canon Law Books in Latin Christianity*. New Haven, 1998.
- Thomas of Capua. *Die Ars Dictandi des Thomas von Capua*. Ed. Emmy Heller. Sitzungsberichte der heidelberger Akademie der Wissenschaften, philosophische-historische Klasse. Vol. 19, Abh. 4. Heidelberg, 1929.
- Tomassetti, A. [ed.]. *Bullarum diplomatum et privilegiorum Sanctorum Romanorum Pontificum Taurinensis editio*. Vol. 3: Lucius III-Clement IV. Turin, 1858.
- Valls-Taberner, F. [ed.]. "El diplomatar de Sant Ramon de Penyafort." *Analecta Sacra Tarraconensia* 5 (1929). Pp. 249-304.

Secondary Sources

- Agustín, Antonio. *De emendatione Gratiani dialogorum, libri duo, cum Stephani Baluzii et Gehrardi Maastrichtii notis*. 2 Vols. Ed. J. A. de Riegger. Venice, 1777.
- Allgemeine Deutsche Biographie*. 56 vols. Leipzig, 1875-1912.
- Alvarez Melcón, B. "El VII Centenario de la publicación de las Decretales de Gregorio IX y los códigos de las mismas en la Bibliotheca escurialense." *Religión y Cultura* 29-30 (1935). Pp. 281-329; 29-47.
- Autrand, Françoise. *Charles V*. Paris, 1994.
- Auvray, Lucien. "Le registre de Grégoire IX de la Bibliothèque municipale de Pérouse."

- Bibliothèque de l'École des Chartes* 70 (1909). Pp. 313-34.
- Bagliani, Agostino Paravicini. “*De fratrum nostrorum consilio: La plenitudo potestatis del Papa ha bisogno di consigli?*” *Consilium: Teorie e pratiche del consigliare nella cultura medievale*. Edd. Carla Casagrande, et al. Micrologus Library 10: Florence, 2004. Pp. 181-94.
- Baier, Hermann. *Päpstliche Provisionen für niedere Pfründen bis zum Jahre 1304*. Vorreformationsgeschichtliche Forschungen 7. Münster, 1911.
- Barraclough, Geoffrey. *Papal Provisions: Aspects of Church History, Constitutional, Legal and Administrative in the Later Middle Ages*. Oxford, 1935.
- Baucells Serra, R. “La personalidad y obra jurídica de San Raimundo de Peñafort.” *Revista Española de Derecho Canonico* 1 (1946). Pp. 7-47.
- Bertram, Martin. www.dhi-roma.it (Shelf marks of 685 *Decretals* manuscripts arranged according to country and library of current location).
- Idem. “Die Extravaganten Gregors IX. und Innocenz' IV. (1234-1254).” *ZRG*, kan. Abt. 102 (2006). Pp. 1-44.
- Idem. “Johannes de Ancona: Ein Jurist des 13. Jahrhunderts in den Kreuzfahrerstaaten.” *Bulletin of Medieval Canon Law* 7 (1977). Pp. 49-64.
- Idem. “Der Dekretalenapparat des Goffredus Tranensis.” *Bulletin of Medieval Canon Law* 1 (1971). Pp. 79-83.
- Idem. “Some additions to the ‘Repertorium der Kanonistik’.” *Bulletin of Medieval Canon Law* 4 (1974).
- Idem. “Die Dekretalen Gregors IX: Kompilation oder Kodifikation?” *Magister Raimundus: Atti del Convegno per il IV Centenario della Canonizzazione di San Raimondo de Penyafort, (1601-2001)*. Ed. Carlo Longo. Institutum historicum fratrum praedicatorum: Dissertationes historicae. Vol. 28. Rome, 2002. Pp. 61-86.
- Idem. “Zwei vorläufige Textstufte.” In: *Juristische Buchproduktion im Mittelalter*. Ed. Vincenzo Colli. Frankfurt am Main, 2002. Pp. 431-79.
- Binkley, Peter. “*Tractatus novarum decretalium: Verses on the Liber Extra.*” In: *Media Latinatis: A Collection of Essays to Mark the Occasion of the Retirement of L. J Engels*. Ed. R. I. A. Nip et al. Turnhout, 1996. Pp. 187-91.
- Blumenthal, Uta-Renate. *The Investiture Controversy: Church and Monarchy from the Ninth to the Twelfth Century*. Philadelphia, 1988.

- Bock, Friedrich. "Päpstliche Sekretregister und Kammerregister." *Archivalische Zeitschrift* 59 (1963). Pp. 30-58.
- Idem. "Kodifizierung und Registrierung in der spätmittelalterlichen kurialen Verwaltung." *AZ* 56 (1960). Pp. 11-75.
- Idem. "Studien zu den Register Innocenz' IV." *AZ* 52 (1956). Pp. 11-48.
- Idem. "Studien zu den Originalregistern Innocenz' III (Reg. Vat. 4-7A)." *AZ* 50-1 (1955). Pp. 329-64.
- Boczek, A. *Codex diplomaticus et epistolaris Moraviae*. Vol. 2. Olmütz, 1836.
- Boese, Helmut. "Über die kleine Sammlung Gregorianischer Dekretalen des Raymundus de Penyafort O. P." *Archivum Fratrum Praedicatorum* 42 (1972). Pp. 69-80.
- Boyle, Leonard. "The *Compilatio quinta* and the Registers of Honorius III." *Bulletin of Medieval Canon Law* 8 (1978). Pp. 9-19. Reprinted in: *Pastoral Care, Clerical Education and Canon Law, 1200-1400*. Variorum Collected Studies Series 135. London, 1981. XI.
- Idem. *A Survey of the Vatican Archives and of its Medieval Holdings*. Rev. ed. Toronto, 2001.
- Brundage, James. *Medieval Canon Law*. London, 1995.
- Idem. *Law, Sex, and Society in Medieval Europe*. Chicago, 1987.
- Burkhart, Peter. "Die Dekretalenhandschrift Vat. Pal. lat. 629 und die Bologneser Buchmalerei am Ende des XIII. Jahrhunderts." In: *Palatina-Studien: Miscellanea Bibliothecae Apostolicae Vaticanae V*. Ed. W. Berschin. Studi e Testi 365. Vatican City, 1997. Pp. 33-59.
- Bresslau, Harry. *Handbuch der Urkundenlehre für Deutschland und Italien*. Vol. 2. 2nd ed. Leipzig, 1912.
- Cheney, Christopher R. *The Study of the Medieval Papal Chancery*. Glasgow, 1966.
- Idem. "Three decretal collections before *Compilatio IV*: Pragensis, Palatina I, and Abrincensis." *Traditio* 15 (1959). Pp. 464-83.
- Idem and Mary G. Cheney [edd.]. *Studies in the Collections of Twelfth-Century Decretals: from the Papers of the late Walther Holtzmann*. Monumenta Iuris Canonici, Series B: Corpus Collectionum. Vol. 3. Vatican City, 1979.

