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# PAPER ABSTRACTS

16TH INTERNATIONAL CONGRESS OF MEDIEVAL CANON LAW

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Here you will find abstracts for all papers given in plenary addresses and concurrent sessions.  
Abstracts for the Tuesday evening poster session are available separately.

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## Alexandrowicz, Piotr

MEDIEVAL DIFFERENTIAE AND THE EARLY MODERN *DIFFERENTIAE* OF CATHOLIC AUTHORS: A CONTINUATION OR BREAKAWAY?

Several early modern canonists addressed the common issue of the relations between *ius canonicum* and *ius civile* in works focusing on differences between the two laws. The profiles of these works were heterogenous, as we can list among them elaborate treatises (e.g. authored by Matthäeus Joseph Reichel, Johann Strein), short dissertations (e.g. the works of Henricus Canisius, Antonio Pérez) or even passages included in general manuals (e.g. by Anacletus Reiffenstuel). Most of these authors were acquainted with the late medieval genre labelled as *differentiae iuris civilis et canonici*, especially with those works which were collected in *Tractatus Universi Iuris*. The early modern authors deliberately employed the term *differentiae* while describing the contents of their works – in order to provide a link to the late medieval jurisprudential practice. The objective of the paper will be an examination of the scope of reliance of these authors on the medieval works: do they merely add medieval *differentiae* as an ornament, or do they use them to support the structure and argumentation models applied? How do they refer to the conceptual framework of application of the two laws constructed on the margin of c. *Intelleximus* (X 5.32.1)? The secondary objectives of the paper include the attitude of early modern Catholic authors to civil law (some were neutral, others rather hostile) as well as their references to contemporary Protestant *differentiae* and jurisprudence. The paper will help to understand the long-lasting influence of medieval canon law jurisprudence through the subsequent development of one legal genre.

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## Alix, Benoît

LA DIMENSION DE L'ALTÉRITÉ DANS LA DÉFINITION DE LA JUSTICE CHEZ LES JURISTES ET THÉOLOGIENS MÉDIÉVAUX (XII<sup>E</sup>-XVI<sup>E</sup> SIÈCLE)

La dimension interpersonnelle de la justice apparaît avec un éclat particulier dans deux maximes. La première, empruntée aux juristes et dérivée du droit romain, prévoit que : *Nemo potest esse iudex in causa propria*. La seconde, puisée dans la *Summa Theologica* de Thomas d'Aquin († 1274), est libellée de la façon suivante : *Nullus autem est iudex sui ipsius*. Par conséquent, la justice – comme attribut d'un pouvoir, quel qu'il soit – ne peut s'exercer qu'entre des individus, certes différents, mais « égaux ». En effet, l'existence a priori d'un rapport de subordination ou hiérarchique, en vertu, par exemple, d'un contrat ou de l'ordre naturel, fait obstacle à ce que l'une

des deux parties puissent « faire justice » à l'autre. En somme, c'est le terme même de *judex* qui doit être interrogé, car il implique des attributions de nature différente selon le contexte. Dès le XIII<sup>e</sup> siècle, les décrétistes, qui examinent diverses relations sociales : maître – élève, mari – femme, père – fils, s'interrogent particulièrement sur la capacité du supérieur à être le juge de l'autre. Au siècle suivant, le discours relatif à l'émergence d'un « pouvoir souverain » tend à réserver au détenteur de celui-ci l'exercice de la justice publique. Dès lors, apparaît la dichotomie entre « espace public » et « espace privé », prémisse de la montée en puissance du triptyque, cher à Walter Ullmann et annonciateur des Temps Modernes : État, politique et citoyen.

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### Álvarez de las Asturias, Nicolás

FUNDAMENTAL OR PURELY ORNAMENTAL? PSEUDO-ISIDORIAN BIBLICAL QUOTATIONS IN SOME 11<sup>TH</sup> CENTURY CANONICAL COLLECTIONS

The massive use of Holy Scripture by Pseudo-Isidore was differently received in the 11th Century canonical collections, which rearranged the forged material. In this paper I am going to focus on the different receptions of Biblical quotations, which appear at Pseudo-Isidore and have taken place in some significant pre-Gratian Canonical Collections. My aim is to give arguments supporting the fundamental role of the Biblical quotations, improving the first answer to the question that entitles the paper.

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### Astorri, Paolo

CLANDESTINE MARRIAGE REDEFINED: CANON LAW IN THE WORKS OF THE LUTHERAN REFORMERS

Within the medieval Church, the term 'clandestine betrothal' was associated with the absence of witnesses, solemnities, and other formalities. Parental consent was not a requirement for betrothal or marriage (the terms 'marriage' and 'betrothal' were often used interchangeably). For example, Hostiensis (1210-1271) argued that clandestine betrothals were defined in four ways: 1) the solemnities were omitted; 2) the betrothal was contracted secretly, without witnesses; 3) the betrothal was contracted breaking a previous betrothal to marry someone else or a previous marriage without the *licentia* of the bishop; 4) the public banns in the church were lacking. Angelo Carletti da Chivasso (1411-1495) stated that a clandestine marriage occurred in three cases: 1) the absence of witnesses; 2) the absence of the solemnities and sacerdotal blessing; 3) the absence of the public banns.

At the beginning of the sixteenth century, Martin Luther (1483-1546) held that the presence of witnesses was not enough to constitute the publicity of a marriage, as the witnesses did not have the public authority to establish a marriage. The parents were the public authority that also had to be present: they signaled God's will. Thus, he proposed a new definition of clandestine betrothal that combined the absence of witnesses with the lack of parental approval. The jurists Conrad Mauser (1506-1548), Johannes Schneidewin (1519-1568), and Joachim von Beust (1522-1597) translated Luther's definition into legal terms. Clandestine betrothals (*sponsalia clandestina*) were divided into two types: first, properly and strictly, when they were started secretly and with nobody present; second, in a more general sense, when they were contracted in the presence of witnesses but without parental consent. The first type, absence of witnesses, continued to be regulated by canon law, with some exceptions. The second, lack of parental

approval, was governed by Roman law reinterpreted according to Scripture, and by new marriage ordinances issued by Lutheran territorial princes.

This paper will focus on the redefinition of clandestine marriage and its legal discipline in sixteenth-century Lutheran Germany. It will show that the adjective 'clandestine' (*clandestinum*) obtained a new meaning: it became a violation of God's order and will. Canon law (X 4.3.1,2,3) was not completely discarded, but rather modified in its application.

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### Austin, Greta

RETHINKING THE BOUNDARIES BETWEEN PENANCE AND CANON LAW, c.900-1020

This paper re-examines the boundaries between "canon law" and "penance," especially as represented in the collections made by Regino of Prüm (c. 906) and Burchard of Worms (c. 1020). Burchard's preface spoke of the "laws of the canons" and the "judgments for those doing penance" in the same breath. Similarly, Rob Meens points out, Regino's *Libri duo* exists "on the borderline of canon law and penitential discipline." Is there a clear line between penance and canon law in this period? Andreas Thier (in Stephan Dusil's summary) has described canonical collections as "repositories of ecclesiastical knowledge that provided readers with normative rules." This paper asks whether modern scholars can actually talk about "canon law" in the long tenth century. If we cannot import these modern categories into the past, how can we best describe texts and practices involving law, penance and Church discipline?

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### Avignon, Carole

RÉGLEMENTER LA PRISE EN CHARGE (*NUTRITIO*) DES ENFANTS EN MARGE, ENTRE DROITS SAVANTS ET LÉGISLATIONS DIOCÉSAINES (XII<sup>E</sup>-XV<sup>E</sup> SIÈCLE)

Cette communication propose d'étudier la formalisation des normes juridiques relatives à la prise en charge (alimenta et nutritio matérielle et spirituelle) des fils et filles nés en marge des normes romano-canoniques du mariage (enfants illégitimes, naturels, adultérins ou de clercs), dans l'altérité sociale (maladie, infirmité) ou religieuse (judéité, hérésie), en fonction de ce que les législateurs diocésains de l'Europe médiévale auront ressenti le besoin de réglementer. Elle prolongera une première recherche publiée en 2018 (« Accueillir l'enfant illégitime : modalités, enjeux, limites de la *benignitas canonica*. Des théories romano-canoniques aux pratiques sociales. XIIe-XVe », *Annales de Bretagne et des Pays de l'Ouest*). Il s'agira cette fois de concentrer l'étude sur les productions réglementaires élaborées aux échelles provinciale et diocésaine, et de les mettre en perspective avec les discours normatifs produits par les droits savants (législation pontificale et réflexion doctrinale) sur les enfants illégitimes ou marginalisés juridiquement, entre obligation de prise en charge conforme au jus naturale et/ou par *benignitas canonica* et déni d'accueil (dans la maison du père) ou interdit de prise en charge (par les femmes). Cette recherche s'inscrit dans le cadre d'un programme scientifique soutenu par l'Agence Nationale de la Recherche (Fil.IAM) qui se propose de saisir les signaux faibles relatifs aux expressions de la parenté dans les situations de filiations dégradées, empêchées et/ou recomposées liées à des formes d'irrégularité et de défauts canoniquement construits, ainsi que de saisir les incidences sociales et culturelles de la hiérarchisation des filiations dans la société occidentale médiévale au regard d'incapacités juridiques et sociales.

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## **Barnett, Jeffrey Ryan**

### THE EMOTIONS OF KILLING IN GRATIAN'S *CAUSA 23*

Writing in the 1140s, the author of the *Decretum*, Gratian attempted to rationalize and justify the act of killing in defense of the Catholic faith. He wrote, "if those who, were inflamed by zeal of their Catholic mother, put to death the excommunicated are not considered homicides – then it is clear that it is right not only to whip but also to kill the wicked." Although a legal text, there are both clear and inferred emotional language that demonstrates a parallel between the correct ordering of emotions and the satisfactory moral intentions needed for justice within war. This paper will argue that in *causa 23*, Gratian saw the correct ordering of emotions as essential for correct intentions to be satisfied for justice within war. The paper will use the two emotions of anger and fear and draw comparisons to St. Augustine's emotional theories in his work *City of God* to Gratian's use of the emotions in the context of war. Throughout the *causa* both anger and fear were neutral terms that required the will to determine its moral or immoral usages. When placed in the context of war, the treatment of the emotions helped determine either a just or an unjust intention while fighting the enemy. This analysis would allow a better understanding of medieval emotions and the concept of canonical just war theory.

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## **Barralis, Christine**

### THE DEFENSE OF *LIBERTATES ECCLESIAE* IN LOCAL ECCLESIASTICAL LEGISLATION (FRANCE, 13<sup>TH</sup>-15<sup>TH</sup> CENTURIES)

The concept of *libertas ecclesiae*, which was at the heart of the Gregorian reform and the resulting transformations, was gradually developed by canon law from the end of the eleventh century. If its essential components (freedom of ecclesiastical elections, immunity of Church's goods and members) are relatively well defined at the end of the twelfth century, the sources of the following two centuries show that the scope and modes of application of these principles were not always very precise or clear and that their interpretation could differ depending on the places and powers involved. Local episcopal legislation reveals that the defense of *libertates ecclesiasticae* remained relevant in thirteenth- and fourteenth-century France, but that it had evolved in its contours with respect to its Gregorian antecedents. While reiterating now-traditional provisions (such as asylum), the theme is now heavily marked by the defense of the prerogatives of the Church Courts and the jurisdiction of prelates in the face of temporal encroachment. In addition, this local legislation develops certain specific elements that mark the dividing line between matters treated at other levels (e.g. the papacy, secular assemblies) and those which lay at the heart of the daily activity of diocesan administrations.

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## **Becker, Emily**

### *TAM INCESTUOSA COPULA*: THE PAPACY AND MARRIAGE ALLIANCE IN 12<sup>TH</sup>- AND 13<sup>TH</sup>-CENTURY LEÓN AND CASTILE

From 1197 to 1204, the kingdoms of León and Castile were caught in bitter conflict with Pope Innocent III over the consanguineous marriage of King Alfonso IX of León and his cousin, Berenguela of Castile. The struggle, though predicated upon Alfonso and Berenguela's marriage, represented more than opposition over the issue of the union itself. Rather it demonstrated two divergent stances upon the broader intertwining issues of marriage and peace. In the late twelfth and early thirteenth century, the papacy was increasingly involved in both the canonical redefinition of legitimate marriage as well as the pursuit of peace within the Iberian Peninsula.

In attempting to accomplish these objectives, the methods and perspectives of the papacy clashed with those of the Iberian kings. Within León and Castile, the utility of political marriages, consanguineous though they may be, was paramount. However, the papacy, especially under Innocent III, considered such unions deleterious to the whole of Christendom as well as canonically invalid. Both parties desired equivalent ends, including success against the Muslims and peace in the Peninsula. The great disparity lay in what manner and by what agent this would be achieved. For seven years, the papacy and the kings of León and Castile sparred over the marriage of Alfonso IX and Berenguela, wielding opposing ideas about the relationship between marriage and peace.

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### **Binotto, Dario**

#### PENANCE OR PUNISHMENT? 12<sup>TH</sup>-CENTURY DISCUSSIONS ON THE PROBLEM OF THE EXECUTED PENITENT

In this presentation I would like to discuss my dissertation project, which focuses on primarily decretist commentaries on the execution of a penitent criminal. The project aims on collecting and analyzing the range of different theoretical and practical problems decretists (including many of the *apparatus* and *summae* not available yet in a printed edition) discussed around this case. One of the questions that arise in the context of the said case is the distinction of penance and punishment. In this context, the *exemplum* was discussed not only by canonists, but also as a *questio* among French theologians in the mid 12th century. Therefore, this case seems especially convenient to scrutinize the prelude to the distinction of a *forum poenitentiale* and a *forum iudiciale* shortly before 1200. I will attempt to define, on the ground of the contemporary sources, the main elements of distinction between 12th century penance and punishment, and, further, to name the criteria that changed in this period. In addition, I will argue that the Becket controversy was an important historical event in promoting this distinction between penance and punishment, as the core argument and line of thought correspond and can be traced back to the same academic circles in France around the middle of the century.

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### **Bird, Jessalynn**

#### EPISCOPAL VISITATIONS AND THE PRACTICE OF INQUISITION IN THE 13<sup>TH</sup> CENTURY

This paper looks at episcopal visitations conducted by Robert Grosseteste and Walter Giffard (England), Odo Rigaud (France) and Frederico Visconti (Italy) to examine how episcopal visitations created patterns of behavior, modes of thought, and expectations on which the success of episcopal and mendicant inquests into heresy and criminal sins depended. The role of synodal witnesses and “trustworthy men” recently examined by Ian Forrest will be considered, as will the liturgy and sermons utilized in episcopal visitations, and the implementation of canon law regarding individuals who inhabited legally ambiguous statuses (e.g. crusaders) or who committed criminal and/or notorious sins (such as usury and clerical/monastic violence and incontinence) which shared the same jurisdictional intersectionality as did heresy. One could argue that the encouragement of denunciation of clerical shortcomings to bishops was extended to the ‘heresy’ (and attendant moral failings) of the laity. Similarly, the promulgation of the simultaneously public and secret disciplinary authority and actions of bishops (and their delegates) through sermons and the spectacle of the judicial and penitential fora and (para)liturgies would be echoed in the *sermo generalis* and *auto-da-fé*. Finally, the negotiation of competing jurisdictions implied by the function of episcopal inquests and visitations per se and

the role of bishops/mendicants as secular justiciars and conducting of parallel secular inquests in England and France paved the way for the assumptions and mechanisms which underlaid lay authorities' support for (or opposition to) the conducting of episcopal inquests against heresy (as well as those overseen by the mendicant orders and specially appointed inquisitors).

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### **Boldrini, Frederica**

THEY PROMISE THINGS THAT THEY DO NOT PRODUCE: ALCHEMY BETWEEN PAPAL LEGISLATION, CANON LAW SCHOLARSHIP, AND PASTORAL LITERATURE

Alchemic practices raised several moral and juridical problems, that have been tackled by Canon Law scholars since the Late Middle Ages. If in 1317 pope John XXII had intervened on this issue with the decretal *Spondent quas non exhibent*, condemning the Alchemists' pretension of transmuting lesser metals into gold, in the first half of the 14th century an important debate on the liceity and on the juridical consequences of alchemy involved leading canon lawyers like Oldrado da Ponte, as well as other prominent *ius commune* jurists like Baldo degli Ubaldi, Andrea d'Isernia and Alberico da Rosciate.

The reflection produced by these authors touched many important theoretical questions, like the epistemological statute of alchemy, the moral limits of human knowledge and the relation between *ius naturae* and the physical expressions of nature. More tangible problems were discussed as well, like those concerning the commercial value to be attributed to alchemic gold and its possible benefit for local economies.

The late medieval debate about these issues will be reconstructed in detail, enlightening how the principles outlined by jurists have been accepted and divulged in pastoral literature, with special reference to the handbooks for confessors that were produced, mostly by mendicant authors, between the 14th and the 15th century.

