Manlio Bellomo, The *Common Legal Past of Europe*
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Ius commune in Europe

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1. Old and New Social Figures

In France in 1016 Adalberon, the bishop of Laon, wrote with conviction and satisfaction that Christian society was made up of "those who pray, those who fight, and those who labor" (oratores, bellatores, laboratores).[51] In this synthetic picture society was divided into three orders: the agrarian aristocracies, traditionally linked to bearing arms, the arts of war, and the exercise and responsibilities of religion; the clergy, in cities, towns, and rural areas and on the various levels of the official hierarchy (parishes, dioceses, and so forth), plus canons and monks; and finally the laborers, those who worked with their hands to cultivate the soil.

The idea of labor was secondary, and it was restricted to manual activities, principally those of the peasant (free, serf, or slave). Other ideals and values had priority over it, such as physical strength, warfare, or the religious life. It was widely believed that not only wealth and well-being but honor and one's good name were to be conquered and defended by the sword, either by individual force or with the aid of armed bands, and that material interests were to be safeguarded by physical ability and by solidarity within the family, the kinship group, and the socio-economic group, or by political intrigue. It was agreed that one could also appeal to the imperatives of reason or morality or to the obligations that religion imposed on the faithful, but law, justice that becomes law and provides norms for civil life, skilled use of legal techniques, and even binding, constraining sentences were all things that remained outside the ideal framework and the vision of a three-part society, even if iurisperiti, judges, and notaries did exist.

Craft and commerce were also excluded from this ideal framework. Of course there had for some time been negotiatores who had built up fortunes, but

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[51] Adalbéron, Carmen ad Rotbertum regem, ed. G.-A. Hückel, in Les poèmes satiriques d'Adalbéron, Bibliothèque de la Faculté des Lettres de l'Université de Paris, 13, 2 vols. (Paris: 1901), 155-56.

they were regarded with suspicion or aversion. Trade was seen as a practice striving for undue and illicit gain, thus it was considered dangerous and harmful to both social well-being and the salvation of the soul.

In short, to look at society from Adalberon's point of view, one could see milites, clergy, and peasants attached to the land, but artisans and merchants, jurists and physicians were simply invisible.

The very lucidity of Adalberon's picture of society shows it to be the last reflection of a world about to enter a profound crisis of transformation. Only a few decades later, in the second half of the same eleventh century, signs of radical renewal were strikingly evident, as we have seen concerning the ecclesiastical world. Those signs became so intense and so widespread that they shaped a new civilization. Naturally, the new society continued to show vital behavior patterns, attitudes, traditions, ideals, and values that belonged to the epoch that was ending, but these now occurred within totally new historical processes, concrete situations, and theoretical configurations. The structure of "feudal civilization" was crumbling: the fief remained, but not the "civilization" that had made it the pivot and the nucleus of the feudal vision of life; many of the material and ideal elements of feudalism still remained, but they were gradually absorbed by the new and original communal and monarchical institutions, and bent to other functions they revealed different capacities.

This turmoil and this "rebirth" permeated all aspects of both everyday life and cultural life and all sectors of human endeavors. Adalberon's neat tripartite division was able to survive only in peripheral, isolated, and out-of-the-way areas where the society that had justified it had survived. In the cities and towns, in the central regions of Europe, and in the great monarchical institutional aggregates such as the Regnum Siciliae everything was changing.

The new "vulgar tongues" emerged and spread. When the Italian language was born, after a long gestation during the tenth and eleventh centuries, it was an exceptional historical event without peer in the two millennia of Christianity. The canons of all manual and professional operations were overthrown in all fields: agricultural methods, craft techniques, trade and commercial operations, and the techniques of the artist and the scholar. Great stone cities were built, and with them and within them great fortunes were founded and augmented by skillful business dealings, specialized professions, and hitherto unknown but notable earnings from the urban market.

In the cities new sorts of persons were active and rose to prominence. Some were specialized jurists trained in schools that became famous and gave rise to the modern university. Some were medical doctors (called "physicians") who borrowed many of their positions and logical procedures for the analysis of reality from newly rediscovered Aristotelian texts, and who tested and refined their professionalism with direct observations. Some were scholars who acquired a growing social and political importance that reached its peak in the age of humanism in the fifteenth and sixteenth centuries. Some were artists -- painters and sculptors in particular. Some were money brokers -- exchangers of coins --

and highly prestigious and powerful financial operators who laid the foundations for modern banking, whose widespread, even international, business dealings gave a measure of economic and cultural unity to a nascent Europe.

A new idea of labor was in the air everywhere: it was now viewed not only as manual toil but as including the activities of the intellectual and the professional, the entrepreneur and the merchant.[52] At the same time, the age-old suspicion and sharp condemnation of trade and commerce declined. The benefits of commerce began to be appreciated, particularly in an age in which one region could be suffering a food shortage while others abounded in seasonal produce. People began to understand that commerce was essential for the existence and development of a market, and that if the market was to include specialized goods it could survive only if it was firmly linked to a flourishing international, or at least intercity, commerce.

2. From the Feudal World to Urban Civilization

In twelfth-century towns and cities, which were growing rapidly as their permanent population increased and their inhabited space was enlarged, needs appeared that were congenital to economic growth, market specialization, an intensification of interpersonal relations, and new forms of political power.

It was in these communities that a need was felt for theoretical models and practical instruments more adequate to new needs than the ones that expressed by the seigniorial, feudal, and rural world. We can glimpse a new conception of public power being tried out; attempts were made to modify the usual definitions and theoretical interpretations of intersubjective relations in the realms of both obligations and real legal situations; there was a new associative spirit that went beyond and often overthrew the feudal schemes of hierarchy and of personal and family status.

Its abstract and reiterated legal concepts made Roman law (which, incidentally, had strongly urban connotations) a mine of precious materials that jurists, as specialists arrogating to themselves a monopoly on the theorization of social relations, could recuperate and reutilize. With Irnerius they began to do just that.

Irnerius headed a school in which the task of reviving and reconstituting Justinian's texts was carried out enthusiastically and with the participation of young and brilliant students. They worked with a sense of urgency to provide theoretical responses, and with them collaboration and aid, to political movements and economic trends that were restructuring the city internally, refashioning its ties with the surrounding territory, and weaving a network of profitable connections between one city and another.

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[52] See Manlio Bellomo, "Il lavoro nel pensiero dei giuristi medievali: Proposte per una ricerca," in Lavorare nel Medio Evo (Naples: Edizioni Scientifiche Italiane, 1983), 171-97.

3. The Twelfth-Century Renaissance and the Autonomy of the Law

Irnerius's life spanned the years between the eleventh and the twelfth centuries (he died around 1130). He was a figure of mythical proportions who symbolized the rebirth of European jurisprudence in Bologna[53] -- a rebirth that, as we have seen, had begun around the mid-eleventh century but had not found a way to express or manifest itself completely or in any one place.

The novelty of Irnerius's work lay mainly in the idea that the texts of the Justinian compilation (the libri legales, as contemporary sources called them) could be used to give a concrete response to anyone who might want to use the law rather than arms to defend his interests.

We do not know whether this idea was Irnerius's alone or whether it had occurred to others before him. Many indications suggest that a current of thought had arisen during the final decades of the eleventh century that had turned more and more toward Roman law, and that a need to know the original texts had kept pace with that interest.

In Bologna as in other cities, what is more, we have increasing evidence of iudices, causidici, sapientes, and legum docti, and there are a few personalities, remembered for various reasons, who stand out from the growing mass of people now occupied primarily or exclusively with legal problems. In Bologna we can find a certain Lambertus, whom Odofredus later called antiquus doctor, and a certain Ubaldo (Hubaldus), who annotated a few passages in Justinian's laws.[54]

Pepo (or Pepone) was better known than those early figures, although little more than his name remains now.[55] He must have been famous in his day if nearly a century later an English writer, Ralph Niger (d. ca. 1210), could mention him favorably in a work written between 1170 and 1189 and give valuable information on him. Odofredus (d. 1265) said of Pepo that he was "of no fame," but this opinion was probably based on Pepo's scant production of scholarly works and on a comparison (that must have been striking) with the much richer and

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[53] On Irnerius, see, in particular Enrico Spagnesi, Wernerius bononiensis iudex: La figura storica d'Irnerio (Florence: Olschki, 1970). See also Manlio Bellomo, Saggio sull'Università nell'età del diritto comune (Catania: Giannotta, 1979), 9ff. and bibliography cited on p. 9 n.7. For more recent bibliography, see Martin Bertram, "Neuerscheinungen zur mittelalterlichen Geschichte von Stadt und Universität Bologna," Quellen und Forschungen aus italienischen archiven und bibliotheken, 67 (1987): 477-88.

[54] See Giorgio Cencetti, "Studium fuit Bononie," Studi Medievali, ser. 3, 7 (1966): 781-833, now in Le origini dell'Università, ed. and intro. Girolamo Arnaldi (Bologna: Il Mulino, 1974), 115.

[55] See Ludwig Schmugge, "Codicis Iustiniani et Institutionum baiulus: Eine neue Quelle zu Magister Pepo von Bologna," Ius Commune, 6 (1977): 1-9. In general on Pepo, see P. Fiorelli, "Clarum bononiensium lumen," in Per Francesco Calasso: Studi degli allievi (Rome: Bulzoni, 1978), 413-59 and the bibliography cited therein.

more mature scholarly activities of Irnerius. Odofredus avoids expressing an opinion on Pepo's work, however, and he does not exclude the possibility that Pepo might have possessed a modicum of scientia: "quicquid fuit de scientia sua, nullius nominis fuit."[56]

In a context in which a number of "jurists" operated, then, Irnerius concentrated on the libri legales -- Justinian's laws -- which were in circulation in Bologna and other parts of central and northern Italy (at the least in Tuscany, Ravenna, Pavia, and Verona) but perhaps not yet in Provence or north of the Alps in general, where an interest in Roman law was nonetheless already fairly strong: "Up to now they [the libri legales] had been neglected and no one had studied them," Burchard of Biberach (d. after 1231), the provost of Ursberg from 1215 to 1226, declared in his chronicle.[57]

4. The Formation of the Corpus iuris civilis and the Writings of Irnerius: The Rise of Civil Common Law

Here and there, forgotten for centuries, separate or bound parchments bearing a text that reproduced (with uneven fidelity) the text of Justinian's lost ancient originals were saved from destruction.

