



# *Honos alit artes*

Studi per il settantesimo compleanno  
di Mario Ascheri

LA FORMAZIONE  
DEL DIRITTO COMUNE  
Giuristi e diritti in Europa (secoli XII-XVIII)

a cura di

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# **Reti Medievali E-Book**

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## Another Fragment of *Compilatio prima* at Columbia University

by Robert Somerville

At several points in recent years the author has called attention to medieval legal manuscripts, both integral and fragmentary, that are now housed in libraries in North America<sup>1</sup>. Fragments, the *membra disiecta*, can easily evade detection even in libraries in which manuscript collections are well catalogued. The work of preparing a complete inventory of these books and detached pieces which now are housed in North America remains a desideratum, and the present note will call attention to another such item found in the Rare Book and Manuscript Library at Columbia University. As such, the remarks to follow will connect with a similar article published in 2006, not only because both deal with fragments now preserved at Columbia, but also because both treat the same medieval text.

Columbia University's rare book holdings include an important collection of legal manuscripts and also, as is the case with many similar repositories, an extensive collection of fragmentary pages from medieval books. A partial list of some of these items can be found in a booklet describing the exhibit held in the Rotunda of Low Memorial Library at Columbia in conjunction with the annual meeting of the Medieval Academy of America that was held at the University in April, 1981<sup>2</sup>. Included there, in addition to charters and two now lost original thirteenth-century papal bulls which were stolen in the 1990s, are a copy of the first part of Gratian *Decretum* (c.1300), a fifteenth-century copy of the *Constitutiones Clementinae*, a complete thirteenth-century copy of Bracton, and even a ninth-century copy of Gennadius of Marseille, *Liber ecclesiasticorum dogmatum*<sup>3</sup>. Furthermore, in great part through the work of Columbia's Curator

<sup>1</sup> See, e.g., R. Somerville, *A Fragment of Compilatio prima at Columbia University*, in *Medieval Church Law and the Origins of the Western Legal Tradition*, Washington DC 2006, pp. 154-188; R. Somerville, *Ivo in America*, in *Bishops, Texts and the Use of Canon Law around 1100*, Washington DC 2008, pp. 111-117; R. Somerville, *Licet and Illicit in the Yarnall Collection at the University of Pennsylvania: Pages from the Decretales of Gregory IX*, in *Law and the Illicit in Medieval Europe*, edited by R. Mazo Karras, J. Kaye, E.A. Matter, Philadelphia 2008, pp. 71-78.

<sup>2</sup> *A Selection of Medieval and Renaissance Manuscripts at Columbia University*, with an introduction by J. Rosenthal (printed at Columbia University in 1981).

<sup>3</sup> In a major theft Columbia lost, *inter al.*, a bull of Innocent III, shelf mark Plimpton MS 278 (see R. Somerville, *Two Letters of Pope Innocent III*, in «Bulletin of Medieval Canon Law» (from now on

of Medieval and Renaissance Manuscripts, Dr. Consuelo Dutschke, beyond these codices over one hundred fragments of medieval manuscripts also have been identified and catalogued. These results are available online through Digital Scriptorium (search under <http://ucblibrary4.berkeley.edu>). Among these legal fragments is a piece of Azo Portius' commentary on the *Codex Iustinianus* (Medieval/Renaissance Fragment 3; Italian, fourteenth-century?), of the *Digesta Iustiniani* with Accursius' commentary (Med./Ren. Fragment 6; Italian, fifteenth-century), and another fragment of the *Digesta*, with marginal glosses (Med./Ren. Fragment 33; French?, twelfth-century). To this group can be added Med./Ren. Fragment 98, from Bernard of Pavia's, *Breviarium extravagantium <decretalium>*, commonly termed the *Compilatio prima* (= *Comp. I*), which was featured in the afore-mentioned study published in 2006<sup>4</sup>.

Columbia University Med./Ren. Fragment 111 also is a piece of a manuscript of *Comp. I*. The fragment, probably written in Italy, can be dated according to Dr. Dutschke to the early thirteenth century. It is difficult to present meaningful measurements for this pear-shaped bit of parchment, but a page of the book from which it derived was seemingly close to 21 centimeters wide. An estimate about its height is even more in the realm of guesswork, but those sheets could have been about 21x30 centimeters. The book housing these leaves was thus not an insubstantial codex. The text was written in two columns, with alternating red and blue initials, and was seemingly a school book. The margins of the two pages at hand are free of any glosses, so if this was a scholastic manuscript it conceivably received very little use, and/or was transcribed soon after *Comp. I* was assembled and, therefore, was copied around the year 1200. On its *recto* side the fragment presents in the second column text from the very end of *Comp. I* 1.23.7 (although that canon per se is illegible), through the beginning of 1.24.1, i.e., the first part of c.21 of the 1179 Lateran Council, which deals with the Truce of God<sup>5</sup>. The verso is in general more difficult to decipher, but toward the bottom of the left-hand column the end of 1.25.2 can be discerned, through 1.26.3. A minute examination of the fragment would refine these indications and could probably

