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CHANGE OF JURIDICAL PARADIGMS A.D. 1100-1300,
MIRRORED IN MANUSCRIPTS HELD IN TUSCANY

I. INTRODUCTION

Interest for a particular field of knowledge can be measured by counting the number of books available for such field in a given time frame and by comparing the result to the quantities of books available for other fields within the same time frame. This maxim can also be used to measure intellectual interests of literate persons who lived in the Middle Ages. When in one geographical region the number of persons interested in one topic had grown, then the demand for books on this topic grew as well and copies of literature on the topic were either imported from elsewhere, or produced in the region itself.

We know of course that a high percentage of books produced in the Middle Ages were destroyed later by ill fate of libraries, mildew and rot. Additional great losses were inflicted by persons who dismantled obsolete books in order to re-use their parchment for other purposes. Nevertheless hundreds of thousands of medieval books have survived to our times. They enable us to gauge how much had been there in remote centuries and to draw conclusions from this.

Liturgical texts constitute the largest portion of preserved manuscripts. Yet, learned literature also amounts to a considerable percentage, perhaps ten percent. Within learned literature, theology holds by far the greatest share, but juridical literature comes next. Based on my experience of fifty

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years in dealing with multitudes of manuscripts, I would deem that literature on law constitutes about ten percent of medieval learned literature in all.

Quantitative research on medieval juridical literature becomes particularly interesting when it compares the dissemination of various literary genres¹ and when it gauges the impact of particular works of one genre in various geographical regions².

One can see that certain genres came into use and flourished during one time period, but later they lost import. Some genres even fell into oblivion. To be sure, the ascent and decline of literary genres had reasons which need to be discerned and explained. At times the reason lies in a change of paradigms. This was the case in the development which gave rise to the present article, as will be shown below.

In addition one can observe that some works within a genre became widely disseminated, while others remained almost unnoticed. The widely disseminated ones had obviously reached many people and will often have influenced them, whereas the less disseminated ones made almost no impact. Certain authors' style of explaining an academic topic gained great popularity. Manuals written by them became standard works of authority. After some time, however, the style which had been in vogue might become outmoded. This phenomenon, too, could be induced by a change of paradigms.

In Tuscany, the time span between 1100 and 1215 brought a profound change in how literate persons regarded law and applied law in practice. This was not caused by any particularly Tuscan change of circumstances.

1. For instance, disseminations of *Decretum Gratiani* and *Codex Iustinianus* were compared in G. DOLEZALEK, *Observaciones sobre el desarrollo del derecho común hasta la época de Alfonso X el sabio*, in *España y Europa. Un pasado jurídico común*. Actas del Primer Simposio Internacional del Instituto de Derecho Común (Murcia, 26-28 de marzo de 1985), Murcia 1986, pp. 27-44.

2. Author's examples: G. DOLEZALEK, *Canon law and Roman law. Some Statistics on Manuscripts in the Vatican Library*, in *A Ennio Cortese - scritti promossi da Domenico Maffei I*, ed. I. BIROCCCHI et al., Roma 2001, pp. 500-505. ID., *Statistiken über die Verbreitung juristischer Texte in Sachsen: Bestände in Leipzig, Halle, Halberstadt, Magdeburg*, in *Rechtsbandschriften des deutschen Mittelalters. Produktionsorte und Importwege*, ed. P. CARMASSI et al., Wiesbaden 2015, pp. 21-38. ID., *La diffusione manoscritta delle opere di due maestri aretini del Duecento: Bonaguida d'Arezzo e Martino da Fano*, in *750 anni degli Statuti Universitari Aretini*. Atti del convegno internazionale su origini, maestri, discipline e ruolo culturale dello «Studium» di Arezzo, ed. F. STELLA, Firenze 2006, pp. 129-139. ID., *La diffusione delle opere di Rolandino in Germania e nelle zone contigue*, in *Rolandino e l'ars notaria da Bologna a Europa*. Atti del Convegno nazionale di studi storici sulla figura e l'opera di Rolandino, ed. G. TAMBA, Milano 2002, pp. 739-757.

It was part of a Europe-wide change of attitude. To wit, «law» as such became an academic discipline and object of intellectual activity. From now onward, source texts of Roman law were studied and applied on a high intellectual level. A few decennia later canon law followed suit. A «learned law» developed.

The Europe-wide effect of this change of attitude became first visible in the government and administration of the church. By 1215, the papal curia had succeeded in instituting the rule of learned law even in Europe's remotest dioceses. In secular government, however, the transition took longer. Academic learning of Roman law first influenced the northern half of Italy and southernmost France in the early twelfth century. Other geographical regions only followed suit with more or less delay as they gradually introduced, one by one, learned law between 1215 and 1650.

The present article will first outline vital points why and how the change of paradigms occurred. It will particularly cast light on Roman law's utility for central government in the church. After these explanations, the effects of the change will be illustrated by means of a quantitative comparison of manuscripts held in Tuscany. In other words, the quantity of juridical source texts from times before the change will be compared to the quantity after the change. Tuscany is taken as an example to illustrate the change which occurred throughout Europe.

Research for this survey was exclusively based on retrieval from data bases and digital files on the internet. It was neither practicable nor necessary, for the purposes of this simple quantitative comparison, to peruse all the individual catalogues and inventories of libraries and archives (printed, typewritten, or often still handwritten). Electronic retrieval provided enough material to prove the thesis of the present article.

Thanks of the undersigned go to SISMEL for kindly allowing direct access to its server in Florence – which provided data from *Codex* (the old regional database for manuscripts held in Tuscany) and from *Madoc* (SISMEL's general data base for manuscripts). Additional data were retrieved from Ken Pennington's bio-bibliographical file of canonists 1140-1500³,

3. K. PENNINGTON, *Medieval and Early Modern Jurists: A Bio-Bibliographical Listing*, in: <http://legalhistorysources.com/biobibl.htm>.

This file was also converted into a data base and enriched with further details: http://amesfoundation.law.harvard.edu/BioBibCanonists/HomePage_biobib2.php/.

from Abigail Firey's project of Carolingian canon law⁴, from Giovanna Murano's file of *Incipits*⁵, from Martin Bertram's lists of preserved copies of the *Decretales Gregorii IX papae*⁶, from the *Bibliotheca legum* of the University of Cologne⁷ and of course from *Manuscripta juridica* which in turn relies on a multitude of sources and on the undersigned's personal viewing of juridical manuscripts⁸.

2. CHANGES RESULTING FROM THE ADVENT OF ROMAN LAW

The change of paradigms was sparked by a new interest for Roman law, propagated by law teachers in Bologna (as specified below). While this fact is widely known, it has so far hardly been considered that it would have remained a mere local or regional matter if it had not been taken up by the church, and in particular by protagonists at the papal curia. They obviously perceived that Roman law could be useful for their aim to strengthen the central government of the church. At first the church's interest focussed merely on Roman procedural rules⁹. Yet, step by step, ever more rules of Roman law were taken up by the popes in their precedent judgments. The leading personnel in dioceses all over Europe took notice of this development and heeded it. Finally, under the pontificate of Pope Innocent III (1198-1215), it became a firmly accepted doctrine that Roman law was a subsidiary source of canon law, applicable in all situations which were not expressly regulated otherwise by the church.

After Roman law had been fully recognised as a subsidiary source of canon law, the juridical authors based their writings on the concept that the two groups of law sources were not antagonists, but that they worked together in a symbiotic division of tasks. The symbiosis of the two laws

4. A. FIREY, *Carolingian Canon Law*, in: <https://ccl.rch.uky.edu/>.

5. G. MURANO, *Initia operum iuris canonici medii aevi. A Shortlist of Works, arranged by their Incipit Words*, in: <https://home.uni-leipzig.de/jurarom/manuscr/murano/initican.htm>.

6. M. BERTRAM, *Signaturenliste der Handschriften der Dekretalen Gregors IX. (Liber Extra). Neubearbeitung April 2014* (Online-Publikationen des Deutschen Historischen Instituts in Rom), Rom 2014, link: http://www.dhi-roma.it/bertram_extrahss.html.

7. *Bibliotheca Legum. A Database on Carolingian Secular Law Texts*, in: <http://www.leges.uni-koeln.de/en/>.

8. G. DOLEZALEK, *Manuscripta Juridica*, in: <http://manuscripts.rg.mpg.de/>.

9. Procedural rules of *Ius Commune* in civil proceedings have recently been canvassed in a monograph by K. W. NÖRR, *Romanisch-kanonisches Prozessrecht. Erkenntnisverfahren erster Instanz in civilibus*, Berlin 2012.

served as Europe's *Ius Commune* («common law» – in the sense of law common to all territories and their inhabitants and institutions).