Toward the mid-eleventh century someone had the idea of rescuing them from their abandonment and putting them back into circulation. According to one imaginative report, something of the sort happened somewhere between Amalfi and Tuscany concerning a complete copy of the Digest. What is certain is that around the mid-twelfth century this exemplar, known under the name of Pandectae, was in Pisa and that it was and continued to be extremely difficult to get a look at it. Aside from this one instance Justinian's compilation was nearly unknown. Fragments existed in Verona and Pavia. We know from later twelfth- and thirteenth-century sources, which give no details and present some uncertainties regarding some elements, that libri legales circulated in the late eleventh century in Tuscany, Bologna, and Lombardy.

What these books were we can only surmise, and even then only by lending weight and precise meaning to words that were written at a time so remote from the facts they recount that they should perhaps not be interpreted too strictly.

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[56] Odofredus, Lectura in D.1.1.6, de iustitia et iure. 1. ius civile (Lugduni, 1550), fol. 7rb: "Quidam dominus Pepo cepit au[c]toritate sua legere in legibus. Tamen, quicquid fuerit de scientia sua, nullius nomen fuit."

[57] Burchard of Biberach (Burchardus Biberacensis), Chronicon, ed. Oswald Holder-Egger and Bernhard von Simson, in Monumenta Germaniae Historica. Scriptores Rerum germanicarum in usum scholarum (Hannover and Leipzig: Hahnsche buchhandlung, 1916), 50: 15-16: "Dominus Wernerius libros legum, qui dudum neglecti fuerant, nec quisquam in eis studuerat . . . renovavit."

All of the Institutes and at least the first nine books of the Code seem to have been the first to reappear and attract scholarly attention. When Ralph Niger mentions that Pepo was baiulus of the Codex and the Institutiones he is in all probability repeating a tradition founded in fact, thus setting the date of the first reappearance of certain portions of the Roman laws. If the Epitome Codicis was still known in the first decades of the eleventh century, now Pepo had access to a copy of the original Codex, a copy that undoubtedly contained flaws and errors but that was nonetheless sufficiently close to the original model composed in the ancient imperial chancery.

It took a good many sheets of parchment to pass on the laws of Rome. Some of these were loose because that was the way they had been found; others, sewn together, made up a "codex" of two or three hundred folios. One "codex" was insufficient to contain all the laws, which is another reason why the libri legales were in a state of disorder. Very few copies existed, few were intact and complete, and all were extremely precious. They cost a great deal. Furthermore, the work required to put them back into order was immense.

Irnerius was the first to have the courage to recompose and restore them. Unlike Pepo, then, he was not satisfied simply to own a copy of the Codex or the Institutiones or to respect the physical existence of those documents. With the encouragement of Countess Matilda, the powerful feudatory of Tuscany (who may have provided financial aid as well as verbal encouragement), Irnerius "renewed the books of the laws and, reconstructing the order in which they had been compiled by Emperor Justinian, with the possible addition of a few words here and there, he divided them up."[58] Irnerius was not a jurist acting as a custodian for normative texts that he was lucky enough to have available and perhaps to own; he was a master of the liberal arts who made himself into a jurist in order to shatter the status of tradition because tradition brought confusion and distortion.

Work advanced slowly, thanks to the objective difficulties inherent in the task and its sheer length, but also because Irnerius was often obliged to leave Bologna to visit Matilda's court, to follow the emperor, Henry V, or to go to Rome to defend the antipope, Anacletus II, in his struggle against Gelasius II. It seems from all the evidence that collecting the parchments and putting their contents into an order that reflected the original arrangement occupied Irnerius for the rest of his life. The entire work, including some portions that had been lost but had been rediscovered at the time, was once more recompiled, if not by Irnerius's own hand, at least in his own day and in his circle. First, many books of the Digest were added to the Institutes along with the first nine books of the Code from book one to the second title of book twenty-four (Dig.1-24.2). This came to be called Digestum vetus. (An old hypothesis, which may have some merit, states that at the time the Digestum vetus included all of book twenty-five

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[58] Ibid., 16: "Dominus Wernerius libros legum . . . renovavit et, secundum quod olim a dive recordationis imperatore Iustiniano compilati fuerant, paucis forte verbis alicubi interpositis eos distinxit."

as well.) Next the final books were added, which in later tradition settled down to comprising books thirty-nine to fifty, but in Irnerius's time this portion may have begun in the middle of the last sentence of an earlier book, Dig.35.2.82, with the words Tres partes (though it is not impossible that it began with the twenty-seventh book). These additions were called Digestum novum. Finally the intervening books were added, from book 24.3 to book 35.2.82, perhaps without the section that came to be known, from its first words, as "Tres partes" (Dig.35.2.82 - Dig.38.17). This portion was known as the Infortiatum. It was later extended when the "Tres partes" section was removed (if indeed it had ever appeared there) from the Digestum novum and placed after Dig.35.2.82, where it nonetheless remained a coherent whole. At that point the Infortiatum took on its definitive form as Dig.24.3 to Dig.38.17. The last three books of the Code, known as the Tres libri (Cod.10 to Cod.12) were also rediscovered, as were the Novels (Novellae Constitutiones), all 134 of which were collected together in a work considered complete and authentic, hence called Authenticum.

All the texts of the Justinian compilation were recopied onto new parchment folios and bound together so as to form new volumes, or codices. In this way, reproduced and emended where it seemed possible to do so (with the "addition of a few words here and there," as Burchard's chronicle tells us), they were distributed (Irnerius's distinxit) in five great folio volumes, each one of which contained some two hundred parchment folios (or some four hundred pages). A tradition was launched; under normal circumstances it continued to be respected until the much later printed editions of the fifteen, sixteenth, and seventeenth centuries.

In this new and soon standard organization, books 1-24.2 of the Digest (the Digestum vetus) formed the first volume; books 24.3-38.17 of the Digest and the Infortiatum made up volume two; books 39.1-50.17 of the Digest, the Digestum novum was volume three; volume four contained the first nine books of the Code; the fifth volume (also known as the Volumen or Volumen parvum) contained the four books of the Institutes, the last three books of the Code (that is, the Tres libri), and the Novels in the version of the Authenticum (hence known as Authenticae) divided into nine collationes.

5. Proliferating Texts and the Market for Juridical Books

Irnerius's restoration of the Justinian compilation was not the work of a scholar isolated from the world. It had profound reasons for its existence that gave it an extraordinary vitality. We need to take a closer look at those reasons.

First, however, we need to establish a few basic points. The texts that were rewritten and redistributed into five volumes began to be copied repeatedly and incessantly, and entire workshops of artisans and booksellers (stationarii exempla tenentes and stationarii librorum) worked at top speed and with increasingly well coordinated and refined methods to produce the numbers of

copies that the market required.[59] Moreover, the market was extensive, to the point that even today libraries in Europe and North America contain some two thousand copies, in whole or in part, of the various portions of the libri legales.

Every volume, or codex, of robust parchment worked and prepared for writing consisted of some two hundred folios, which means that about one hundred sheep were required to provide the raw material for one book! A book was thus an expensive commodity whose price reflected the costs of the parchment and its preparation, the cost of writing, entrusted to skilled amanuenses, and sometimes the cost of miniature, illumination, and binding that further increased its value. A book was an inheritance, and like every legacy it was to be safeguarded, used with intelligence, and profited from.

It is impossible to think that all this occurred (Irnerius's recovery of the Justinian text, the production of copies of it, the formation of specialized workshops, the circulation of the books, the investment of large amounts of money, and the assumption of entrepreneurial risks) only because Irnerius thought it the proper scholarly thing to do to revise and reorganize the Justinian compilation, or simply because his contemporaries and successors were stricken with a pure philological or historical interest or with a yen to possess a book. Clearly, if their desire for knowledge had been predominantly or exclusively theoretical and intellectual, a professional concern for philological studies would soon have sprung up, and the need for an accurate "reading" derived from numerous comparisons of reliable texts would have led directly to problems concerning the authenticity of the text. Even if this had happened, we would still have to explain the very large quantities of books that were produced -- numbers that seem far superior to the needs of even a large band of scholars. But for centuries nothing occurred that we could credit to any philological or historical interest. If there was (and indeed there was) concern to give the text a "certain" form, the reasons for doing so were all internal to a new way of dealing with legal problems.

Jurists, practitioners, and the professors in the schools all found a "certain" text useful: the value, validity, and reasonableness of an interpretation, in the courts as in the schools, could not do without the certainty that the text contained those precise words and not others, those passages, those precepts and not others. If during a debate someone could claim to alter the text under discussion, if someone could claim to present a text that differed by as much as a single word and could base his arguments on that altered text, then debate, colloquy, or the exchange of contrasting points of view on an interpretation would have become useless exchanges of soliloquies.

The jurist needed a dependable text, an exemplar. This was why structures were created that offered adequate guarantees, and why particularly reliable

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[59] See Bellomo, Saggio sull'Università, 113-133.

craftsmen-merchants (stationarii exempla tenentes) were entrusted with the reproduction of such texts.