- Chodorow, Stanley. *Christian Political Theory and Church Politics in the Mid-twelfth Century; the Ecclesiology of Gratian's Decretum*. Publications of the Center of Medieval and Renaissance Studies 5. Berkeley, 1972.
- Clanchy, Michael. T. *From Memory to Written Record: England 1066-1307*. Cambridge, MA: 1979.
- Clarke, Peter. "The Collection of Gilbertus and the French glosses in Brussels." *ZSRG*, kan. Abt. 86 (2000). Pp. 132-45.
- Cohen, Jeremy. *The Friars and the Jews*. Ithaca, 1979.
- Coll, José M. "San Raimundo de Peñafort y las Misiones del Norte africano en la Edad Media." *Missionalia Hispánica* 14 (1948). Pp. 26-42.
- Congar, Yves M.-J. "Der Platz des Papstums in der Kirchenfrömmigkeit der Reformer des 11. Jahrhunderts." In: *Sentire Ecclesiam: Festschrift Hugo Rahner*. Edd., Jean Daniélou and Herbert Vorgrimler. Freiburg, 1961. Pp. 196-217.
- Constable, Giles. *The Reformation of the Twelfth Century*. Cambridge, 1996.
- Cottineau, Laurent-Henri. *Répertoire topo-bibliographique des abbayes et prieurés*. 2 vols. Mâcon, 1939.
- Cujas, Jacques. *Recitationes ad decretalium Greg. IX libros II., III., IV.* Frankfurt, 1594.
- Dannenberg, Lars-Arne. *Das Recht der Religiosen in der Kanonistik des 12. und 13. Jahrhunderts*. Vita regularis: Ordnungen und Deutungen religiösen Lebens im Mittelalter 39. Berlin, 2008.
- D'Avray, D. L. *The Preaching of the Friars : Sermons Diffused from Paris before 1300*. Oxford, 1985.
- Denifle, Heinrich. "Die päpstlichen Registerbände des 13. Jhs. und das Inventar derselben vom J. 1339." *Archiv für Litteratur- und Kirchengeschichte des Mittelalters*. Vol. 2. Berlin, 1886. Pp. 1-105.
- Idem and Gregor Palmieri. *Specimina paleographica ex Vaticani tabularii Romanorum Pontificum registris selecta*. Rome, 1888.
- Dietterle, Johannes. "Die Summa confessorum (dive de casibus conscientiae)." *Zeitschrift für Kirchengeschichte* 24-7 (1903-6). Pp. 353-74/520-48; 248-72; 59-81/350-62; 70-83/166-187.
- Dondorp, Harry. "Review of Papal Rescripts in the Canonists' Teaching." *ZRG kan.* Abt. 76-7 (1990-1). Pp. 172-253; 32-110.

- Dossat, Yves. *Les Crises de l'Inquisition toulousaine au XIIIe siècle, 1233-1273*. Bordeaux, 1959.
- Douai, C. "Saint Raymond de Pennafort et les hérétiques." *Le Moyen Âge* 12 (1899). Pp. 305-25.
- Duggan, Charles. *Twelfth-Century Decretal Collections and their Importance in English History*. University of London Historical Studies. Vol. 12. London, 1963.
- Errara, A. "Il *Directorium* inquisitoriale di san Raimondo." *Magister Raimundus: Atti del Convegno per il IV Centenario della Canonizzazione di San Raimondo de Penyafort, (1601-2001)*. Ed. Carlo Longo. Institutum historicum fratrum praedicatorum: Dissertationes historicae. Vol. 28. Rome, 2002. Pp. 165-92.
- Eubel, Conrad. *Hierarchia Catholica Medii Aevi sive summorum pontificum, S. R. E. cardinalium, ecclesiarum antistitum series*. Vol. 1. Münster, 1913.
- Evans, G. R. "Suppletio." *Archivum Latinitatis Medii Aevi* 42 (1979/80) pp. 73-8.
- Feenstra, Robert. *Droit romain au moyen âge (1100-1500)*. Introduction bibliographique à l'histoire du droit et à l'ethnologie juridique. Vol 10. Brussels, 1979.
- Fischer, Hans. *Katalog der Handschriften der königlichen Bibliothek zu Bamberg*. Vol. 1. Bamberg, 1903.
- Fliche, Augustin, Christine Thouzellier and Yvonne Azais. *La Chrétienté romaine, 1198-1274. Histoire de L'Église depuis les origines jusqu'à nos jours*. Edd. A. Fliche and V. Martin. Vol. 10. Paris, 1950.
- Florent, François. *Praefatio de Methodo et auctoritate collectionis Gratiani, et reliquarum Collectionum Decretalium post Gratianum*. In: *Opera Juridica*. Vol. 1. Paris, 1679.
- Flores Selles, Candido. *Epistolario de Antonio Agustín*. Acta Salmanticensia: Filosofía y letras. Vol. 115. Salamanca, 1980.
- Fournier, Edouard. "L'accueil fait par la France du XIIIe siècle aux Décrétales pontificales: Leur traduction en langue vulgaire." In: *Acta Congressus iuridicus internationalis VII saeculo a decretalibus Gregorii IX et XIV a codice iustiniano promulgatis, Romae 12-17 Novembris 1934*. Vol. 3. Rome, 1934. Pp. 247-67.
- Fransen, Gérard. "Les diverses formes de la *Compilatio prima*." *Scrinium Lovanensis: Mélanges historiques Etienne van Cauwenbergh*. Recueil de travaux d'histoire et de philologie. Vol. 24. Louvain, 1961.

- Idem. "La tradition manuscrite de la *Compilatio prima*." In: *Proceedings of the Second International Congress of Medieval Canon Law, Boston College, 12-16 August 1963*. Monumenta iuris canonici, Series C, subsidia. Vol. 1. Vatican City, 1965. Pp. 55-62.
- Idem. *Les décrétales et les collections de décrétales*. Typologie des Sources du Moyen Âge occidental. Vol. 2. Turnhout, 1972.
- Friedberg, Emil. *Ueber meine neue Ausgabe der Decretalen-Sammlungen und der Quinque Compilationes Antiquae*. Leipzig, 1882.
- Idem. *Ueber meine neue Ausgabe der Quinque Compilationes Antiquae: Eroerterungen ueber die Entstehungszeit des Decretum Gratiani*. Leipzig, 1882.
- Fuhrmann, Horst. *Einfluss und Verbreitung der pseudoisidorischen Fälschungen*. 3 vols. Schriften der Monumenta Germaniae Historica 24. Stuttgart, 1973-4.
- Gallagher, Clarence. *Canon Law and the Christian Community*. Analecta Gregoriana 208, Series Facultatis Iuris Canonici, sec. 8, no. 8. Rome, 1978.
- Galmes Mas, L. "Biobibliografía de san Ramón de Penyafort." In: *Magister Raimundus: Atti del Convegno per il IV Centenario della Canonizzazione di San Raimondo de Penyafort, (1601-2001)*. Ed. Carlo Longo. Institutum historicum fratrum praedicatorum: Dissertationes historicae. Vol. 28. Rome, 2002. Pp. 11-34.
- García y García, Antonio. "Valor y proyección histórica de la obra jurídica de San Raimundo de Peñafort." *Revista Española de Derecho Canonico* 18 (1962). Pp. 233-52.
- Idem. "Canonística Hispana." *Traditio* 22 (1966). Pp. 466-8.
- Idem. "La Canonística Ibérica (1150-1250) en la investigación reciente." *Bulletin of Medieval Canon Law* 11 (1981). Pp. 63-7.
- Idem. "Un complemento a las sumas de penitencia y de matrimonio de San Raimundo de Peñafort." In: *Grundlagen des Rechts: Festschrift für Peter Landau zum 65. Geburtstag*. Ed. Richard Helmholz, et al. Rechts- und Staatswissenschaftliche Veröffentlichungen des Görres-Gesellschaft. Vol. 91. Paderborn, 2000. Pp. 535-47.
- Gesamtkatalog der Wiegendrucke*. Vol. 10. Stuttgart, 2000.
- Gibbs, Robert. "The development of the illustration of legal manuscripts." In: *Juristische Buchproduktion im Mittelalter*, ed. Vincenzo Colli. Studien zur Europäischen Rechtsgeschichte 155. Frankfurt am Main, 2002. Pp. 173-218.