The relationship between canon law and Roman law may best be understood with the help of an image. The learned scholarly culture of canon law travelled to all countries of western Christianity in a stately coach drawn by six horses and was everywhere received with awe. Medieval Roman law travelled on the coach's footboard as canon law's lackey. Roman law, thus, was a «symbiotic companion and servant of canon law»¹⁰.

After the change-over to academic «learned law», book production changed. Roman law had become important. So texts of Roman law were now produced in series¹¹. Yet, the interest for Roman law had also evoked a new awareness which caused that canon law was then also taught as a separate academic discipline. Thus a new source book for courses on canon law was written (see below) and copied in great numbers.

Until the end of the Middle Ages, graduates in canon law always outnumbered by far graduates of Roman law. Therefore literature of canon law was copied in greater numbers than literature of Roman law literature. It can be estimated that the quantity of extant medieval handwritten copies of canon law is about seven times the quantity of extant copies of Roman law¹².

Let us look at the early twelfth century in more detail. This time period saw tumultuous quarrels and wars in the aftermath of an important church reform which had started in the late eleventh century¹³. The reformers had succeeded in reorganising the papacy and the papal curia. Now they aimed to strengthen central government of the church, so that they could control and secure obedience to the reform's principles – even in remote dioceses.

In this situation a new juridical tool came in sight, namely rediscovered law texts of the Roman emperor Justinian: *Digesta*, *Codex Iustinianus*, *Insti-*

10. A. WINROTH had coined the saying that Roman law was a «subservient» of canon law. A. GOURON rightly remarked, however, that in the first decennia of the twelfth century teachers of learned Roman law paved the way for an oncoming learned canon law: *Le droit romain a-t-il été la «servante» du droit canonique?*, in «Initium. Revista Catalana d'Història del dret» 12 (2007), pp. 231-243.

11. G. DOLEZALEK, *La pecia e la preparazione dei libri giuridici nei secoli XII-XIII*, in *Luoghi e metodi di insegnamento nell'Italia medioevale (secoli XII-XIV)*, Atti del Convegno internazionale di studi (Lecce-Otranto, 6-8 ottobre 1986), ed. L. GARGAN *et al.*, Galatina 1989, pp. 201-217 (p. 207 ss.).

12. *Ibid.*, p. 205.

13. B. SCHWARZ has written an eye-opening summary account of the church reformers' long and perilous struggle from 1149 onward: *The Roman Curia (until about 1300)*, in *The History of Courts and Procedure in Medieval Canon Law*, ed. W. HARTMANN *et al.*, Washington 2016, pp. 160-228.

tutiones, and *Authenticum*. These, as a tool, could possibly assist the reformer's aims: namely the texts contained procedural rules which in ancient Rome had assisted the Roman system of central government. Procedural rules which had secured the homogeneousness of the vast Roman Empire might also help to hold the equally wide-spread Christian church together.

After Justinian's texts were rediscovered, one portion at a time, in the course of the eleventh century¹⁴, they were at first applied relatively sparingly¹⁵, and were seldom copied in their full length¹⁶. They contained juridical technical language which was difficult to understand. Their arrangement was at first sight perplex. In particular the *Digesta* and *Codex Iustinianus* were both very voluminous and they largely contained disconnected case law. Text passages which at first sight appeared to be useful for a certain juridical argument could conflict with some other text passage(s) which at a first reading appeared to regard exactly the same type of factual situation. So no one undertook the difficult task to develop «finding aids» to render the texts accessible and usable in their entirety.

This situation changed after 1100: a *index* Wernerius in Bologna (later italianised *Irnerius*), began to explore Justinian's texts and to teach courses on them¹⁷. Wernerius had pupils who followed suit. Joint efforts of law

14. CH. M. RADDING - A. CIARALLI, *The Corpus Iuris Civilis in the Middle Ages: A Case Study in Historiography and Medieval History*, in «Zeitschrift der Savigny-Stiftung für Rechtsgeschichte» 117 RA (2000), pp. 274-310.

15. *Ibid.*, pp. 294-295, 308-310.

16. On eleventh century epitomized copies of *Codex Iustinianus*, see A. CIARALLI - G. DOLEZALEK, *Codicis Iustiniani Epitome Beinecke and Summa Perusina* (11th century), in *Ius Romanum - Ius Commune - Ius Hodiernum. Studies in Honour of Eltjo J.H. Schrage on the Occasion of his 65th Birthday*, ed. H. DONDORP *et al.*, Amsterdam and Aalen 2010, pp. 75-100. On eleventh century full copies of *Codex Iustinianus*, see S. J. J. CORCORAN, *New Subscripts for Old Rescripts: the Vallicelliana Fragments of Justinian's Code Book VII*, in «Zeitschrift der Savigny-Stiftung für Rechtsgeschichte» 126 RA (2009), pp. 401-422; on fragments of books 1 and 2 from the same time in Würzburg, see *id.*, *After Krieger: Observations on some Additional or Revised Justinian Code Headings and Subscripts*, *ibid.*, pp. 423-439. Also R. WEIGAND, *Fragmente des römischen Rechts in der Universitätsbibliothek Würzburg*, *ibid.*, 105 RA (1988), pp. 784-788. S. J. J. CORCORAN furthermore published photographs of yet a third fragment (Cod. 8.35.5-7; Cod. 8.36.3-5) from the same time, held by an anonymous owner: <http://www.ucl.ac.uk/volterra/texts/new-jc-fragment-2016>.

17. Wernerius' activities as a lawyer are attested by documents ranging from 1113 to 1125, last re-edited and commented on by E. SPAGNESI, *Wernerius Bononiensis index. La figura storica d'Irnerio*, Firenze 1970. The book was in some points corrected and added to by G. DOLEZALEK, in «Zeitschrift der Savigny-Stiftung für Rechtsgeschichte» 101 RA 88 (1971), pp. 493-497. Wernerius' activities as a glossator of law texts were fully discussed by E. CORTESE, *Il diritto nella storia medievale* 2, Roma 1995, pp. 57-71. Also *id.*, *Irnerio*, in *Dizionario biografico degli italiani*, vol. 62, Roma 2004, pp. 600-605. *id.*, *Irnerio*, in *Dizionario biografico dei giuristi italiani*, vol. I, Bologna 2013, pp. 1109-1113.

teachers in Bologna developed techniques and expertise in interpreting and representing vast parts of Justinian's texts to students.

Wernerius had reactivated Justinian's texts because the remote emperor had put them into force in Italy and they had never been abrogated officially. Arguably, thus, they still were valid law for Italy's city courts and regional courts, although they had not been taken into regard for centuries because no one really knew them.

A parallel pretext, however, could be cited for the use of Justinian's texts in the church. An ancient saying had come down through the centuries that «the Church lives under Roman law» (*ecclesia vivit lege Romana*). Since the Roman legal rules had fallen into almost complete oblivion in the early Middle Ages, this proverb had become meaningless, but it was still well-known. Therefore, many clerics also sought to acquire some knowledge of Roman law.

In the twelfth century there existed only one place where masses of students could get academic instruction in learned law in extended courses on a high intellectual level: namely in Bologna. Throughout the twelfth century this city had a flourishing school of Roman law. From the second third of the century onward it also had a flourishing school of canon law, absolutely separate from the school of Roman law. The Bolognese courses had such high intellectual level because they were entirely based on original juridical source texts.

In competition, small-scale short law courses on a lower intellectual level were on offer in many other places in Italy and also beyond the Alps. They were offered by individual learned lawyers who resided there. Their teaching served a clientele which merely wished to acquire some basic knowledge of law, and they wanted it fast. In these places Roman law was taught as a side subject, to accompany teaching of rhetoric or canon law. Their courses were largely based on surrogate texts in place of the original source texts. In other words, they merely used summaries and/or excerpts, or even collections of juridical proverbs¹⁸, but not full source texts. Around 1215, however, such low-level courses became unimportant because they could no longer compete with Bologna. Gradually other places in various countries emulated the Bolognese syllabuses and methods.

18. For instance, the Anglo-Norman collection of adages beginning with the word *Dolum* was used for teaching. It was edited by M. SCHWAIBOLD, *Brocardica "Dolum per subsequentia purgari". Eine englische Sammlung von Argumenten aus dem 12. Jahrhundert*, Frankfurt am Main 1985. The original version, preserved in some manuscripts, comprises verbatim transcriptions of Justinian's respective texts from which the adage was abstracted.

3. ROMAN LAW'S ADVANTAGES FOR PAPAL CENTRAL GOVERNMENT

We must pause here for a moment, because it remains to be explained in more detail why Justinian's procedural rules suited the aims of the church reformers better than previous judicial practice, and why Roman law and the corresponding new approach to law were altogether useful for them.

One advantage of Roman procedural law must immediately have caught the eye: the central power, *i.e.* the papacy, obtained juridical means to call to it cases which pended before subordinate powers, and it could decide such cases once and for all. In addition, subjects also had a right to lodge judicial appeals to the central power. Appellants, while looking after their own interests, came to function as watchdogs and whistle-blowers, informing the central power of malfeasance and misuses in subordinate government.