This has nothing to do with any love for the past, nor with an admiration for the grandeur, the power, and the glory of Rome. It shows no desire for or interest in historical knowledge. Historians have even noted that the literary realm in the twelfth century was characterized by an "absence of the ancient classics and of vernacular literature"[60] among the usual reading matter of cultivated men and in the curriculum of the "arts."[61] It did not matter to the jurists who returned to the laws of Justinian whether Justinian had lived before or after Christ. Fanciful anecdotes circulated in the law schools about the origin of the "Twelve Tables" that contained the archaic laws of Rome. Thus if we read that "Roman law originated with the Greeks, like all other sciences,"[62] we know that the passage is a stylistic flourish written by an author who had only a vague notion of Greek and Roman antiquity, had little interest in improving his knowledge, and could not even understand Greek: "Grecum est, legi non potest."[63]

The proliferation of codices, their diffusion and their wide circulation despite their very high individual cost were thus related to other needs. Roman laws were useful to the jurist. Why? To satisfy what needs?

Before turning to this problem and attempting an explanation, we need to look at the larger question of the norms of the church as a universal organization embracing all the fideles Christi. We shall see a parallel, if not even more striking, development in canon law, with even larger numbers of copies that were produced and put on the market (and even larger numbers of them remain today).

6. Gratian and the Decretum: The Rise of Common Canon Law

If it was thanks to Irnerius's efforts that Justinian's legislative compilation was brought back as a vital force in juridical circles, it was thanks to the efforts of another person of mythical proportions, Gratian, that the norms of the church were first successfully presented (after a number of attempts) in a homogeneous corpus

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[60] Charles Homer Haskins, The Rise of Universities (1923) (New York: Peter Smith, 1940), 41.

[61] Haskins notes that one professor in Bologna made fun of Cicero but declared that he had never studied him and came close to boasting of the fact that he had never read him (ibid., 11).

[62] Accursius, the constitui to D.1.2.2., de origine iuris. 1. necessarium: "Sic ergo a Graecis habuerunt originem, sicut et quaelibet scientia."

[63] See Bellomo, Saggio sull'Università, 16-17.

reflecting the author's intention in a work that has become basic to European law.[64]

Gratian probably a monk, and he may first have lived near Ravenna in the monastery of Classe. He later lived in Bologna, where around 1140 he finished drafting a monumental compilation of laws (some four thousand items) known in its manuscript versions as Concordia discordantium canonum but called by long-standing tradition the Decretum.

This work was not an official compilation, and although it came to be recognized as the base for subsequent church legislation, it was never promulgated into "law." We see here, as in other instances and on other levels (for example, with the redactions that put city customary measures into written form and gave them a sure base) that "legislative" phenomena at their origins and in an initial phase were defined by the initiative, the responsibility, and the authority of one private individual. The Decretum has a complex structure that does not totally reflect its original organization. For some years at least -- until the early 1150s -- it lacked some parts that were added later (the titles De poenitentia and De consecratione), and it did not include some passages from the Justinian Digest and Code that were inserted later. Gratian also inserted into the Decretum brief annotations called dicta in which he discussed the discordant legal texts or Holy Scripture, or he cited the institutes and principles of Roman law in order to compare them with the law of the church. At the same time, the Decretum was enhanced with notes called paleae, a word of uncertain origin that may refer to the author of the glosses, a pupil of Gratian's nicknamed Pocopaglia (Paucapalea), of "Little Straw".

Thus it probably was not Gratian's original intention to treat either problems of a theological nature (which is why the titles De poenitentia and De consecratione were missing) or the materials and the principles of Roman law (which is why citations to the Digest and the Code were added later). It is also probable that as years went by other jurists, influenced by the Bolognese schools of Roman law and by demands specific to the church, somewhat modified the shape of the 1140 version of the work. Gratian died around 1150; we can date the modifications to the Decretum from between that date to about 1170.

The original and central core of the Decretum was composed of materials that Gratian had selected either directly from scattered manuscripts or indirectly,

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[64] See Peter Landau, Kanones und Dekretalen: Beiträge zur Geschichte der Quellen des kanonischen Rechts (Frankfurt: Keip, 1993). For a general introduction, see Peter Landau, "Gratian (von Bologna)," in Theologische Realenzyklopädie (Berlin and New York: Walter de Gruyter, 1977-), 14:124-30, and the annotated bibliography, pp. 129-30. On Gratian, see also Stephan Kuttner, "Gratian, canoniste du XIIe siècle," in Dictionnaire d'histoire et de géographie ecclésiastiques, ed. Alfred Baudrillart (Paris: Letouzey et Ané, 1912-), vol. 21 (1986), cols. 1235-39. There are at least two reliable editions of Gratian's Decretum. The first, made by the so-called correctores romani, was published in Rome in 1582; a more recent edition by Emil Friedberg appears in Corpus Iuris Canonici, 2d ed., 2 vols. (Leipzig: Bernhard Tauchnitz, 1879-81), reprint, 2 vols. (Graz: Akademische Druck- und Verlagsanstalt, 1959).

extrapolating them from previous collections that had, in their turn, been taken either directly or from the sources or indirectly from other works. His ideal (and in part real) library certainly included writings of Anselm of Lucca (Collectio canonum) and Cardinal Gregory of San Chrisogono (Polycarpus), the Tripartita and the Panormia of Ivo of Chartres, the so-called Collection of the Three Books, and the Liber de misericordia et iustitia of Anselm of Lüttich. The Etymologiae of Isidore of Seville were known only in excerpta. Although Gratian certainly made use of the writings of the church Fathers (that is, of Latin and Greek patristics) -- in fact they provide about a third of all the materials used -- it is not clear whether or not he always read them in the full text. More probably he used anthologies such as the Collection of the Three Books that selected and had passed on significant fragments of such texts.

Around the middle of the twelfth century Gratian's Decretum was taken as a "certain" and reliable text, one that could be referred to not only for the internal and structural problems of the church but also for a rule of life offered to or imposed on the fideles Christi throughout Christendom. Thus the work responded to the same need for "certitude" felt in the secular field, where is was satisfied by Irnerius's rediscovery and restoration of the laws of Justinian. There was a difference, however: although the emperors of the Holy Roman Empire continued to make laws, their edicts were only very rarely inserted into the Justinian framework. This happened only in a very few, exceptional instances, for example, the Constitutio, Habita of Frederick I Barbarossa, a few laws on heresy of Frederick II, and the entire text of the Consuetudines feudorum (Liber feudorum), a text that contained some imperial laws and that provided material for the tenth collatio of the Novels. Thus where civil law was concerned, the architecture and the contents of the compilations remained rigidly fixed, solid, and invariable. At the same time, "faith" in the Roman laws was reinforced and relived with a sense of trust imbued with a strong sacrality. The decretals of the popes and the canons of the church councils were immediately applied to everyday experience, added to the older laws, or substituted for them. Thus they continually raised a problem that Gratian had attempted to solve by taking norms from different geographical locations, of different epochs, and of differing significance and applying to them the four basic criteria of ratio temporis, ratio loci, ratio significationis, and ratio dispensationis. Doubts continually arose as to whether or not a legal precedent already existed for a specific problem or a case in point and, if so, whether that earlier law should be understood as having been abrogated (following the logic of ratio temporis); whether in some particular locality a rule might exist that contravened the general norm (ratio loci); whether the antinomy in apparently contradictory norms might not be worked out logically (ratio significationis; or whether clearly contradictory norms might not be treated as statements of a rule and an exception to that rule (ratio dispensationis).

In short, interpretive techniques and methods were developed that could be employed (and that were conceivable) in all cases because they referred to a dependable, "certain" normative text couched in "certain" words and not in others.

As with the civilists, the juridical thought of the canonists excluded all intellectual requirements of a philological or historical nature; their sole concern was the need to consult a reliable and authoritative text.

7. The Quinque compilationes antiquae

There were other attempts to select from and systematize the vast legislative materials of the church. At times private individuals took on the task; later the church assumed direct responsibility for such operations and official collections were made, some of which were impressive works destined to last for centuries.

After Gratian, the jurists began to collect papal decrees. Soon they put together collections of papal judicial decisions (called decretals). One of the first collections to be used in the schools was the Breviarium extravagantium. It was the work of a private jurist, Bernard of Pavia, and was composed between 1188 and 1191, after the Decretum had crystallized into its definitive form (with the additions that we have discussed) and when other ways were being sought to update the legislative materials of the church. Bernard's Breviarium was divided into five "books," each one of which treated a topic recalled by the mnemonic formula iudex, iudicium, clerus, connubia, crimen (judge, trial, clergy, marriage, crime). Another private jurist, John of Wales, produced a similar collection.

A third collection of papal decretals had official backing when for the first time a pope, Innocent III (d. 1216), thought it necessary for the church to act to guarantee the authenticity, the "certitude," and thus the trustworthiness of the measures, and also to reinforce the validity of the laws themselves by authenticating their inclusion in the compilation. The collection was promulgated in 1209 or 1210, and in the latter year it was sent to the professors of the flourishing and famous university schools of Bologna, a logical move given the common mind-set and the many relations that linked the Holy See and the young clerici who studied law and their jurist "doctors."

A fourth collection, again by a private jurist, was made by a prominent German active in Italy and known as Johannes Teutonicus (d. 1245).

A fifth collection, published in 1226, was the work of Pope Honorius III (d. 1227). Honorius followed the example of Innocent III by sending his compilation to the schoolmen of Bologna with the recommendation that they not only use it in the schools and in the courtroom but also that they encourage its acceptance "by others both in their decisions and in the schools,"[65] a message that he himself took to heart by sending the same compilation to the law school at Padua.[66]

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[65] Honorius III, Compilatio V, Proemio (in Corpus Iuris Canonici, ed. Friedberg, 151): "Mandamus, quatinus eis solempniter publicatis absque ullo scrupulo dubitationis utaris et ab aliis recipi facias tam in iudiciis quam in scholis."

[66] Winfried Steltzer, Gelehrtes Recht in Österreich (Vienna: H. Böhlau, 1982), 151.