- Idem and Susan L'Engle, edd. *Illuminating the Law: Legal Manuscripts in Cambridge Collections*. London, 2001.
- Gilchrist, John. "The reception of Pope Gregory VII into the canon law (1073-1141)." *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 90, 97, *Kanonische Abteilung* 59, 66 (1973, 1980). Pp. 35-82; 129-229.
- Idem. *The Church and Economic Activity in the Middle Ages*. New York, 1969.
- Gillmann, F. "Johannes von Phintona, ein vergessener Kanonist des 13. Jahrhunderts." *Archiv für katholisches Kirchenrecht* 116 (1936). Pp. 446-84.
- Idem. "Petrus Brito und Martinus Zamorensis Glossatoren der Compilatio I." *Archiv für katholisches Kirchenrecht* 120 (1940). Pp. 60-4.
- Gimenez y Martínez de Carvajal, J. "El Decreto y las Decretales fuentes de la primera Partida de Alfonso el Sabio." *Anthologica Annua* 2 (1954). Pp. 239-48.
- Idem. "San Raimundo de Peñafort y las Partidas de Alfonso X el Sabio." *Anthologica Annua* 3 (1955). Pp. 39-58.
- Giry, Arthur. *Manuel de diplomatique*. Paris, 1894.
- Göller, Emil. *Die päpstliche Pönitentiarie von ihrem Ursprung bis zu ihrer Umgestaltung unter Pius V.* 2 vols. Rome, 1907-11
- Gómez, E. "Un comentario inédito a las Decretales de san Raimundo de Peñafort." *Boletín Eclesiástico de Manila* 13 (1935). Pp. 21-6.
- Grundmann, Herbert. *Religious Movements in the Middle Ages*. Trans. Steven Rowan. Notre Dame, 1995.
- Hageneder, Othmar. "Papstregister und Dekretalenrecht." In: *Recht und Schrift im Mittelalter*. Ed. Peter Classen. Vorträge und Forschungen 23. Sigmaringen, 1977. Pp. 319-47.
- Idem. "Die äusseren Merkmale der Originalregister Innocenz' III." *Mitteilungen des Instituts für Österreichische Geschichtsforschung* 65 (1957). Pp. 296-339.
- Hain, Ludwig. *Repertorium Bibliographicum*. 2 vols. Leipzig, 1891.
- Hanenburg, Jacob. "Decretals and Decretal Collections in the Second Half of the XIIth century." *Tijdschrift voor Rechtsgeschiedenis* 34 (1966). Pp. 522-99.
- Hartmann, Wilfried and Kenneth Pennington, edd. *The History of Medieval Canon Law*

- in the Classical Period, 1140-1234*. Washington, D. C., 2008.
- von Heckel, R. "Die Dekretalensammlungen des Gilbertus und Alanus nach den Weingartner Handschriften." *ZRG*, kan. Abt. 29 (1940). Pp. 116-357.
- Hefele, C.-H., and H. Leclercq. *Histoire des consiles d'après les documents originaux*. Vol. 5, pt. 2. Paris, 1913.
- Helmholz, Richard. *The Spirit of Classical Canon Law*. Atlanta, 2010.
- Idem. *Marriage Litigation in Medieval England*. Cambridge Studies in English Legal History. Cambridge, 1974.
- Herde, Peter. *Beiträge zum päpstlichen Kanzlei und Urkundenwesen im 13. Jahrhundert*. Kallmünz, 1961.
- Idem. *Audientia litterarum contradictarum*. 2 vols. Bibliothek des Deutschen Historischen Instituts in Rom, vols. 31-2. Tübingen, 1970.
- William Hinnebusch. *The History of the Dominican Order*. 2 vols. New York: 1986.
- Hodel, B. "La canonisation de Saint Raymond." In: *Magister Raimundus: Atti del Convegno per il IV Centenario della Canonizzazione di San Raimondo de Penyafort, (1601-2001)*. Ed. Carlo Longo. Institutum historicum fratrum praedicatorum: Dissertationes historicae. Vol. 28. Rome, 2002. Pp. 51-60.
- Hoffmann, Hartmut. *Gottesfriede und Treuga Dei*. Schriften der Monumenta Germaniae Historica 20. Stuttgart, 1964.
- Holder-Egger, O. [ed.] *Cronica Reinhardbrunensis*. MGH, *Scriptores* 30. Hanover, 1896.
- Holtzmann, Walter. "Kanonistische Ergänzungen zur Italia Pontificia," *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 37-8 (1957-8). Pp. 55-102; 67-175.
- Horwitz, Steven. "Reshaping a decretal chapter: *Tua nobis* and the canonists." In: *Law, Church and Society: Essays in Honor of Stephan Kuttner*. Edd. Kenneth Pennington and Robert Somerville. Philadelphia, 1977. Pp. 207-21.
- Idem. "Magistri and magisterium: Saint Raymond of Peñafort and the Gregoriana." *Escritos del Vedat* 7 (1977). Pp. 209-38.
- Hove, A. van. *Commentarium Lovaniensis in Codicem Iuris Canonici*. Vol. 1: *Prolegomena*. Rome, 1932.