Furthermore, it is obvious that central control of subordinate administration becomes easier if everyone everywhere lives largely under the same legal norms, so that particular customs and statutes only play a minor role and are embedded in a normative framework common to all. In the eyes of the personnel in the papal curia, canon law, plus Roman law on topics not regulated by canon law, was the main law of Christianity in Europe. This brought all subordinate ecclesiastical institutions into the weak position that whenever they wanted to base an argument on a divergent particular statute or custom, they had to first adduce that such statute or custom exists and that it is lawful. Furthermore, the lawyers of the curia interpreted all diverging statutes and customs narrowly, so that they should disturb the *Ius Commune* as little as possible. This was expressed in the legal maxim *Statuta stricte sunt interpretanda* («statutes are to be interpreted strictly»).

Let us now contrast this to the general character of the previously used source-books of canon law, namely the collections of *canones* (= *Canonum collectiones*). They assembled excerpts from precepts of church councils, letters of popes, writings of ancient theologians, and also some scarce excerpts of legislation by remote Germanic rulers or even morsels of Roman law.

The structure of the *canones* shows that they were unfit for the new Bolognese approach to law: namely they contained many admonitions and moral recommendations. In contrast, the ancient Romans had clearly distinguished between, on the one hand, «law» (minimum standards for socially tolerable behaviour, enforceable in law courts) and, on the other hand, other socially approved behaviour, such as politeness, good manners,

taste, neighbourliness, lifestyle pleasing to God, etc. (thus recommendable higher standards which are only imperfectly enforceable by peer pressure). By regarding «law» as a separate category, Roman lawyers were able to constitute «legal» principles and tenets in widest accordance with citizens and foreigners, whereas disputes about politeness, good manners, etc., could be left to each individual person's consideration and to customs of regions and societal groupings. It is obvious that a clear definition of «law» makes it easier to keep remote territories under control.

Furthermore, the *Canonum collectiones* contained relatively few rules and tenets with abstract descriptions of factual situations where the rule or tenet had to be applied. For most factual situations, the *Canonum collectiones* merely delivered a more or less wide variety of excerpts from authoritative texts. One excerpt might direct the reader towards one direction, but subsequent excerpts would point out that various responses are arguable, so that one had room to move. It seems that the *Canonum collectiones* rather served as a resource for rhetorical discussion. They were tool boxes from where parties in judicial controversies could pick arguments to underpin their pleading.

Dispute resolution by means of rhetorical arguing was and is a common phenomenon. For example, Byzantine collections of tenets of Roman law were mainly used as a quarry from which to mine and cite rhetorical arguments. Similarly, South African tribal procedure uses a multitude of proverbial tenets: they are used for discussion, not for decision. One party may say: «What has begun badly cannot lead to a good result.» The other party may retort: «But a rainy day may nevertheless end with sunshine.» So for each proverb there is also an opposed proverb, and arguments can be discussed to and fro for both sides. The palaver will continue until finally the gathered villagers – presided over by their chief – succeed in bringing the quarrelling families to reason and to reconciliation.

Justinian's law texts, in contrast, did not merely provide arguments. They delivered clear commands for a great number of factual situations which could arise. It is true that Justinian's *Digesta* and *Codex Iustinianus* contained a high percentage of case law, but they also comprised numerous rules and legal tenets with abstract descriptions of facts. And further, the medieval glossators and commentators took care to digest the case law into abstract rules and tenets. Thus, whenever the actual facts of a case matched an abstract description, the respective rule or tenet had to be applied. Legally irrelevant facts were disregarded.

Roman civil procedure largely freed magistrates from delays caused by rhetorical discussions. It gave the magistrates rules to establish swiftly who was right and who was wrong. The «right» party won and went home victorious and self-assertive, whereas the «wrong» party lost and went home ashamed and sad – in contrast to, *e.g.*, South African tribal procedure, whose main aim is to reconcile the parties so that both shall go home content to be good neighbours or even friends.

When one compares the advantages and disadvantages between rhetorical dispute resolution, on the one hand, and swift decisions based on cogent rules, on the other hand, the latter style of procedure is clearly more suitable for central administration. A central court of justice over vast territories will always be swamped by requests and appeals. Its magistrates have no time for palavers.

Justinian's texts brought yet a further advantage. They were reasonably subdivided into thematic books and titles. Although the organisation of *Digesta* and *Codex Iustinianus* was far from perfect, medieval juridical authors found it sufficiently convenient for their own general surveys of law, and certainly more convenient than any other arrangement which they knew.

Furthermore, although the ancient Romans had never aimed at bringing their many hundreds of legal principles and rules into one coherent all-encompassing system, their legal tenets were nonetheless amenable to orderly arrangement. This advantage was very soon experienced. Already in the first third of the twelfth century authors began to write systematic treatises on specific topics of Roman law.

It took a while until the papal curia contacted Bolognese teachers of Roman law and requested advice from them. Wernerius himself had become problematic for the church, in that in the controversy between Emperor Henry V (1106-1125) and Pope Paschalis II (1099-1118), Wernerius had sided with the emperor. He was excommunicated and banned. But some time after Wernerius had passed away, Cardinal Aymericus (who died in 1141) wrote to the Bolognese law teacher Bulgarus and requested him to compose and send a survey of Emperor Justinian's rules of civil procedure. Bulgarus did so. This was an early step towards an oncoming symbiosis.

Nevertheless the general attitude of canonists towards Roman law still remained hesitant up to the mid of the 1160s. Reasons for this can be seen in that Justinian's texts and their language had not yet been explored to their full extent. The Bolognese teachers had not even succeeded in estab-

lishing a reliable standard text for the *Digesta*¹⁹ and *Codex Iustinianus*²⁰. So it is understandable that the canonists did not yet dare to trust the Roman law fully.

4. CANON LAW TEACHING SOON CAUGHT UP WITH ROMAN LAW

Looking back for further understanding, we see that most likely in the 1130s, a teacher of canon law named *Gratianus* (of whom we have no other secure data) sifted and re-worked materials from previous *Canonum collectiones*. He disposed the materials into a reasonably arranged text book, interspersed with his own decisive comments and interpretations – thus reconciling all texts which at first sight appeared to contradict each other. He therefore titled his work *Concordia discordantium canonum*. It was later short-named *Decretum Gratiani*.

A first recension²¹ was completed after the end of the Lateran Council II of 1139. A second, reworked recension followed soon after, certainly before 1150. It speedily became the standard textbook of canon law. Previous *Canonum collectiones* ceased to be copied.

Some text passages in the *Decretum Gratiani* still blur the boundary between «morals» and «law». Furthermore, the work still maintains the old customary style of citing long series of excerpts. But here the excerpts are not merely on offer for picking arguments. They rather shall warn readers

19. F. C. V. SAVIGNY, *Geschichte des römischen Rechts im Mittelalter* 3, Heidelberg 1834, pp. 719-760, enumerated 326 glosses to the *Digesta*, from Bolognese law teachers in the first two thirds of the twelfth century, which show that the then available manuscripts contained many variant readings of the text. Each teacher had to decide individually which reading he wanted to recommend to his students.

20. Law teachers who lectured on the *Codex Iustinianus* had equally to cope with a great variety of variant readings: G. DOLEZALEK - L. MAYALI, *Repertorium manuscriptorum veterum Codicis Iustiniani* 1, Frankfurt am Main 1985, pp. 45 n. 42, 47, 508-509.

21. Discovered by A. WINROTH in the early 1990s. See his article *The Two Recensions of Gratian's Decretum*, in «Zeitschrift der Savigny-Stiftung für Rechtsgeschichte» 114 KA 83 (1997), pp. 22-31 and his dissertation *The Making of Gratian's Decretum*, Cambridge 2000. An edition is still in progress: <http://www.gratian.org>. R. WEIGAND had dated the work by proving that it comprised one text of the second Lateran council, 1139: *Chancen und Probleme einer baldigen kritischen Edition der ersten Redaktion des Dekrets Gratians*, in «Bulletin of Medieval Canon Law» N.S. 22 (1998), pp. 53-75 (p. 67). The classification of early manuscripts of Gratian's *Decretum* into categories of «drafts» or «abbreviations» or «recensions», or mere «groups of manuscript tradition», remains a point of debate. Cf. O. CONDORELLI, *Graziano*, in *Dizionario biografico dei giuristi italiani*, vol. 1, Bologna 2013, pp. 1058-1061 (1058b-1060a).

against possible counter-arguments with which they might be confronted in a discussion. In the end, readers learn abstract rules under which they can subsume the facts of a case.

Gratian's revised work conveyed 62 text passages from the *Codex Iustinianus* and 43 from the *Digesta* – more than the first recension, and also much more than the closely preceding collection *Polycarpus* of Cardinal Gregory of S. Grisogono (who died in 1113). Yet still by far not enough to provide norms for all frequently occurring types of cases in ecclesiastical courts.