Historians know these five works collectively as the Quinque compilationes antiquae.[67] Although they were fated to disappear when they were absorbed, reelaborated, and replaced by the sweeping legislation of Gregory IX in 1234, they nonetheless document the decisive decades in European legal history between the late twelfth and early thirteenth centuries. In particular, they testify that the law of the church was conceived of not only (as in Gratian) as a law common to all the faithful, but it was also proposed and imposed as the law in both the schools and the law courts. Gratian had relied on the spontaneous acceptance of the faithful, individually or collectively, and the fortunes of his work depended on their acquiescence, but with Innocent III and Honorius III this relationship underwent a radical change. The original objectives were not only respected but reinforced and strengthened: the "cultural" fabric that gave meaning to Gratian's efforts was completed and in part replaced by an intent that remained cultural but also bore the authoritative force of papal promulgation. This meant that the utilization of the works that were imposed on both the schools and the courts was conditioned and solicited not only by scholarly and methodological demands but also by the obedience due a "law" decreed by a pope.

If we were to ignore the two quite separate aspects of the problem we would be totally unprepared to grasp the reasons for the enormous success of the great laws of the church -- and of Justinian's laws -- in an age in which the law courts used the contents of common law, canon and civil (but not their underlying system or principles!) only as "residual measures" of last resort to be consulted only when no law applying to the case at hand could be found.

Nor could we grasp why the church insisted so vehemently on providing a law common to all the Christian faithful when it was evident (as is now indisputable) that the normative content of common law bore little weight in the law courts or in practice in the secular mechanisms that imposed order in the life of those same fideles Christi. Obviously, we need to broaden our horizons and to try to grasp the phenomena that we have begun to investigate according to a historiographic logic that goes beyond a consideration of only the most macroscopic aspects of judicial and notarial practice.

8. The Great "Codifications" of the Church: The Liber Extra of Gregory IX, the Liber Sextus of Boniface VIII, the Clementinae of Clement V, and the Formation of the Corpus iuris canonici

The church in the fourteenth century worked actively to create a universal corpus of laws and to give a physiognomy to its "common law."

In 1234 another great event occurred. Gregory IX (d. 1241), speaking in the name of the Universal Church of Rome, promulgated a ponderous collection of laws taken mainly from the Quinque compilationes antiquae (1188 - ca.1226),

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[67] Quinque Compilationes Antiquae, ed. Emil Freidberg (Leipzig: 1882; reprint Graz: Akademische Druck- und Verlagsanstalt, 1956).

supplemented by Gregory's own decisions and decretals. The material was presented in 1239 "chapters" or articles and was divided into five books, following the design of the Breviarium of Bernard of Pavia, a structure that was to remain the model for the church's later legislative efforts. The drafting of this work was supervised by a great Spanish jurist, Raymond of Pennafort, a Dominican and the pontifical penitentiary, later canonized. The compilation was published under the title Decretales, but it was also called the Liber Extra because the measures it contained were outside of (extra) Gratian's Decretum.[68]

It is usually said that the Liber Extra resembles a code. Indeed, in it and by means of it two important principles were affirmed: first, the principle of exclusivity,[69] by which all papal decretals not included in its corpus and postdating Gratian's Decretum lacked authenticity and, consequently, did not have legal force in the courts. The second principle was connected to the first: it was the notion of textuality, by which the decretals that had indeed found their way into the Liber Extra had special validity within the text in which they had been inserted and in the form and in the words chosen and used by Raymond of Pennafort. Undoubtedly, the legislative work of Gregory IX displays one of the most significant tendencies observable in legal circles and in twelfth- and thirteenth-century schools of law since the age of Irnerius -- a tendency of both practitioners and theorists to seek the sure haven of a "certain text," assumed as a point of reference in juridical debate. Whether or not that tendency was an original creation that came to be reflected in the consciousness and the thought of the age, or whether or not it manifested a new idea of a "code" as an organic and comprehensive, "complete" and "definitive" collection of laws is another problem. I would have my doubts that this could have occurred, even in an age that admittedly often placed a high value on the authoritarian and sacral aspects of the universal powers of the pope and the emperor, but that was nonetheless fully aware of the varied, fluid, and composite nature of the laws of the church, central and peripheral, and of the local normative systems of cities, counties, duchies, principalities, and kingdoms. Furthermore, as is known, not only did new papal decretals continue to be produced and promulgated, circulated, and collected in a variety of ways in private compilations (at times they piled up in anonymous anthologies with no guarantee of authenticity), but also old canons and ancient decretals were reutilized, in whole or part, in a variety of ways.

Although there was indeed in the Liber Extra the idea of a unified and homogenous corpus that suggested completion and definitiveness, that idea had hermeneutic validity and force and was not realized in the dynamics or the gradations of the normative sources except in ways incompatible with the modern idea of a "code." As a "code," the Liber Extra would have to have done away

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[68] Liber Extra, ed. Friedberg, in Corpus Iuris Canonici, vol. 2, cols. 5-928.

[69] Peter Landau, "Corpus Iuris Canonici," in Evangelisches Kirchenlexicon, ed. Heinz Brunotte and Otto Weber, 4 vols. (Göttingen: Vanderhoeck & Ruprecht, 1956-61), vol. 1, cols. 773-777.

with the local normative systems or at least have been given precedence over them in application; instead, outside the Papal States the contents of its norms had validity and were utilized only as subsidiary law when there were no appropriate local and particular dispositions adequate to the solution of a specific judicial problem. They might not even have the force of subsidiary law if it was legitimate, in a particular case, for a judge to decide the case according to the place, the persons, his conscience, or his judgment of the equity involved.

Nonetheless, the popes continued to pursue the idea of a body of laws for all of the Christian world; of a corpus that would have unity and provide unity to the measures compiled; a corpus that would be sufficiently authoritative to constitute a necessary and fundamental part of the experience of the jurist -- theoretical or practical -- and to be an essential reference for legal practice or for administrative and commercial transactions. Several decades later (in 1298), Boniface VIII followed the example of Gregory IX by promulgating a new and extensive collection of norms that came to be known as the Liber Sextus to indicate that it was an addition to the five books of the Decretales of Gregory IX. It too was divided into five books, following the tradition of iudex, iudicium, clerus, connubia, and crimen inaugurated by Bernard of Pavia a century earlier.[70]

At the same time as the legal activities of the church were being extended and intensified and gaining in specificity in both their exercise and their results, new projects for "codification" continued to arise. In Avignon, to which the papal see had been transferred (in permanent residence from 1305), Clement V launched a new official collection of the laws of the church. At his death in 1314 his successor, John XXII, completed and promulgated the work, but it took its name from the pope who had begun it, the Decretales Clementinae or simply the Clementinae.[71] The Clementinae included the constitutions of the Council of Vienne and the decretals of Clement V from 1305 to the year of his death.

At the start of the fourteenth century, then, there were great legal works that the church either appropriated (Gratian's Decretum) or promulgated (the Liber Extra, the Liber Sextus, and the Clementinae) in order an attempt to provide certain, homogenous, authoritative, and authentic texts for the community of the faithful in Christ, in particular to those who exercised jurisprudence in the wide variety of concrete local situations in the Christian world. These bodies of laws, which historiography calls "codes" but which only partially expressed a codistic view of the law, were known everywhere and everywhere taken as the basis of legality. But they had not yet been brought together into one body of law.

It was only later than people began to speak of a Corpus iuris canonici. In 1500 a French jurist, Jean Chappuis, put order into the various compilations, completing them with two additional texts and creating the grandiose edifice (whose basic elements already existed) that came to be known and was utilized

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[70] Liber Sextus, ed. Friedberg, in Corpus Iuris Canonici, vol. 2: cols. 929-1124.

[71] Decretales Clementinae, ed. Friedberg, in Corpus Iuris Canonici, vol. 2, cols. 1125-1200.

for centuries as the Corpus iuris canonici. It contained the Decretum of Gratian (ca. 1140), the Liber Extra or Decretales of Gregory IX (1234), the Liber Sextus of Boniface VIII (1298), and the Clementinae of Clement V (1314 and following). Jean Chappuis also included some of the laws of John XXII that had been endowed with an apparatus of glosses, distributing them under various titles (headings) and publishing them as Extravagantes Johannis XXII.[72] Chappuis did the same for some papal decretals -- in particular, the laws of Sixtus IV (1471-84) -- that had proven sufficiently important to be included in private collections of canon law, and he published this collection of seventy-four laws under the title Extravagantes communes.[73] In 1582, Pope Gregory XIII had all of these collections printed after a commission had carefully examined their contents. This edition of the Corpus iuris canonici became the official Roman text that was never again altered until the present century.

Once formed, the Corpus iuris canonici had an extraordinary stability. It was in fact to remain in force in the church until 1917, when the Holy See itself was won over by the idea and the belief that only in a modern "code" (the Codex iuris canonici) could the principles of order and authority be realized, universally imposed, and assured absolute precedence over all local bodies of law. The rapidity with which the Code of 1917 was replaced by a new Code in 1983 shows how precarious and illusory it was for the church to place its trust in a single code conceived as a complete text.

9. Civil Law and Canon Law: The Utrumque ius

There was an urgent problem underlying the common law: there were two highest laws, the canon and the civil, a duality expressed by the term utrumque ius, "the one and the other law." Because both claimed to be the law common to the entire Christian world, the parameters of each one needed to be specified if they were to continue to coexist. The ancient laws of Justinian had little or nothing in common with the new constitutional structure of the Holy Roman Empire. The old magistracies had disappeared. The new magistracies, both central and peripheral, were different. All that was left -- and it was intensely alive -- was a central conceptual nucleus once incorporated into the constitutions of ancient Rome and now revived and reinterpreted in the figura of the Holy Roman Empire. This nucleus was the very idea of imperium, which was different and distinct from dominium, and a notion that permitted no grey areas or neutral and intermediate areas such as the idea of seigniory.