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### **Bolton, Brenda**

“SI NOTASSES MELIUS, QUOD LEGISTL...”: INNOCENT III, BERENGAR OF NARBONNE, AND THE MATTER OF EPISCOPAL DEPOSITION

On 30 May 1203, Innocent III warned Berengar II, archbishop of Narbonne (1191–1211), to refrain from abusing those powers entrusted to him and to take seriously the obligations of high office, “lest he should, by exploitation, destroy that which he could retain by use”. High on Innocent’s list of misdemeanours was serial absenteeism, the archbishop having failed to visit his province for a period of thirteen years, preferring instead to remain as abbot at the Abbey of Montearagón near Huesca. Berengar’s proven neglect forced the Pope to declare as *ecclesiae derelictae*, not only the church of Narbonne but also several others within its metropolitan dioceses of Adge, Béziers, Carcassonne, Elne, Lodève, Maguelonne, Nîmes and Uzès. Innocent further accused the archbishop of consecrating unsuitable candidates to the episcopate and requesting money in return (an implicit reference to Simplicius II’s letter of 482 to archbishop John of Ravenna who appointed the unqualified George as bishop of Modena). Whilst the list of Berengar’s indiscretions was both lengthy and serious, given the incidence of heresy not only in Narbonne but across the whole of Languedoc, he nevertheless clung to office for a further seven years and is usually described as not having been legally deposed but rather ‘retired’ on grounds of ill health and old age.

In this paper I attempt to examine how rules and practices evolved in episcopal deposition at the turn of the twelfth century when, according to Julien Théry-Astruc’s excellent study, “Excés”,

“affaires d’enquête” et gouvernement de l’Eglise (v.1150–v.1350)’, published in *Pathologie du pouvoir* (Brill, 2016), formal procedures were just beginning to be stabilized. He argues that Innocent III distinguished between actions deemed *criminaliter* when the degradation of the accused (the more serious punishment) was at stake and those deemed *civiliter* when the problem was less serious, perhaps only involving the possible loss of a benefice. He also cites Berengar of Narbonne as Number 51 in a list of punished bishops in his Annexe 2, *Corpus des cas* (1198–1342). Innocent III’s correspondence may help to clarify further Berengar’s ‘deposition’.

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### **Bombi, Barbara**

LEGAL THEORY AND PRACTICE: THE CASE OF THE PROCTORS OF ST. AUGUSTINE’S CANTERBURY AT THE 14<sup>TH</sup>-CENTURY PAPAL CURIA

The professionalization of curial proctors went hand in glove with the bureaucratization of the papal curia from the late twelfth century. By the fourteenth century, we see individuals from different backgrounds acting as representatives for petitioners before curial departments, often in teams that included professionals with different kinds of expertise. This paper will investigate the training and legal knowledge of these representatives through the well-documented case-study regarding the proctors of the abbey of St Augustine’s Canterbury, who defended the monastery at the papal curia in lengthy litigation against the archbishops of Canterbury between 1300 and 1336. The paper particularly draws on the activity of John Mankael, a monk of St Augustine’s who trained in theology at Oxford and left over 30 books to the abbey’s library. Three of these are legal manuscripts. One (Cambridge, Corpus Christi College, ms. 38) is particularly interesting for reconstructing Mankael’s activity in Avignon, since it contains the list of titles of Innocent IV’s Apparatus on the Liber Extra and casus on selected titles of the Liber Extra, the Liber Sextus and the Clementine. The manuscript has several fourteenth-century additions in cursive hand, which comment on the sections concerning excommunication, papal and episcopal rights of dispensation and jurisdictional issues. My paper will therefore focus on these annotations and will try to link them to John Mankael’s activity as legal representative of St. Augustine’s at the curia in the 1320s. Three questions will be specifically addressed:

- The expertise of legal representatives acting at the papal curia, especially those from a monastic background;
  - Their legal knowledge and the use of it in petitioning the papal curia;
  - The relationship between canon law theory and practice in proctorial activity.
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### **Brasington, Bruce C.**

*INCLINANS SE DEORSUM DIGITO SCRIBEBAT IN TERRA: MEDIEVAL CANON LAW IN AN AGE OF NIHILISM*

Arthur Leff’s essay, “Unspeakable Ethics, Unnatural Law,” calls into question modern presuppositions about jurisprudence’s and morality’s foundations. If there is no God, and thus no transcendent moral order, how can there be any normative standard by which to judge right and wrong? We are never going to get anywhere (assuming for the moment that there is somewhere to get) in ethical or legal theory unless we finally face the fact that, in the Psalmist’s words, there is no one like unto the Lord. If He does not exist, there is no metaphoric equivalent. No person, no combination of people, no document however hallowed by time, no process, no premise, nothing is equivalent to an actual God in this central function as the unexaminable examiner of good and evil. The so-called death of God turns out not to have been just His funeral; it also

seems to have effected the total elimination of any coherent, or even more-than- momentarily convincing, ethical or legal system dependent upon finally authoritative extrasystemic premises. His conclusion in 1979 is no less haunting today:

Only if ethics were something unspeakable by us, could law be unnatural, and therefore unchallengeable. As things now stand, everything is up for grabs. Nevertheless: Napalming babies is bad. Starving the poor is wicked. Buying and selling each other is depraved. Those who stood up to and died resisting Hitler, Stalin, Amin, and Pol Pot-and General Custer too-have earned salvation. Those who acquiesced deserve to be damned. There is in the world such a thing as evil. [All together now:] Sez who? God help us.

My paper offers in response to Leff that most unnatural and unspeakable message of medieval canon law: Grace. Among the texts whose commentary I explore is John 8:6, which forms part of my title. Jesus' silent, graceful response to the mob, rocks in hand, challenges us, no less than our medieval forebears, to seek justice and mercy in a fallen world.

POWER AS PRIVILEGE: THE MAXIM *PRIVILEGIUM MERETUR AMITTERE, QUI POTESTATE SIBI CONCESSA ABUTTUR* ('HE WHO ABUSES THE POWER GRANTED HIM DESERVES TO LOSE PRIVILEGE')

Legal historians are fond of maxims, and with good reason. They exert a remarkable force across the centuries and some, for example, *Quod omnes tangit, ab omnibus approbetur*, have shaped not just the law but political theory as well. A maxim that deserves to be better known is *Privilegium meretur amittere, qui potestate sibi concessa abutitur*(PMA). Originating in a decretal of Pope Simplicius, this declaration that abuse of power resulted in the loss of privilege spread throughout the canon law and entered Gratian's *Decretum* at multiple points. These inspired decretist commentary. Papal decretals quoted it as well. Pope Innocent III was particularly fond of it. Like *Quod omnes tangit*, PMA also moved outside legal discourse, for example in the polemics of the Investiture Contest, the theology of Peter Abelard, and Hugh of St. Victor's exegesis. Secular writers also took it up, for example Arnold of Brescia in his *Liber consolationis et consilii*. Jurisprudents of the *ius commune* were also familiar with the maxim as well as later scholastics, for example Suarez. PMA also contributed to the controversial literature of the Reformation, especially in England. PMA thus enlarges our understanding of medieval canon law and the *ius commune*. More importantly, it remains relevant for our own day, where rulers and their regimes, like their medieval predecessors, assume that power is a right, not a privilege.

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### Brunetti-Olson, Trisha

*PROCESSUS SANTANAE*: THE BLESSED MOTHER'S AND CANONISTS' BATTLE AGAINST THE DEVIL'S GRACELESS JUSTICE

This paper extends the discussion of the two previous. It offers a reading of the *Processus Santanae*, an early fourteenth century tale about the Devil bringing suit in a heavenly court before Animate Justness, the person of Christ. The Devil claims that, in Saving us, the Man of Sorrows unjustly despoiled Him of His possession. In Her status as *Salve Regina*, the Blessed Mother acts as our advocate. The text was composed and used as a canon law lesson. Thus it easily appears historically insensible, for it shines light on procedural and substantive Law's potential demonic character in obstructing deeds born of Grace. In so doing, it dramatically undercuts the popular thesis that, beginning with the decretists' exegesis of Genesis, the canonists envisioned canonical procedure, a species of Law, as a Holy constraint on their Lord and as the summit of Christian Justice. Indeed, throughout the tale, sitting as Animate Justness, the person of Christ breaches



canon procedure. So too, as the “advocate of humankind,” Mary persistently twists the canons on restitution due to spoliation. In a non-lawyer like fashion, She also begs Her son to recall Her care for Him when a child. By the end, this paper offers, Satan’s Lawsuit imparts two interrelated lessons. The Justness of the Savior’s salvific deeds flow out of their Loving Graciousness, and thus out of their Lawlessness. Because of this, the canon advocate’s ability to act justly, including toward his adversary, depends not on Law’s sanction, but on the deed’s incandescent graciousness. Satan’s Lawsuit gives us a glimpse of the canonists disposed to Christian Justness, including juridic justness, as part of the Whole called Caritas, and thus as not tethered to Law, procedural or substantive.

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### **Burden, John**

FRAMING GRATIAN’S *DECRETUM*: NEW EVIDENCE FROM THE EARLY MANUSCRIPTS

Compared to the first recension of Gratian’s *Decretum*, which is preserved in at least four manuscripts, the contours of the second recension remain vague. It has never been precisely defined and variations in post-first-recension manuscripts have led some scholars to question whether a true second recension ever really existed. This paper will consider the evidence for a second recension in the titles and organizational structure of early *Decretum* manuscripts. Giovanna Murano, for example, has noticed that Paris, BnF, lat. 3895 (Py) contains the title “Liber Gr[atia]ni se[cun]de editioni decretorum,” which seems to quite literally reference a “second edition.” Another interesting title can be found prefacing the introduction “In prima parte agitur” in three early Italian manuscripts (Mv, Vc, Vo): “incipiunt capitula decretorum a Gratiano in ordine redactorum. . .” This title seems to reference “revisers” (redactores) who gave the *Decretum* a new “structure” (ordo). By exploring these manuscripts and many more, this paper will argue that a true second recension did exist and that some early readers and users of the *Decretum* were very much aware of it.

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### **Bytchkowsky, Nelly**

L’UTILISATION DU DROIT CANONIQUE MÉDIÉVALE DANS LA DOCTRINE GALLICANE DE LOUIS DE HÉRICOURT

Louis de Héricourt (1687-1752) est un canoniste gallican célèbre pour sa tentative de systématisation du droit canonique par la publication en 1719 des Loix ecclésiastiques de France dans leur ordre naturel.

À la manière de Domat, qui le précède, Héricourt propose une énumération de maximes canoniques divisées en parties et chapitres. Dans cette entreprise de systématisation, les maximes sont accompagnées de « justifications » : ces références canoniques et séculières fort nombreuses constituent les fondements techniques et historiques de ces maximes. Sans surprise, les fragments du Corpus juris canonici sont très largement mobilisés par le juriste gallican.

En dépit de la critique d’Héricourt à l’égard du développement de la monarchie pontificale, son travail accorde une place substantielle aux décrétales de l’âge d’or de la Papauté qu’il puise dans le Décret de Gratien, les décrétales de Grégoire IX, le Sexte, les Clémentines, les Extravagantes et les Extravagantes communes. Le maniement des textes pontificaux n’est évidemment pas anodin. Bien souvent, l’emploi de telle ou telle décrétale permet de dépasser les oppositions doctrinales, notamment ultramontaines.

L’ambition de cette conférence est alors de proposer une étude de la place et du rôle des sources canoniques médiévales dans l’œuvre de ce juriste français gallican.

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## Caddy, Edward

### THE CRUSADE EFFORT OF DROGO REDIRATUS: A CASE STUDY IN CRUSADE VOWS, CHARTERS, AND CANON LAW

By taking the crusade vow an individual turned the intention to participate in an expedition into a moral obligation binding by canon law. One such vow was sworn early in 1096 by a layman from Angers, Drogo Rediratus, who then sought support for his journey from the local abbey of Saint-Serge. Two years elapsed and Drogo had not yet left. News brought back from the crusade discouraged Drogo and he decided to abandon his plan. Seeking to release himself from the crusade vow (*voti sui reus*), Drogo petitioned Abbot Bernard and the monks of Saint-Serge with a request to commute his obligations, offering to use the money that he has was preparing to carry on the crusade for the construction of the chapel of Saint-Leonard at Durtal. An agreement was drawn up, and with the matter was settled.

My paper will demonstrate that, although a well-defined doctrine of the vow and its obligations had not been fully developed on the eve of Urban II's preaching of the crusade in 1095, the binding power of the vow was generally understood. Pope Paschal II, and likely Urban II before him, declared excommunicate those who failed to fulfil it without valid cause. Through this case set in its context, I shall explore contemporary understandings of the crusade vow by lay people and the religious, and its implications even before the great codifications and papal dissemination of ecclesiastical law.

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## Champagne, Marie-Thérèse

### COMPANIONS ON THE JOURNEY: HOW AND WHY A TWELFTH-CENTURY ROMAN TEXT CIRCULATED WITH THE *DECRETUM*

In the second quarter of the twelfth century the *Decretum* began to circulate from its origin in Bologna. Twelfth-century copies proliferated throughout Europe into many versions with various introductory texts, summaries, commentaries, and glosses. During that same era, a metrical poem written in Rome c. 1144-1145, *Ad incorrupta pontificum nomina conservanda*, began to circulate. Nineteen manuscript versions of that poem still exist today, and eight apparently circulated with early versions of the *Decretum*. Nicolaus Maniacutius (fl. c. 1130s-1160s), the author of the poem, was a highly educated cleric who also participated in a discourse community of scholars that included Jewish scholars. It extended beyond Rome to the Benedictine Abbey of Montecassino. The earliest of the eight copies of the two texts paired together was created at Montecassino c. 1146. In some of the eight copies, Nicolaus's poem is inserted between an introduction to the *Decretum* and the first *distinctio*, sharing the same folio or column, the same script and hand, and the same ink color. This paper is part of a larger research project investigating how Nicolaus's poem was valued and how it circulated during the High Middle Ages. The research presented at the Congress will explore why and how the two texts circulated together.

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## Clarke, Peter D.

### CLERGY AND CONTEXTS OF VIOLENCE IN LATER MEDIEVAL ENGLAND AND WALES

Violence is central to popular images of the medieval past. A growing body of scholarship has reinforced but also nuanced this picture. Much of this focuses on the violence of the laity, especially nobility. Clergy, by contrast, have received less attention as perpetrators and victims of medieval violence. Recent studies have nevertheless drawn attention to their participation in

medieval warfare and thus questioned the received image of peaceable clergy set apart from a violent, warlike society. This paper, however, proposes a different approach focussing on clerical involvement in everyday violence: violent crimes documented in later medieval court records. Historians, notably Claude Gauvard, have studied such crimes but again mainly regarding laity. Criminal violence is embedded in social relations, as Gauvard's work shows, hence its study is crucial to understanding the clergy's relations with medieval society. Hence this paper will explore the contexts in which clergy occur as perpetrators or victims of criminal violence and what these reveal about relations between the pre-Reformation clergy and laity. Criminal violence involving clergy in later medieval England and Wales was dealt with in one or more of three legal contexts: before the king's justices, local ecclesiastical courts, and the papal curia. Accordingly records produced in all three settings will be exploited in this paper, including the gaol delivery rolls for Kent, church court records from the Canterbury and Rochester dioceses in the same region, and the papal penitentiary registers.

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### Condorelli, Orazio

THE PROCLAMATION OF THE UNION OF FLORENCE (1439) IN CONSTANTINOPLE (12 DECEMBER 1452)

At the Council of Florence, after several months of negotiations, the union of the Churches of Rome and Byzantium was stipulated. The decree of Eugene IV (*Laetentur caeli*) contained the terms of the agreement, including the definition of the primacy of the Bishop of Rome and the recognition of the privileges of the patriarchs of the East. The union was received with difficulty in Constantinople, despite the efforts made by the emperor John VIII Palaeologus and his successor Constantine XI. The union was officially proclaimed in Constantinople only on 12th December 1452, when the city was under siege and about to fall into the hands of Muhammad II. The proclamation is part of the diplomatic processes through which Constantine hoped to receive the moral support of the papacy and the military aid of the Christian powers. Cardinal Isidore of Kiev had been sent by pope Nicholas V to Constantinople to give effect to the union of Florence and to prepare the religious context that would have favored the military rescue of the European kingdoms. The theme of the union, however, cannot be reduced only to a question of political convenience. Some great figures of the Byzantine Church (including Bessarion and Isidore of Kiev) embraced the union and with their action became promoters of the rapprochement between Rome and the Byzantine Church. The fall of Constantinople, however, radically changed the context in which, for centuries, the *negotium unionis* had taken place. There was no longer an emperor, the historical interlocutor of the Church of Rome, and there was no longer an empire, the institutional reality in which Byzantine Christianity was embodied. The concept of papal primacy remained, before and after 1439, an unresolved issue in the dialogue between the Latin Church and the Byzantine Church. In the Latin Church primacy was placed within the framework of the concepts of the *plenitudo potestatis* and papal monarchy, matured in the doctrinal and institutional developments of the 12th-15th centuries; in the East primacy was conceived as a service of unity which the Bishop of Rome exercised in the ecclesiological and canonical system of the patriarchal pentarchy.

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### Corran, Emily

PENITENTIAL JURISDICTIONS BETWEEN BISHOP, MENDICANT AND PRIEST: THE VIEW FROM CONFESSORS' MANUALS

This paper explores what confessors' manuals reveal about competition for penitential jurisdiction. The case study will be a book of penitential questions on Raymond of Penafort's *Summa de Casibus* gathered by William of Rennes. William discusses the episcopal mandate to Dominican confessors at length, setting out the sins that may be absolved by a simple priest, those reserved to the bishop, and the important subsection of reserved cases open to the bishop's mendicant delegate. In general William emphasizes that Dominicans should not presume to absolve sins that are reserved to a bishop, but, crucially, he lists a range of exceptions – cases where mendicants can absolve cases not open to the parish priest. This all suggests that mendicants and the bishop were not always in competition over penitential jurisdiction; in fact mendicants had an interest in promoting episcopal reservations. Moreover, it helps to explain the overriding interest of these manuals in sins requiring absolution from a higher authority than a simple priest. This paper thus shows what confessors' manuals can add to our understanding of the wider penitential administration.