I have the impression that Gratian intended to convince readers that Roman law was rarely needed, since most arguments which might be taken from it could as well be found in writings of the church fathers. Further, Gratian was not familiar with Justinian's legislation. He copied from previous *Canonum collectiones* fifteen texts of ancient Roman law which had been abrogated by Justinian²².

Gratian's cautious attitude in respect of Roman law persisted under his immediate successors. They added more material to their master's text book, but little came from Roman law. Still around 1160 a treatise on procedure was very tellingly titled *Rhetorica ecclesiastica*²³. It remained almost entirely based on the *Decretum Gratiani*.

Ecclesiastical practice in the courts, however, went into the opposite direction. For instance, English accounts of the king's proceedings against Archbishop Thomas Becket in 1164 show that both sides used procedural intricacies from Roman law²⁴.

In the 1150s an expert of Roman law from Brescia, Guibertus de Bornardo, added Romanist glosses to the *Decretum Gratiani*²⁵, and techniques of copying glosses on Roman law texts were taken over by workshops

22. The *Decretum Gratiani* contains fifteen texts from abrogated Roman law. Four are disguised, bearing false inscriptions (C. 2 q. 6 c. 40; C. 35 q. 5 c. 6; C. 35 q. 7 c. 25-26). Two have no inscription at all (C. 2 q. 3 c. 8; C. 2 q. 7 c. 53). The other nine cite their (abrogated) Roman source clearly (C. 2 q. 6 c. 22; C. 2 q. 6 c. 24-27; C. 11 q. 1 c. 5 and 35-36; C. 23 q. 8 c. 23; C. 25 q. 2 c. 20).

23. Edited by L. WAHRMUND, *Quellen zur Geschichte des römisch-kanonischen Prozesses im Mittelalter*, vol. 1 nr. 4, Innsbruck 1906. On this work see last P. LANDAU, *Die 'Rhetorica ecclesiastica' - Deutschlands erstes juristisches Lehrbuch im Mittelalter*, in *Summe - Glosse - Kommentar*, ed. F. THEISEN et al., Osnabrück 2000, pp. 125-139; L. FOWLER-MAGERL, *Ordo iudiciorum vel ordo iudiciarius*, Frankfurt 1984, pp. 45-56.

24. A. J. DUGGAN, *Roman, Canon and Common Law in Twelfth-Century England: The Council of Northampton (1164) Reexamined*, in «Historical Research» 83 (2010), pp. 379-407.

25. R. WEIGAND, *Romanisierungstendenzen im frühen kanonischen Recht*, in «Zeitschrift der Savigny-Stiftung für Rechtsgeschichte» 100 KA 69 (1983), pp. 200-249 (on pp. 201-209).

whose scribes copied glosses on the *Decretum Gratiani*²⁶. Finally, in 1165 or 1166, the *Summa Decreti* by Stephan of Tournai²⁷ brought a massive load of medieval Roman law into the teaching of canon law. This effected a new orientation in subsequent literature.

In the mean time, precedent judgments by popes (the so-called *decretales*) developed canon law further. Such *decretales* were at first gathered in private collections. After various experiments to give such collections a plausible organisation, Bernardus Balbi (Papiensis) redacted a collection in five books which followed the arrangement of Justinian's *Digesta* and *Codex Iustinianus*. The work was published around 1190. Bernardus' work *Breviarium extravagantium* became an additional standard textbook in the schools of canon law. Later, after collections with more recent materials had followed, lawyers called it *Compilatio prima*. Hence subsequent complementary collections of *decretales* were called *Compilatio secunda*, *Compilatio tertia*, *Compilatio quarta*, *Compilatio quinta*.

The *Decretum Gratiani* and the five *compilationes* were glossed and commented on (and accompanied by exegetical literature) in the same way as Justinian's texts of Roman law.

In 1234 Pope Gregory IX promulgated an all-comprehensive collection of *Decretales*. It shortened and consolidated texts from *Compilatio prima* through *Compilatio quinta*, together with recent texts which had originated under Gregory's pontificate. Lawyers soon gave this work the customary name *Liber Extra* (abridged «X»), to indicate that it contained materials outside the *Decretum Gratiani* (*extra* in the sense of «outside»).

In the course of the thirteenth century several popes promulgated additional legislation (*Novellae*) – in particular Pope Innocent IV (1243-1254). Collections of such *Novellae* circulated for a while. In 1298, however, pope Boniface VIII (1294-1303) consolidated them in a *Liber Sextus Decretalium*, together with recent materials from his pontificate.

The series of official collections ended in 1317 with the *Constitutiones Clementinae*, in which Pope John XXII promulgated texts from his predecessor Clement V (1305-1314)²⁸. Thereafter two additional collections

26. G. DOLEZALEK – R. WEIGAND, *Das Geheimnis der roten Zeichen. Ein Beitrag zur Paläographie juristischer Handschriften des zwölften Jahrhunderts*, *ibid.*, pp. 143-199.

27. Edited by F. J. V. SCHULTE, *Die Summa des Stephan von Doornick über das Decretum Gratiani*, Giessen 1891. Stephan's work was dated by A. GOURON, *Les sources civilistes et la datation des Sommes de Rufin et d'Étienne de Tournai*, in «Bulletin of Medieval Canon Law» 16 (1986), pp. 55-70.

28. A list of manuscripts is provided by J. TARRANT, *The Manuscripts of the Constitutiones Clementinae*, in «Zeitschrift der Savigny-Stiftung für Rechtsgeschichte» 101 KA 70 (1984), pp. 67-133 and 102 KA 71 (1985), pp. 76-146.

of *Extravagantes* found wide dissemination²⁹, but they were not officially promulgated by popes.

5. INTRODUCTION TO THE SURVEY ON MANUSCRIPTS IN TUSCANY

Retrieval in data bases and digital files on the internet (as mentioned above) provided a listing of contents of 799 manuscripts in Tuscany (fragments included). A first group of them (comprising 315 manuscript volumes and fragments) contained altogether 382 copies of source texts of law, used in the time span 1100-1500. The other group (with 483 volumes and fragments) contained secondary literature which consisted mostly of lecture scripts or commentaries tied to one particular source text, but also contained a wide variety of other juridical works, such as treatises on specific topics, manuals for notaries, manuals for confessors, legal opinions for law cases, etcetera. These amounted to altogether 1339 copies of secondary literature. All materials comprised (source texts and secondary literature together), amounted to 1721 copies.

The introduction to the present article promised to provide a quantitative comparison of juridical literary genres before and after the great change of paradigms. From times before the great change, however, only copies of sources of law are preserved. No secondary literature was written, because *law* was by then not held to be a separate academic discipline. For this reason the present article's quantitative comparison limits itself to primary source texts of law. In contrast, secondary literature is passed over because all its genres only originated after the great change. Interested readers may however retrieve the complete materials in *Manuscripta juridica*. The materials will be incorporated into this data base at its next update.

In the survey below, titles of juridical works and names of authors are standardised according to usage in *Manuscripta juridica*.

Two important points (implied above) must be repeated here expressly.

First, the survey's figures for copies of individual texts are always minima. In other words: they merely state that Tuscany has at least as many items as mentioned in the survey. There may be more, of course.

Second, the survey regards manuscripts held in Tuscany, thus not manuscripts produced in Tuscany. Probably a high percentage of the manu-

29. One of these collections has been edited by J. TARRANT, *Extravagantes Iobannis XXII*, Città del Vaticano 1983.

scripts in question were already in Tuscany in the Middle Ages. Yet, only some texts of the old *Canonum collectiones* have clearly been produced in Tuscany. The new approach to law also changed the modalities of commerce and production of law books.

Before the great change, in the time period when «law» was still regarded to be a mere aspect of rhetoric and theology and morals, juridical source texts were still copied in monasteries and in cathedral scriptoria, along with other literature. Such production was usually destined for local needs, not for export. Palaeographers can study such manuscripts' characteristics of script and can pinpoint a close region or even a specific place where the manuscript in question had probably been produced.

In contrast, such narrow pinpointing is no longer possible for juridical source manuscripts of the new «learned law». These were so complex that their copying required special expertise. Therefore commercial workshops undertook to multiply them in series.

For a long time, workshops in Bologna were the main producers of source texts, because this was the sole place where the new «learned law» could be studied in its full extent and detail, for decennia. The Bolognese developed a standard layout for juridical source texts and also standard fashions of script and chemistry of ink³⁰.

After much delay, other centres of studying, one by one, emulated Bologna's method of law teaching. Together with this, however, they also emulated many traits of Bolognese layout, etcetera. Law books produced in series looked very much alike, everywhere. Furthermore, although fashions of script and decoration still varied somewhat from country to country, scribes trained in law book production in one country could nevertheless move easily to a different country and were welcomed there.