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[72] Extravagantes Johannis XXII, ed. Friedberg, in Corpus Iuris Canonici, vol. 2, cols. 1201-1236; Jacqueline Tarrant, Extravagantes Iohannis XXII (Monumenta Iuris Canonici, ser. B, Corpus Collectionum, 6) (Vatican City: Biblioteca apostolica vaticana, 1983).

[73] Extravagantes communes, ed. Freidberg, in Corpus Iuris Canonici, vol. 2, cols. 1237-1312.

The laws of the church contained the same image of power but were directed to a different end. Whereas civil normative systems were conceived of and directed toward founding and guaranteeing the commonweal and the terrestrial existence of structures and persons, canon law was charged with creating the best conditions, in this world, for humankind to avoid losing its soul and achieve salvation in the glory and beatitude of Heaven. At a certain point these two aims converged, but they tended to produce potentially conflicting results. Both regarded man in his terrestrial condition: for the Empire, so that man, subjected to an auctoritas, might realize the common good in freedom and responsible autonomy; for the church, in order to avoid the temptation of sin and enjoy soul's salvation for all eternity.

In principle the basic distinction was and remained the ancient and highly lucid one that Pope Gelasius I had affirmed in 494: there were two dignitates that reigned over the world, the auctoritas sacrata Pontificum (sacred authority of the popes) and the regalis potestas (royal power). The first was constituted pro aeterna vita (for eternal life), the second pro temporalium cursu rerum (for the duration of the secular world).[74] Accursius expressed the same idea in juridical terms in a schematic and theoretical representation: "Nec papa in temporalibus nec imperator in spiritualibus se debeant immiscere" (Neither the pope in secular matters nor the emperor in spiritual matters has any authority),[75] thus reserving to the Roman pontiff dominion over the human spirit and to the emperor dominion over politics and the course of earthly events.

The problem was that in fact and in the administration of the two separate powers the popes tended to occupy themselves with terrestrial affairs, precisely because many of these offered opportunities for sinning. For example, although a mortgage contract or a rental contract were undeniably terrestrial matters, hence belonged within the emperor's sphere, it was nonetheless true that the payment of interest (a usura; usury) might be requested of the borrower or imposed on him. Because anyone who asked for or demanded interest sinned, since usury was prohibited for religious reasons, the pope had, or arrogated to himself, the power to intervene even in terrestrial affairs to dictate a measure that would serve to close off all roads to sin.

This is why Odofredus could write, with an incisiveness that tempered an irreverent and sarcastic tone, "Dominus papa ratione peccati intromittit se de omnibus" (The lord pope intervenes in all matters by reason of sin).[76] Several decades later, in the early fourteenth century, Cinus of Pistoia was equally

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[74] Gelasius I is quoted in Francesco Calasso, Medio Evo del diritto (Milan: Giuffrè, 1954), vol. 1, Le fonti, 140 n. 2.

[75] Accursius, the conferens generi to Auth. Coll.I.6, quomodo oportet episcopos, in principio.

[76] Odofredus, Lectura in Cod.1.1.4, de Summa Trinitate.1.nemo clericus, no. 3 (Lugduni 1552), fol. 6rb.

decisive: "Ecclesia sibi usurpavit ratione peccati totam iurisdictionem" (The church usurps to itself all jurisdiction by reason of sin).[77] Many popes came in for repeated and sharp criticism of their acts and their legislative initiatives when they meddled in all areas of the law with the argument and the excuse of avoidance of sins.

It is certain that this occurred. If we turn to the Liber Extra of Gregory IX, promulgated in 1234, we have direct proof of the church's overstepping the line: in the field of criminal law, because the church claimed jurisdiction in such illicit acts as adultery and rape (X.4.7; X.5.16), bigamy (X.1.21), calumny (X.5.2), injurious libel (X.5.36), false witness (X.5.20), physical violence (X.5.36), and even homicide (X.5.12) and theft (X.5.18); in the field of private law, because there were legal institutions that the church considered particularly dangerous for the soul (because particularly conducive to sin) such as commodatum, or the free loan of chattels (X.3.15), deposit of funds (X.3.16), buying and selling (X.3.17), loans and usurae (usury; X.5.19), lending on gages and other securities (X.3.21), and donations (X.3.24). Still in the field of private law, because the family, which fell under private law, was the ideal community for the moral and religious education of the individual, in the image of the Holy Family (Joseph, Mary, and the Infant Jesus), the church felt that certain structures such as consanguinity, kinship, and affinity (X.4.14) required regulation, as did some family-related activities. Hence the church not only felt justified in prohibiting adultery, bigamy, marriage between close relatives, and divorce (X.4.19), but also in fixing the time (X.4.2) and the forms of marriage rites, providing a specific regime governing the wealth of offspring who entered the clergy (X.3.25), and regulating donations between a father and his children and between husband and wife (X.4.20).

As is obvious, there was a wide spectrum of activities and norms within canon law that occupied spaces typical of legal institutions already regulated by Roman and Justinian law. But if superimposed areas of jurisdiction created many practical problems, they also helped to solve some. The rigidity of a discipline more than seven centuries old gave support to the church's laws, lending them basic, concrete legal concepts; at the same time that rigidity was corrected, tempered, and bent to contain new norms marked by the supreme authority of the church that served to make that authority coherent with the fluid events of extraordinarily creative centuries.

4
Ius proprium in Europe

Summary: 1. Foreword: Setting the Scene; 2. Italy: Communal Legislation: Piedmont and Savoy; The Papal State; The Guidicati of Sardinia, The Regnum Siciliae: Municipal Custom and Royal Law, The Assisae of Roger II; the Liber

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[77] Cino da Pistoia, Lectura, in Auth. Clericus post Cod.1.3.32(33), de episcopis et clericis.1.omnes qui, no. 2 (Francofurti ad Moenum 1578, reprint, Turin: 1964), fol. 18vb.

5
The University in Europe and the Ius commune

Summary: 1. The School of Irnerius and the Myth of Bologna; 2. Studying Jurisprudence in terra aliena; 3. The Growth of Schools in European Cities; 4. The Organization of the Academic World; 5. External and Internal Pressures: From the Emperor to the Universitates Scholarium; 6. A Different Organizational Model: The University of Paris; 7. The Spread of Universities in Europe; 8. Why Were Universities So Successful?

1. The School of Irnerius and the Myth of Bologna

During the eleventh century and at the start of the twelfth century schools were still few. Monasteries and episcopal seats were active in providing elementary and secondary schooling, but it is very unclear whether or not further instruction on a private basis was given in the house of a magister to small groups of zealous young men eager to improve their store of juridical knowledge after their basic course of studies in the "liberal arts," in particular, in the "trivium" of grammar, rhetoric, and dialectic.

One thing is clear: one school soon stood out from the rest for its importance and its reputation. It emerged as the best because it alone concentrated exclusively on the study of law and on reading the legislative texts of Justinian. These texts, which had been rediscovered and recomposed and had become the libri legales par excellence, enabled students to regard the law as a new science distinct from (though not separate from) the arts of the trivium, on the one hand, and theology and ethics, on the other.

This school was Irnerius's. We know little about Irnerius's pupils. There may have been many of them but only four have left abundant and reliable traces, either as a "group" that historians call the "Four Doctors" (although the title of "doctor" is surely inaccurate) or as individuals. Two of the Four Doctors founded prominent schools with a methodology of their own and a unique personality; two seem simply to have been lost to memory in later tradition. The two more important jurists were Bulgarus and Martinus, men to whom later writers credit bitterly opposed positions;[104] the other two were Jacobus (legend tells us that the dying Irnerius indicated him as his true spiritual heir and principal successor) and Hugo.

This first and fundamental development, which gave autonomy not only to the scientia of the law but also to the places -- the scholae -- in which that "science" was cultivated and transmitted, took place in Bologna. Furthermore, the names of Irnerius and Bologna were intertwined: the man immediately became

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[104] On this point, see Manlio Bellomo, Saggio sull'Università dell'età del diritto comune (Catania: Giannotta, 1979), 48-49, and the literature cited therein.

a myth; the city won immediate fame through him, even though when Irnerius died in 1130 the city had already become known as a center of studies and was nicknamed docta.[105]

2. Studying Jurisprudence in terra aliena

Young men from all parts of Italy and from all countries of Christian Europe flocked to Bologna. They came from Sicily and Campania, from Latium and Lombardy; they came across the Alps from France and Germany, the British Isles, and the Iberian Peninsula. They came because they were attracted by the new science, whether by the image that contemporary preachers gave of it in their harsh and bitter condemnations or by the approval, concealed or open, of both cultivated poets and versifying pedants.

Popular wisdom knew and said that jurisprudence was an art that led to power and wealth. The ironic fable of the ass Brunellus,[106] whose credulity led him to lose his tail and who, tailless, became a student, was symbolic of all those who eagerly strove to win honors and wealth through the study of the law, learned to use "words six feet long," and committed to memory, with immense effort, all of Justinian's Corpus iuris.[107] "We do not study vain things," the young men

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[105] I have made ample use of my own previous writings in this chapter, and I refer the reader to them for both the topics treated here and sources and bibliography not specifically given here: Manlio Bellomo, Aspetti dell'insegnamento giuridico nelle Università medievali (Reggio Calabria: Parallelo 38, 1974-), vol. 1, Le "quaestiones disputatae": Saggi di Manlio Bellomo; Bellomo, Saggi sull'Università nell'età del diritto comune; Bellomo, "Legere, repetere, disputare: I tre impegni del giurista nelle scuole universitarie medievali (secoli XII-XV)," in XVe Congrès International des Sciences Historiques (Bucarest 10-17 August 1980): Rapports, vol. 3 (Bucarest: 1980), 325-26; Bellomo, "Il Medioevo e l'origine dell'Università," in L'Università e la sua storia, ed. L. Stracca (Turin: Nuova ERI, 1980), 13-25; Bellomo, "Studenti e 'populus' nelle città universitarie italiane dal secolo XII al XIV," in Università e società nei secoli XII-XVI, Atti del Nono Convegno Internazionale, Centro Italiano di studi di storia e d'arte, Pistoia 20-25 September 1979 (Pistoia: Centro Italiano di studi di storia e d'arte, 1982), 61-78; Bellomo, "Scuole giuridiche e università studentesche in Italia," in Luoghi e metodi di insegnamento nell'Italia Medioevale (secoli XII-XIV), Atti del Convegno internazionale di studi, Lecce-Otranto, 6-8 October 1986, ed. Luciano Grargan and Oronzo Limone (Galatina: Congedo, 1989), 121-40.