«BMCL»), n.s., 1 [1971], pp. 67-70), and a bull of Pope Nicholas III, shelf mark Smith Western MS 8. The shelf marks of the other books noted are: Gratian, Plimpton MS 85; *Const. Clem.*, Smith Western MS 18; Bracton, Diamond Law Library, Treasure MS B.72; Gennadius, Plimpton MS 58. See also in general for the Columbia collection, R. Somerville, *Some Remarks on the Early History of Columbia University's Collection of Medieval and Renaissance Manuscripts*, in *Medieval and Renaissance Manuscripts at Columbia University*, ed. B. Terrien-Somerville, New York 1991 (Rare Book and Manuscript Occasional Publication 1), pp. 1-6. The most recent acquisition of a medieval legal codex is an early twelfth-century copy of the *Collectio Sinemuriensis*, on which see F. Roumy, *A New Manuscript of the Collectio Sinemuriensis (New York, Columbia University, Western MS 82)*, in *Canon Law, Religion, and Politics*, edd. U.-R. Blumenthal, A. Winroth, P. Landau, Washington DC 2012, pp. 56-74.

<sup>4</sup> See note 1 above.

<sup>5</sup> All references for *Comp. I* are to the work of E. Friedberg, *Quinque compilationes antiquae nec non Collectio canonum Lipsiensis*, Leipzig 1882, p. 1 ff., with numerical references to book, title, and canon. For a Latin text and an English translation of c.21 of the canons of the Lateran Council see *Decrees of the Ecumenical Councils I*, ed. N.P. Tanner S.J., Washington DC 1990, p. 222 (following the third ed. of *Conciliorum Oecumenicorum Decreta*, eds. G. Alberigo et al., Bologna 1973).

offer a more accurate suggestion about the dimensions of the book from which the page derives.

The compiler of *Comp. I*, the canonist Bernard of Pavia, had a long and distinguished career. As was summarized in 2006, he was a native of Pavia, had been a student at Bologna and then taught there, was for a time resided at the papal curia, and in 1187 was provost of the church at Pavia<sup>6</sup>. He assembled this collection there around the year 1190, and the work survives in different versions. Bernard also composed other works, including an earlier collection of decretals, and, notably, a *Summa decretalium* on *Comp. I*, and his career led him to the episcopate, first of Faenza, and then back to Pavia where he died in 1213. The importance of *Comp. I* cannot be overestimated. Aside from the legal rulings included in the work and the canonists' glosses on them, as one of the so-called *Quinque compilationes antiquae* – that is, one of the five collections of papal decretals that served as the main sources for the *Decretales* of Pope Gregory IX – the compilation set a pattern for systematic collections of decretals with its structure of five books arranged under titles. Moreover, through the Gregorian *Decretales*, promulgated in 1234, not only texts per se but also many of the titles from *Comp. I* were incorporated into the Church's official canon law.

*Comp. I* was edited in the sixteenth century by Antonio Agustín. Work was started on another edition by Joseph Anton Rieger in 1779, but only the first of five planned volumes appeared<sup>7</sup>. The standard work on *Comp. I* by Friedberg has been termed «in most parts an analytic description, meant to be used in conjunction with his edition of the *Liber extra* (...) Only chapters suppressed by Gregory IX were given in full in Friedberg's slender companion volume in 1882»<sup>8</sup>. Friedberg used a handful of German manuscripts in his analysis of *Comp. I*, and the need for a new study of the manuscripts of the compilation was acknowledged<sup>9</sup>. That work was undertaken by Gérard Fransen and the results were published in articles in 1961 and in 1965<sup>10</sup>. Fransen examined 92 manu-

<sup>6</sup> For Bernard and *Comp. I* see now K. Pennington, *Decretal Collections 1190-1234*, in *The History of Medieval Canons Law in the Classical Period, 1140-1234*, eds. W. Hartmann, K. Pennington, Washington DC 2008, pp. 295-300. Useful comments also can be found in earlier works, e.g., R. Somerville, B.C. Brasington, *Prefaces to Canon Law Books in Latin Christianity: Selected Translations, 500-1245*, New Haven 1998, pp. 216-220; J. Gaudemet, *Les sources du droit canonique, VIII<sup>e</sup>-XX<sup>e</sup> siècle*, Paris 1993, pp. 124-125; P. Landau, *Alltestamentliches Recht in der «Compilatio prima» und sein Einfluss auf das kanonische Recht*, in «*Studia Gratiana*», 20 (1976) = *Mélanges G. Fransen* II, pp. 111-133, reprinted with supplements in P. Landau, *Kanones und Dekretales*, Goldbach 1997 (*Bibliotheca eruditorum* 2), pp. 299\*-319\*, and 480\*-481\*; A. Fiori, *Bernardo da Pavia*, in *Dizionario biografico dei giuristi italiani*, a cura di Bircocchi, E. Cortese, A. Mattone, M.N. Miletti, I, Bologna 2013, pp. 231-232.