Work shops which multiplied law texts were forerunners. They developed techniques and fashions which were taken over much later by monastic scriptoria for their copying of theological texts. By reason of the time lag between fashions in juridical source text production and delayed reception of such fashions in theological scriptoria, modern librarians often misjudge the date of origin of juridical manuscripts, because they compare their script to dated theological manuscripts with which the librarians are familiar.

30. Fashions of layout, script and ink for glosses are described by G. DOLEZALEK - L. MAYALI, *Repertorium manuscriptorum* 1 (as in note 20), pp. 461-509; G. DOLEZALEK, *Raumgestaltung auf Blatträndern juristischer Studientexte im 12. Jahrhundert*, in *Codex und Raum*, ed. S. MÜLLER et al., Wiesbaden 2009, pp. 185-194.

Although Tuscany had seen some small scale law teaching in Arezzo from 1215 onward³¹ and probably already in the 1100s in Pisa³², large scale teaching and thus concomitant mass production of juridical source texts only began after the university of Siena was founded (in 1240) and after the university of Florence was founded (in 1321). No specific Siennese or Florentine fashions of production are known, so the workshops there probably emulated the respective current Bolognese fashions and can thus not be distinguished.

6. MANUSCRIPTS OF JURIDICAL SOURCE TEXTS IN TUSCANY. A SURVEY

Almost all manuscripts with juridical literature from times before the great change of paradigms contain *Canonum collectiones*. Thirty different collections are preserved in Tuscany, in 57 manuscripts. I enumerate them to illustrate that they contain a wide variety of collections, and to show that sundry manuscripts contain more than one collection (or excerpts of such). This is typical for manuscripts of this kind on the European continent.

31. Cf. G. DOLEZALEK, *La diffusione manoscritta* (as in note 2).

32. Law teaching in Pisa is attested in a letter of a monk of St.-Victor in Marseille. He had been sent to Rome, but he intended to pause on his way in order to acquire some juridical learning in Pisa, and so his letter sought respective permission from his newly elected abbot «B». The letter is neither signed nor dated, but its character of handwriting clearly points to the twelfth century, and rather to the first half than to the second half. Therefore J. DUFOUR - G. GIORDANENGO - A. GOURON identified abbot «B» with Bernard Garin, 1124/1127: *L'attrait des 'leges'. Note sur la lettre d'un moine victorin (vers 1124/1127)*, in «Studia et Documenta Historiae et Iuris» 45 (1979), pp. 504-529; G. GIORDANENGO - A. GOURON, *Sur un moine bénédictin en avance ou en retard sur son temps*, in «Revue historique de droit français et étranger» 85 (2007), pp. 315-322; A. GOURON, *Le droit romain a-t-il été 'servante'* (as in note 10). In contrast, A. WINROTH pleaded for abbot Bertrandus de Montemurato whose election probably dated from 1181: *Law Schools in the Twelfth Century*, in *Mélanges en l'honneur d'Anne Lefebvre-Teillard*, ed. B. D'ALTEROCHE *et al.*, Paris 2009, pp. 1057-1064 (on pp. 1060-1061). Furthermore, P. LANDAU suggested that the famous law teacher Bulgarus de Bulgarinis had sojourned in Pisa, as shown by the fact that he had collated variant readings in his own copies of *Digesta* to respective readings in the ancient manuscript kept in Pisa: *Bulgarus in Pisa. Die Anfänge des Pisaner Rechtsstudiums und die Nachkorrektur der Digestenvulgata*, in *Honos alit artes. Studi per il settantesimo compleanno di Mario Ascheri* 1, ed. P. MAFFEI *et al.*, Firenze 2015, pp. 211-217 (download possible under in: <http://www.ebook.retimedievali.it>). This opinion is based on a misunderstanding. In text passages of Roman law which have variant readings, pre-accursian glosses frequently mention that law teacher X «read» here one wording whereas law teacher Z «read» a different wording. Yet in these connotations the word «read» (= «legit») was used in the sense of «lectured» – and thus not the sense of «inspected» or «collated». In other words, these glosses mean to say that law teacher X, in his lecture, recommended to his students the one reading, while law teacher Z rather recommended a different reading.

- Can. coll. *Concordia canonum*, author: Cresconius Afer ep.³³ (1 ms.)
- Can. coll. *Decretorum libri XX*, author: Burchardus Wormatiensis ep.³⁴ (13 mss.)
- Can. coll. *Liber de vita christiana*, author: Bonizo de Sutri ep.³⁵ (1 ms.)
- Can. coll. *Panormia*, author: Ivo Carnotensis ep.³⁶ (3 mss.)
- Can. coll. *Polycarpus*, author: Gregorius de s. Grisogono card.³⁷ (3 mss.)
- Can. coll. *Liber sententiarum magistri A.*, author: Algerus de Leodio(?); Albericus Remensis(?); Aelmerus Cantuariensis(?)³⁸ (1 ms.)
- Can. coll. «Ashburnhamensis»³⁹ (1 ms.)
- Can. coll. «Dionisyo-Hadriana»⁴⁰ (2 mss.)
- Can. coll. «Gaddiana»⁴¹ (1 ms.)
- Can. coll. «Hibernensis»⁴² (5 mss.)
- Can. coll. «Epitome Hispana»⁴³ (3 mss.)

33. Lucca, Biblioteca Capitolare Feliniana (*further down* BCF) 125, fols. 1ra-8ra (s. IX ex., Italia).

34. Firenze, Biblioteca Medicea Laurenziana (*further down* BML), Plut. 16.21 (s. XI-XII, Italia centr.; prov.: Fontebuona/Friuli, Badia Camaldulense); Firenze, Biblioteca Nazionale Centrale (*further down* BNCF), Conv. soppr. F.4.255 (s. XI-XII, Italia; prov.: Vallombrosa); *ibid.*, Conv. soppr. C.1.2777, fols. 9v-57r (s. XI-XII; prov.: Firenze, Badia); Siena, Archivio di Stato (*further down* ASSi) A.191 fols. 1ra-16vb (s. XI); BCF 124, fols. 5ra-166va (s. XI ex., Italia centr.); Firenze, Biblioteca Riccardiana (*further down* BRicc) 240 (s. XI ex., Italia); Cortona, Biblioteca Comunale e dell'Accademia Etrusca (*further down* BCAF) 75 (s. XII.1, Italia centr.); Pistoia, Archivio Capitolare (*further down* ACPT) C.140 (s. XII in., Italia centr.); ACPT C.125 (s. XII in., Pistoia); Prato, Biblioteca Roncioniana (*further down* BRonc) Q.VIII.4 (3) (s. XII in., Pistoia); BML, Calci 11, fols. 1ra-192ra; BML, Plut. 7 sin. 1, fols. 152va-155ra (s. XI-XII, *excerptum*); BCF 597, fol. *bifolium initiale* (s. XI.2, Italia centr., *fragm.* 1.94-96 et 1.131-135).

35. BML, Plut. 23.5, fols. 91r-182v (a.1150 ca.).

36. BML, San Marco 487; BNCF, Conv. soppr. G.1.836 (prov.: Vallombrosa); Pisa, Biblioteca Cathariniana (*further down* BCath) 53.

37. BRicc 258 *pars* II (s. XII, Italia); BML, Strozzi 27 (s. XII, *liber* III.20); BNCF, Conv. soppr. B.4.559 (s. XII, Camaldoli, *liber* III.20).

38. BML, Plut. 5 sin. 7 (s. XII ex., Firenze).

39. BML, Ashburnham 1554 (s. XII in.).

40. *Ibid.*, fols. 84r-99v et 119v-135r (s. XII in.); BCF 125, fols. 10vb-157rb, *appendices* fols. 8va-209va (s. IX ex., Italia).

41. BML, Plut. 89 sup. 32 (*olim* Gaddi) (s. XII.1).

42. BML, Ashburnham 82 (s. IX.2, Francia occid., prov.: *Sancta Iustina de Padua?*); *ibid.*, Calci 11, fols. 181rb-183rb; *ibid.*, Plut. 20.48; *ibid.*, Plut. 7 sin. 1, fols. 181rb-183rb; Livorno, Biblioteca Comunale Labronica «Francesco Domenico Guerrazzi» (*further down* BLabr) Sez. XVI n.12 (Inv. 476), fols. 8r-56v, 192r-196v (s. XI-XII, Italia *sept.*).

43. BML, Ashburnham 1554, fols. 99v-119v (s. XII.1); BCF 490, fols. 288r-309v (s. VIII ex. - IX in., Lucca? Epitome); BRicc 258 *pars* I (s. XII, *concilia Graeca et Africana tantum*, incompl.).