[106] The fable, which dates from the twelfth century, is told in Nigellius Wireker, "Speculum stultorum": see Thomas Wright, ed., The Anglo-Latin Satirical Poets and Epigrammatists of the Twelfth Century, Rerum britannicarum medii aevi scriptores, Rolls series, 59, 2 vols (London: Longman, 1872; Wiesbaden: Kraus Reprint, 1964), 1: 1-145, esp. 52-54.

[107] Nigellius Wireker, "Contra curiales," in The Anglo-Latin Satirical Poets, ed. Wright, 1:164.

of the twelfth century scornfully declared when they compared rhetoric and philosophy to the greater worth of jurisprudence.[108]

The young were not discouraged by fiery preachers' bitter accusations or somber predictions of misfortune from bishops who had their own interests in mind and timid country parish priests. They did not fear St. Bernard's condemnation of people "who long for knowledge in order to sell its fruits for money or honors."[109] nor were they shaken by the words of Maurice of St. Victor, who declared that jurists "seek knowledge not to become wise, but to prostitute themselves venally for men's praise or for money. Thus, being unworthy of knowledge, they never truly attain it."[110]

The danger of losing one's soul for all eternity was an insufficient threat. The young failed to be terrorized by the thought that Paris in the twelfth century was "hell's lightning bolt,"[111] that it was the chosen residence of all the vices, that its paved streets, frequented by prostitutes and illuminated by the lights of the brothels, led straight to hell.[112] Instead, the young developed a surprising curiosity and an interest nourished by fantastic representations of scenes of a life lived intensely. The lapidary goliardic "Gaudeamus igitur, juvenes dum sumus" (let us then rejoice while we are young) began to be heeded, and such widely

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[108] Oxford, Bodleian Library, Rawl.C.427, fol. 70ra, in Hermann Kantorowicz, "An English Theologian's View of Roman Law: Pepo, Irnerius, Ralph Niger," Mediaeval and Renaissance Studies 1 (1941-43), now in Kantorowicz, Rechtshistorische Schriften, ed. Helmut Coing and Gerhard Immel (Karlsruhe: C. F. Müller, 1970), 238 n. 37.

[109] St. Bernard of Clairvaux, In Canticum, Sermo XXXVI (PL, 183, col. 968D): ". . . et sunt. . . qui scire volunt ut scientiam suam vendant: verbi causa, pro pecunia, pro honoribus," quoted in the text from the Kilian Walsh translation.

[110] Maurice de Saint-Victor in Gaines Post, "Masters' Salaries and Student-Fees in the Mediaeval Universities," Speculum 7 (1932): 181-98, quotation (in Latin), p. 189: "Sapientiam quaerunt non propter sapientiam, sed ut venalem prostituant, vel pro laude humana, vel pro pecunia. Unde sapientia indigni, ipsam in veritate non inveniunt."

[111] The opinion of Peter of Celle: Petrus Cellensis Epistolae, 73 (PL, 202, col. 509).

[112] Jacques de Vitry so describes Paris, remembering his student days and writing in 1216 and 1221. See The Historia occidentalis of Jacques de Vitry, ed. John Frederick Hinnenbusch (Fribourg: The University Press, 1972), chap. 7, "De statu parisiensis civitatis," 90-91: "The city of Paris, like many others, drifted in the shadows enveloped in many crimes and perverted by innumerable abject [acts]. . . . Like a scabious she-goat and like a soft ewe, it corrupted many of the newcomers who flowed in from all parts with its ruinous example. . . . Simple fornication was held to be no sin. Everywhere, publicly, close to their brothels, prostitutes attracted the students who were walking by on the streets and the squares of the city with immodest and aggressive invitations. And if there were some who refused to go in [with them], they called them sodomites, loudly and behind their backs."

shared sentiments became a life-style: "Time slips by, and I have done nothing; time returns, and I do nothing."[113]

Raymond de Rocosel, the bishop of Lodève and a mediocre poet, warned students that the threat of losing their lives in the slow voyage that took them, day by day, further from their paternal house was not worth the risk: "Per mare, per terras, quasi pauper inutilis erras" (like a beggar, good for nothing, will you wander on land and sea).[114] It was common knowledge that brigands infested the highroads. They might easily rob a traveler and take everything he had -- books, money, horses, sword and clothes -- and leave him "naked, beaten, and wounded, miserable, discomfited, [and] alone,"[115] to be brought, if he was lucky, to a monastery. It was also known that in the cities general indifference could lead to a miserable life as a beggar. In spite of all this the young abandoned the paternal house and "maternal kisses"[116] and became "pilgrims for love of learning"[117] -- the new learning. On the road the student met other students from Sicily or from the far-off British Isles, and they might join forces with chance traveling companions or with experienced and cautious merchants. Such encounters accustomed students to life in common and encouraged a sense of solidarity; as the students talked they compared habits and customs, and their various "vulgar" tongues were harmonized by the lexical and grammatical vehicle of Latin, a living, simple, ductile language. Thus they helped to forge a cultural unity that was already finding its typical habitat in the cities.

3. The Growth of Schools in European Cities

There were private schools in the "learned" cities, first in Bologna, then in Montpellier, Toulouse, and Orléans in France, in Palencia and Lérida in Spain, and in Padua, Reggio, and Vercelli in Italy. These schools might have a very long life, as in Bologna, Padua, Naples, Rome, and Perugia, or a short one, as in

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[113] Charles Homer Haskins, The Rise of the Universities (1923) (New York: Peter Smith, 1940, 84): "Li tems s'en veit, / Et je n'ei riens fait; / Li tens revient, / Et je ne fais riens."

[114] Raymond de Rocosel, "De certamine animae. Invectio contra goliardos," in Johannes Werner, "Nachtrag zum Certamen anime des Raymundus de Rocosello," Neues Archiv, 36 (1911): 550-56. The passage cited can also be found in Olga Dobiache-Rojdesvensky, Les poésies des goliards (Paris: Rieder, 1931), 184.

[115] Charles Homer Haskins, Studies in Mediaeval Culture (Oxford: Clarendon Press, 1929), p. 18 n. 3: "Me nudum, verberatum, et vulneratum, lugubrem et abiectum in solitudinem dimettentes."

[116] Raymond de Rocosel, "De certamine animae," in Werner, "Nachtrag zum Certamen anime," 550-56.

[117] Frederick I Barbarossa, Constitutio, Habita, in Winfried Stelzer, "Zum Scholarenprivileg Friedrich Barbarossas (Authentica 'Habita')," Deutsches Archiv für Erforschung des Mittelalters, 34, 1 (1978): 123-65, quotation 165.

Vicenza, Arezzo, and Vercelli. Such schools might be recognized by the public authorities or not; they could be set up and organized as part of a studium or their precarious existence could be left to chance.

A student chose which school he wanted to join. Originally (in the twelfth century) his choice might be determined by streams of relatives, friends, or fellow countrymen; on the other hand, it might be an individual decision influenced the ill-advised faith that he placed in the advice of tavern-keepers, merchants, or prostitutes. In a later period (the thirteenth century and after), the choice was more likely to be guided by necessity, as in Paris, or made at least partially inevitable by decisions taken within the powerful student corporations that applied to all students.

The general pattern of post-secondary academic life was already set by the turn of the thirteenth century. In the early decades of the twelfth century competition was restricted to the famous and well-frequented private schools of Bologna; by the end of the twelfth century and the beginning of the thirteenth, many cities were eager to attract schools and welcome students, and did so: Modena by around 1180; Vicenza for some years between 1204 and 1208; Arezzo by around 1215; Padua from 1222 on (with phases of inactivity and silence); Naples after 1224 (with frequent interruptions and new beginnings); Vercelli, for a short time after 1228 thanks to an organized migration of students from Padua; then Rome, in the pontifical curia (Studium Curiae) and in the city (Studium Urbis), Reggio Emilia, San Gimignano, Siena, Perugia, and others.

4. The Organization of the Academic World

Courses of study were not organized in the same manner throughout Europe. Two distinct forms emerged, hence two types or models for a university. The first and the oldest was the Bolognese model. Although we can speak of its various elements separately, in reality they were of course contemporaneous and solidly mingled in one overall context.

The first element is the schola. A schola was usually set up in the same house as the master's living quarters, hence the dominus of the house was both dominus and doctor or magister, the school's professor. One of his servants, whose tasks became specialized to serve the needs of the school, served as its bidellus. In one variant of this model a professor did not own the house and the school lodged in it but was simply responsible for instruction. This was the case of Placentinus, a jurist whose very name is unknown and who is always given in the sources by the toponym, "of Piacenza." He and his students were lodged in the houses of the Castelli (or Da Castello) family near the Porta Ravegnana in buildings of the commune civitatis.

The second element in the Bolognese model was the scholares and their associations. The first of the two ways in which students who frequented a school in the twelfth century were organized was by consortia, fraternitates, or communitates.