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### **Cushing, Kathleen G.**

#### REFORM AND LEGAL PRECEDENT IN ELEVENTH-CENTURY CHURCH COUNCILS

From the time of the early Church, councils were the chief legislative fora in which matters of doctrine, ecclesiastical discipline, the norms of clerical and lay behaviour, administrative procedure, and indeed Christian worship and practice were established and disseminated. Convened under the authority of the Holy Spirit, Church councils were self-consciously creators of legal precedents in and of themselves, however much they might make explicit reference to the canons of earlier councils or papal decretals, collections of which were brought to church councils (great or small), were regularly consulted and informed those councils' own rulings. More often than not, however, the use of previous legislation was not explicitly acknowledged or identified. After all, if the council operated under the authority of the Holy Spirit, clearly, it did not need to invoke legal precedent and canons were simply adapted, re-packaged and/or re-promulgated.

This paper considers explicit and non-explicit appeals to legal precedent in three very different eleventh-century Church councils: the Council of Pavia in 1022; the Council of Seligenstadt in 1023; and the Lateran Council of 1059. Although these councils were different in their nature and scale, they all reveal interesting intersections of ideas of reform and legal precedent and the transmission of their decrees were both influential and extensive (if less so in the case of Pavia). I look to explore whether legal precedent was articulated in the context of reform measures perhaps deemed 'innovative' or whether they were mechanisms for pursuing strategies (as Vanderputten has recently argued) of justifying 'politically motivated interventions in the institutions and observance of the religious communities of western Christendom'. By examining the contexts in which law was invoked directly and where the undeniable use of precedent was not invoked, I will offer an additional approach for investigating the use of law in practice in eleventh-century councils.

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### **D'Avray, David**

#### CANON LAW AND CONSCIENCE IN AN UNSTUDIED PENITENTIARY FORMULARY

Research on the apostolic penitentiary made tremendous strides after its Registers became accessible, through the work of Kirsi Salonen and others. They only tell us about the fifteenth and sixteenth century. A new front was opened up by Arnaud Fossier's magisterial study of

penitentiary formularies, which open up understanding of the preceding period. One formulary, in British Library Add MS 24057, remains unstudied. It probably dates from around 1300. Like other formularies, it is a window into the complicated world of conscience and canon law. For instance, a cleric was given a benefice but someone else entirely illegally had possession of it. The cleric arranged to pay the man in possession a pension, just so that he could peacefully get what was rightly his. But then a third party came along with an indubitably stronger claim than the possessor, who lost all hope of the benefice. Why does he go to the Penitentiary? On the surface, his reason is that people might suspect him of simony, because of that pension. By the end though it turns out that the Penitentiary tells him he does not have to, and should not, pay the pension. So was that his motive all along? These formulary cases take one into an interesting realm of mixed motives, and conflicting considerations, cognate to the casuistical cases studied by Emily Corran.

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### Dauchy, Audrey

#### HIRING PRIESTS: THE LEGAL FRAMEWORK OF A CONTESTED PRACTICE

Could priests be hired out? Gratian's *Decretum* provided that each parish church, metaphorically assimilated to a wife, should have its own priest. Therefore, parishes could not be entrusted to hired priests (C. 21, q. 2, c. 4; C. 21, q. 2, c. 5). The temporary nature of leasing agreements was then deemed implicitly incompatible with dedicated pastoral care. However, the real question was not so much whether a priest could be hired, but under what conditions. By examining how medieval canonists dealt with this issue from the 12th to the 15th century, this paper will highlight that the principle of the prohibition of hiring priests for services came up against concrete situations. The absence of the parish priest indeed justified that a priest were hired and paid to provide his services as a replacement during the necessary time, in addition to his own office. Nevertheless, hired priests could neither be in charge of parishioners' souls nor lead the parish. Indeed canonists objected that such leasing agreements were simoniacal if the care of souls (*cura animarum*) was paid for. This paper will show how medieval canonists considered hiring priests as an unsatisfactory but necessary temporary solution.

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### Delivré, Fabrice

#### THE *DECRETUM ELECTIONIS* BY HENRICUS DE SEGUSIO: LAW AND PROCEDURE OF EPISCOPAL ELECTION

This paper is devoted to the *Decreta electionum a domino Henrico Hostiensi et Velletrensi episcopo cardinali composita* (as runs the explicit in Basel, UB, C III 34, fol. 99vb), a short treatise on the conduct of elections attributed to Henricus de Segusio/Hostiensis (d. 1271). Discovered in 1907 by A. von Wretschko, who identified 4 manuscripts, the text has been mentioned by scholars interested in the making of bishops (G. Barraclough, 1933 ; R. Benson, 1968) or in the writings of the prominent canonist of the thirteenth century (K. Pennington, 1993, 2013 ; G. Brugnotta, 1999). Despite its recent edition based on 4-5 manuscripts (G. Voltolina, 2013), the *Decretum electionis* still requires further examination as a representative of the procedural turning point in the 'golden age of episcopal election, 1100-1300' (K. Pennington, 2018). While reconsidering the manuscript evidence (13 extant copies), the dating of the opus (before 1253, ca. 1253-1262, after 1262 ?), its structure and contents, the tension between text and gloss and the impact of the constitution *Quia propter* (Lateran IV c. 24 ; X 1.6.42) related to the three forms of election (scrutiny, compromise, quasi-inspiration), the study will focus on the set of glosses to find out,

through technical problems of electoral theory, the link between this ‘minor work’ and the ‘major works’ of Henricus, especially the *Summa* (ca. 1253) and the *Commentum* on the Decretals of Gregory IX (1262–1265, ca. 1270). To another extent, the paper will investigate the matter of the *decretum electionis*, i. e., the formal document enacted by the cathedral chapter and brought to the superior in order to get consecration of the elect and approval of the election. On this topic, Henricus de Segusio/Hostiensis provided two *decreta*, the first *per formam compromissi* and the second *per formam scrutini*. He drew heavily on tradition, liturgical (the *pontificale Romanum*) as well as juridical (*Quia propter* and its glossators, Tancred on 3Comp.), and contributed himself to the debate. Proposing models to follow, the *Decretum electionis* was put into practice. It made its way, in part or in full, in the *Speculum iudiciale* of William Durantis (d. 1296), in the *Summa de electione* associated with Johannes Andreae (d. 1348) and regarded as an addition to the massive *Libellus super electionibus* (1286/87) by William of Mandagout (d. 1321), in *artes notariae*, in formularies compiled for the use of papal notaries and, last but not least, in *decreta* issued by ecclesiastical communities from the 1270’s onwards.

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### Descamps, Olivier

LA SANCTION DES CLERCS DANS LES SOMMES DES CONFESSEURS DE LA FIN DU MOYEN ÂGE  
Le commentaire au canon *Sicut dignum* (X., 5, 12, 6) à propos du fondement de la responsabilité en matière d’homicide casuel suscite une controverse au sein des canonistes. En effet, faut-il exiger le même degré de faute au for interne et for externe ? S’il y a une différence de degré, quelles seront les conséquences pour l’auteur de l’acte répréhensible et pour la victime ? Les points de vue divergents alimentent des discussions entre d’illustres canonistes. C’est Innocent IV qui lance le débat qui ne trouvera sa solution qu’au XV<sup>e</sup> siècle sous la plume de Panormitain. Cette communication reprend les points de vue différents et montrent les enjeux sociaux des doctrines soutenus.

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### De Concilio, David

THE ARGUMENTATIVE USE OF ROMANO-CANONICAL SOURCES IN LATE TWELFTH-CENTURY ANGLO-NORMAN WORLD AND CONTINENTAL EUROPE

The irreconcilable opposition between Romano-canonical law and common law traditions lies in the idea that both are conceived mainly as alternative systems of substantive law. If instead we consider the Romano-canonical sources not as a systematic picture, but as repositories of legal arguments to mobilise case by case, we can find a strong analogy between how they are used on the two sides of the channel.

This is particularly evident in the genesis of the twelfth-century collections of brocards; this paper aims at showing this analogy by focusing on one of the oldest of these collection, the canonical work known as ‘*Perpendiculum*’, which today is believed to have an Anglo-Norman origin (Gouron, 2000).

In this perspective, this paper aims at shading some light on the *Perpendiculum* and at reconsidering the studies on this work, by presenting the planned edition of its text and by analysing again the issue of its origin on the light of the most recent findings.

Finally, this study aims to suggest how the textual history and the origin of the *Perpendiculum* shows a similar use of the Romano-canonical sources as repositories of arguments, both in England and on the continent: collections of arguments like this work are firstly produced in the Anglo-Norman area, tapping into Canon law, and successively in the rest of Europe, opening

to arguments of Roman law. Furthermore, this pattern of legal translation underlines the existence of a twelfth-century common European learned legal culture, which connected together Anglo-Norman England and continental Europe.

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### de Lorenzo, Lucia

#### THE CONJUGAL METAPHOR IN THE ECCLESIOLOGY OF ENRICO DA SUSÀ (HOSTIENSIS)

Enrico da Susà (1200? - 1271), also known as Hostiensis, is traditionally considered one of the most important canonists of the thirteenth century: a point of reference for his contemporaries, and for the canonical studies one of the most authoritative sources of the *utrumque ius*. In the last 70 years, his ecclesiological thought has been the object of a debate within the community of scholars, which sees him as the spokesman of the monarchical and centralizing instance of papal power, or as the proponent of a ‘corporative’ reorganization of papal jurisdiction. The aim of this paper is to offer an overview of the studies on this subject, and of new possible research perspectives. Among these, particular attention will be paid to the use that the cardinal, in the *Liber IV* of his *Summa*, makes of the traditional device of the spousal metaphor to describe the relationship between bishops, universal church and local church. This metaphor, intersecting with the commentary to the decretal *inter corporalia* (X 1.7.2), should perhaps be able to shed new light on the ecclesiological thought of Hostiensis.

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### Di Paolo, Silvia

#### CAUSAE PIAE AND ECCLESIASTICAL BENEFICES IN THE LATE MIDDLE AGES

Through pious bequests, the faithful committed themselves irrevocably to God, to invest a share of their patrimony in the sphere of charity. This operation was also read as a conversion of money into “pieces of charity” in the service of the construction of a common good. In practice, it transformed not only the nature of the goods, making them inalienable, but also the status of the administrators and their beneficiaries. Putting the goods “out of market” expressed the intention to control these resources, their circulation and appropriation, to influence the choices of their administrators; as well as, to build a patrimony as a body endowed with privileges and therefore, entitled to recover credits difficult to collect. Since the early Middle Ages, canons and decretals severely condemned the greed of those who, wearing the guise of “Bankers of God”, on the contrary, were sullied by sinning against him through fraud.

The renowned decretal “Quia Contingit” promulgated by Clement V further prohibited the constitution or the transformation into benefice of the bodies endowed with juridical personality, such as the hospitals, which had been founded by pious wills. Indeed, the practise made the boundaries between *piae causae* and benefices fluid i.e. equivocal and therefore, canonists and theologians tried to define and circumscribe them.

The Roman Curia intervened to discipline this situation by using the *regulae cancellariae* and the *decisiones Rotae*, which allow a better understanding of the extent of the patrimonial administration of the Church’s temporal goods, which was a burning issue in the aftermath of the Lutheran Reformation.

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### Dolezalek, Gero

CHARMS AND WOES IN SALVAGING UNCOMPLETED PROJECTS, E.G., MASSES OF UNEDITED MATERIALS FROM THE VATICAN CATALOGUE OF KUTTNER/ELZE

In the first years of the new millennium, Martin Bertram and I salvaged sample galley proofs for a third volume of Kuttner / Elze's Catalogue of Manuscripts of Canon and Roman Law in the Vatican Library. We uploaded these samples on the internet. Thereafter we furthermore wrote together a report on the decades-long history of the project, and about what would be needed to bring a real good third volume into being – published in 2014 in "Studi e testi" (Miscellanea XX). In the mean time plenty of other materials from the Kuttner / Elze project have come back to light: magnetic tapes which no present machine could still read, high stacks of computer lineprints, thousands of typewritten sheets, masses of handwritten draft notes. Peter Landau and Anders Winrothin, in their functions as President and Director of the Stephan-Kuttner-Institute of Medieval Canon Law, entrusted these materials to me for sorting, (re-)digitising, standardising of data (in order to create indexes). The aim was and is, that those materials which are still useful should be made publicly available – at least on the internet. I report here on what has been achieved so far, and what remains to be done.

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### **Donahue, Charles**

CLANDESTINE MARRIAGE IN MEDIEVAL SYNODAL LEGISLATION: A STUDY FROM THE CORPUS SYNODALIUM DATABASE (COSYN)

As is well known, local councils and synods proliferated in the thirteenth century. They generated, among other things, a large body of conciliar canons and synodal statutes, some of which have been given modern editions. The recent general history of medieval canon law in the classical period, however, does not deal with them. I have neither the time nor the competence to offer a general account of medieval synodal legislation here. What I would like to do is to take one particular form of synodal statute, sometimes called the 'liber synodalis', and make some suggestions as to what became of that form in the fourteenth and fifteenth centuries, comparing for these purposes England and the northern part of France. If time allows, I would also like to offer some examples of how conciliar canons and synodal statutes were used in litigation in the church courts the later Middle Ages. The story of the 'liber synodalis' and the examples, in turn, will bring us to a suggested answer to the question posed in the title.

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### **Dorin, Rowan**

AUDIENCE AND AUTHORITY IN LATE MEDIEVAL DIOCESAN STATUTES

Following the lead of medieval canonists, modern scholars have long been interested in the ways that local episcopal legislation served to support and supplement the church's universal law, dutifully conveying the provisions of the latter to local clergy and adapting them to local needs. Little attention has been paid, however, to the ways that contemporary listeners and readers would have understood the relationship of these statutes to higher sources of law. Drawing on the corpus of extant thirteenth- and fourteenth-century diocesan legislation – and focusing in particular on preambles and citations of the universal law – this paper will reconstruct how local clergy might have understood the place of episcopal statutes within the broader context of late medieval canon law.

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### **Drossbach, Gisela**

*REGESTA DECRETALIUM ET EXTRAVAGANTES*: THE USE OF PAPAL DECRETALS AROUND 1200



My new results concerning decretal materials raise the question whether the early *ius novum* was also used in other *Summae* as well as in other sources of canon law. For this reason, a corpus of works containing decretals, for instance, *Ordines iudicarii*, should be evaluated. Because scholarly attention has heretofore focused almost exclusively on decretal collections, the contemporaneous appearance of the decretals in other literary genres sheds light on new perspectives of the use of decretals. Further new key subjects are the working methods of the early decretalists, their school affiliations, and new insights into the avenues of reception of canonical literature by their users.

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**Duggan, Anne J.**

ROMAN LAW IN ENGLISH ECCLESIASTICAL CASES FROM C.1150 AND ITS INFLUENCE ON ENGLISH COMMON LAW

Set in the context of English/Anglo-Norman precocity in sending consultations and appeals to the papacy, this paper examines evidence for the civilian underpinnings of procedures and legal principles deployed in English ecclesiastical cases from the 1150s and their infiltration into English Common Law. These include the raising of exceptions (objections) and the employment of four important legal principles: *res inter alios acta*, *res iudicata*, *fraus et dolus*, and the *onus probationis*.

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**Dusa, Joan**

CANON LAW AND THE MARGINALIZATION OF THE EASTERN CHURCH IN THE FOURTEENTH CENTURY

The condemnation of the Eastern Church rulers in Serbia and Bulgaria to death in the fourteenth century transcended the previous denunciations of them by the Church as schismatics and heretics. This attack coincided with papal policies of creating crusader states, the Hungarian Empire and other colonizing efforts in Eastern Europe. I want to show that the origin of this particular repudiation was developed by canon lawyers who were confronting the challenges to the temporal powers of the Church.

John XXII hired canonist Alvarus Pelagius to develop the strategy against the anti-pope Nicholas V and his supporter Louis of Bavaria. He developed arguments to apply the death penalty to heretical schismatics. Benedict XII overturned these decrees. Clement VI reasserted the death penalty against Louis and the anti-pope as well as the Serbian and Bulgarian kings based on the writings of Alvarus Pelagius.

Historical literature contends that the imposition of the death penalty on the heretical schismatic Orthodox rulers was reasonable. In this paper I argue that it should not have been anticipated from the theological principle of the Church as the Mystical Body of Christ using both spiritual and temporal powers. In it I explore how canon law contributed to the application of the death penalty based on arguments from the temporal principle at the expense of the spiritual. I will also show that though this contributed to the marginalization of the Orthodox Church adherents in Eastern Europe by the West, it was rooted in defensive measures taken by the Church in response to losing its temporal powers.