- Can. coll. «Novariensis poenitentialis», Novara BCap. LXXXIV [54]⁴⁴ (1 ms.)
- Can. coll. «Pisana»⁴⁵ (1 ms.)
- Can. coll. «Decretales pseudo Isidorianae»⁴⁶ (8 mss.)
- Can. coll. «Riccardiana»⁴⁷ (1 ms.)
- Can. coll. «Sanblasiana», Sankt Paul 7/1⁴⁸ (1 ms.)
- Can. coll. «Theatina» sive «Novariensis», Novara BCap. LXXXIV [54]⁴⁹ (2 mss.)
- Can. coll. «Vaticana 1342»⁵⁰ (2 mss.)
- Can. coll. «vetus Gallica»⁵¹ (1 ms.)
- Can. coll. *Collectionis canonum libri XIII*, author: Anselmus II Lucensis ep.⁵² (3 mss.)
- Can. coll. in capitulis 30 «De ratione matrimonii»⁵³ (1 ms.)
- Can. coll. in libris 3 (a. 1119-1123)⁵⁴ (1 ms.)
- Can. coll. in libris 3, *Collectio canonum*, author: Deusdedit cardinalis⁵⁵ (2 mss.)
- Can. coll. in libris 5⁵⁶ (3 mss.)
- Can. coll. in libris 7⁵⁷ (1 ms.)
- Can. coll. *Collectio X partium*, author: Galterius Tervanensis; attr. Hildebertus Cenomanensis ep.⁵⁸ (1 ms.)

44. BML, Calci 11, fols. 193rb-204vb (*excerpta*).

45. BCath 59, fols. 1-16 (s. XII *in.*).

46. BNCF, Conv. soppr. I.3.18 (s. X-XI, Italia *sept.*); BML, Ashburnham 53, *folia ante Coll. Anselmi* (s. XII); BML, Plut. 16.18 (s. XV, Firenze); BLabr Sez. XVI n.12 (Inv. 476), fols. 57r-164r (s. XII, Italia *sept.*; prov.: Brescia); BCF 123, fols. 9va-126vb (s. IX *ex.*, Lucca); ACpt C.101, fols. 2r-6r (s. XII *in.*); C.130 (s. IX-X, Pistoia); BNCF, Pal. Panciatichi 135, fols. 1-290 (late copy s. XV).

47. BRicc 300.

48. BCF 490, fols. 236r-271v (s. VIII-IX, Lucca).

49. BML, Calci 11; BCF 124, fols. 173ra-191rb (s. XI.2., Italia centr.).

50. BML, Edili 82, fols. 4v-168v; BCF 125, fols. 190ra-209va (s. IX *ex.*, Italia).

51. BML, Edili 82, fol. 169rb (s. XI.1, Italia: *excerpta*).

52. BML, Ashburnham 53 (s. XII, Italia); BML, San Marco 499, fols. 10v-209v (s. XII: *recensio A*); BCath 59.

53. BML, Plut. 20.48.

54. ACpt C.135.

55. BRicc 228; *ibid.*, 229.

56. BML, Plut. 4 sin. 4 (s. XI, Italia?); Plut. 5 sin. 7; BRicc 300 (s. XII *in.*, Italia centr.).

57. BCAE 43 (s. XII.1).

58. BNCF, Conv. soppr. D.2.1476 (S. Annunziata).

Can. coll. in titulis 183 «de s. Maria Novella»⁵⁹ (3 mss.)

Can. coll. in titulis 74 «Diversorum patrum sententiae»⁶⁰ (3 mss.)

Can. coll. *Specificanda*⁶¹ (1 ms.)

In Tuscany, the quantity of merely 57 manuscripts comprising old *Canonum collectiones* contrasts sharply with the more recent mass of 256 manuscripts which contain source texts from time periods after the great change. Even if we consider that many volumes of *Canonum collectiones* may have been destroyed (or recycled) after their contents had become obsolete, the particularly wide difference between the two figures clearly proves that the change of paradigms had modified juridical book production and commerce profoundly.

The quantities of source texts of the new type shall now be surveyed in two steps: firstly texts of canon law, thereafter texts of secular law.

The first recension of *Decretum Gratiani* is merely preserved in one manuscript⁶². In contrast, the copies of the second recension amount to 29, if one also counts fragments and abbreviations along with the more or less complete texts⁶³.

59. Firenze, Biblioteca Marucelliana (*further down* BMaruc) C.386, fols. 4r-161r (s. XII *in.*); BNCF, Conv. soppr. A.4.269, fols. 7r-227v (S. Maria Novella); BRicc. 3006, fols. 3r-202v (s. XII *in.*).

60. BML, Conv. soppr. 91 (Albarese, Badia di S. Maria e Benedetto), fols. 21v-106v (s. XII *in.*); BML, Plut. 16.15, fols. 49r-98r (s. XI-XII); BNCF, Conv. soppr. B.3.1122 (S. Maria degli Angeli), fols. 1-40v (Francia *sept.*).

61. BCath 74, fols. 25r-40v (s. XII.1).

62. BNCF, Conv. soppr. A.1.402, fols. 168ra-175vb (originated around 1140, Italy).

63. BCAE 74, fols. 12ra-325rb; BMaruc A.298; BML, Acquisti e doni 93 (incomplete); *ibid.*, Edili 96; *ibid.*, Edili 97; *ibid.*, Fiesole 120; *ibid.*, Gadd. Reliqui 2; *ibid.*, Plut. 1 sin. 1; *ibid.*, Plut. 1 sin. 10; *ibid.*, Plut. 4 sin. 1; BNCF, Conv. soppr. A.2.376, and A.2.403, fols. 1ra-276ra; BNCF, Magl. XXXI.22; BRicc 860, fols. 4vb-31rb; Lucca, Archivio Arcivescovile (*further down* AALu) 20, fols. 3ra-206vb; BCF 126, fols. 2ra-372rb; Sansepolcro (Arezzo), Archivio Storico Diocesano, fondo capitolare, f. 3 nr. 11, 13; Siena, Biblioteca Comunale degli Intronati (*further down* BCI) K.I.3, fols. 1ra-354rb; *ibid.*, K.I.10, fols. 1ra-439vb; *ibid.*, G.V.23, fols. 8ra-282ra et 291vb-494vb; Arezzo, Archivio di Stato, Raccolte e miscellanee, Collezione di frammenti, (*further down* ASAr, Coll. framm.) Busta 5 [Decreto di Graziano]; BCI I.IV.13, fols. 2ra-vb et 1ra-vb (*fragm.*); Siena, Biblioteca privata «Domenico Maffei» (*further down* BMaffei) s.s. (inv. 11, *fragm.*); *ibid.*, (inv. 22, *fragm.*); *ibid.*, (inv. 26, *fragm.*); *ibid.*, (inv. 38, *fragm.*); BML, Plut. 1 sin. 7, fols. 114ra-117rb (*abbreviatio*); Plut. 3 sin. 1, fols. 1ra-3rb (*abbreviatio*); BRicc 860, fols. 1ra-4vb (*abbreviatio* Humanum genus; Liber decretorum distinctus est in III partes).

Tuscan libraries hold two collections of *decretales* which do not correspond to *Compilatio prima, or secunda, tertia, quarta, quinta*⁶⁴.

The more prominent five *compilationes*, however, are represented in altogether four manuscripts⁶⁵.

Copies of the *Decretales Gregorii IX papae* amount to 35 items⁶⁶. Eight items contain additional *Novellae Innocentii IV papae*⁶⁷. Fifteen items preserve the *Liber Sextus Decretalium* by Pope Boniface VIII⁶⁸, and twenty-one preserve the *Constitutiones Clementinae*⁶⁹.

We may add four copies of the *Extravagantes Johannis XXII papae*⁷⁰, one copy of *Extravagantes communes* by popes Clement VI, Paul II and other

64. BML, Fiesole 114: *Decretalium collectio* («Florentina B»); BCF 221, fols. 220ra-229r: *Decretalium collectio* («Lucensis»), saec. XII ex.

65. BML, Plut. 3 sin. 6: at least *Compilatio I et IV*; Plut. 4 sin. 2: at least *Compilatio I, II et III*; BNCF, Pal. 157: at least *Compilatio I* (palimpsested, and painstakingly identified by Gabriella Pomaro; my special thanks go to her); BCI I.III.16: at least *Compilatio III et V*.