- Idem. "De Decretalium Gregorii IX origine historica, utilitate et momento." *Ius Pontificium* 14 (1934). Pp. 102-20.
- Jasper, Detlev. *Das Papstwahldekret von 1059*. Beiträge zur Geschichte und Quellenurkunde des Mittelalters. Vol. 12. Sigmaringen, 1986.
- Jelicic, Vitorimus. "De mente Gregorii IX adornanda Collectione Decretalium." In *Congressus iuridicus internationalis VII saeculo a decretalibus Gregorii IX et XIV a codice iustiniano promulgatis, Romae 12-17 Novembris 1934*. Vol. 3. Rome, 1934. Pp. 1-20.
- Kehr, Paul et al. *Regesta Romanorum Pontificum. Italia Pontificia*. 9 vols. Berlin, 1906-62.
- Kempf, Friedrich. "Zu den Originalregistern Innocenz' III: eine kritische Auseinandersetzung mit Friedrich Bock." *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 36 (1956). Pp. 86-135.
- Idem. *Regestum Innocentii III papae super negotio Romani Imperii*. Miscellanea historiae pontificiae 12. Collectio 21. Rome, 1947.
- Idem. *Die Register Innocenz III; eine paläographisch-diplomatische Untersuchung*. Miscellanea historiae pontificiae 9. Collectionis 18. Rome, 1945.
- Kurtschied, Bertrand. "De VII codificationis Gregorianae centenario." *Apollinaris* 7 (1934). Pp. 187-92.
- Kurtschied, Bertrand and Felix Antonius Wilches. *Historia Iuris Canonici*. Vol. 1: *Historia fontium et scientiae iuris canonici ad usum scholarium*. Rome, 1943.
- Kurze, D. "Anfänge der Inquisition in Deutschland." In: *Die Anfänge der Inquisition*. Ed. Peter Segl. Bayreuther Historische Kolloquien 7. Cologne, 1993.
- Kuttner, Stephan. "Raymond of Penyafort as editor: The 'decretales' and 'constitutiones' of Gregory IX." *Bulletin of Medieval Canon Law* 12 (1982). Pp. 65-80. Reprinted in: *Studies in the History of Medieval Canon Law*. Variorum collected studies series. CS 325. Aldershot, 1990. XII.
- Idem. "The Revival of Jurisprudence." In: *Renaissance and Renewal in the Twelfth Century*. Edd. Robert L. Benson and Giles Constable. Cambridge, MA, 1982. Pp. 299-323.
- Idem. "Notes on the *Glossa Ordinaria* of Bernard of Parma." *BMCL* 11 (1981). Pp. 86-93. Reprinted in: Idem. *Studies in the History of Medieval Canon Law*. Variorum Collected Studies Series CS 325. Aldershot, 1990. XIV.

- Idem. "Antonio Agustín's edition of the *Compilationes antiquae*." *Bulletin of Medieval Canon Law* 7 (1977). Pp. 1-14.
- Idem. "A Collection of Decretal Letters of Innocent III in Bamberg." *Medievalia et Humanistica*, new series 1 (1970). Pp. 41-56. Reprinted in: *Medieval Councils, Decretals and Collections of Canon Law*. Variorum Collected Studies Series. CS 126. London, 1980. VIII.
- Idem. "Notes: Antonio Augustín and the Correctores." *Traditio* 24 (1968). P. 505.
- Idem. "Rénier de Pompose ou Rainerius Pomposanus ou de Pomposa." In: *Dictionnaire de droit canonique* 7. Paris, 1965. Pp. 83-4.
- Idem. "Some Emendations to Friedberg's Edition of the *Decretals*." *Traditio* 22 (1966). Pp. 480-2.
- Idem. "Johannes Andreae and his novella on the Decretals." *The Jurist* (1964). Pp. 393-408. Reprinted as "Johannes Andreae." In: Idem. *Studies in the History of Medieval Canon Law*. Variorum collected studies series. CS 325. Aldershot, 1990. XVI.
- Idem. *Harmony from Dissonance : An Interpretation of Medieval Canon Law*. Wimmer Lecture 10. Latrobe, PA, 1960. Reprinted in: *The History of Ideas and Doctrines in The Middle Ages*. Variorum Reprint CS 113. London, 1980.
- Idem. "The Collection of Alanus: A Concordance of its two Recensions." *Rivista di storia del diritto italiano* 26 (1953). Pp. 37-53.
- Idem. "Zur Entstehungsgeschichte der Summa de casibus poenitentiae des hl. Raymond von Penyafort." *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, kan. Abt. 39 (1953). Pp. 419-34. Reprinted in: *Studies in the History of Medieval Canon Law*. Variorum collected studies series. CS 325. Aldershot, 1990. XI.
- Idem. "The Barcelona edition of St. Raymond's first treatise of canon law." *Seminar* 8 (1950). Pp. 52-67. Reprinted in: Idem. *Studies in the History of Medieval Canon Law*. Variorum collected studies series. CS325. Aldershot, 1990. X.
- Idem. "Notes on a Projected History of Twelfth-century Decretal Letters." *Traditio* 6 (1948). Pp. 345-51.
- Idem. "Johannes Teutonicus, das vierte Laterankonzil und die Compilatio quarta." *Miscellanea Giovanni Mercati* V. Studi e Testi 125. Vatican City, 1946. Pp. 608-34.
- Idem. "Bernardus Compostellanus Antiquus: a Study in the Glossators of the Canon Law." *Traditio* 1 (1943). Pp. 277-340. Reprinted (with *retractiones*): idem,

- Gratian and the Schools of Law*. Variorum Collected Studies, CS 185. London, 1983.
- Idem. *Repertorium der Kanonistik (1140-1234): Prodromus corporis glossarum*. Studi e testi. Vol. 71. Vatican City, 1937. Reprinted: Rome, 1972.
- Idem. "On 'Auctoritas' in the Writing of Medieval Canonists: the Vocabulary of Gratian." In: *La notion d'autorité au Moyen Age: Islam, Byzance, Occident*. Paris, 1982. Pp. 69-80. Ed. George Makdisi, et al. Reprinted in: *Studies in the History of Medieval Canon Law*. Variorum Collected Studies Series. CS 325. Aldershot, 1990. VII.
- Idem. "Papst Honorius III und das Studium des Zivilrechts." *Festschrift für Martin Wolff*, ed. E. von Caemmerer, et al. Tübingen, 1952. Pp. 79-101. Reprinted in: Idem, *Gratian and the Schools of Law, 1140-1234*. Variorum Collected Studies Series CS185: London, 1983. X.
- Idem. "Quelques observations sur l'autorité des collections canoniques dans le droit classique de l'Église." In: *Actes du Congrès de droit canonique, Paris 22-26 Avril 1947* (Paris, 1950). Pp. 305-12. Reprinted in: *Medieval Councils, Decretals and Collections of Canon Law*. Variorum Collected Studies Series. CS 126. London, 1980. X.
- Idem and Eleanor Rathbone. "Anglo-Norman canonists of the twelfth century." *Traditio* 7 (1949-51). Pp. 279-358. Reprinted in: Kuttner, Stephan. *Gratian and the Schools of Law*. Variorum Collected Studies, CS185: London, 1983. VIII.
- Idem and Beryl Smalley. "The 'Glossa ordinaria' to the Gregorian decretals." *The English Historical Review* 60 (1945). Pp. 97-105. Reprinted in: Kuttner, Stephan. *Studies in the History of Medieval Canon Law*. Variorum Collected Studies Series. CS 325. Aldershot, 1990. XIII.
- Landau, Peter. "Rechtsfortbildung im Dekretalenrecht." *ZRG kan. Abt.* 86 (2000). Pp. 86-131.
- Idem. "Methoden des kanonischen Rechts in der frühen Neuzeit zwischen Humanismus und Naturrecht." In: *Juristische Methodenlehre zwischen Humanismus und Naturrecht, Beiträge zu einem Symposium vom 19-22 November 1997 Centro Stefano Franscini Monte Verità/Ascona*. Ed. Claudieter Schott. *Zeitschrift für Neuere Rechtsgeschichte*, Sonderdruck 22 (1999). Pp. 7-28.
- Idem. "Officium und Libertas christiana." *Sitzungsberichte der Bayerische Akademie der Wissenschaften, philisophische-historische Klasse* 3 (1991). Pp. 41-53.
- Idem. "Das Dekret des Ivo von Chartres." *ZRG, kan. Abt.* 70 (1984) pp. 1-44.