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## Dziwiński, Paweł

### THE PROTESTANT PERSPECTIVE ON MEDIEVAL CANON LAW: THE CONTRIBUTION OF *DIFFERENTIAE*

The late medieval method employed to differentiate *ius canonicum* and *ius civile* proved to be exceptionally useful to Protestant jurists, allowing them to simultaneously highlight the flaws attributed to Roman canon law as well as to validate its reformation. Thus, several works inspired by the *differentiae* genre (e.g. works of Johann Oldendorp, Konrad Ritterhausen) strongly influenced the perception of medieval canon law amongst Protestant jurists. The early modern methodological approach was utilized in diverse ways: to establish general rules serving as a paradigm for further analyses (e.g. Konrad Ritterhausen, Johann Peter von Ludewig); to mix legal reasoning with a strong historical narrative (e.g. Johann Ernst von Flörcke); to improve particular argumentation with the addition of a broader context or to facilitate the comprehension of its functioning (e.g. Jacob Brandmüller, Johannes Voet). The purpose of the paper is twofold. Firstly, to review the attitude to the medieval canon law presented by the authors of the Protestant *differentiae*. How did they build a historical narrative around the relations between civil and canon law in the Middle Ages? How did they refer to canon law prior to Gratian's *Decretum*? How did it subsequently change? Secondly, to evaluate their actual dependency on medieval works (i.e. early-medieval collections, Gratian's *Decretum*, decretals) along with the leading intellectual frameworks introduced by medieval canon law. In order to ensure the clarity and brevity of the paper, the examination will primarily elaborate on the matter of court proceedings.

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## Eckert, Raphaël

### THE SEPARATION OF THE JUDICIAL AND PENITENTIAL *FORA* IN CANONICAL AND THEOLOGICAL THOUGHT (12<sup>TH</sup>-13<sup>TH</sup> CENTURIES): A REVIEW OF AN INTERPRETATION

This paper intends to revisit the distinction between judicial and penitential fora in the canonical and theological sources of the late twelfth and early thirteenth centuries. For the past century, traditional historiography has taken their separation for granted, since canon law was allegedly emancipated from the sacramental domain at the end of the 12th century. The tribunal would be the place of judgement (judicial forum), which was the domain of law, and confession the place of penance (penitential forum), which was the domain of pastoral ministry. The idea of a strict separation of fora has been strongly questioned over the last twenty years, notably following the work of P. Prodi and J. Chiffolleau. New research has emphasized the porosity between the fora and even their non-relevance in ecclesial practice. These studies, which profoundly renew the analysis of the links between canonical punishment and penance, should lead to a better understanding of why canonists and theologians of the late twelfth century attached such importance to the distinction between fora. This contribution therefore intends to shed light on the theoretical distinction of fora, in canonical and theological thought, in the light of these historiographical advances.

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## Eichbauer, Melodie H.

### CANON LAW AS AN AUTHORITY IN *LIBRI PENITENTIALES* FROM PARIS IN THE LATE TWELFTH / EARLY THIRTEENTH CENTURY

From at least the twelfth century, Northern France had been known for its schools. The cathedral school of Notre Dame, and the monastic schools of Saint-Victor and Sainte-Geneviève on the

Left Bank benefited both from the patronage of the Capetians and from the papacy. These schools would comprise the University of Paris, the center of theological study. In spite of the university's renown in one discipline, scholars were versatile. While known for their writings in one area, they often possessed an impressive knowledge of other areas. As a case in point, this paper will explore canon law as an authority in *libri penitentiales* compiled in late-twelfth and early-thirteenth-century Paris. The pastoral theologians Peter the Chanter, who served at the cathedral of Notre Dame, and Robert of Flamborough, who served as the *penitentiarius* at Saint-Victor, each compiled influential penitential manuals. Despite their renowned for their work in theology, they also had a practical and theoretical knowledge of the law. They grounded their penitentials in canonical authorities and served as papal judges delegate on a number of occasions. This paper will explore the inclusion of canon law in the penitentials of Peter the Chanter and Robert of Flamborough, how they used their canonical authorities, and for what end. The topics covered in the pages of their *libri penitentiales*—topics such as simony, homicide, marriage, and excommunication—necessitated a knowledge of law, even if law was neither their first area of expertise nor their first area of interest.

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### Faivre-Faucompré, Rémi

LES CONSÉQUENCES PATRIMONIALES DE L'EXCOMMUNICATION DES 'PRÊTRES ULTRAMONTAINS' DANS LE DROIT ROMANO-CANONIQUE MÉDIÉVAL

Un fragment de Pomponius inséré dans le Digeste prévoit, de manière implicite, que celui qui tient une construction sur le sol d'autrui par un contrat de bail n'est pas tenu de payer le loyer lorsque l'édifice est détruit par la faute d'autrui. À la charnière du XIIe et du XIIIe siècle, Azon estime que cette règle peut constituer un argument en faveur des « prêtres ultramontains » (sacerdotes ultramontani). Ayant été excommuniés, ces derniers sont en effet privés de revenu et ne seraient par conséquent plus tenus de payer le cens. Par cette référence aux prêtres ultramontains, le célèbre glossateur semble évoquer la situation du clergé français après qu'Innocent III a jeté l'interdit sur le royaume de France le 14 janvier 1200. La réflexion d'Azon permet dans un premier temps d'interroger l'actualité de cette question dans la pratique ecclésiastique de l'époque. L'opinion d'Azon passe par ailleurs dans la Grande glose d'Accurse, avant d'être discutée par certains commentateurs. Pour Bartole, la solution retenue ne serait toutefois pas conforme au droit romain : la faute du clerc excommunié empêche ce dernier de bénéficier de l'exemption de paiement du cens. L'analyse postérieure de la réflexion d'Azon permet donc de révéler dans un second temps l'importance de l'éloignement contextuel. Alors qu'un véritable intérêt des romanistes pour une difficulté rencontrée par certains clercs se fait initialement jour, les commentateurs envisagent en effet la question du paiement du cens par les prêtres ultramontains excommuniés comme un simple cas d'école.

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### Fiori, Antonia

CANON LAW AND THEOLOGY IN JUAN DE TORQUEMADA'S *NOVA ORDINATIO DECRETI GRATIANI*  
The renowned Dominican theologian Juan de Torquemada, one of the most eminent supporters of papal primacy in the conciliarist debate, is known above all as the first author of a treatise on ecclesiology (the *Summa de ecclesia*). Less known are his close links with canon law. In addition to an extensive Commentary on Gratian's work (1449-1464), he compiled a *Nova ordinatio Decreti Gratiani* (1451), a rearrangement of the content of the *Decretum* into five books, reproducing the order of the Decretals of Gregory IX.

The systematic reorganization of the *Decretum* was not a neutral or disengaged operation. The specific purpose of Torquemada seems to have been to provide a canonistic support for his own theological and ecclesiological visions, as a comparison between the *Nova ordinatio* and other works of the same author clearly shows. Besides, the focus on Gratian's *Decretum* was strategically of the utmost importance in the context of the conciliarist crisis, because the opponents of papal primacy based much of their arguments on it.

The paper will examine the *Nova ordinatio Decreti*, taking into consideration the role of Gratian's work in the conciliarist debate, and in light of Torquemada's ecclesiological, theological and canonical thought.

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### **Firey, Abigail**

#### THE STABILITY OF TRADITION: A WARRANT FOR AUTHORITY IN CAROLINGIAN CANON LAW?

Scholars whose work rests largely on study of manuscripts or complex critical editions are well aware of the potential for mutation in texts that are transmitted over several centuries, often over a wide geographical extent, with little or no institutional control over the quality of the copies made from a sometimes large number of exemplaria. And scholars of law are well aware of the implications of such potential mutation: authoritative texts might have their meaning radically altered; some communities might operate under different understanding of canonical rules than others. Other than the impressions gained from editions of specific texts or studies of the transmission of particular authorities, we have an limited understanding of the "topography" of early medieval canon law. That is, we know little of the range of preferred authorities, or the prevalence of particular canons. We still rely largely on Friedrich Maaßen's 1870 register of texts and the collections containing them as a map to dissemination, although Lotte Kéry's *Guide to Early Medieval Canonical Collections* has opened a much, much wider view of the manuscripts to be investigated. Even Kéry's work, however, understandably lists larger, more coherent collections than the many transcriptions of select canons and other legal material that often accompany those collections in the manuscripts. This paper explores how we can approach questions about stability, mutation, breadth of selection, and rarity of some canons in the vast amount of canon law available to Carolingian jurists (as Karl Morrison and others have called early medieval scholars of law). It comments on methods for assessing the popularity and variety of canons, and also explores strategies for moving to larger conclusions about the stability and mutability in the transmission of canon law— and hence, to reflections upon authority and precedent.

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### **Fulton Brown, Rachel**

#### MARY AS ADVOCATE AND THE JUSTICE OF MERCY

It is a commonplace in modern criticism of the medieval devotion to the Virgin Mary that medieval Christians sought to undermine God's authority as Judge by appealing to His Mother to intercede with Him whatever the gravity of their sins. Such criticism misrepresents both medieval understanding of the magnitude of God's mercy in becoming incarnate and Mary's role as advocate in appealing to the mercy of her Son. Rather, as medieval Christians argued, appealing to Mary was an acknowledgment at once of the enormity of every sin, however small, and of the need for mercy that justice might be fulfilled. Medieval Christians explored this mystery through their invocation of Mary as heavenly Queen standing beside the throne of her Son and pleading on behalf of her devotees. This paper will explore the significance of

representing Mary as advocate through commentaries on the most famous invocation of her in this role, the antiphon *Salve Regina*, sung every evening after Compline as well as in other instances, such as the blessing of ships. As medieval Christians understood it, far from subverting God's justice, Mary's advocacy on the part of her servants fulfilled it, even as by interceding with her Son on their behalf, she brought their sins to his attention to be forgiven.

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### **Gual Silva, Carolina**

RELATIONS BETWEEN CHRISTIANS AND MUSLIMS IN THE DEFINITION OF PAPAL JURISDICTION IN RAYMOND OF PEÑAFORT AND HOSTIENSIS

Canonists played a vital role in the definition of ecclesiastical jurisdictions, particularly in papal jurisdiction. In the 13th century, Canon Law authors made efforts to define the nature of jurisdictional authority using concrete situations, conflicts, and specific needs in society. Jurisdiction regulated practices such as the ordaining of priests and bishops, the administration of sacraments, the granting of benefits and privileges, and, thus, determined the extension and limits of authority. Jurisdictional limits were established in relational terms, i.e. it was only possible to determine where jurisdiction started or ended in relation to the limits of another power or authority. In this context, the place of non-Christian groups also had to be defined within ecclesiastical jurisdiction, since relations between the various groups happened in and outside Christendom. This paper intends to analyze how Canon Law proposed ways of regulating the relation between Christians and Muslims as an element of papal jurisdiction. We propose to demonstrate that these regulations, which included prohibitions of marriage between different faiths and payment of taxes, constituted one more element in the complex network of powers which helped to form papal jurisdiction. The work is based on an intertextual approach of Canon Law texts such as the *Liber Extra*, Raymond of Peñafort's *Summa de paenitentia*, Henry of Suse's *Summa aurea*, and the various authorities – from Canon Law, Theology, and Civil Law – which they used to create a cohesive juridical interpretation of papal jurisdiction.

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### **Gumpfenberg, Clemens Freiherr von**

THE WORKSHOP OF AN ITALIAN-TRAINED CANONIST IN FRANCONIA – ALBRECHT VON EYB (1420-1475) AS JURIST

Albrecht von Eyb, a noble-born Franconian, left Germany, like many other sons of well-off families of this time, to study the laws in Italian universities in the hope of a career in his homeland after his return. However, his fifteen Italian years were not crowned by a splendid career as a jurist. This may be one of the reasons why Albrecht von Eyb is exclusively known for his achievements in the field of humanism.

Especially with respect to his actual stay in Italy and his professional activity as a lawyer which is conserved in manuscripts still unexplored, the question arises, what he brought with him from Italy. In doing so, it is necessary to ask about the working techniques of the lawyer, for example with the help of the evaluation of allegations which he applied in his legal expert opinions. Also questions regarding the content of his legal opinions may not be disregarded. He also brought with him a large body of manuscripts, which allowed him to build a considerable private library. Those library holdings provide a further starting point to get to the bottom of his legal activity in Franconia.

The paper will eventually deal with the question if the whole workshop of Albrecht von Eyb has to be interpreted in the context of a more extensive process of cultural transfer by which the learned nobleman brought learned culture as a whole from Italy to the Province of Franconia.

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### **Harrington, Jesse Patrick**

#### THE RECEPTION OF LATERAN II (1139) AND *LATAE SENTENTIAE* EXCOMMUNICATION IN TWELFTH-CENTURY IRELAND

The twelfth-century Irish reception of the Second Lateran Council (1139) has been chiefly studied in relation to its canons regarding the freedom of abbatial election, and to the career of the papal legate responsible for their dissemination, St. Malachy of Armagh. The Second Lateran Council is arguably most notable however for its Canon 15 ('Si quis'), which introduced the new penalty category of 'latae sententiae' or automatic excommunication for violence against clerics. Given the violence inflicted against Irish churches and personnel in the twelfth century, the impact of this canon in Ireland would be of clear interest. In this paper, I examine a number of early exemplary texts which are our best witness to the influence of these canons, including Latin and vernacular hagiography and clerical poetry. Taken together, I argue that these texts show the broad reception and practical adaptation of Canon 15, and of later informal papal clarifications of 'latae sententiae' excommunication, in Ireland as early as the 1140s. This reception is preciously early, not least as the broad acceptance of Canon 15 in the universal Church was delayed by Gratian's objections until the 1180s. Finally, I discuss the wider implications that this early reception case study has for our understanding of the reception of written and oral canonistic ideas in the twelfth century, and for the progress of the 'Gregorian' reform in Ireland before the transformative English invasion of 1169.

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### **Hauck, Jasmin**

#### MARRIAGE DISPENSATIONS AND LEGAL PROCEDURE IN FLORENCE, CA. 1455-1540

This paper aims at giving an overview of the main findings of a concluded research project on the marriage dispensations obtained by supplicants from the diocese of Florence between ca. 1455 and 1540 and the delegated procedure they went through. Besides numerous sources on the normative and dogmatic background of these procedures sources emanating from the investigated proceedings themselves form the basis of this work, such as around 500 supplications among the records of the Apostolic Penitentiary and 150 Florentine court records. Central questions of this study were: To what extent was the legal procedure of the execution of marriage dispensations shaped by diverse legal and social norms? Did the taking of evidence closely follow the rules set up by legal norms and affirmed by the *communis opinio doctorum* or was there room for a free assessment of evidence? Can local patterns be observed that clearly diverge from the findings on other areas? What can we learn from the choice of certain witnesses and the content of their depositions about the functioning of the genealogical memory when it comes to proving that a kinship tie between two spouses was to close? Was there a clear distinction between *forum conscientiae* and *forum iudiciale* on a local level when it comes to dealing with such different types of papal graces in Florence?

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### **Heil, Michael**

#### CANON LAW AT BOBBIO UNDER ABBOT AGILULF (CA. 887-896)

The monastery of Bobbio looms large in the study of law in early medieval Italy. A number of important legal manuscripts have been localized to the monastery, and Bobbio has in the past been proposed as the place of origin of such collections as the, *Collectio Mutinensis Collectio Dionysiana Bobiensis*, and the so-called *Excerpta Bobiensia* of Roman law. A particular concentration of canon law manuscripts attributable to Bobbio can be either securely or plausibly dated to the abbacy of Agilulf, ca. 887–896. Rather than revisiting the large-scale collections associated with the monastery, this paper will instead probe Bobbio’s canonical activity in this period by examining a number of short collections of canons and other excerpted materials. These small assemblies of texts, most just a few folios long, are found in a number of manuscripts datable to Agilulf’s abbacy. With their sometimes puzzling principles of inclusion and organization (or apparent lack thereof) these small collections raise—and supply us with material to try to answer—a number of questions: Why were the monks of Bobbio evidently so interested in canon law in this period? What canonical resources did they have at their disposal? What elements most attracted their attention, and why? What if anything did they intend to “do” with canon law?

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### Izbicki, Thomas M.

#### MARRIAGE OF A MAD MAN: C. *DILECTUS* [X 4.1.24]

In 1205 Pope Innocent III wrote to the bishop of Vercelli concerning a matrimonial case. A certain knight from Alessandria had married his daughter Rufina to one Obizzo Lancavala. Only afterward did the father discover, according to his petition, that Obizzo was continuously mad (*furiosus*) and his bride could not live with him. Basing himself on the existing canon law of marriage, Innocent said that the consent of both parties was necessary for a valid marital union. Since Obizzo was mad, he could not contract a valid marriage because of his impeded ability to consent. In his assessment of Obizzo’s capacity, Pope Innocent’s conclusion was also rooted in Roman law. Via *Compilatio tertia* and the *Liber extra*, this decretal, entitled *Dilectus* in the title *De sponsalibus et matrimonio*, helped form the canon law and theology of marital consent by the mentally afflicted. Canonists and theologians required valid consent, at least during a lucid interval, for a person who suffered mentally to form an indissoluble marriage. A person continually mad never could consent. However, a lapse into madness by one partner after a marriage was validly contracted did not invalidate that union, requiring the sane spouse to remain faithful. This teaching reached educated pastors via pastoral manuals. Thus indissolubility was balanced with the doctrine of marital consent.