Students banded together to form a consortium in order to resolve such specific practical problems as finding lodgings or getting access to a book, or else in order to increase their leverage in negotiations with the professor, the city's merchants, the book merchants and copyists, and so forth. When these or analogous and larger associations emphasized mutual assistance they were also called fraternitates; when they emphasized pleasure and sociability they were called communitates.

The second mode of student association was the comitiva. All the students of any given schola were associated with their master, who called them socii mei; with the dominus of their school the students formed a comitiva that defined their participation in all phases of daily life, in the school as they sat at their benches in the classroom, or in the city as they took part in religious functions, popular holidays, and saint's day processions or when they went gaming or visited the taverns and other places for dissolute living.

A third element in student life in the Bologna model was the natio. Toward the end of the twelfth century, although the comitiva did not disappear, it began to loose its central position in the organization of student life, largely because there were some essential needs that it failed to satisfy, such as providing lodging and meals, ways to borrow money (with attendant guarantees), access to books, and judicial guidance in civil and criminal matters. Instead, students who belonged to different schools in the same city began to frequent one another and band together to pursue common ends. The selection process that led to the creation of a group (or to co-opting the members of an existent group) operated by common language, shared habits and customs, and a collective mind-set arising from a common national origin or from a similarity of views among people born in the same place or the same territory (natio). Thus students from the various schools and the various comitivae began to gather together in these new organizations, all the while continuing to be part of the old comitivae. For some years the new associations were called indifferently nationes or universitates, but as early as the second or third decade of the thirteenth century the term nationes prevailed. At the same time, the relationship between the students and the professor of a school changed because the comitiva lost its significance and its functions in daily life. The individual professor still did not have relations with students from other schools.

A fourth part of the Bologna model was the universitas (an English translation would be guild or corporation) of the students and the collegium of the "doctors." The students' interests and the professors' interests began to diverge. On the students' side, the nationes soon grew and took the form of broader associations that came to be called universitates. In Bologna there were two such universitates, that of the ultramontani, which included the nationes of students from north of the Alps, and that of the citramontani, which included the four Italian nationes of the Lombards, the Tuscans, the Romans, and the Campanians. On the other side, teachers' associations developed toward the mid-thirteenth century, when the domini of the various city schools joined together in a

corporation similar to and on the model of the other craft and trade corporations. Their association took the name of collegium, and there were collegia for professors of civil law, canon law, medicine, and the arts.

A fifth element was the student collegia. These were organizations for students but not founded by the students themselves nor wholly run by them. In general these were institutions founded by popes, cardinals, bishops, or wealthy lords in the aim of providing a hospitium -- a place of residence -- to a number of young people from one particular city, region, or larger geographical area. This sort of institution was neither common nor particularly important in Italy, but north of the Alps there were many such collegia.

Sixth and last, there was the role of the bishop or the archdeacon. In Bologna the archdeacon (elsewhere the bishop) -- a person external to the world of studies but not extraneous to it -- had tasks that were set and described (somewhat ambiguously) in a famous decretal of Honorius III in 1219. In this decretal, Super speculam, the archdeacon of Bologna, a high ecclesiastical dignitary, was charged with granting the insignia of the doctorate to candidates who proved themselves worthy of that honor in their doctoral examination. Since it was unsure whether the certification of that worthiness was a duty of these ecclesiastical dignitaries or a privilege of the professors, a mixed system was set up. Two final examinations were instituted, a private examination (called privata) given in the sacristy, for which the professors (and only those professors who were members of a collegium) were responsible; and a subsequent public examination (called publica, conventus, or laurea), which took place in the cathedral and was in essence a solemn (and extremely costly) ceremony.

5. External and Internal Pressures: From the Emperor to the Universitates Scholarium

The tangled relations within the world of studies were further complicated when emperors such as Frederick I Barbarossa (with the Constitutio, Habita of 1155) or kings such as Frederick II (with the "foundation" of the Studium in Naples in 1224) projected their own strategic moves onto them. Popes -- Innocent III and, above all, Honorius III during the early decades of the 1200s -- did the same, as did communal city governments (Modena around 1180 and Reggio Emilia in 1242) and the papal curia in the 1230s and 1240s.

In some cases the intervention was by happenstance, as in 1155 with the constitution of Frederick Barbarossa. More commonly, however, it was motivated by a desire to put some order into the world of studies and students. One clear example of the latter case is Reggio Emilia, where the commune civitatis, in an attempt to ordinare studium (organize the school), established procedures for assigning individual students and professors to schools that already lined both

sides of the city's main street.[118] Ordinare studium or reformare studium therefore did not always and in every case mean founding a studium (a university); often, and especially at first, it meant, more simply, established rules for avoiding confusion and conflict and for subjecting to "order" an already operational and fluid reality.

The students also wanted a hand in shaping the multi-faceted world of schools, professors, and would-be professors. Their basic associations, the nationes and the universitates, moved in just that direction, the nationes with the principal aim of gathering together all the students from other regions or from foreign lands and of helping to satisfy elementary everyday needs and study requirements, the universitates working both to reinforce and defend the functions of the nationes and to guarantee students from other regions or lands living space and rules for peaceful cohabitation within the city and scholarly discipline within the schools. These organizations struggled incessantly (and victoriously): first against the communal government under the podestà, then against the people's commune, and eventually against the lord of the city. In their daily operations the rectores of the universitates -- leaders who were older, more experienced students -- put the contractual power of the universitas to the test as they dealt with professors (particularly regarding the "choice" (electio) of a school a student might want to frequent or to avoid) and with such specialized economic operators as the stationarii (booksellers).

The stationarii were entrepreneurs and merchants. Some of them, the stationarii exempla tenentes or stationarii peciarum, specialized in keeping exemplars -- exemplaria -- of works containing laws or statements of doctrine and in lending out such originals or copies authenticated as originals to be recopied or to serve as models for the correction of other texts. Such works could be borrowed whole or, more commonly, divided into sections known as peciae. Other stationers known as stationarii librorum produced books (codices) and sold new or used copies of books. Certain stationarii became stationarii universitatis by swearing to obey the rectores and to respect the rules of the statutes of the student universitates.

There were various sets of dispositions, emanating from a variety of institutions, that laid down rules for the schools. There were imperial norms such as the Habita of 1155, pontifical measures such as the famous decretal of Honorius III of 1219, royal decrees such as those of Frederick II on the schools of Naples. There were also laws passed by city communal governments, either included in (or scattered through) the local statutes, as in Bologna in measures of the Comune del Podestà promulgated between 1245 and 1267, or incorporated as a "book" of statutes, as in Bologna with the statutes of the people's commune of

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[118] Reggio Emilia, Consuetudines, 1242, "Quod fiat distributio scolarum a strata tam superius quam inferius," in Consuetudini e Statuti Reggiani del secolo XIII, ed. Aldo Cerlini (Milan: Hoepli, 1933), 36: "Item statuimus quod fiat distributio scolariorum dominorum maistrorum tam a strata superius quam a strata inferius, arbitrio bonorum hominum qui fuerint ad studium ordinandum."

1288. Finally, there were measures decided by the colleges of jurist doctors and, above all, the statutes of the universitates scholarium such as the Bologna student statutes of 1252, of 1272-74, and the longer and more fully articulated statutes of 1317, which were then revised and updated every ten years. In Padua student statutes were drawn up in 1262 (the so-called Pacta vetera), and in 1321, following the Bologna text of 1317. The nationes also had statutes, one example of which is those of the natio teutonica in Bologna in the mid-fourteenth century.

6. A Different Organizational Model: The University of Paris

The other major model for the organization of university studies was more common in France.[119] It existed in Italy as well, however, and it gradually became the rule there as the universitas scholarium (the "university" as an organization of students, professors excluded) shifted to the universitas scholarum (a "university" that included both students and professors).

The chief characteristic of this second model was the participation, at the same time and in one organization, of three elements that seemed to be and in practice were separate and distinct in the "Bolognese model": students, professors, and a chancellor endowed with governing powers (who was the bishop of the university city). In this model, if there were student organizations they were attached to the student collegia or the nationes connected with the colleges, or they were completely extraneous to the official structure of the studium.

Within the university activities, spheres of competence, and powers became specifically defined, and "magistracies" were formed that were entrusted with (or recognized to have) power to choose the professors, establish their teaching responsibilities and their stipends, provide for financial administration, guarantee the quality of instruction, establish the curriculum and the program, and safeguard the freedom and set the limits of teaching.

In the 1400s this was the most common university structure, and although in preceding centuries it had been typical of Paris alone, by that date it was common to universities new and old throughout Europe. We can find the same structures, with certain variants, in Italy in Perugia, Florence, Pavia, and Catania, and outside Italy in Prague, Pécs, Heidelberg, Toulouse, Salamanca, and a large number of other universities.

7. The Spread of Universities in Europe

One glance at a map of Europe in the mid-fifteenth century shows that every region proclaimed its vocation for university teaching. From Bohemia (Prague, 1348) to Austria (Vienna, 1365) and Germany (Heidelberg, 1386; Cologne, 1388);

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[119] The distinction between the two types of university organization is particularly well presented in Alan B. Cobban, The Medieval Universities: Their Development and Organization (London: Methuen; New York, distrib. Harper & Row, Barnes & Noble Import, 1975).

from the British Isles (Cambridge and Oxford) to France (Paris, Montpellier, Toulouse, Orléans); from Spain (Palencia, Lérida, Huesca, Salamanca) to Italy (from Bologna, eleventh and twelfth centuries, to Catania, 1434-44), there were everywhere tens of universities in which the original libertas scholarium was entangled in and governed by the apparatus of the studium and student associations (the universitates, the nationes) and professors's associations (the collegia) and had less and less room for action. At the same time, universities tended to have a political and cultural bent strongly linked to the fortunes of the principalities or the regna and determined by the will of the lord (prince or sovereign) or the acquiescent or competing will of the bishop or the pope. The cities and the patricians who ruled them could also have a part in university affairs, proof positive that the problems of university teaching had become just as important as problems and views connected with the intellectual disciplines that the universities cultivated and transmitted from one generation to another.