- Idem. "Die Entstehung der systematischen Dekretalensammlungen und die europäische Kanonistik des 12. Jahrhunderts." *ZSRG* 96, kan. Abt. 65 (1979). Pp. 120-48.
- Landini, Lawrence. *The Causes of the Clericalization of the Franciscan Order*. Chicago, 1968.
- Lanhers, Yvonne *et al.* *Tables des Registres de Clément V publiés par les Bénédictins*. Bibliothèque des Écoles françaises d'Athènes et de Rome. 3e série. Paris, 1957.
- Laurin, Franz. *Introductio in Corpus Iuris Canonici*. Freiburg, 1889.
- Lawrence, C. H. *The Friars*. London, 1994.
- Le Bras, Gabriel, Charles Lefebvre and Jacqueline Rambaud. *L'age classique, 1140-1378: Sources et theorie du droit*. Histoire du droit et des institutions de l'Eglise en Occident. Vol. 7. Paris, 1965.
- Lea, Henry Charles. *A History of the Inquisition in the Middle Ages*. Vol. 1. New York, 1888. Reprinted: 1958.
- Le Goff, Jacques. *Your Money or Your Life: Economy and Religion in the Middle Ages*. Trans. Patricia Ranum. New York, 1990.
- Leicht, P. S. "L'Invio delle decretali di Gregorio IX all'università di Bologna." *Atti e Memorie Romagna* 25 (1934-5). Pp. 1-8.
- Linehan, Peter. *The Spanish Church and the Papacy in the Thirteenth Century*. Cambridge, 1971.
- L'Engle, Susan. "Trends in Bolognese legal illustration." In: *Juristische Buchproduktion im Mittelalter*, ed. Vincenzo Colli. Studien zur Europäischen Rechtsgeschichte 155. Frankfurt am Main, 2002. Pp. 219-44.
- Little, Lester. *Benedictine Maledictions: Liturgical Cursing in Romanesque France*. Ithaca, NY, 1993.
- Longo, Carlo. "Biobibliografía de san Ramón de Penyafort." In: *Magister Raimundus: Atti del Convegno per il IV Centenario della Canonizzazione di San Raimondo de Penyafort, (1601-2001)*. Ed. Carlo Longo. Institutum historicum fratrum praedicatorum: Dissertationes historicae. Vol. 28. Rome, 2002. Pp. 35-50.
- Lopez Ortiz, J. "Aportacion de San Raimundo de Penafort al libro de las Decretales." In *Instituto de Espana, Sesión de apertura del curso academico 1975-6*. Madrid, 1976. Pp. 1-27.
- Luño Peña, Enrique. *El pensamiento jurídico de san Raymundo de Peñafort*. Zaragoza,

- 1945.
- Idem. "El pensamiento jurídico de san Raymundo de Peñafort." *Universidad de Zaragoza* 22 (1945). Pp. 51-70.
- Maasen, Friedrich. *Die Geschichte der Quellen und der Literatur des canonischen Rechts im Abendlande bis zum Ausgange des Mittelalters*. Graz, 1870. Reprinted: 1956.
- Makowski, Elizabeth. *Canon Law and Cloistered Women: Periculoso and its Commentators, 1298-1545*. Studies in Medieval and Early Modern Canon Law 7: Washington, D.C., 1997.
- Maleczek, Werner. *Papst und Kardinalskolleg von 1191 bis 1216*. Publikationen des historischen Instituts beim österreichischen Kulturinstitut in Rom. Edd. Otto Kresten and Adam Wandruszka. 1. Abteilung: Abhandlungen. Vol. 6. Vienna, 1984.
- Mandonnet, Pierre. "La carrière scolaire de saint Raymond de Peñafort." *Analecta Sacri Ordinis Fratrum Praedicatorum* 14 (1920). Pp. 278-310.
- Mas i Solench, Josep Maria. "Las *Decretales* en el derecho catalan." In: *Magister Raimundus: Atti del Convegno per il IV Centenario della Canonizzazione di San Raimondo de Penyafort, (1601-2001)*. Ed. Carlo Longo. Institutum historicum fratrum praedicatorum: Dissertationes historicae. Vol. 28. Rome, 2002. Pp. 193-204.
- Meduna, Brigitte. *Studien zum Formular der päpstlichen Justizbriefe von Alexander III. bis Innocenz III. (1159-1216): Die non-obstantibus Formel*. Sitzungsberichte der kaiserlichen Akademie der Wissenschaften in Wien, philosophisch-historische Klasse 436. Vienna, 1989.
- Melnikas, Anthony. *The Corpus of the Miniatures in the Manuscripts of Decretum Gratiani*. 3 vols. Studia Gratiana 16-18. Rome, 1975.
- Michaud-Quentin, Pierre. *Sommes de casuistique et manuels de confession au Moyen Âge*. Analecta Medievalis Namurcensia 13. Louvain, 1962.
- Idem. "Remarques sur l'oeuvre législative de Grégoire IX." In: *Études d'histoire de droit canonique dédiées à Gabriel Le Bras*. Paris, 1965. Pp. 263-81.
- Idem. *Universitas: expressions du mouvement communautaire dans le Moyen-Âge latin*. L'Église et l'État au Moyen Âge 13. Paris, 1970.
- Minucci, O. "Istituti di diritto processuale nella Summa de poenitentia et matrimonio di