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### Jarrige, Martin

#### APPROCHES CANONIQUES DE LA PRIMOGÉNITURE ROYALE ET SEIGNEURIALE (XIII<sup>E</sup>-XV<sup>E</sup> SIÈCLES)

Dès du X<sup>e</sup>me siècle commence à se cristalliser dans l’espace carolingien la pratique d’une succession royale à la fois héréditaire et indivise, caractérisée par la vocation de l’aîné des mâles du souverain ou du seigneur à accéder sur le trône, qui mutera progressivement en une loi coutumière de primogéniture, laquelle sera la règle commune des monarchies européennes. Si cet usage, quoique régulièrement souhaité par certains théologiens de l’époque carolingienne, trouve essentiellement des explications étrangères à l’influence de l’Eglise sur le pouvoir temporel, plusieurs canonistes du Bas Moyen Âge ne manqueront pas de se poser la question de son fondement et de sa bonne application.

La tâche de plusieurs générations de glossateurs et commentateurs fut en premier de trouver dans les canons du Corpus des arguments en faveur d'une succession aux royaumes par les aînés des rois, offrant ainsi à la règle commune dans les royaumes des fondements tirés des Ecritures, des Pères de l'Eglise et de la législation pontificale.

Elle fut ensuite de théoriser la nature du droit de primogéniture et des éventuelles libertés laissées à son titulaire, l'épisode de Jacob et Esaü au chapitre 27 de la Genèse formant dans leur esprit un puissant argument en faveur de la patrimonialité de ce droit.

Enfin, ces juristes ont eu à détailler l'application concrète de la primogéniture selon les circonstances pouvant rendre sujette au doute l'identité du successible.

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### **Kamali, Elizabeth Papp**

FINDING FACTS IN MEDIEVAL ENGLISH LAW: THE STRATEGIES OF CONFESSORS AND CORONERS  
Accounts of the post-Lateran IV period tend to emphasize the different procedural paths taken by English secular courts, which adopted jury trial for felony cases, and continental European secular courts, which turned toward inquisitorial methods and a greater reliance on confession. This paper argues that the fact-finding strategies of the two systems had more in common than may appear at first glance, and that this commonality may be traceable, in part, to the strategies described in manuals for confessors. These manuals, which increased in circulation in the early thirteenth century, borrowed from the classical rhetorical tradition the use of a systematic set of questions (*quis, quid, ubi, etc.*) to elicit a full telling of a sin in order to assign an appropriate penance. The procedure of the English coroner, which developed from the late twelfth into the thirteenth century, adapted these inquisitorial strategies in order to question inquest jurors and witnesses with the aim of generating a narrative that relayed the essential circumstances of an alleged homicide. In both the confessional setting and the coroner's inquest, such questions helped to elucidate the intent of the actor. While this fact-finding occurred in a pre-trial context in English felony cases, it nonetheless demonstrates a confluence between English criminal procedure and the inquisitorial trial procedure developing on the continent. Through the medium of the *summa* for confessors literature, canonical fact-finding strategies exerted a subtle yet powerful influence on English criminal procedure, helping build the foundation for developing notions of criminal responsibility.

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### **Kirshner, Julius**

ANTONIO ROSELLI'S ROLE AS *ARBITER ET ARBITRATOR* IN A FLORENTINE DOWRY RESTITUTION DISPUTE

A prominent jurist of the fifteenth century, the Florentine Antonio Roselli (1381-1466) is especially admired for his tracts, including *Monarchia, sive de postestate imperatori et pape* (1433-1437), *De successibus ab intestato* and *Super arbore consanguinitatis* (1450), *De indiciis et tortura* (1461), and *De usuris*, all of which were published in the *Tractatus universi iuris* at the end of the fifteenth century. He served as consistorial advocate and trusted adviser to Popes Martin V and Eugenius IV. My paper focuses on his less elevated role as an arbitrator in a dowry restitution dispute between Antonia di Piero Strozzi and her feckless and penurious husband Michele and his brother Averardo, sons of the Florentine canonist Lapo da Castiglionchio the Elder. Evidence of Roselli's role comes from an arbitral judgment (*laudum*) of 1420 preserved in the Archivio di Stato of Florence. The *laudum* reveals the jurist's skills in negotiating the mundane complexities arising from the restitution of a dowry *constante matrimonio*.



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**Kola, Maria***DIFFERENTIAE* IN ACTION: THE CASE OF PRESCRIPTION AND GOOD FAITH

Among many points of tension between *ius canonicum* and *ius civile*, one which is the most emblematic and has received broad scholarly attention is that linked to *bona fides* and *praescriptio*. This tension was petrified at the end of the 13th century in the famous rule possessor *malae fidei ullo tempore non praescribit* (VI 5.13.2). The paper will draw on the scholarship dedicated to this issue to reflect on the collection of sources which received relatively little attention so far, namely *differentiae iuris civilis et canonici*. This case study will be dedicated to the question of possessor *malae fidei* within late medieval *differentiae* (e.g. the works of Bartolo da Sassoferrato, Galvano da Bologna, Prosdocimo Conti) and early modern *differentiae* (e.g. works of Konrad Rittershausen, Johann Emerich von Rosbach, Matthäus Joseph Reichel). The main research questions are as follows: How did the jurisprudential account on this issue develop in *differentiae*? How were *differentiae* dependent on the mainstream scholarly literature? How did the medieval and early modern authors approach the tension between the two laws, and did they propose any reconciliation between them on this point? What was the relation between medieval accounts on possessor *malae fidei* and early modern ones? The preliminary research showed that *differentiae* on *praescriptio* grew in scope and sophistication with the passage of time. The objective of the paper is to determine whether there was a methodological shift between medieval and early modern *differentiae* and, if so, how it was manifested in the sources.

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**Kotlyar, Ilya**

## THE CANON LAW ON THE TESTAMENTARY EXECUTOR IN SCOTLAND

The testamentary executor had precursors in the Roman law, but it only received extensive development in the medieval Canon law. The *Ius Commune* jurists, Canonists and Civilians alike, elaborated the issues of the rights and duties of the executor, co-executorship, transmission of the office, and others. The authoritative texts lacked extensive provisions on executors, and, thus, a constant problem was which rules to apply by analogy: those on procurators, on arbiters, on tutors or on heirs? While the executors were ubiquitous in Europe until 1500, after then they only remained a widely used institution only in the British Isles. England experienced strong influence of the Canonist and Civilian rules on executor and produced influential commentaries on the topic of its own. However, it was in Scotland that these rules were particularly influential and received their fullest elaboration. This involved balancing the interests of co-executors and the dead executor's successors, the development of the intestate rights of succession and the strict procedure of handling the defunct's assets. Interestingly, the Canonist and Civilian influence in this field did not end with the Reformation in 1560, but rather persevered and increased in importance in the 17th century. The Canonist legacy, however, declined in importance in Scotland in the 18th century.

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**Lange, Tyler**

## MEDIEVAL CANON LAW IN EIGHTEENTH-CENTURY FRANCE: EPISCOPAL AUTHORITY, GENDER, MAURIST HISTORIANS, AND THE EXEMPTION OF MONTIVILLIERS

This paper shows how the history of the exemption of Montivilliers mirrors shifting theories of the Church from the eleventh to the eighteenth century. It begins with its non-papal origins and

the formative phase concluding in its confirmation by the Avignon Pope Clement VII. Secondly, the paper examines the practices of abbatial authority following the monastery's reform in the early seventeenth century. Thirdly, the paper examines attitudes to early and high medieval canon law in litigation over the Abbess of Montivilliers's jurisdictional power in the 1740s and 1750s. The dispute pitted, on one side, the post-Tridentine and Catholic Enlightenment impetus towards regularization, heightened concerns about female authority within the Church, and an aggressive, polarized French episcopacy against, on the other side, assertive female religious, Maurist historians' respect for existing ecclesiastical institutions in the face of royal and papal centralization, and epistolary networks linking savants, female religious from different polities, and aristocratic families – all against the backdrop of an increasingly ultramontane monarchy, explosive Gallican resentment, nationalized canon law, and nascent concerns about the utility of contemplative orders. The conclusion will focus on the tension between historical knowledge and theological imperatives in the eighteenth century, between privileges and the “esprit de système” common to ultramontanes and to Enlightenment figures.

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### Lault, Marie-Clotilde

#### *CLERICI LUSORES: LA DOCTRINE CANONIQUE FACE AUX CLERCS JOUEURS*

From the first Christian centuries, Christians are forbidden to play. The justifications are primarily theological. Chance is the rival of the Eternal Time : *Sortes mittuntur in sinum, sed a Domino temperantur* (Prov. 16. 33). *Animus lucrandi* is the rival of the Faith : *Non potestis Deo servire et mammonae* (Matt. 6. 24). From this theological justification, the sources of canon law care about game. Conciliar legislation prohibits games of chance and all games hujusmodi. The Fourth Lateran Council prohibits clerics even the show of game. This prohibition is found in the *Decretum* of Gratian, the Decretals of Gregory IX or the Sext. But it raises many questions from the medieval doctors. First, they determine which games can be lawful. For example, chess games, (games *causa virtutis vel ingeni*) are authorized by the *communis opinio*. But, many doctors are against. Only legal treaties exclusively dedicated to games allow truly understand the issues. Thus, treaties *De ludo* of Paris de Puteo, of Joannis Baptistae Caccialupi or of Stephanus Costae specify why medieval jurists and canonists, from the thirteenth century, prohibit some games to clerics, how they proceed against the players clerics, and finally how they punish them.

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### Lenz, Philipp

#### THE EARLIEST GLOSSES TO CAUSA 2 OF THE *DECRETUM GRATIANI*

The paper investigates the earliest glosses to some quaestiones of C.2 of the *Decretum Gratiani*. The manuscripts selected for this purpose include the only consistently glossed first-recension manuscripts Aa and Bc (with glosses representing the second recension) as well as other twelfth-century manuscripts which transmit the earliest intact layers of glosses (such as Br, Gg, Mc, My, Pf, Vo). Since these glosses consist almost exclusively of allegations, they have received little if any attention so far. The study aims to illuminate the character, the meaning, the function and the interdependency of the allegations and the few notabilia and discursive glosses in C.2. Moreover, it tries to identify possible parallels between the glosses and the early *Summae* and to trace their evolution in later *apparatus*. In a previous article, I examined the glosses to D.1-8 in Aa, Bc and Pf. The present study should allow me to test some of the hypotheses I formulated in that article. I am particularly interested in the double nature of the earliest glosses, which appeared when investigating D.1-8. On the one hand, the earliest glosses may lay the foundation for the

development of later commentaries on a particular passage. On the other hand, their content and function may significantly differ from later apparatus, thus highlighting practices of glossing and teaching the *Decretum Gratiani* which are proper to the third and maybe the fourth quarter of the 12th century.

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### Leveleux-Teixeira, Corinne

#### SEEKING TRUTH: A STUDY ON OATHS IN CANON LAW AND THEOLOGY (11TH-14TH CENTURIES)

During the Middle Ages, the wide diffusion of the practice of oath enabled it to assume various functions : manifestation of fidelity, ritual of king's coronation, commitment of the vassal towards his lord, canonical *purgatio*, birth of communitarian identities (thanks to *conjuraciones*), procedural acts, etc. Reflecting several of these topics, the genealogy of the political oath (with a main promissory content) was clearly traced in P. Prodi's already-old work (1992), *Il Sacramento del potere*.

Rather than going into this perspective, the present study focuses on the nature, functions and forms of the oath linked to the question of truth (that is to say with a special attention to its assertory value) at a time when this concept of truth was facing decisive changes. Indeed, the renewal of legal studies and the genesis of the so-called 'modern state' but also the development of moral and sacramental theology, the diffusion of the confession and the progressive penetration of the Aristotelian corpus have profoundly renewed the conception of the truth, rooted until this period into the old Augustinian theory, but now involved in a much more flexible conception, open to relativization. In this renewed pattern, one will wonder what the oath brings or removes to the manifestation of the truth in the context of a trial (with especial regard to *ordines iudicarii*) but also in interpersonal relationships, as a tool of assertion and communication (through confessors' manuals and pastoral literature).

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### Le Tilly, Laurent

#### LA DISTINCTION ENTRE SYNDIC ET PROCUREUR DANS LE DROIT CANONIQUE MÉDIÉVAL

Le syndic est une institution née dans l'Antiquité grecque puis reprise en droit romain dans les compilations de Justinien. Il s'agit du représentant des *universitates personarum*, les ensembles de personnes. Après une unique occurrence du terme de syndic dans un dictum du Décret de Gratien, la réception de cette institution en droit canonique est véritablement initiée par Bernard de Pavie (+1213) : celui-ci consacre un titre entier du premier livre de son *Breviarium extravagantium* au syndic (Comp. Ia, 1, 30). Il contient une décrétale de Grégoire le Grand (590 – 604) dans laquelle le pape et père de l'Église ordonne que des moines aient recours à un tiers pour gérer leurs affaires, à fin qu'ils puissent consacrer leur temps à la prière. Le terme de syndic est absent de la décrétale compilée et ne figure donc que dans l'intitulé donné par l'auteur de la *Compilatio Prima*. Ce titre est ensuite repris par Raymond de Peñafort (+1275) dans les *Décrétales de Grégoire IX* (X, 1, 39).

Les décrétalistes dès lors contraints à gloser et commenter la décrétale, sont amenés à comparer le syndic à d'autres espèces de représentants, en particulier le procureur (*procurator*) et à distinguer ces différents agents.

La distinction théorique est néanmoins contournée dans la pratique.

**Lincoln, Kyle C.**

PORTIONARY CANONS IN LEÓN-CASTILE IN THE LONG TWELFTH CENTURY: QUESTIONS AND (POTENTIAL) ANSWERS

This paper will be a study, both quantitative and qualitative, of the role of portionary canons in cathedral chapters in León and Castile in the long twelfth century (c.1085-1230). I will investigate the evidence for the use of portionary canons, attempt to account for the reasons for their extra-legal presence in cathedral chapters in León and Castile, and present the papal writs that dispensed chapters from the prohibition against partial prebendaries in the cathedral chapters in León and Castile.

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**Liu, Yanchen**

*SED QUARE NON SUNT TOLERANDI: APOSTASY AND REBAPTISM IN THE GLOSSA ORDINARIA TO THE DECRETALES GREGORII IX*

This paper investigates the *Glossa ordinaria* to Title 5.9, *De apostatis et reiterantibus baptisma*, of the *Decretales Gregorii IX*. This title contains six canons. These provisions, coming from twelfth-thirteenth-century papal decretals, respond to specific questions including (1) what is the general procedure for treating the crime of apostasy, which in this context means retreating from one's clerical/monastic order to a secular life; (2) can monks, abandoning their original professions, join other religious orders; (3) what is the canonical crime associated with rebaptism; and (4) whether a cleric, after performing rebaptism, still can be promoted in the Church. Accompanying these canons and serving as a basic research tool for high medieval law students and scholars, the *Glossa* clarifies the legal implications and confronts the potential complexities of the cases treated. Further, as this paper will demonstrate, the *Glossa* also can provide counter arguments and discussions about legal regulations, terms, and concepts. Often the arguments can only be discovered in the Romano-canonical allegations (the "footnotes" of the *Glossa*), that may cover circumstances far beyond the cases in the canons. Finally, this paper interrogates how the *Glossa* employs its allegations: does it always faithfully follow the cited authorities, or occasionally twist (or even challenge) them, expecting the reader to comprehend the flow of the argument? Analyzing these hitherto unexamined glosses in Title 5.9 of the *Decretales* will deepen understanding of both the working logic of thirteenth-century canonical jurisprudence, and the meanings of apostasy and rebaptism in medieval canon law as it was practiced.

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**Lomax, John Phillip**

ANNEXA SPIRITUALIBUS AND THE EXTENSION OF ECCLESIASTICAL IMMUNITY FROM SECULAR JURISDICTION

The *Decretum Gratiani* distinguishes between matters that are mere *spirituale* and those that are mere *temporale*, entirely spiritual or entirely temporal. In matters mere *spirituale*, churchmen cannot lawfully submit to lay jurisdiction, but they are subject to lay jurisdiction for the effects, regalia, and other benefits that they hold from secular lords. The immunity termed ecclesiastical liberty did not apply to matters mere *temporale*. Under Eugenius III and Alexander III, the papacy acted to restrict the *ius patronatus* on the claim that pious donations were *connexa spiritualibus*, that these gifts took on the character of matters mere *spirituale* by possession and use. The term *annexa spiritualibus* became the preferred term for this claim. On analogy with the restrictions on *ius patronatus*, the Fourth Lateran Council ruled that nearly all possessions that churchmen held from secular lords were "iuri spirituali...annexa." While every canonist agreed that churchmen

could not lawfully submit to lay jurisdiction in matters mere *spiritualibus*, they asserted that matters mere *temporalibus* could not be annexed to the spiritual. So where was the line between temporal and spiritual? The excommunication of Frederick II in 1239 forced the issue. Only one of the seventeen papal allegations pertained to matters mere *spirituale*, six to annexa *spiritualibus*. The excommunication sounded warning bells among secular lords. Frederick found willing listeners among lords who deeply resented the papacy's intrusive claim of spiritual status for matters mere *temporale*.