<sup>7</sup> St. Kuttner, *Antonio Agustín's edition of the Compilationones antiquae*, in «*BMCL*», n.s., 7 (1977), pp. 3 ff., discussed the editorial history of *Comp. I* from the sixteenth to the nineteenth century.

<sup>8</sup> *Ibid.*, p. 3. Friedberg, *Quinque compilationes*, pp. vi-xxiii.

<sup>9</sup> *Ibid.*, p. xxiii.

<sup>10</sup> G. Fransen, *Les diverses formes de la Compilatio prima*, in *Scrinium Lovaniense: Mélanges historiques Étienne Van Cauwenbergh*, Louvain 1961 (Université de Louvain, Recueil de travaux d'histoire et de philologie, 4<sup>e</sup> sér., 24), pp. 235-253; and *La tradition manuscrite de la 'Compilatio prima'*, in *Proceedings of the Second International Congress of Medieval Canon Law*, eds. St.

script of *Comp. I*, but readily conceded that his work represented only the «first results», with «provisional conclusions», of an investigation of the collection's diffusion<sup>11</sup>.

Fransen's studies have remained the starting points for research on the manuscripts of *Comp. I*, but now must be read in light of Pennington's discussion. Over the years Fransen himself provided supplements, but never published a new comprehensive list of copies of *Comp. I*<sup>12</sup>. The diffusion of the compilation was extensive, even remarkably so given the fact that the "useful life" of the compilation extended only for about 40 years, i.e., from about the year 1190 or 1191 to 1234, when its texts were formally superseded and replaced in an official way by the Gregorian *Decretales*. Fransen knew 127 manuscripts containing the work<sup>13</sup>. But as could be expected, not only is *Comp. I* represented by a large number of complete exemplars, many fragments also survive<sup>14</sup>. The fact that Columbia University possesses two fragments of different copies of *Comp. I* is a clear testimony to the work's widespread diffusion.

A word is in order, finally, about the actual discovery of Med./Ren. Fragment 111. This piece of parchment was found laying loose inside the incunable Goff P-208: Paulus Soncinus, *Questiones in libros metaphysicae Aristotelis* (Venice, Simon Bevilacqua, 28 September 1499). This book has a half-leather binding that originated in southern Germany, possibly Heidelberg. There is reason to think, however, that the fragmentary leaf of *Comp. I* was placed in the incunable at a later date because pastedowns in a half leather binding would be unusual<sup>15</sup>.

Kuttner, J.J. Ryan, Vatican City 1965 (Monumenta iuris canonici, Subsidia 1), pp. 55-62; Both articles are reprinted in G. Fransen, *Canones et questiones. Évolution des doctrines et système du droit canonique*, 1.1 *Manuscrits juridiques et collections canoniques*, Goldbach 2002 (Bibliotheca eruditorum 25), nos. 9 and 12.

<sup>11</sup> Fransen, *Les diverses formes*, pp. 238-39 and 253; *La tradition manuscrite*, p. 55.

<sup>12</sup> See Fransen's comments on *Comp. I* in *Sources et littérature du droit canonique classique*, in *Proceedings of the Ninth International Congress of Medieval Canon Law*, edd. P. Landau, J. Mueller, Vatican City 1997 (Monumenta iuris canonici, Subsidia 10), pp. 14-15. Some information on manuscripts of *Comp. I* unearthed subsequent to Fransen's two articles can be found in various places, e.g., St. Kuttner and A. García y García, *A New Eyewitness Account of the Fourth Lateran Council*, in «Traditio», 20 (1964), pp. 115-116, reprinted in St. Kuttner, *Medieval Councils, Decretals, and Collections of Canon Law*, 2<sup>nd</sup> ed., Aldershot 1992 (Variorum Collected Studies Series CS126), no. IX, but especially in articles and short notes in the «BMCL», e.g., M. Bertram, *Some Additions in the 'Repertorium der Kanonistik'*, in «BMCL», n.s., 4 (1974), pp. 9-10, and G. Dolezalek, *Another fragment of the Apparatus 'Militant siquidem patroni'*, in «BMCL», n.s., 5 (1975), pp. 130-132. The bifolium of *Comp. I* described by Dolezalek shares certain similarities to the Med./Ren. Frag. 98 at Columbia University discussed in the article cited above at note 4.

<sup>13</sup> Fransen, *La tradition*, p. 55, wrote, «Y a-t-il un seul texte médiéval pour lequel nous disposons de 127 MSS échelonnés seulement sur quarante-cinq ans?». Cf. Pennington, *Decretal Collections*, p. 299.

<sup>14</sup> Notices about fragments of *Comp. I* can be found in both series of the «BMCL» (the earlier series, prior to 1971, was part of the journal «Traditio»): see the entry for *Comp. I* in the *Cumulative Index, 1155-1983*, in «BMCL», n.s., 14 (1984), p. 25. See also St. Kuttner, *Manuscripts of canon law in Hungary: An index to Peter Erdö's article in Apollinaris*, in «BMCL», n.s., 18 (1988), p. 64, under Bernard of Pavia.

<sup>15</sup> This information is supplied from the description of the fragment given in Digital Scriptorium.