66. BML, Acquisti e doni 160, and 225; *ibid.*, Conv. soppr. 460; *ibid.*, Edili 86, 87, 88, 89; *ibid.*, Gaddi 3; *ibid.*, Fiesole 119; *ibid.*, Plut. 21.20; *ibid.*, Plut. 1 sin. 10; *ibid.*, Plut. 3 sin. 4; *ibid.*, Plut. 3 sin. 9; *ibid.*, Plut. 4 sin. 3; *ibid.*, Plut. 5 sin. 2; BNCF II.I.417; *ibid.*, Pal. 157; La Verna (Arezzo), Biblioteca del Convento della Verna 4; *ibid.*, 17; BCF 137, fols. 4ra-283va; *ibid.*, 138, fols. 1va-305vb; *ibid.*, 139, fols. 1ra-228ra; *ibid.*, 287, fols. 3va-218rb; Pistoia, Biblioteca Forteguerriana (*further down* BFort) A.65; Poppi (Arezzo), Biblioteca Rilliana (*further down* BRill) 10; BCI G.III.18, cf. continuation in H.III.2, fols. 162ra-285vb; *ibid.*, G.III.19, cf. continuation in H.III.2, fols. 45ra-161vb; *ibid.*, H.III.1; *ibid.*, H.III.14; *ibid.*, H.V.1; *ibid.*, K.I.6; BMaffei s.s. (inv. 4); *ibid.*, s.s. (inv. 5); ASAr, Coll. framm., Busta 5 [*Liber X*]; Arezzo, Biblioteca Diocesana Seminario Vescovile, Gammurrini, Framm. di codice V, 5.9.

67. BML, Plut. 1 sin. 10 (Santa Croce, *Novellae I, II et III*); BCF 137, fols. 284ra-297rb (*Novellae III*); *ibid.*, 139, fols. 229r-235v (*Novellae III*); *ibid.*, 287, fol. 218va-vb (*Novellae III*); BFort A.65 (*Novellae III*); BRill. 10 (*Novellae III*); BCI H.III.2 (*Novellae III*); ASAr, Coll. framm., Busta 5 [*Innocentius IV*].

68. BCAF 76 *pars I*, fols. 1ra-54vb; BCF 143, fols. 3r-84v et 85ra-106vb; *ibid.*, 144, fols. 1ra-42rb; *ibid.*, 145, fols. 1ra-101vb; *ibid.*, 233, fols. 3ra-12b; *ibid.*, 234, fols. 2ra-101rb; BSLu 3032, fols. 1r-126v et 133r-142v; ACPt C.129 *pars I*, fols. 1ra-44vb; BCI K.I.7, fols. 1ra-64vb; *ibid.*, K.I.9, fols. 1ra-87rb; *ibid.*, D.X.27 *pars II*, fols. 25r-94v (in linguaggio volgare); *ibid.*, G.III.17, fols. 1ra-119vb (the first sheets went lost); *ibid.*, K.I.5, fols. 2ra-116vb (also lacking the first sheets, and lacunous); ASAr, Coll. framm., Busta 5 [*Liber Sextus*]; BMaffei s.s. (inv. 49, *fragm.*).

69. BCAF 77, fols. 1ra-66va; BML, Edili 87, 90, 91; *ibid.*, Plut. 1 sin. 3; BCF 144, fols. 202ra-222rb; *ibid.*, 145, fols. 103ra-158rb; *ibid.*, 236, fols. 1ra-57rb; *ibid.*, 237, fols. 1ra-60vb; *ibid.*, 279, fols. 1ra-116vb; *ibid.*, 284, fols. 1ra-69v; BSLu 2697, fols. 1r-58r; Monteriggioni (Siena), Biblioteca Diocesana Alessandro VII 1, fols. 137v-138r; ACPt C.126 *pars II*, fols. 2ra-13rb; BFort A.40 *pars I*, fols. 1rb-18va; BCI G.III.15, fols. 1rb-136vb; *ibid.*, H.III.3 *pars I*, fols. 1ra-14ra; *ibid.*, H.III.4, fols. 1ra-56ra; *ibid.*, H.III.5 *pars I*, fols. 3ra-18va; *ibid.*, K.I.4, fols. 1ra-53rb; *ibid.*, H.III.2 *pars I*, fols. 1ra-44vb (lacunous).

70. BML, Plut. 20 sin. 12; BCI H.III.3 *pars I*, fols. 14va-16vb; *ibid.*, H.III.4, fol. 56va-vb; *ibid.*, H.III.5 *pars I*, fols. 17va-18vb.

popes⁷¹, two copies of Pope John XXII's constitution *Execrabilis*⁷², and two manuscripts with the same pope's legislation for the Franciscan order⁷³.

Also the guide lines for the papal chancery (*Regulae Cancellariae Apostolicae*) were an important source text and were commented on. One manuscript in Tuscany preserves their recension by Pope Paul II, promulgated in 1464⁷⁴.

In secular law, the teachers in Bologna (and in other law schools which emulated the Bolognese syllabus) glossed and commented in first line on Emperor Justinian's *Codex Iustinianus*, and on his *Digesta* (subdivided into three portions: *Digestum vetus*, *Infortiatum*, and *Digestum novum*).

For the *Digesta*, Tuscany possesses a unique treasure: the so-called *Littera Florentina*, a manuscript which has directly come down to us from the sixth century⁷⁵. It was preserved in Pisa before it was brought to Florence. Therefore it is also known under the name of *Littera Pisana*. While it is clear that this manuscript is our most important source for the text of Justinian's *Digesta*, a heavy debate rages since centuries about the question whether yet other full or partial copies of *Digesta* text might have come down to the twelfth century and might also be a source of variant readings in early Bolognese manuscripts⁷⁶.

Copies of the Digest's first portion (*Digestum vetus*) are contained in 11 manuscripts⁷⁷ and 17 fragments⁷⁸. The second portion (*Infortiatum*) is pre-

71. BCF 294, fols. 278ra-300rb.

72. BCF 236, fols. 57va-58vb; *ibid.*, 284, fols. 69v-73r.

73. Arezzo, Biblioteca Città di Arezzo 351 *pars* IV, fols. 45ra-52va; BNCF, Conv. soppr. G.3.451 *pars* IV, fols. 132ra-136rb.

74. BCF 292, fols. 207vb-214va.

75. BML «Pandette», formerly bound in two volumes, nowadays stored without any binding, in boxes. The manuscript's origin is a matter of vivid debate. I find A. BELLONI's suggestion plausible that the manuscript might have been produced in Cassiodor's scriptorial treasure-house *Vivarium* in Squillace: *Un'ipotesi per le Pandette fiorentine*, in *Iuris Historia. Liber Amicorum Gero Dolezalek*, ed. v. COLLI *et al.*, Berkeley 2008, pp. 1-16.

76. The debate's history was last canvassed by M. MILANI, *L'editio maior mommseniana del Digesto e i manoscritti della Vulgata*, in «Teoria e Storia del Diritto Privato» 12 (2019), pp. 1-80 [www.teoriaestoriadeldirittoprivato.com].

77. BML, Acquisti e doni 158/1, and 417, fols. 1-145; *ibid.*, Edili 65; *ibid.*, Redi 181, fols. 1ra-197vb; *ibid.*, Plut. 6 sin. 3, fols. 1ra-274ra; BNCF, Banco Rari 24; *ibid.*, II.I.287; BCF 313, fols. 1ra-364vb; BCI H.IV.10; *ibid.*, H.IV.18; *ibid.*, I.IV.4.

78. ASAr, Coll. framm., Busta 6 [*Digestum vetus*]; BML, Plut. 6 sin. 3, fols. 1ra-IIvb (*fragm.*); Luc-ca, Archivio di Stato (*further down* ASLu), rilegature dei registri seguenti: Curia del Fondaco 1447, 1753 (sotto il bifoglio di copertina), 1873, 2143, 2314; ACPt C.171 (Collezione di frammenti), quattro fogli; ASSi, Diplomatico, Foderine di registri 3, 4, 7, 13, 14, 16, 17, 21, 22.

served in 7 manuscripts⁷⁹ and 4 fragments⁸⁰. The third portion (*Digestum novum*) is preserved in 11 manuscripts⁸¹ and 4 fragments⁸². This quantitative division is representative. World-wide, particularly many copies of the first portion are known to exist. Less copies of the third portion are known, and still less of the middle portion.

For the *Codex Iustinianus*, Tuscany even possesses one small fragment of the first recension, written on papyrus. It has directly come down to us from the sixth century⁸³ and is thus a very rare item.

Of the very widely disseminated second recension (the only recension known to medieval scholars), Tuscany has nine copies of this work's books 1-9⁸⁴ (plus 14 fragments⁸⁵) and five copies of its books 10-12⁸⁶.

Emperor Justinian's *Institutiones* (published in A.D. 534) were written for beginner students and thus short and easy to copy. Tuscany has 18 copies⁸⁷ and five fragments⁸⁸.

79. BML, Acquisti e doni 158/2; BML, Edili 66; BNCF, Banco Rari 25; BCF 319, fols. 1ra-219vb; Pisa, Archivio di Stato, Miscellanea di Manoscritti 64, fols. 1ra-219vb; BCI I.IV.6; BMaffei s.s. [*Infortiatum*].

80. BML, Acquisti e doni 195, fols. 21ra-22vb; ASLu, rilegatura del registro Curia del Fondaco 1474, 1494; ASSi, Diplomatico, Foderine di registri 19.