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### **Martin, Édouard**

#### LA DROIT DE DÉPOSITION DU PRINCE CHEZ LES DÉCRÉTISTES: LES LIMITES DU DUALISME

La formation de la science canonique au XIIe siècle a pour clé de voûte l'identification du pontife romain comme arbitre par excellence de la Chrétienté et de ses regna. La primauté spirituelle qui lui est reconnue rejaillit au temporel, et assure au successeur de Pierre une prééminence qui s'exprime chez les canonistes en formules juridiques de puissance vis-à-vis des empereurs et des rois. À partir de Gratien et sa compilation de référence, les commentateurs du Décret construisent un système original qui s'appuie bien souvent sur l'inspiration des grégoriens modérés (à l'instar d'Yves de Chartres). Le spirituel est doté d'une dignité supérieure, mais la sphère temporelle conserve son autonomie (d'où la continuation d'un certain dualisme inspiré du modèle gélasien). L'empereur tient son pouvoir de Dieu comme le pape. Ce courant de pensée trouve sa dynamique la plus aboutie chez Huguccio de Pise et Simon de Bisignano. Cependant, aucun des grands juristes modérés du XIIe siècle ne renonce tout à fait à la verticale de la déposition des empereurs et des rois. Notre intervention se propose de montrer qu'en réservant ainsi au pontife le plus considérable des atouts souverains, la science juridique des décrétistes est moins une remise en cause des acquis de la révolution pontificale qu'une étape dans la constitution d'un discours d'unité politique recevable par toute la chrétienté, et qui trouve son apogée dans la mystique politique d'Innocent III.

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### **Mayenburg, David von**

#### THE REACTION OF THE CHURCH AND CANON LAW TO THE BLACK DEATH: SYNODAL RECORDS, 1347-1360

From the beginning, western church was continuously confronted by internal and external challenges, which frequently even endangered its existence. Disputes about fundamental theological questions and the schisms which arose out of them, conflicts with other confessions (Jews and Muslims), disciplinary problems with clerics and laymen, but also clashes with secular powers again and again led to vital crises. Taking into account the range and frequency of these crises, but also the many examples of failed conflict resolution, it comes as a surprise, that – in contrast to the secular empires of the middle ages – the church is still existent. The hypothesis, that this (relatively) successful crisis management of the church is based on its legal constitution, is currently researched on in a project of three trilateral conferences (2018-2020) in the Villa Vigoni, funded by the Deutsche Forschungsgemeinschaft, the Fondation Maison des Sciences de l'Homme and the Villa Vigoni. After a short introduction to the project, the lecture will address the question of how the Church and its administration responded to the challenge of the Black Death (1347-1350). Did they fall back on tried and tested crisis response mechanisms in coping with the enormous personnel losses and the simultaneously growing tasks in the area of

pastoral care? Or did they find new ways and solutions? The presentation offers a first evaluation, based on Synodal Records.

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### Meeder, Sven

#### PULLING THREADS: THE INTELLECTUAL NETWORK AROUND THE *COLLECTIO 91 CAPITULORUM*

The ninth-century canonical collection in Vesoul, Bibliothèque municipale 79 (73) is a ‘minor collection’ in every sense of the word. The short work occupies a mere ten folios in the small codex, its 91 chapters are sourced from less than a dozen authoritative texts, its arrangement is ‘unstructured’ [Kery:1999]; it survives in only one (later) manuscript and there is almost no trace of a direct influence on later collections. Yet, Paul Fournier argued this minor collection was of prime importance and deserved the attention of historians [Fournier:1926]. Taking Fournier’s cue, this paper presents the results of a detailed study of the *Collectio 91 capitulorum* and its satellite texts, which reveals numerous connections to other minor canonical collections, including the *Collectio Laudunensis*, the *Collectio Sangermanensis*, and the *Collectio 53 titulorum*. Rather than an emphasis on textual taxonomy, this paper regards these connections primarily as traces of ‘communities of learning’, in which legal masters shared certain outlooks on the use of canon law to fulfil complex and varied functions within their particular, local, context. This way, the minor canonical collections reveal much of the vitality and dynamism of this local implementation of the ambitious Carolingian project. The paper will demonstrate that the *Collectio 91 capitulorum*—and the intellectual networks in which it was compiled—is an especially valuable witness in this respect.

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### Meens, Rob

#### CANON LAW IN THE EARLY MIDDLE AGES: PROBLEMS AND PROSPECTS

This paper wants to rethink the concept of canon law in the early Middle Ages. Over the last couple of years a growing unease about the usefulness of the concept of canon law in the period before Gratian can be observed. Quite often we look at early medieval texts that provide rules for Christian ways of living, from the perspective of ideas and concepts deriving from the formal study of canon law as it developed with the Father of canon law. The following topics will be addressed: What kind of texts do we regard as belonging to the field of canon law and why is this so? Do these categories correspond with early medieval ways of thinking about these texts? Can we say anything about the ways in which these texts were used? their institutional setting? Do such texts provide norms to be enforced and if so, how? How do we have to read their sometimes bewildering variety?

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### Mellouki, Léa

#### THE SUMMONS OF FOREIGNERS IN THE SCHOLARLY PROCEDURE AND THE ITALIAN PRACTICE OF THE 13<sup>TH</sup> AND 14<sup>TH</sup> CENTURIES

In Italy, the movement of communal construction in the eleventh and twelfth centuries led certain jurists of the thirteenth century to specify the legal status of each individual who could have ties with the commune. They thus distinguished between the citizen (*civis*), the contadin (*comitatimus*), and the foreigner (*forensis*). It is this last one which holds a particular attention of the Bolognese jurists and practitioners such as Rainerius Perusinus and Aegidius de Fuscarariis. In the accusatory procedure, this status of foreigner questions the jurists as for the formalism

surrounding the citation in justice that it is made by the ecclesiastical judge or the secular judge. The status of foreigner raises the need for a control of the writ of summons, a clarification of the role of the nuncio and the role of the notary, which this paper aims to expose in the light of learned law and practice.

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### **Mikula, Maciej**

#### CANON LAW AT THE KRAKOW UNIVERSITY 1450-1550

The objective of the paper is to analyze the main issues present in the scholarly work and teaching of professors of the University of Krakow. To explore these issues, it will be necessary to investigate the organizational transformations of the Faculty of Law; and the academic works of lecturers, as well as their non-university activities, in particular in canon law courts. The purpose of comparing research issues undertaken at the end of the Middle Ages and at the beginning of modern times is to verify whether the new humanistic currents had an impact on the didactics and scholarly reflection of Jagiellonian law professors. In addition, involvement in the judiciary of canon law prompts the question of the extent to which the professors' academic work was of a theoretical nature, and how often they undertook the investigation of practical problems resulting from the application of the law in church courts. Unfortunately, due to the fire at the Faculty of Law in 1719, numerous sources for the history of the Faculty were irretrievably lost. This circumstance means that searching for information requires reaching for sources outside the university, complicating and extending the source query significantly. In the case of scholarly papers, printed works will be of great help, as opposed to manuscripts saved from conflagration in 1719. An analysis of the marginal notes of users of these works should shed light on questions as to whether they constituted legal aid or were rather teaching aids, and the margins were student notes.

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### **Mimouni, Alexandre**

#### *FALSA MONETA ET MONETA INJUSTA* EN DROIT CANONIQUE MÉDIÉVAL

À l'époque médiévale classique, le *crimen falsi* constitue une catégorie du droit criminel savant, polymorphe mais néanmoins unitaire. En droit romain, sont regroupés sous ce terme des faits extrêmement variés (faux témoignage, usurpation d'identité, *suppositio partus*, etc). Dans cet ensemble composite, le faux-monnayage constitue un crime à part.

Portée par les sources abondantes du *corpus juris civilis*, les civilistes définissent le faux monnayage comme une grave atteinte à l'autorité publique, qu'elle spolie d'un de ses rôles fondamentaux, et placent pour ce crime sous régime particulièrement sévère, tant du point de vue procédural que pénal. Cette particularité du crime de faux-monnayage tend à un rapprochement avec le crime de lèse-majesté.

La problématique monétaire est sensiblement différente du point de vue des canonistes. À partir d'une décrétale d'Innocent III au roi d'Aragon relative au serment public du souverain, la réflexion des canonistes établit une distinction entre monnaies fausse et injuste.

Si la première notion repose sur le langage et les réflexions susmentionnées des civilistes sur la *falsa moneta*, la seconde, l'idée de la *moneta injusta*, est, en revanche, propre au droit canonique. Dans les commentaires savants, se développe ainsi la théorie qu'une monnaie peut être injustement dévaluée par les autorités publiques.

L'objet de notre communication sera d'observer la mise au jour par la doctrine de cette idée du rex falsarius, aboutissant à une mise en accusation potentielle d'un roi et d'étudier la portée de cette réflexion dans les sources étendues du droit canonique médiéval.

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### **Mocchi, Pietro**

*CONSORTIA SCHISMATICORUM FUGIENS: THE MANUSCRIPT TRADITION AND CULTURAL LEGACY OF THE DE PREEMINENTIA SPIRITUALIS IMPERII* BY OPICINUS DE CANISTRIS

The *De preeminentia spiritualis imperii* (1329) is a political and ecclesiological treatise by Opicinus de Canistris. In the *De preeminentia* Opicinus assumed a fierce pro-papal stance, outlining and tackling the main points of the controversy that was contraposing John XXII and Lewis the Bavarian. This tract is an example of those 'libri de potestate papae' which shaped empire-papacy political discussions in the first decades of the 14th century, building mostly on religious and legal, both Canon and Civil, sources to define the extent of papal authority and the origin of legitimate power.

The only existing edition of the *De preeminentia* is by Richard Scholz (1911). It is partial and flawed by several inaccuracies. Moreover, Scholz did not study in detail its manuscript tradition, while the limits of this edition likely discouraged further examinations. Indeed, later scholarship overlooked the treatise, disregarding it as unoriginal and rather insignificant, yet in absence of any specific study.

This paper will delve for the first time into the cultural legacy of the *De preeminentia*. Firstly, it will reconstruct the manuscript tradition. Secondly, it will expand on the relevant features of these manuscripts, considering them in their respective milieux. Thus, it will show how the treatise has been copied and studied in the 14th and in the 15th century, proving itself a useful read that provided argumentations on topics such as papal primacy, unity of the Church and Christian poverty, at times when these issues were still the cause of heated debates and division.

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### **Monroe, William**

A SERIES OF GLOSSES IN 9TH-CENTURY CANON LAW COLLECTIONS

Several manuscripts of the *Collectio Dionysio-Hadriana* in the Bibliothèque nationale de France include a section of short glossaries of terms that appear in the various canons. The glosses are not extensive, but generally consist only of alternative expressions for select terms from the canons, as well as for other forms (e.g., verbal, adjectival, or nominative) of the same terms. It is a curious phenomenon, which occurs in at least seven other manuscripts of the Hadriana as well as some other canonical collections. The manuscripts were written mostly between the beginning and the middle of the ninth century in East and West Francia, and currently housed in libraries in France, Germany, and Italy. A small portion of these glosses contain German words, and have been published along with other Old High German glosses, but the Latin glosses have not been much studied. They are not the same glosses treated in the 1877 article by Friedrich Maassen (SB Vienna). They also take at least two forms, one following after the entire collection, and the other falling between the prologue and the main text. What I would like to do in this paper is to locate the origin of these glosses and to determine the intentions of the compilers. For what use were these glosses intended, and to what use were they actually put?

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## Moore, Michael Edward

*BELLA HORRIBILIA: VIOLENCE AND THE DESIRE FOR ORDER IN THE POST-CAROLINGIAN COUNCILS, 875-910*

During the dramatic political changes in Europe in the late Carolingian period, and especially following 888, as the Carolingian Empire was broken apart into six (sometimes seven) separate kingdoms, and as incursions of Vikings, Magyars and Saracens heightened the sense of crisis, bishops insisted on their traditional role as lawgivers and prestigious counsellors of kings. The records of councils held during this period evince a constant concern with ongoing warfare and the incursion of pagans. The language of the councils reverberate with the “textual sound” of slaughter, maiming, invasion and burning. While some historians are reluctant to give credit the complaints of violence in councils and annals, it is pervasive, to the extent that it characterizes the sources. The bishops spoke very often of the violence they experienced and their corresponding sense of danger. These councils can serve as precious documents recording the mentality of an elite cadre of churchmen during an unsettled period of history. The approach of this paper is to understand the councils as key sources for this period, to be analyzed using the methods of intellectual, legal history and *Kulturwissenschaft*. The councils represent a potent element of continuity and integrity during this time.

As royal legislation fell silent, the councils met frequently, issued law, and renewed familiar political philosophies and ideals concerning social and religious order. Episcopal law echoed in the silence of royal legislation. Councils such as Ponthion (876), Fismes (881), and other councils held in Tribur, Mainz, and Trosly, cautiously linked their concerns to the Carolingian reform councils, and attempt to update them. In this atmosphere the bishops insisted on long-standing episcopal values regarding their desire for a sacralized kingship saturated with ecclesiastical norms, that would cooperate systematically with the church, and that alongside the bishops, would help to restore and guarantee the social and cosmic order – *ordo*.

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## Muenks, Nicholas J.

‘IN DOUBTFUL CASES JUDGMENT MUST NOT BE ABSOLUTE’: RELINQUISHING THE CRIMINAL TO HIS CONSCIENCE IN THE *SUMMA* OF HUGUCCIO

In the *Decretum* are found a handful of chapters in which a criminal or sinner is relinquished to his own judgment, or to himself, or to his conscience. These clauses went unremarked until Huguccio, who, in his *Summa*, incorporated them into his doctrine on the nature and limitations of judicial competence. According to that doctrine, the ambit of ecclesiastical judgment was restricted to that which could be proven by evidence, testimony, or instruments. All else he regarded as occult, and therefore beyond the competence of the courts. Yet this doctrine left a large swath of human behavior—including that which seemed confirmed by suspicion or publica fama—which was neither prosecutable nor in fact secret. It was to deal with these situations that Huguccio seized upon the chapters mentioned above: D.4, c.6, *Denique*; D.33, c.7, *Habuisse*; C.14, q.8, c.1, *Qui admisit*; and C.35, q.6, c.4, *Si duo*. In each, church authority was confronted with a crime which could not be prosecuted and yet was not secret. In each, the judge must leave the guilty to his own conscience or judgment, which—for Huguccio— meant admitting that the case was beyond judicial competence. Judgment of occult crimes was reserved to God alone, so that church authority must content itself with admonitions and exhortations. To relinquish one to conscience functioned as such an exhortation, and leveraged the threat of final judgment to fill a lacuna in Huguccio’s juridic scheme.

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**O’Harrow, Hailey****DISCOVERING A CANONICAL EMOTIONAL VALUE SYSTEM: EMOTION LANGUAGE IN GRATIAN’S *DECRETUM***

The purpose of this paper is twofold: it analyses emotion language in the late twelfth century Old French version of Gratian’s *Decretum*, while also introducing a new methodology to the study of canon law. “Emotion language” can be defined as those occurrences in which an emotion is expressed or referred to. While the verbs, nouns, adjectives and adverbs associated with specific emotions allow us to readily track when emotions are expressed, it is more difficult to determine when they are inferred or referred to without explicit emotional vocabulary. To address this challenge, it is useful to employ “didactic emotional discourses” – these are identifiable as those discourses in which a situation prompts the display of an emotion, and actions are taken as a result of this display. They are didactic in that they almost always impart a lesson. Perhaps the most common discourse in Gratian’s *Decretum* is one associated with penance. Transgressive behaviour prompts the discourse; there is an evident emotional state that an individual must exhibit; the result of this penitential emotional state is the rehabilitation of the individual into society. As the emotional state of a penitent is clearly a dismal one, the lesson imparted is: avoid breaking the rule in the first place. The didactic emotional discourses in Gratian’s *Decretum* clearly demarcate which emotions within the text are considered valuable, and which are not. It is therefore possible to determine, through an emotional analysis of the recurring discourses in the text, a twelfth century canonical emotional value system.

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**Oberholzer, SJ, Paul****THE «EIGENKIRCHE» (PROPRIETARY CHURCH) IN THE EARLY MEDIEVAL CHARTERS OF THE MONASTERY OF ST. GALL**

Ulrich Stutz formulated in his inaugural lecture at the University of Basel in 1894 for the first time the concept of the *Eigenkirche*, which he used to explain the ownership of early medieval churches in the Germanic cultural area. Even though Stutz’s content underwent profound modifications, the concept of the *Eigenkirche* remained an integral part of ecclesiastical legal history.

In this paper, the early medieval documents of the monastery of St. Gall will be examined with regard to the concept of the *Eigenkirche*. The importance of this documentation lies in the fact that it contains over 800 charters between 700 and 920 in a uniquely coherent form what allows to draw singular conclusions about the Low Church system in Alemannia. In the course of the 7th century, its population was Christianised by the landowning nobility, and in a second step, monastic centres guaranteed a consolidation of the faith. In this process, around 720 the monastery of St. Gall was founded and subsequently endowed with properties by Alemannic landlords, including churches, which thus became *Eigenkirchen* of the monastery.

The aim of this paper is to elaborate the legal conditions of the Low Churches and their development. Are there foundations of churches mentioned? Can the builders be identified? What position did they have among the Alemannic nobility? Is a church distinguished from other transferred goods, or was it an integral part of the manorial system? Are there indications of an endowment that was intangibly linked to the church?