- san Raimondo di Penyaafort.” In: *Magister Raimundus: Atti del Convegno per il IV Centenario della Canonizzazione di San Raimondo de Penyaafort, (1601-2001)*. Ed. Carlo Longo. Institutum historicum fratrum praedicatorum: Dissertationes historicae. Vol. 28. Rome, 2002. Pp. 35-50.
- Moore, Robert Ian. *The Origins of European Dissent*. Medieval Academy Reprints for Teaching 30. Toronto, 1994.
- Mühlmann, S. “Luther und das *Corpus Iuris Canonici* bis zum Jahre 1530: Ein erforschungsgeschichtlicher Überblick.” *ZRG*, kan. Abt. 58 (1972). Pp. 235-305.
- Mueller, Wolfgang. *Huguccio: the Life, Works, and Thought of a Twelfth-Century Jurist* Studies in Medieval and Early Modern Canon Law 3. Washington, D. C., 1994.
- Naz, Raoul, et al. *Dictionnaire de droit canonique*. 7 vols. Paris, 1935-65.
- Nörr, K. W. “Päpstliche Dekretalen und römisch-kanonischer Zivilprozess.” In: *Studien zur Europäischen Rechtsgeschichte*. Ed. W. Wilhelm. Munich, 1975. Pp. 53-65.
- Ochoa Sanz, Javier. *Vincentius Hispanus: Canonista boloñes del siglo XIII*. Cuadernos de Instituto Jurídico Español 13. Rome/Madrid, 1960.
- Oesterle, G. “*Summa iuris S. Raymundi de Penyaafort*.” *Revista Española de Derecho Canónico* 2 (1947). Pp. 665-70.
- Otis, Leah Lydia. *Prostitution in Medieval Society: The History of an Urban Institution in Languedoc*. Chicago, 1985.
- Pacaut, Marcel. *L'Ordre de Cluny, 909-1789*. Paris, 1986.
- Paravicini Bagliani, Agostino. “La mobilità della corte papale nel secolo XIII.” In: *Itineranza Pontificia: La Mobilità della Curia papale nel Lazio (Secoli XII-XIII)*. Ed. Sandro Carocci. Nuovi Studi Storici 61: Rome, 2003).
- Patschovsky, Alexander. “Zur Ketzerverfolgung Konrads von Marburg.” *Deutsches Archiv für Erforschung des Mittelalters* 37 (1981). Pp. 641-93.
- Pavón Ramírez, Marta. “Estudio de unas Decretales encargadas por Tristán de Salazar, arzobispo de Sens, y copiadas por el italiano Francisco Florio conservadas en la Biblioteca Apóstolica Vaticana.” In: *Roma Magistra Mundi: Itineraria Culturae Medievalis. Parvi flores. Mélanges offerts au Père L. E. Boyle à l'occasion de son 75e anniversaire*. ed. Jacqueline Hamesse (Louvain-la-Neuve, 1998). Pp. 273-84.
- Peitz, Wilhelm. *Regestum domini Innocentii tertii papae super negotio Romani imperii (Reg. Vat. 6) riprodotto in fototipia a cura della Biblioteca apostolica Vaticana*. Codices e Vaticanis selecti 16. Rome, 1927.

- Pellegrino, Piero. "La editio legis e la publica promulgatio nelle Decretali di Gregorio IX." *Ius Canonicum* 22 (1982). Pp. 285-342.
- Idem. "Osservazioni a proposito di una questione disputata sulla promulgazione della legge nelle Decretali di Gregorio IX." In: *Diritto, persona e vita sociale: Scritti in memoria di Orio Giacchi*. Vol. 1. Milan, 1984. Pp. 137-53.
- Pennington, Kenneth. "Bio-bibliographical Guide to Canonists, 1140-1500": <http://faculty.cua.edu/Pennington>.
- Idem. *Johannis Teutonici Apparatus*, online edition of Bk. 3.1-22: <http://faculty.cua.edu/pennington/edit301.htm>.
- Idem. "Gregory IX, Emperor Frederick II, and the Constitutions of Melfi." In: *Popes, Teachers, and Canon Law in the Middle Ages*. Edd. James Sweeney and Stanley Chodorow. Ithaca, 1989. Pp. 53-61.
- Idem. "The Legal Education of Pope Innocent III." *Bulletin of Medieval Canon Law* 4 (1974). Pp. 70-7.
- Idem. "Summae on Raymond de Pennafort's 'Summa de casibus' in the Bayerische Staatsbibliothek, Munich." *Traditio* 27 (1971). Pp. 471-80. Reprinted in: *Popes, Canonists and Texts (1150-1550)*. Variorum Collected Studies Series, CS 412. Aldershot, 1993. XV.
- Idem. *Johannis Teutonici Apparatus glossarum in Compilationem tertiam*. Monumenta Iuris Canonici, Series A: Corpus Glossatorum. Vol. 3. Vatican City, 1981.
- Idem. "Extravagantes in the Gregoriana." *Bulletin of Medieval Canon Law* 5 (1975). Pp. 69-71.
- Idem. "The Making of a decretal collection: The genesis of *Compilatio tertia*," *Proceedings of the Fifth International Congress of Medieval Canon Law, Salamanca, 1976*. Monumenta Iuris Canonici, Series C, Subsidia 6: Vatican City 1980. Pp. 67-92. Reprinted in: Idem. *Popes Canonists and Texts, 1150-1550*. Variorum Collected Studies Series, CS 412. London, 1993.
- Idem. "An earlier version of Hostiensis' *Lectura* on the *Decretals*." *Bulletin of Medieval Canon Law* 17 (1987). Pp. 77-90. Reprinted in: Idem. *Popes, Canonists and Texts (1150-1550)*. Variorum Collected Studies Series, CS 412. Aldershot, 1993. XVII.
- Idem. "Henricus de Segusio (Hostiensis)." *Popes, Canonists and Texts (1150-1550)*. Variorum Collected Studies Series, CS 412. Aldershot, 1993. XI. Pp. 1-12.

- Idem. "Johannes Andreae's *Additiones* to the Decretals of Gregory IX." *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, kan. Abt. 74 (1988). Pp. 328-47. Reprinted in: Idem. *Popes, Canonists and Texts (1150-1550)*. Variorum Collected Studies Series, CS 412. Aldershot, 1993. XIX.
- Idem. "Pope Innocent III's views on Church and State: a gloss to *Per venerabilem*," in: *Law, Church and Society: Essays in Honor of Stephan Kuttner*. Edd. Idem and Robert Somerville. Philadelphia, 1977. Pp. 1-25. Reprinted in: Idem. *Popes, Canonists and Texts (1150-1550)*. Variorum Collected Studies Series, CS 412. Aldershot, 1993. IV.
- Idem. "The French recension of *Compilatio tertia*." *Bulletin of Medieval Canon Law* 5 (1975). Pp. 53-71. Reprinted in: Idem. *Popes, Canonists and Texts (1150-1550)*. Variorum Collected Studies Series, CS 412. Aldershot, 1993. IX.
- Pennotus, Gabriel. *Generalis totius sacri ordinis clericorum canicorum historia tripartita*. Rome, 1624.
- Pérez de Heredia y Valle, I. "La *Summa de matrimonio* de san Raimundo de Peñafort." In *Magister Raimundus: Atti del Convegno per il IV Centenario della Canonizzazione di San Raimondo de Penyafort, (1601-2001)*. Ed. Carlo Longo. Institutum historicum fratrum praedicatorum: Dissertationes historicae. Vol. 28. Rome, 2002. Pp. 111-64.
- Phillips, Georg. *Kirchenrecht*. Vol. 4. Regensburg, 1851.
- Pitz, Ernst. *Papstreskript und Kaiserreskript im Mittelalter*. Tübingen, 1971.
- Pixton, Paul. *The German Episcopacy and the Implementation of the Decrees of the Fourth Lateran Council, 1216-1245: Watchmen on the Tower*. Studies in the History of Christian Thought. Ed. Heiko Oberman, vol. 64. Leiden, 1995.
- Post, Gaines. "A Romano-canonical maxim *quod omnes tangit* in Bracton." *Traditio* 4 (1946) pp. 197-251.
- Idem. "*Plena potestas* and consent in medieval assemblies." *Traditio* 1 (1943) pp. 355-408.
- Potthast, Augustus. *Regesta Pontificum Romanorum inde ab anno post Christum natum MCXCVIII ad annum MCCIV*. 2 vols. Berlin, 1874-5. Reprinted: Graz, 1957.
- Reulos, Michel. "Le Décret de Gratien chez les humanistes, les gallicans et les réformés français du XVIème siècle." *Studia Gratiana* 2 (1956). Pp. 24-53.
- Riaza, T. and M. Torres. "Versiones castellanas de las Decretales de Gregorio IX." In