81. BML, Acquisti e doni 158/3; *ibid.*, Ashburnham 153; *ibid.*, Edili 67; *ibid.*, Gaddi 43, fols. 1ra-250vb; *ibid.*, Plut. 6 sin. 1; *ibid.*, Plut. 6 sin. 2; BNCF, Banco Rari 26; BCF 317, fols. 1ra-285rb; ACPt C.154; BCI H.IV.13; *ibid.*, I.IV.5.

82. ASAr, Coll. framm., Busta 6 [*Digestum novum*] (several); ASLu, copertina del registro Curia del Fondaco 1753; ASSi, Diplomatico, Foderine di registri 6.

83. BML, Papiro PSI I sine numero.

84. BML, Acquisti e doni 160; *ibid.*, Edili 68; *ibid.*, Redi 179, fols. 1ra-157vb; *ibid.*, Plut. 6 sin. 4, fols. 1ra-239vb; *ibid.*, Plut. 6 sin. 5; BCF 320; *ibid.*, 322; ACPt C.106 (epitome, s. XI.2, Italia); BCI H.IV.16.

85. ASAr, Coll. framm., Busta 6 [*Codex Iustinianus*]; BML, Ashburnham 1560, fols. 97r-98r (*excerptum* C.9.13.1); ASLu, copertina del registro Curia del Fondaco 1768; *ibid.*, copertine dei registri Podestà di Minucciano 117, and 577; ACPt C.99, fogli di guardia; *ibid.*, C.171 (Collezione di frammenti), frammento penultimo; ASSi, Diplomatico, Foderine di registri 31, 40, e 41; BMaffei s.s. (inv. 7, *fragm.*); *ibid.*, (inv. 20, *fragm.*); *ibid.*, (inv. 27, *fragm.*); *ibid.*, (inv. 34, *fragm.*); *ibid.*, (inv. 37, *fragm.*).

86. BML, Acquisti e doni 159, fols. 186ra-247vb (C.10-12); ASLu, copertina del registro Commissario generale delle Montagne e delle Vicarie 23; BCF 325, fols. 195ra-260rb (C.10-12); BCI H.IV.17, fols. 175ra-234va (C.10-12); BCI I.IV.11, fols. 255ra-338va (C.10-12).

87. BCAE 73; BML, Acquisti e doni 159, fols. 3ra-63rb, and 392, fols. 1ra-45vb, and 432, fols. 1ra-65ra; *ibid.*, Ashburnham 1560, fols. 1r-97r; *ibid.*, Conv. soppr. 228, fols. 35ra-43ra; *ibid.*, Plut. 6 sin. 10, fols. 91ra-138vb; *ibid.*, Plut. 6 sin. 7, fols. 1ra-41va; BNCF, Pal. Panciatichi 143, pp. 1-42; BRicc 855, fols. 1ra-53vb; BCF 325, fols. 1ra-57v; *ibid.*, 327, fols. 1ra-38va; BRill 206, fols. 1v-98v; *ibid.*, 33, fols. 1ra-47vb, 49ra-vb, 51ra-57v; BCI H.IV.14, fols. 1ra-60vb; *ibid.*, H.IV.15, fols. 1ra-93vb; *ibid.*, H.IV.17, fols. 1ra-54rb; *ibid.*, I.IV.11, fols. 3ra-68rb.

88. ASAr, Coll. framm., Busta 6 [*Institutiones*]; ASSi, Diplomatico, Foderine di registri 49 e 53; ASLu, Podestà di Minucciano 422; BRill 206, fols. 3r-4v.

The *Authenticum* (a collection of late legislation by Emperor Justinian, promulgated after the publication of *Digesta*, *Codex Iustinianus* and *Institutiones*)⁸⁹ is found in Tuscany in seven manuscripts⁹⁰ and one fragment⁹¹.

In addition to Emperor Justinian's texts, the law teachers in Bologna between 1100 and 1300 also lectured on two medieval Italian source texts: the *Libri feudorum* (a textbook on feudal law, redacted in the mid of the twelfth century), and a collection of law texts from the remote Lombard kings (*Leges Longobardorum*, later called *Lombarda*). Tuscany has six volumes of the *Libri feudorum*, in various recensions⁹², and three volumes of the laws of the Lombard kings⁹³.

For the sake of curiosity it may furthermore be reported that Tuscany also holds one manuscript of «surrogates» which served for low-level teaching of Roman law (in place of high-level teaching which was based on original source texts). The manuscript in question is written in Anglo-Norman script of the late twelfth century⁹⁴. It contains a very widely disseminated vocabulary of terms of Roman law, beginning with the words *Exactis regibus*⁹⁵ followed by a collection of excerpts from the *Codex Iustinianus*. The choice of excerpts and the contents of Anglo-Norman scribbles added in the margins show a particular interest in judicial procedure and in acquisition of goods by inheritance or bequest. Such interests fitted with clerical personnel of ecclesiastical institutions. The volume ends with the so-called *Liber iuris Florentinus*, being a *Summa Institutionum et ordo iudiciorum*⁹⁶.

89. Discussed in *Novellae constitutiones. L'ultima legislazione di Giustiniano, tra oriente e occidente, da Triboniano a Savigny*. Atti del Convegno Internazionale Teramo, 30-31 ottobre 2009, ed. L. LOSCHIAVO et al., Napoli 2011.

90. BML, Acquisti e doni 159, fols. 66ra-185vb; *ibid.*, Plut. 6 sin. 7, fols. 43ra-140vb; *ibid.*, Plut. 6 sin. 10, fols. 139ra-161vb; BCF 325, fols. 58ra-170vb; ACPt C.131, fols. 5ra-75vb; BCI H.IV.17, fols. 55ra-174rb; *ibid.*, I.IV.11, fols. 69ra-222ra.

91. ASSi, Diplomatico, Foderine di registri 56.

92. BML, Acquisti e doni 159, fols. 248ra-268va; BCF 325, fols. 171ra-194vb; *ibid.*, 427, fols. 11r-59r; BCI H.IV.17, fols. 235ra-254vb; *ibid.*, I.IV.11, fols. 223ra-250rb.

93. BML, Plut. 77.10 (s. XII.1), fols. 11r-89v; *ibid.*, Plut. 89 sup. 86 (s. XI ex. vel XII in.), pag. 1-138; *ibid.*, Plut. 77.1 (s. XII.2), fols. 11ra-58ra.

94. BML, Plut. 66.36.

95. Edited by M. CONRAT, *Die Epitome exactis regibus*, Berlin 1884. The data base *Manuscripta juridica* lists 82 copies of this work, so far.

96. Text edited by M. CONRAT, *Das Florentiner Rechtsbuch, ein System römischen Rechts aus der Glossatorenzeit*, Berlin 1882. P. WEIMAR justly characterized this Anglo-Norman work as a «mediocre product» of little avail: *Die legistische Literatur der Glossatorenzeit*, in *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte* 1, ed. H. COING, München 1973, pp. 129-260 (pp. 208-209). A. GOURON suggested that the work had been redacted around 1175 in Ireland: *Un traité juridique d'origine irlandaise: le Livre de Florence*, in «Initium. Revista Catalana d'Història del dret» 9 (2004), pp. 61-71; re-edited in his collected studies *Pionniers du droit occidental au Moyen Âge*, nr. XIV, Aldershot-Burlington 2006.

ABSTRACT

The Pitfalls of Inventories or the Goodness of Doubt about Origins and Provenance

This article presents a quantitative analysis of medieval juridical literature. It states that before 1100 such literature mainly consisted in collections of *canones*. These collections had merely gathered excerpts of literature, and it appears that they were largely focussed on providing arguments for rhetorical disputes. In the course of the twelfth century they ceased to be copied, because a change of paradigms had occurred: «law» as such had become an academic discipline. The author uses this occasion to outline his personal view on essential reasons and effects of the change. The facts are long known, but the impact of the church reformers' aim to strengthen central jurisdiction and legislation in the church has so far not been valued sufficiently.

The need for studies in law had been sparked by the realisation that rediscovered texts of Roman law were relevant for use in court. Texts of Roman law contained abstract wordings of norms. Law teachers found them directly in the source texts, or they inferred them from case law contained in the source texts. The new approach to source texts was emulated in canon law. A new textbook was written (the so-called *Decretum Gratiani*). It re-arranged and interpreted materials from previous collections of *canones* so that one could use them to infer abstract norms. Subsequently judicial practice in the church courts applied these norms.

The new approach gained momentum as popes then began to use rules of Roman law for precedent judgments. This was obviously motivated by the insight that Roman law was useful to the papal curia's aim of strengthening central government in the church.

This article uses manuscripts held in Tuscany as a representative example to illustrate how the new approach to source texts caused changes in book production and acquisition. In Tuscany, the quantity of merely 57 manuscripts comprising old collections of *canones* contrasts sharply with the subsequent mass of 256 manuscripts which contain full texts of primary sources of canon law and Roman law.

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