## Ott, John S.

### EPISCOPAL LETTERS AND COMPULSORY OATHS: OBSERVATIONS ON A FARRAGINOUS COLLECTION IN BORDEAUX, BM MS. 11

Bordeaux Bibliothèque Meriadeck Ms. 11 has been known to scholars of canon law since at least the late nineteenth century, principally because of two collections of legal material it contains: a relatively brief but dense compilation of Pseudo-Isidorean decretals, conciliar decrees, and papal correspondence, much of it apparently drawn from the *Collection in 74 Titles* (fols. 73r-76r); and the *Collectio Burdegalensis* (fols. 147v-180r), which has been the subject of sustained scrutiny and a recent edition by Kriston Rennie. Largely overlooked has been a third, farraginous compilation of legal materials on fols. 144v-147v, which encompasses a dossier on, among other topics, forced oaths and whether they are legally binding on their swearers, particularly ecclesiastics. This material includes five episcopal letters from the eleventh century, four of which, to my knowledge, appear nowhere else. While these letters were edited and commented upon in 2002 by Detlev Jasper, my intention with this paper is to further situate the episcopal letters and the other farraginous canonical material in this section of Bordeaux BM Ms. 11 in their historical and textual contexts.

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## Pennington, Ken

### MEDIEVAL CANON LAW AND THE *IUS COMMUNE*

Fifty years ago, the *Ius commune* was a term that had not yet appeared in English language essays and books on canon law or in books on legal history. The *Ius commune* had experienced a rebirth in the twentieth century. Two Italian scholars Francesco Calasso and Emilio Bussi published articles in the 1930's that introduced "diritto comune," *Ius commune*, into the world of legal history in the modern world. Scholars in Europe embraced the term but gave a plethora of confusing explanations about what the term meant. Some defined it as Roman law; some as canon law, and some as both Roman and canon law (*ius utrumque*). These conflicting definitions have circulated until the last quarter of the twentieth century, and in some cases until the present time. Since the last decades of the twentieth century *Ius commune* has appeared in the titles of English books and essays, becoming part of legal historians common language. We use it to describe the system of law that was taught in medieval and early modern law schools and used in the courts. This paper will attempt to pose questions about the meanings of *Ius commune* in ancient Roman law, medieval jurisprudence, and early modern legal thought. My talk will pose a number of questions but not answer them entirely.

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## Recchia, Alessandro

### *SYMONIACA HERESIS: LA SIMONIA NELLA ICONOGRAFIA DELLE MINIATURE DEI MANOSCRITTI DEL DECRETUM GRATIANI*

Il contributo si propone di analizzare le miniature di diversi manoscritti della Causa I del *Decretum Gratiani* prodotti dal XII al XIV secolo, per studiare il legame tra l'immagine ed il testo giuridico e la dottrina intorno alla simonia così come essa si è sviluppata dalle origini sino alla prima decretistica. In particolare, si porranno in luce i temi ricorrenti nelle miniature per individuare le linee di sviluppo dell'iconografia della simonia nel quadro più ampio dell'iconografia cristiana, nel tentativo di offrire nuove chiavi interpretative della dottrina classica sulla simonia come delitto e come eresia.

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## Rehak, Martin

### THE CONCEPT OF 'IUS NATURALE' IN THE *SUMMA QUESTIONUM* OF MAGISTER HONORIUS

As already known e.g. from Rudolf Weigand's research about *Die Naturrechtslehre der Legisten und Dekretisten*, Magister Honorius introduces in his *Summa questionum*, D.3 t.1 *De iure naturale*, not less than six different meanings of the term "ius naturale". The present contribution shall discuss which of these meanings underlie the various references to the "ius naturale" in the other parts of the named *Summa*.

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## Reverchon, Florian

### LA NULLITÉ COMME *POENA* DANS LE DROIT CANONIQUE MÉDIÉVAL

Depuis le XIV<sup>e</sup> siècle, les civilistes et les canonistes se sont demandé si l'annulation d'un contrat prévue par la loi est une peine. Si, pour la restitutio du mineur ou l'invalidation pour non-respect des formalités requises, la réponse peut sembler évidente, les lois prohibant un acte au nom du bien public ou visant à punir l'auteur fautif de l'acte interrogent davantage. Deux considérations semblent avoir été déterminantes aux yeux des canonistes : une peine diminue le patrimoine (ce qui, selon Jean d'André, n'est pas le cas quand on annule un contrat ou, encore moins, une élection à un bénéfice) et elle doit viser à punir (argument de Balde ou Philippe Dèce). D'où une variété de solutions particulières, généralement contre l'assimilation de la nullité à une peine, malgré des exceptions. La question avait un enjeu pratique, les lois pénales, au contraire des autres, étant interprétées strictement (Panormitain étudie justement la question sous X, 1, 2, 2). La communication vise à retracer, de 1300 (avant Jean d'André, la question ne paraît pas posée sous cette forme par les canonistes) à 1500, les aspects saillants d'un débat reflétant aussi l'évolution générale du concept de nullité. Parler de peine revient en effet à penser la nullité comme sanction, plutôt que comme qualité intrinsèque de l'acte invalide. Le questionnement sur la peine pourrait notamment avoir un lien avec la tendance, notamment chez Bartole pour le dol, à « individualiser » la nullité (dite alors *respectiva*) lorsqu'une des parties peut seule décider ou non de maintenir le contrat.

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## Rolker, Christof

### TEXTUAL SCHOLARSHIP IN THE DIGITAL AGE: THE *CLAVIS CANONUM* PROJECT IN CONTEXT

Digital tools and editions have profoundly shaped how medieval canon law history can be studied. An important example is the *Clavis canonum* database which started in the 1970s as a card file index for pre-Gratian canon law collections and since 2005 is available online via the MGH homepage ([www.mgh.de/ext/clavis/](http://www.mgh.de/ext/clavis/)). While the digital version provided essentially the same information as its paper-based predecessors, its transformation into a database has changed, and continues to change, the way canonical collections are studied. The current overhaul of the database by Danica Summerlin (U Sheffield), Clemens Radl (MGH Munich), and myself expands the database while at the same time improves its interface based on feedback from *Clavis* users all over the world. The *Clavis* database now covers both pre- and post-Gratian collections, and also the *Decretum Gratiani* itself, and we continue to improve both the search options and the output options (including data visualization). A next step in analysing canonical collection by using digital tools will include machine learning, providing yet more possibilities to ask new questions and better understand medieval canon law.

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**Rosati, Simone**

*AD ECCLESIASTICI CUSTODIAM PATRIMONII PERTINERE: THE GOODS OF THE CHURCH IN THE ANCIENT CONCILIAR SEASON*

This work aims at retracing the legal, economic and social status of the ecclesiastical goods through the analysis of the most significant texts of the ecumenical and local councils (both Eastern and Western).

The study of the canonical sources, analysed through a methodological approach that observes the form of the source – as an expression of the historical, social and, consequently, legal context allows to see that the ecclesiastical property has been the object of attention and of lively debates in the ancient councils of the Church. One of the most relevant aspects of the study shows that the conciliar decisions have tried, throughout the centuries, to protect the patrimony, especially of the local churches (whose unavailability is established), against the illicit interferences by the lay powers or the illegitimate behaviour of the bishops themselves, who committed a grave sin of impiety by squandering the goods of the Church.

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**Roumy, Franck**

*RES INTER ALIOS ACTA: LA CONTRIBUTION DU DROIT CANONIQUE CLASSIQUE À L'EFFET RELATIF DES ACTES JURIDIQUES ET DES JUGEMENTS*

La communication se propose d'analyser la manière dont les canonistes du Moyen Âge central sont parvenus à faire d'une règle formulée incidemment par les jurisconsultes romains de l'époque tardive, un principe général du droit des contrats et du droit du procès, qui s'est maintenu jusqu'à aujourd'hui dans la plupart des systèmes juridiques occidentaux. La règle selon laquelle les jugements et les actes juridiques ne nuisent pas aux tiers a en effet été explicitement formulée dans plusieurs rescrits de Dioclétien (C., 7, 56, 3 et 7, 60, 1-3). La transformation de cette disposition en un principe général du droit des contrats et de la procédure est cependant l'œuvre des juristes du jus commune. Le droit canonique classique a joué ici un rôle majeur. Les canonistes ont repris de la formule romaine dans la deuxième moitié du XII<sup>e</sup> siècle. Rapidement, ils l'ont transformée, en lui donnant l'aspect d'une véritable maxime générale : *res inter alios acta non prodest vel praejudicat*. L'adage a été reçu dans les recueils de brocards et a ainsi connu une importante diffusion. L'extension du consensualisme, au tournant des XII<sup>e</sup> et XIII<sup>e</sup> siècles, a conduit la doctrine canonique à ériger la règle, qui se limitait principalement au champ processuel, en un principe fondamental du droit des contrats. Elle est invoquée à plusieurs reprises dans la pratique dès le pontificat d'Innocent III.

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**Schmoeckel, Mathias**

*ERKENNEN, GLAUBEN, WISSEN. EPISTEMOLOGIE UND JURISTISCHES ERKENNTNISVERFAHREN AM BEISPIEL DER MITTELALTERLICHEN KIRCHE*

Das 9. Jahrhundert zeichnet sich durch einige gelehrte Kleriker aus, die den Aberglauben der sie umgebenden Welt bekämpften und eine christliche Weltordnung herbeiführen wollten. U.a. wurden deswegen die Ordalien abgelehnt. Unter der Prämisse, dass Christus die Wahrheit ist (Jo 14,6), deren Erkenntnis die Kirche vermittelt, kam es nach diesen Autoren auf das richtige Verfahren an, um die Wahrheit zu bestimmen. So wurden Regeln entwickelt, die auch dem juristischen Erkenntnisverfahren galten. Daraus entstand bis Tancred die Dogmatik des

römischkanonischen Beweisrechts. Diese Lehre wurde zunehmend bis zum 14. Jahrhundert für immer mehr Verfahren genutzt und inhaltlich ausdifferenziert. Die Übereinstimmung von Theologie, Erkenntnislehre und Beweisverfahren führte gleichermaßen zu einer großen Stimmigkeit dieser Lehren und stärkte die Herrschaft der Kirche. Eine eigene Dogmatik entwickelte sich allerdings in den Ketzerverfahren.

Ab dem späten 14. Jahrhundert wurden die Ausnahmen jedoch eklatanter, die abgelehnten Ordalien kamen im Rahmen einer größeren Gewaltbereitschaft wieder. Das Ketzerinquisitionsverfahren wurde nicht nur für die Hexenverfolgung grundlegend, sondern trug auch zur Verbreitung des *arbitrium iudicis* bei. Mit Nicolaus Cusanus wurde dann die allgemeine und gleiche Erkenntnis der Wahrheit durch Menschen abgelehnt; vielmehr sei die individuelle Erkenntnis Gottes durch den Glauben entscheidend. Hier begann die Einheit von Erkenntnislehre, Theologie und juristischem Beweisverfahren zu zerbrechen, wie es dann in Folge der Reformation überdeutlich wurde. Diese Fragen sollen am Beispiel des Sachverständigenbeweises und seiner Geschichte exemplifiziert werden.

*English: CSI Bartolus?* While “Criminal Science Investigation” has become an important part of modern detection, it is commonly assumed that expert witnesses had almost no part in Medieval Roman-Canon procedural law. With a closer look, however, we learn that expertise of any kind was very welcome; Roman-Canon procedural law cared in particular for the equal chances of both parties. In addition, The treatment of expert witnesses through the centuries is very conclusive for revealing for how societies conceive of human understanding and knowledge.

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### Sedano, Joaquín

#### DISSOLUTION OF MARRIAGE: GRATIAN, THEOLOGIANs, AND DECRETISTS

The dissolution of a non-consummated marriage by papal authority has its roots in the old tradition which allowed the automatic dissolution of a non-consummated marriage by virtue of the religious profession of one of the spouses. The *auctoritates* of Gratian’s *Decretum* received this tradition which was later discoursed by the canonists in the context of a theological and highly symbolic background. This paper focuses on the doctrines of both theologians and decretists which seeks to delineate such exception to the divine law of indissolubility of marriage.

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### Smith, Damian

#### VERGENTIS IN SENIUM IN THE ALBIGENSIAN CRUSADE

The bull of Innocent III, *Vergentis in senium*, sent to the clergy and people of Viterbo and dated to 25 March 1199 proved of primordial importance to the canonists on questions concerning heresy. This was particularly the case concerning the questions of whether the goods of somebody associated with heretics should revert to them once they had abandoned that association and whether a child, orthodox in faith, should be disinherited because of the crimes of its father. These questions, perplexing for lawyers, lay at the heart of the development of the Albigensian Crusade, in the Church’s treatment of Count Raymond VI of Toulouse and other nobles of the region, and in the handling of the cases of Raymond VI’s son, Raymond VII, and Roger, the son of Raymond-Roger Trencavel. This paper traces the increasing divergence on these questions between the thought of the pope, who was prepared to take pity on both parents and children, in the manner which *Vergentis* had indeed suggested might be the case, and that of the prelates in the Midi, who doubted whether such a course of action could be beneficial to the

Church in the long-term. This culminated in the debate at the Fourth Lateran Council, famously described by the anonymous continuator of the *Chanson de la Croisade Albigeoise*, and here the divisions and decisions of the Council will be examined.

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### Sol, Thierry

#### DEPOSITION AND DEGRADATION OF BISHOPS IN THE 11TH AND 12TH CENTURIES

The degradation and deposition of bishops was a sanction used to resolve the crisis of the Church in the 11th and 12th centuries. In this paper, I will try to specify the reasons and causes invoked, the conduct of the procedure, the competent judge, the possibilities of appeal and the increasing role of the Apostolic See. The *Decretum* of Gratian and the comments of the decretists will be the main sources of this research.

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### Somerville, Robert

#### POPE URBAN II AND CANON LAW, AGAIN

The title is, with a slight adjustment, borrowed from the title of Bishop F.J. Gossman's groundbreaking dissertation, directed by Stephan Kuttner, and published in 1960. Through analysis of 24 pre-Gratian canonical collections, this work documented the extensive impact on the Church of Urban's letters and councils, moving into the twelfth century. In the ensuing decades much research has been done to elaborate on Gossman's research, and the work of Martin Brett, Linda Fowler-Magerl, Horst Fuhrmann, Peter Landau, Stephan Kuttner, et al. comes to mind. One lecture certainly is hardly sufficient to try to offer a full, synthetic treatment of the topic. The focus of this presentation is, therefore, three-fold. There will be a discussion of Urban's papal letters, then attention devoted to his ten papal councils, and, finally, consideration given to a small group of prominent texts which are found in the canonical tradition, particularly the enigmatic entry JL 5760 (*Duae inquit leges*).

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### Sorice, Rosalba

#### FOREIGNERS-ENEMIES IN THE EUROPEAN LEGAL TRADITION: THE CONTRIBUTION OF JURISTS OF THE *IUS COMMUNE* IN THE CONSTRUCTION OF THE LEGITIMATE RIGHT OF ENEMIES TO DEFEND THEMSELVES

The medieval doctores interpret, *sub species iuris*, the concept of *bellum*, introduced into the *ordo iuris* from the *ius gentium* and therefore legitimate in its exercise. The *ius belli* also appears as a right which, if exercised *iusta causa*, lawfully allows *occidere alienos*. The path that the jurists follow is for a long period founded on the unilateralism of war, just for one of the belligerent parties, this consideration consequently cancels the right of resistance of the *alieni*-enemies who cannot defend themselves if rightly attacked. Starting in the 14th century, the jurists began to recognize the equal right of defense to the enemy even in the case in which the aggression against him was legitimately committed.

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### Stüber, Till

#### BETWEEN PATRONAGE AND OBLIVION: REFERENCES TO KINGS IN EARLY MEDIEVAL CANON LAW MANUSCRIPTS

In late antiquity, convening superregional synods was only made possible by the support the Roman state provided to the Church. In the post-Roman successor kingdoms of the West, “public” and particularly royal sponsoring remained an inevitable prerequisite for convening Church assemblies. As shown by numerous examples from the Visigothic, Frankish, Burgundian and Ostrogothic realms, it was customary in conciliar acts to explicitly refer to the ruler and to thank him for his patronage. However, in times of political change and shifting loyalties, references to specific rulers could quickly become an embarrassing and even precarious affair. Given the universal claim of synodal rulings, compilers and copyists of canon law collections inevitably had to deal with this problem. How did they cope with the fact that their exemplars contained numerous references to kings, if these kings enjoyed a dubious afterlife and if remembering them was deemed inopportune for various reasons? Could references to “inopportune” kings diminish a text’s authority and thus decrease the probability of its transmission? My paper aims to address these questions, showing that compilers of early medieval canon law collections developed various methods to handle this problem, ranging from the simple omission of names to the *réécriture* of passages, from the addition of glosses to the omission of entire documents. It was not only in the fields of historiography and hagiography that contemporaries proved to be creative in dealing with their past, but also in the supposedly more “static” field of canon law.

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### Sullivan, Thomas

#### RANKING AND ADOPTION IN THE PARISIAN LICENTIATE PROGRAM IN CANON LAW, 1415-1448

The licentiate program in the Parisian Faculty of Canon Law in the fifteenth century involved a long, elaborate, and sometimes contentious process of two- to three months’ duration, culminating in the bestowal of the licentiate by the university chancellor. It unfolded in three stages: the first saw the bachelor candidates admitted to the examination and the examination proper; the second included assignment of class rank to the candidates (the “*assignatio locorum*”) and their adoption by the regents (the “*distributio baccalariorum*”) for presentation to the chancellor; and, finally, the licentiate ceremony itself with its subsequent “*scrutinium*” and communal feast. Statute, oath, and custom controlled the activities taking place at each of these stages.