- Congressus iuridicus internationalis VII saeculo a decretalibus Gregorii IX et XIV a codice iustiniano promulgatis, Romae 12-17 Novembris 1934.* Vol. 3. Rome, 1934. Pp. 293-6.
- Ribas y Quintana, B. *Estudios históricos y bibliográficos sobre san Ramón de Penyafort.* Barcelona, 1890.
- Ribes Montane, Pedro. "San Ramon de Penyafort y los estudios ecclesiasticos." *Analecta Sacra Tarraconensia* 48 (1975). Pp. 85-142.
- Idem. *Relaciones entre la potestad eclesiastica y el poder secular segun San Ramon de Penyafort : estudio historico-juridico.* Publicaciones del Instituto Español de Historia Eclesiastica: Monografias. Vol. 26. Rome, 1979.
- Riley-Smith, Jonathan. *The Crusades: A History*, 2nd ed. New York, 2005.
- Rittner, E. "Zu Friedberg's Ausgaben der Gregorianischen Dekretalen-Sammlung und der Quinque Compilationes Antiquae." *Zeitschrift für Kirchenrecht* 19 (1884). Pp. 71-84.
- Rius Serra, J. "San Raymundo de Peñafort, ¿fue canónigo de Barcelona?" *Analecta Sacra Tarraconensia* 20 (1947). Pp. 251-3.
- Robinson, Ian S. *The Papacy, 1073-1198: Continuity and Innovation.* Cambridge, 1990.
- Robles, Laureano. *Escritores dominicos de la Corona de Aragón (Siglos XIII-XV).* Salamanca, 1972.
- Rodenberg, Carl. *Epistolae saeculi XIII e Regestis pontificum Romanorum selectae.* 3 vols. Monumenta Germaniae Historica, Epistolae. Berlin, 1883-94. Reprinted: Munich, 1982.
- Rouse, Richard H. and Mary A. Rouse. *Preachers, Florilegia and Sermons: Studies on the Manipulus Florum of Thomas of Ireland.* Studies and Texts 47. Toronto, 1979.
- Rousseau, Josèphe. "Ius publicum Ecclesiae Decretalibus Gregorii IX illustratum." In *Congressus iuridicus internationalis VII saeculo a decretalibus Gregorii IX et XIV a codice iustiniano promulgatis, Romae 12-17 Novembris 1934.* Vol. 3. Rome, 1934. Pp. 35-76.
- von Savigny, Friedrich Carl. *Die Geschichte des Römischen Rechts im Mittelalter.* 7 vols. Heidelberg, 1834-51.
- Sayers, Jane. *Papal Government and England during the Pontificate of Honorius III,*

- 1216-1227. Cambridge Studies in Medieval Life and Thought. 3rd Series. Vol. 21. Cambridge: 1984.
- Schielhass, Karl. "Wissenschaftliche Forschungen unter Gregor XIII. für die Neuausgabe des Gratianischen Dekrets." *Papsttum und Kaisertum: Forschungen zur politischen Geschichte und Geisteskultur des Mittelalters, Paul Kehr zum 65. Geburtstag dargebracht*. Ed. Albert Brackmann. Munich, 1926. Pp. 674-90.
- Schmidt, Tillman. "Die Rezeption des Liber Sextus und der Extravaganten Papast Bonifaz' VIII." In: *Stagnation oder Fortbildung? Aspekte des allgemeinen Kirchenrechts im 14. und 15. Jahrhundert*. Bibliothek des Deutschen Historischen Instituts in Rom 108. Tübingen, 2005. Pp. 51-64.
- Schulte, Johann Friedrich von. "Beitrag zur Geschichte des canonischen Rechtes von Gratian bis auf Bernhard von Pavia." *Sitzungsberichte der philosophisch-historische Classe der kaiserliche Akademie der Wissenschaften* 72. (1872). Pp. 481-517.
- Idem. *Die Geschichte der Quellen der Literatur des Canonischen Rechts*. 3 vols. Stuttgart, 1875-80. Reprinted: Union (N. J.), 2000.
- Schwertner, Thomas M. *Saint Raymond of Pennafort*. Milwaukee, 1935.
- Segl, Peter. "Dominikaner und Inquisition im heiligen romischen Reich." In *Praedicatores, Inquisitores: Acts of the 1st International Seminar on the Dominicans and the Inquisition, February 23-25, 2002*. Dissertationes Historicae 29. Rome, 2004. Pp. 211-48.
- Idem. "Quoniam abundavit iniquitas." *Rottenburger Jahrbuch für Kirchengeschichte* 17 (1998). Pp. 53- 65.
- Idem [ed.]. *Die Anfänge der Inquisition im Mittelalter*. Bayreuther Historische Kolloquien 7. Cologne, 1993.
- Segle, Kurt-Victor. *Texte zur Inquisition*. Texte zur Kirchen- und Theologiegeschichte 4. Gütersloh, 1967).
- Seredi, Iustinianus Georgius. "De relatione inter Decretales Gregorii Papae IX et Codicem Iuris Canonici." In: *Congressus iuridicus internationalis VII saeculo a decretalibus Gregorii IX et XIV a codice iustiniano promulgatis, Romae 12-17 Novembris 1934*. Vol. 4. Rome, 1934. Pp. 11-26.
- Sheehan, Michael. *The Will in Medieval England: From the Conversion of the Anglo-Saxons to the End of the Thirteenth Century*. Studies and Texts 6. Toronto, 1963.
- Sickert, Ramona. "Dominikaner und Episkopat. Zur Etablierung des Predigerordens in