My paper addresses the activities of the second stage—ranking and adoption of candidates— and the mechanics underpinning these. Ranking was a feature of the licentiate program in each of the three upper faculties at the University of Paris. It detailed the order in which each bachelor candidate would be presented to the chancellor. Regents and bachelors alike paid considerable attention to the composition of the “*ordo licentiatorum*” for three important reasons: rank was public, rank reflected academic excellence, and rank determined precedence in subsequent public ceremonies and examinations. Unique to the Parisian Faculty of Canon Law was the “*distributio baccalariorum*” in which regents chose a bachelor candidate (or candidates) with whom to be associated in the licentiate process, perhaps for the purpose of sponsorship or for purposes of income.

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### Summerlin, Danica

#### DECRETALS AND LETTERS IN LATE TWELFTH-CENTURY CANONICAL COLLECTIONS

This paper is focused on the process of sifting legal sources in the central middle ages, and its presentation in modern historiography. Its particular interest is in how twelfth-century audiences



contemplated canon law outside the boundaries created by later twelfth-century canonical collections, and particularly those collections of primarily papal decretals. In their lengthy commentaries, canonists outlined the key elements and forms of a papal decretal. But how far were those theoretical divisions maintained outside the schools, especially in considering the letters written by the papacy and incorporated locally into these collections? So as not to repeat important prior works which have explained what a decretal was in theory, this paper is interested in comparing theory with practice, considering whether – or not – those letters which are not preserved in material modern scholars describe as canonical should be treated differently from those which are and how far the lawyers of the late-twelfth century are responsible for the categories that modern scholars employ concerning such legal texts. Given the overwhelming evidence in favour of the local compilation of decretal collections in the later-twelfth century, how important was it that a specific text was a decretal, and how have the collections and their modern commentators shaped this interpretation?

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### **Summers, Margaret Mary**

#### LAW, EDUCATION, AND PASTORAL CARE: HONORIUS III AND THE UNIVERSITY OF BOLOGNA

This paper examines the involvement of Pope Honorius III (1216–1227) with the University of Bologna in order to better understand the pope's attitude toward legal studies. Honorius is known for restricting the clerical study of civil law; his 1219 letter *Super speculam* forbade many types of clerics from studying civil law and prohibited the formal study of civil law altogether at Paris. Honorius' correspondence with Bologna, however, demonstrates that he strongly supported the study of both civil and canon law at the University of Bologna. Honorius defended the University of Bologna against encroachment from the Bolognese commune and sought to improve the quality of education at the university by tasking the archdeacon of Bologna with granting teaching licenses only to qualified scholars. At the same time, Honorius shared with his predecessor, Innocent III, and his successor, Gregory IX, an interest in directing education to the needs of the Church. In his 1220 letter *Ex relatione venerabilis*, Honorius explained his hopes for the educational program at the University of Bologna; he stated that the city should be “another Bethlehem,” or “House of Bread,” which brought forth clerics trained for the care of souls. Honorius did not want clerics to pursue lucrative careers in civil law, but, in the wake of the reforms of the Fourth Lateran Council of 1215, he did believe canon law education to be an essential part of preparation for pastoral care.

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### **Szuromi, Anzelm Sz.**

#### NEW EVIDENCES CONCERNING THE TWO-WAY TRANSFER OF CANONICAL MANUSCRIPTS BETWEEN THE ANGLO-SAXON KINGDOMS AND THE EUROPEAN CONTINENT

Thirteen years ago I have begun a codicological and paleographical analysis of the Medieval Latin canon law manuscript collection of the different sections of the National Library of St. Petersburg. Within the last four years I focused on the identification of the penitential exemplars of the 7th–12th century, supplementing my work in St. Petersburg with research in the British Library. This comparative work has discovered several penitential manuscripts which clearly supported that close correlation and even cooperation between the Irish monasteries of the Scottish and Anglo-Saxon Kingdoms and of the French territory, already from the early 7th century. This correlation made possible the transfer of Italian canonical manuscripts to Northumberland through particularly the Abbey of Corbie (est. about 659/661). This is

especially true regarding the Priory of Lindisfarne (est. about 634). My recent research could identify a “twin” penitential manuscripts from the 7th century which were compiled in Italy for the Abbey of Corbie, and one of them transferred to Lindisfarne before the end of the same century (now one exemplar can be found in the British Library, the other is in the National Library of St. Petersburg). Another important textual witness also belonged to the material of Lindisfarne and its earliest stratum copied in Italy in the 7th century, supplemented several times. This particular manuscript places into a new frame our concept on the early correlation of the written disciplinary culture between the Anglo-Saxon Kingdoms and the European continent, which was a constant, two-way transfer from the 7th to the 12th century.

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### **Taliadoros, Jason**

BOUNDARIES OF CANON LAW, ROMAN LAW, AND COMMON LAW IN ENGLAND IN THE LATE TWELFTH AND EARLY THIRTEENTH CENTURY: MASTER VACARIUS AS A CASE STUDY IN MULTILEGALISM

Focusing on the works and immediate legal context of Master Vacarius (c. 1115/1120–c.1200), what can we say about multi-legalism in late twelfth- and early-thirteenth-century England? Vacarius is most famous for his influential Roman law teaching text, the *Liber pauperum*. But his other works—on marriage (comparing the popular canonists’ and theologians’ positions of the day), heresy (in which he employed Roman law analysis), and a purely theological treatise on incarnation—survive in single manuscripts only, and arguably had little influence. Yet they demonstrate that Vacarius not only crossed the boundary between Roman law and canon law, but law and theology too. This paper asks whether, like the famous English canonist Ricardus Anglicus (c. 1161–1242), who began his career teaching the laws of the *ius commune* in Bologna before devoting the rest of his life to administration and litigation in the church and common law courts of England as prior of Dunstable, Vacarius too traversed the divide between the *ius commune* and the nascent English common law. We have a number of rich sources to test this thesis: the records of the ecclesiastical courts of the Province of Canterbury between 1200 and 1301 (where Vacarius formed part of the *familia* of Theobald from around 1144) and York (where he later joined the household of Roger from c. 1159–1200), as well as accounts from secular courts in the Selden Society series and in the online database of Year Books. This paper aims to use these sources to begin an analysis and reflection on the practical application of normative principles of English common law, canon law, and Roman law, and the implications of any overlap, borrowing, or ‘influence’ between them.

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### **Thier, Andreas**

OBSERVATIONS ABOUT MEDIEVAL CANON LAW APPROACHES TO TIME: THE DEBATE ABOUT PERPETUITY AND TEMPORALITY IN X 1.2.11 AS AN EXAMPLE

Since Augustine’s reflections on time and God in his *Confessiones*, concepts and ideas about time and temporal dimensions formed an important in the medieval tradition of theology and philosophy. This development did, however, not find a correspondent in the science of medieval canon law. On closer examination it appears as if there were multiple understandings and notions of time, which, however, were not always fully elaborated. Rather more or less implicit understandings of time and temporal phenomena like the opposition of continuity and discontinuity or the distinction between the past, the present and the future were applied. The

suggested paper shall address these approaches to time. It shall focus in particular on a jurisprudential debate about the understanding of the term *in perpetuum...perduraret* in the context of the punishment of clerics, used in a decretal by Innocent III with the incipit *ex literis* (X 1.2.11). The paper shall give a short survey on the broad spectrum of different understandings and notion of *tempus* in medieval canon law in its first section. In a second step the attention shall turn to Innocent's decretal and its context, before then, in a third section, the doctrinal debates on the interpretation of *in perpetuum* shall be discussed. The paper shall close with several concluding remarks.

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#### **Torres Fernández, Marcos**

THE RECEPTION OF CAROLINGIAN LEGISLATION ON SUITABILITY FOR PRIESTHOOD: THE IMPORTANCE OF REGINO OF PRÜM

A better clergy was one of the aims (and result) of the Carolingian Reform as the abundant conciliar, episcopal and imperial legislation proves. Many of its contents are traditional, but some innovations can be traced. In this paper, I will deal with the partial incorporation of that canonical discipline made by Regino of Prüm, as one of the "responsibles" of its wider circulation in posterior collections up to Gratian's *Decretum*.

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#### **Vanides, Aaron**

RHETORIC AND THE CANONIST: THE SPEECHES OF FRANCESCO ZABARELLA

While the Paduan jurist and cardinal Francesco Zabarella stands at the center of developments in canon law during the later Middle Ages, his substantial and diverse written corpus has only received limited scholarly attention and none of his works have been edited according to the standards of modern textual criticism. This glaring lacuna stems in part from Zabarella's participation in late-medieval literary trends and the mutation of traditional canonical genres during the Great Western Schism as well as novel techniques of transmission that have only recently come into focus after pioneering work in the history of the book. In accordance with his duties as a professor of canon law, Zabarella composed traditional commentaries on the decretals that survive today in weighty folio-sized manuscripts and in several early modern printed editions. But Zabarella, much like his contemporary Jean Gerson, also wrote numerous small treatises, like the so-called *tractatus*, whose paths of transmission were fluid and often distinct from his traditional writings. In my paper I propose to rethink Zabarella's place in the history of late medieval canon law by turning to an even more neglected aspect of his literary career, namely his prowess as an orator. On the basis of a corpus of speeches found in a particularly rich manuscript (MS 5513, ff. 88a-216a) in the Österreichische Nationalbibliothek, a „Sammelhandschrift mit kanonischen Texten,“ I argue that Zabarella's centrality to the intellectual world and politics of the later Middle Ages is most clearly illustrated by these rhetorical sources.

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#### **Veneziani, Enrico**

RE-THINKING DEUSDEDIT'S *COLLECTIO CANONUM*: AN ALTERNATIVE VISION OF THE CHURCH?

The eleventh-century reform has often been described as a linear period, as attested by the use of the label 'Gregorian reform' to indicate the years between 1073-1122. It has been proved, however, that if something missing was indeed linearity. Differences can be found not only

among the ecclesiology of reforming popes but also among their supporters, each proposing a different view of the Church. These diversities were particularly accentuated during Gregory VII's pontificate, triggered by the clash with Henry IV and the bishops of the Reichskirche. Deusdedit's canonical collection, compiled between 1083 and 1087, may have entailed one of these different positions. The historiographical models, which identified in the collection a model of primacy focused on the Roman church instead of the pope, have led the way to new interpretations. Building on what has been described by Glauco Maria Cantarella as the 'uneasiness over papal primacy', my paper will consider how Deusdedit's canonical sources on Roman primacy offered a vision different from Gregory VII's ecclesiology. By re-thinking Deusdedit's position among the pope's supporters as a possible member of an internal opposition to some of the more extreme Gregorian claims, the paper will throw new light on both the cardinal's work and the papal inner circle, especially on those collaborators who, although faithful to Gregory, may not have shared all his decisions and ecclesiological claims.

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### Viejo Ximénez, José Miguel

PRELECTIONES SOBRE EL *DECRETUM GRATIANI* DE LAS PRIMERAS DÉCADAS DE LA ESCUELA DE BOLONIA

En cuanto saber autónomo con rango académico, la canonística comenzó con Graciano. Entre 1140 y 1190, la enseñanza del Derecho canónico se basó en la lectura y en el comentario de la *Concordia discordantium canonum*. Como en las demás disciplinas, el curso comenzaba con una lección introductoria, *prelectio*, en la que el maestro hablaba sobre el *ius canonicum* (*ars extrinsecus / circa artem*), así como sobre Graciano y el contenido y propósito de su *Decretum* (*ars intrinsecus / circa librum*). Algunas *prelectiones* se utilizaron como prólogos de las *summae* de la Escuela de Bolonia. Para elaborar sus *prelectiones* / prólogos, los decretistas aprovecharon los conceptos de *materia, intentio y modus agendi / tractandi* propios de los *accesus ad auctores*. El estudio de estos prólogos desvela las dependencias intelectuales de los primeros canonistas, así como las relaciones de la naciente ciencia del *ius canonicum* con las artes liberales y la teología. Las *prelectiones* son también un lugar privilegiado para conocer la concepción que los maestros boloñeses tenían de su disciplina y de su auctor: cuál era su visión de los *sanctorum patrum decreta* y los *conciliorum statuta*, del trabajo que realizó Graciano, y del contenido y alcance del *Decretum*.

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### Wand, Benjamin

DEFINING THE *COLLECTIO SALISBURGENSIS* AND ITS PLACE IN THE *CODEX SALISBURGENSIS*

The Salzburg Codex (St. Peter a.IX.32) is an edited collection of canon law materials bound in the early eleventh century. Past scholarship has loosely identified two major components of the codex. The first either originated in or was copied from Cologne, and the second component has been identified as the *Collectio Salisburgensis*. Besides these pieces, the codex also contains a variety of miscellaneous materials, including letters, canons, and a runic alphabet. Since the codex contains several notable penitentials and council excerpts, such as the *Concordia Canonum* of Cresconius, Hrabanus Maurus' Penitential for Heribald, and the *Collectio Vetus Gallica*, portions of the *Codex Salisburgensis* have been studied in isolation from the codex. These previous studies have often focused on the transmission of these pieces, and the sole monograph on the codex, by Georg Phillips in 1864, provided an overview of the codex's contents. As a result, there exists no cohesive study of the codex as an artifact of eleventh century canon law or penitential practices.

Further examination of this codex reveals a purposeful organization of its contents. This paper will propose that the *Codex Salisburgensis* was assembled for practical use, and thus exemplifies pastoral care in an Ottonian diocese.

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### **Wetzstein, Thomas**

REFORMING THE HEART OF THE POPE: OBSERVATIONS ON THE THEORY AND PRACTICE OF REVOKING MEDIEVAL PAPAL LAW

At the peak of its medieval history, the pope had also become the sole legislator of the Latin Church. This meant – in the words of Boniface VIII – that he had all the laws of the Church in the chamber of his heart (VI 1.1.2). This ambitious programme implied the necessity of adapting the whole legal framework of the Latin Church to the necessities of space and time. We know such examples from specific fields of papal legislation, among which one of the most common examples might be the constitution “Non debet” issued by Innocent III. on the Fourth Lateran Council in 1215, later known as X 4.14.8. What mostly remains without commentary is the justification the pope seems to be obliged to give when altering *statuta humana* and *constitutiones* that contained canonical prescriptions on forbidden degrees of consanguinity and affinity. The paper will follow this path and try to confront further examples of popes revoking decrees of their predecessors with contemporary doctrine on *revocatio*, *derogatio*, *abrogatio* or *obrogatio*, partially contained in the papal decrees themselves. When dealing with this intricate problem we may, in a larger context, get precious insights into an empirical side of an almost proverbial modernity of papal legislation symbolised by often-quoted formulas like *plenitudo potestatis* prefiguring modern sovereignty.

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### **Yahia Cherif, Sofiane**

*SENTENTIA ET RES IUDICATA* DANS LES ÉCRITS DE L'ÉCOLE PARISIENNE

Les travaux menés au cours des dernières décennies sur l'école parisienne ont très qualitativement fait croître les connaissances scientifiques sur l'un des foyers principaux de pensée juridique du Moyen-Âge. Il s'agit d'un lieu de savoir où l'étude du droit canonique prit son essor vers 1160, avec une influence certaine sur la pensée juridique en Europe. Des réflexions en confrontation directe avec les autres grandes écoles de Bologne et d'Oxford.

L'étude de la procédure ne fait pas exception. Des ordines sont rédigés, étayant le caractère de véritable vecteur de culture juridique de cette littérature procédurale. De nombreux apparats aux compilations antiques — que les travaux susmentionnés nous ont permis de mieux appréhender par l'identification de leurs auteurs — contiennent également des réflexions essentielles sur la procédure qui favorisent la compréhension d'un *ordo iudicarius* marqué par les spécificités locales. Les réflexions des juristes sur la sentence et la chose jugée à l'époque médiévale ont étoffé l'héritage romain sur le sujet. Une étude des règles proposées sur ces deux objets dans les écrits de l'école parisienne doit servir d'une part à identifier les éléments de culture spécifique et d'autre part à étendre les connaissances sur ces institutions qui renvoient à l'autorité et à la pratique locale.

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### **Yee, Ethan Leong**

GOD, POPE, AND PARISH PRIEST: HOW THIRTEENTH-CENTURY JURISTS DISCUSS GENERAL REMISSIONS

Gratian does not discuss indulgences, but Gregory IX's *Decretales* contains two canons on indulgences: *Quod Autem* and *Cum ex eo*. Based on these two decretals, many thirteenth-century jurists elaborated different theories about how indulgences worked, trying to balance jurisdictional principles from canon law with theological necessities. Jurists such as Bernard of Parma, Godfrey of Trano, Innocent IV and Hostiensis discussed a wide range of issues, such as who could issue indulgences, where that power comes from, how that power interacts with the judgment of God, whether indulgences worked in purgatory and how they were regulated at the parish level. But when mendicant jurists picked up the issue, divisions began to emerge. Dominicans such as Raymond of Penafort tended to struggle with the disparity between the pope's judgment, based on *plenitudo potestatis*, and God's judgment, remaining very ambiguous about whether people should see indulgences as a lessening of penance. Meanwhile, Franciscan jurists, such as Henry of Mersberg and Monaldus of Capodistria tended to gloss over the theological problems and treat indulgences as a pastoral matter, giving parish priests the final say. On the one hand, the pope could grant an infinite amount of indulgence to everyone if he wished, but no individual would receive that indulgence if his or her parish priest considered him or her undeserving of it. This disparity in approaches to indulgences would be partially resolved by the adoption of the "treasury of merit" explanation for indulgences by both Dominican and Franciscan jurists.

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