- südfranzösischen Bischofsstädten, 1215-1235. ” In: *Die Bettelorden im Aufbau*. Edd. Gert Melville and Jörg Oberste. *Vita regularis: Ordnung und Deutungen religiösen Lebens im Mittelalter*. Vol. 11. Münster, 1999. Pp. 295-319.
- Simon, André. *L'Ordre des Pénitentes de Ste-Marie-Madeleine en Allemagne*. Freiburg, 1918.
- Singer, Heinrich. “Die Dekretalensammlung des Bernardus Compostellanus Antiquus.” *Sitzungsberichte der kaiserlichen Akademie der Wissenschaften in Wien, philosophisch-historische Klasse* 126, ii (1914). Pp. 1-119.
- Somerville, Robert. *The Councils of Urban II*. *Annuaire Historiae Conciliae, Supplementum* 1. Amsterdam, 1972.
- Idem. *Pope Alexander III and the Council of Tours*. *Publications of the Center for Medieval and Renaissance Studies* 12. Berkeley, 1977.
- Idem and Stephan Kuttner. *Pope Urban II, The Collectio Britannica and the Council of Melfi*. Oxford, 1996.
- Sommar, Mary E. *The Correctores Romani: Gratian's Decretum and the Counter-Reformation Humanists*. *Pluralisierung & Autorität* 19. Berlin, 2009.
- Southern, Richard W. *Scholastic Humanism and the Unification of Europe*. 2 vols. Oxford, 1995.
- Steck, Johannes Christian Wilhelm. *Abhandlungen aus dem deutschen Staats-und Lehnrecht*. Halle, 1757.
- Stephen of Tournai. *Die Summa über das Decretum Gratiani*. Ed., J. F. von Schulte. Giessen, 1891. Reprinted: Aalen, 1965.
- Stickler, Alfons M. *Historia juris canonici latini: Institutiones academicae*. Vol. 1: *Historia Fontium*. *Studia et textus historiae juris canonici*. Vol. 6. Rome, 1950.
- Tangl, Michael. *Die päpstlichen Kanzleiordnungen von 1200-1500*. Innsbruck 1894. Reprinted: Aalen, 1959.
- Tanner, Norman, et al. *Decrees of the Ecumenical Councils*. Vol. 1. London, 1990.
- Teetaert, Amédée. “Raymond de Penyafort.” *Dictionnaire de théologie catholique*. Vol. 13, pt. 2. Paris, 1937. Pp. 1806-23.
- Idem. “*Summa de matrimonio Sancti Raymundi de Penyafort*.” *Ius Pontificium* 9 (1929). Pp. 54-61.

- Idem. "La doctrine pénitentielle de Saint Raymond de Penyafort." *Analecta Sacra Tarraconensia* 4 (1928). Pp. 121-82.
- Idem. "La *Summa de poenitentia* de Saint Raymond de Penyafort." *Ephemerides Theologicae Lovanienses* 5 (1928). Pp. 49-72.
- Idem. *La confession aux laïques dans l'Église latine depuis le VIIIe jusqu'au XIVe siècle*. Bruges, 1926.
- Tellez, Gonzalez Manuel. *Commentaria perpetua in singulos textus quinque librorum Decretalium Gregorii IX*. Lyon, 1673.
- Theiner, A. *De Romanorum Pontificum epistolarum decretalium antiquis collectionibus et de Gregorii IX. P. M. decretalium codice*. Leipzig, 1829.
- Idem. *Disquisitiones criticae in praecipuas canonum et decretalium collectiones*. Rome, 1836.
- Thouzellier, Christine. "La légation en Lombardie du cardinal Hugolin." *Revue d'histoire ecclésiastique* 45 (1950). Pp. 508-42.
- Tierney, Brian. *Foundations of the Conciliar Theory: The Contribution of the Medieval Canonists from Gratian to the Great Schism*. Cambridge, 1955.
- Toso, A. "Decretalium Gregorii IX cum Codice Iuris Canonici comparatio." *Ius Pontificium* 14 (1934).
- Troje, Hans. *Graeca Leguntur*. Forschungen zur neueren Privatsgeschichte. Vol. 18: Cologne, 1971.
- Ullmann, Walter. *Medieval Papalism: The Political Theories Of The Medieval Canonists*. The Maitland Memorial Lectures 1948. London, 1949.
- Vacas Galindo, Enrique. *San Raimundo de Peñafort, fundador de la Orden de la Merced*. Rome, 1919.
- Valls Taberner, Fernando. *San Ramón de Penyafort*. Barcelona, 1936.
- Van Espen, Zeger Bernhard, "Dissertatio in quinque libros decretalium." *Ius ecclesiasticum universum ecclesiasticum*. Naples, 1766.
- Villey, Michel. *La croisade. Essai sur la formation d'une théorie juridique*. L'Église et l'État au Moyen Âge. Vol. 6. Paris, 1942.
- Walther, Helmut . "Ziele und Mittel päpstlicher Ketzerpolitik in der Lombardei und im

- kirchenstaat, 1184-1252. In: *Die Anfänge der Inquisition im Mittelalter.* ” Ed. Peter Segl. Bayreuther Historische Kolloquien 7: Cologne, 1993. Pp. 103-30.
- Walz, Angelus. “Sanctus Raymundus auctor *Summae casuum.*” In: *Congressus iuridicus internationalis VII saeculo a decretalibus Gregorii IX et XIV a codice iustiniano promulgatis, Romae 12-17 Novembris 1934.* Vol. 3. Rome, 1934. Pp. 25-34.
- Alan Watson. *The Evolution of Western Private Law.* Baltimore, 2001.
- Watt, J. A. “Hostiensis on *Per venerabilem.*” In: *Authority and Power: Studies on Medieval Law and Government Presented to Walter Ullmann on his Seventieth Birthday.* Edd. Brian Tierney and Peter Linehan. Cambridge, 1980. Pp. 99-114.
- Watt, J. A. “The papal monarchy in the thought of St. Raymond of Pennafort.” *The Irish Theological Quarterly* 25 (1958). Pp. 33-42; 154-71.
- Weigand, Rudolf. “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.* Studi Gratiani 29; Rome, 1998. Pp. 883-99.
- Winroth, Anders. *The Making of Gratian’s Decretum.* Cambridge, 2000.
- Norman Zacour. “The cardinals’ view of the papacy.” In: *The Religious Roles of the Papacy: Ideals and Realities, 1150-1300.* Ed. Christopher Ryan. Papers in Medieval Studies. Vol. 8. Toronto, 1989. Pp. 413-38.
- Zechiel-Eckes, Klaus. “Auf Pseudoisidors Spur, Fortschritt durch Fälschungen?” *Studien und Texte* 31 (2002). Pp. 1-24.
- Idem. “Ein Blick in Pseudoisidors Werkstatt: Studien zum Entstehungsprozeß der falschen Dekretalen. Mit einem exemplarischen editorischen Anhang (Pseudo-Julius an die orientalischen Bischöfe, JK † 196).” *Francia: Forschungen zur westeuropäischen Geschichte* 28 (2001). Pp. 37-90.
- Zerfass, Rolf. *Der Streit um die Laienpredigt.* Untersuchungen zur Theologie der Seelsorge 2. Freiburg, 1974.
- Zutshi, Patrick. “Innocent III and the reform of the papal chancery.” In: *Innocenzo III: Atti del Congresso Internazionale Roma, 9-15 settembre 1998.* Ed. Andrea Sommerlechner. Vol. 1. Miscellanea della Società Romana di storia Patria. Vol. 45. Rome, 2003. Pp. 84-101.