8. Why Were Universities So Successful?

Although the universities faced an impressive number of problems and although it is striking to observe how deeply they were rooted in the city and its neighboring territory and how greatly they contributed to the prosperity of vast segments of society, we cannot ignore other possible reasons for the schools' success; other situations and events that encouraged them and made their multiplication and dissemination inevitable.

Why should Irnerius's law school have become an immediate myth? Why should tens, even hundreds, of other schools open and draw crowds of students from near and far? Why should so many young people have committed and consumed part of their fathers' fortunes and so many fathers have accepted or desired their sons' departure for the university city, even when they both knew that it would bring personal sacrifices and often mortal risks? Why should so many cities and so many kings, emperors, and popes have founded new studia and guided their destinies, embellished them, and endowed them with privileges?

The only explanation is that they did so because the law that was taught in those institutions was of vital importance for individuals, families, and kinship groups; for the cities and for the regna, for the emperor, and for the church. They did so because the law had to be known in all its aspects; it required full mastery if it was to be used not only on occasions for learned theoretical reflection and for demanding scholastic debates but also in the courts, in notarial practice, in arbitration to avoid lawsuits, and in the peaceful acts any person who enjoyed a res (property) and wanted to dispose of it to his own profit or that of his heirs. Because it was a law essential for acts of public governance, for the legitimation of power, conquered or inherited, for tutelage of the interests of groups or segments of society. Because it was a law indispensable for nourishing the hopes of people engaged in administrative careers who populated the emerging structures of local bureaucracies, lay and ecclesiastical. Thus it is not only reasonable but

necessary to see these as the reasons for the universities' development: otherwise we would have to credit the rise and the success of the European universities to collective folly.

There is a problem, however: the law curricula for the university instruction imparted from the twelfth to the eighteenth centuries in Europe was exclusively based on the laws of Justinian, the Corpus iuris civilis, and the great normative collections of the church, the Corpus iuris canonici, but judges and notaries did not usually apply these laws. Furthermore, as is known, the contents of these bodies of laws gave no guidance and provided no norms for those who had responsibilities for governance or administration on the local level, in the commune civitatis or the regnum, in the seigniory or the principality, in the hierarchy of the church or in the monastic orders.

Conversely, the programs of the European universities never covered the laws of the particular governing structure -- the local "common law" -- be it the kingdom, the commune civitatis, the seigniory, or the principality -- laws that the judges were bound to apply in the first instance, as we have seen, when they contained a precept pointing to a decision in the case at hand; laws that the administrators were obliged to respect as they carried out their duties.

It is obvious that such perspectives are foreign to the thinking of anyone who sees the Ius commune, civil and canon, only as a complex of norms necessary for judicial decisions or for the redaction of the acts for transactions, or who understands the Ius commune only in its dimension of positive law and relegates it to the rank of a supplementary or subsidiary law. This approach is a dead end because it fails to explain how the programs of study of European schools of jurisprudence -- both the schools originally chosen or later recognized (electae) by the universitates scholarium and the schools incorporated into the studia of royal, imperial, or papal foundation -- came to concentrate unique on the civil and canon Ius commune.

We need to take a closer look at these perspectives.

6
Legal Science: Forms of Exposition and Techniques of Diffusion

Summary: 1. The Orality of Knowledge; 2. The Lectura of Authoritative Texts; 3. Glossae; 4. Tradition and the Circulation of Glosses: Graphic and Didactic Grids, the Apparatus, Lecturae redactae, and Lecturae reportatae; 5. Summae; 6. The Punctatio librorum and the Three Phases of Instruction; 7. The Repetitio; 8. The Quaestio disputata; 9. Tradition and Renewal in the Thirteenth Century; 10. Lecturae per viam quaestionum and Lecturae per viam additionum; 11. From Lecturae to Commentaria

1. The Orality of Knowledge

Throughout the later Middle Ages both the formation and transmission of knowledge were typically oral. The obverse of this coin was that an extremely small number of written texts were recognized as speaking with authority. At the head of this list were the Gospels, which, as both "Scripture" and "scripture" were writing par excellence. "Holy Writ" was placed on the altar as an expression and confirmation of the idea that those writings were the books of the faith, sacred for their stamp of divine authority and for the precious truths that they contained and preserved. Next to the books of the Truth were the books of Justice. In both cases, these works merited their place out of the conviction that those books, those "scriptures," gave at least a glimpse of the eternal dimensions of the Truth and Justice whose full understanding and total admiration would be the reward in Heaven of only the best of humankind.

The jurist's books were those of the Corpus iuris civilis. Soon, however (around the mid-twelfth century), the list began to grow because Gratian's Decretum was awarded the same dignity. It was followed, somewhat later, by some of the church codifications that eventually went into the Corpus iuris canonici.

Thus an utrumque ius ("the one" and "the other" law, civil and canon) was enclosed within a limited number of volumes, while all around them there was an irrepressible, rampant, and necessarily oral interpretation.

On the one hand, there were the authoritative sacred books, works worthy of a place on the altar. Legend even has it that one famous jurist, Jacopo Baldovini (Jacobus Balduini), intent on understanding a passage in Justinian's compilation, placed the book of human laws beside the divine book on the altar

and spent the entire night before them on his knees praying God for guidance and comfort.[120]

On the other hand, there was the spoken word, free or guided by schemes of argumentation, by "forms," and by molds, but always unmediated and always essential for the construction and diffusion of knowledge. As Roffredus Beneventanus put it,[121] the spoken word had something magical about it because it permitted an immediate, ready communication, whereas an inert and cold written text might act as a resistant, difficult screen between the person thinking and attempting to communicate and the person reflecting and attempting to understand.

This conviction was no less widespread than the habit itself: "From what one hears," Humbert de Romans stated as early as the thirteenth century, "one obtains an excellent result, which is sapientia. In no other way, in fact, can man make himself more wise than by what he listens to."[122]

An acute sensitivity to oral communication inspired brilliant investigations. Reading, Hugo of Saint Victor wrote, is of three sorts: it is one thing for the person who is teaching, another for the person who is listening, and yet another for someone who meditates on the writings. None of these three moments was independent of the others because each one adjusted to and was shaped by their three-way relationship. The person speaking addressed the person listening, the listener selected out what he could apprehend, and anyone reflecting on the few authoritative written texts available knew that both his reading and his reaction to what he read would correlate with those of others.[123]

2. The Lectura of Authoritative Texts

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[120] The episode is related in Freiderich Carl von Savigny, Geschichte des römischen Rechts im Mittelalter, 6 vols (Heidelberg: Mohr und Zimmer, 1815-31, reprint Bad Homburg: 1961), 5:105. The anecdote is also given, in the same sense as here, in Francesco Calasso, "Il diritto comune come fatto spirituale" (1946), available in Calasso, Introduzione al diritto comune (Milan: Giuffrè, 1951), 177. See also Manlio Bellomo, Società e istituzioni in Italia dal Medioevo agli inizi dell'età moderna, 5th ed. (Catania and Rome: Giannotta, 1991), 455.

[121] See Sven Stelling-Michaud, L'Université de Bologne et la pénétration des droits romain et canonique en Suisse aux XIIIe et XIVe siècles (Geneva: E. Droz, 1955), 74.

[122] Humbert de Romans, Opera de vita regulari, ed. Joachim Joseph Berthier, 2 vols. (Rome: A. Beffani, 1888-89), 1:256.

[123] Hugo of Saint Victor, Didascalion: De studio legendi (PL, 176, cols 741-838. For the passage cited, see also the edition of Charles Henry Buttimer (Washington D.C.: Catholic University Press, 1939), 57-58. For a more recent English translation, see Didascalicon: A Medieval Guide to the Arts, ed. and trans. Jerome Taylor (New York: Columbia University Press, 1961).

From the start, the academic lesson for students of civil law was a lectura (reading) of one of the codices (books) in which Justinian's legislative texts had been collected, following an organization into the five parts, or volumina (volumes), that had become traditional from the twelfth century.

Although all the sections of the Corpus iuris civilis were considered of an equal importance, they nonetheless came to be used in quite different ways. The Institutes and the first nine books of the Code were used intensively in the early twelfth century, but toward the end of that century the Institutes became less central (until the fifteenth and sixteenth centuries, when they regained a part of their former importance).

The first of the three volumina into which the Digest was divided emerged as a major text, usually to accompany the first nine books of the Code. This meant that students in the schools had an opportunity to follow lecturae on the Digestum vetus and the Code but were less likely to have occasion to attend lecturae on the Infortiatum, the Digestum novum, the Institutes, the Tres libri (the last three books of the Code), or the Novels. In the manuscript volumina (which were codices in the modern sense of "books"), Justinian's laws were usually written in a large hand and arranged in two columns that occupied only the central part of the page. This not only made them easier to read but also left ample space in all the margins -- side, top, and bottom -- for annotations.

In the classroom the students crowded around the professor, who sat (at least until the last years of the twelfth century) at the center of the room. The professor had before him a lectern or a table on which the book of the laws was placed, a position that in theory enabled all the students (but in reality, given their number, only a few of them) to read the text along with their master.

For many decades both professor and students spoke in the classroom: the professor posed the problems, at times following an outline, and the students responded, debating among themselves or with the master or offering objections to the way in which the problems were put or to the solutions proposed.

The "degree program" had no time limit. Anyone who wanted to do so could continue his studies for years until he felt he had learned enough. He would begin again from the beginning year after year, studying the same book, each time finding some of his old companions in the classroom but also younger, newly arrived, timid, and inexperienced novelli auditores.

Some students ended their curriculum with an examination in the cathedral, though that exercise was not yet subject to specific regulation. Others managed to grasp little and attended a school for only a short time. John of Salisbury said that they stayed no longer than it took a chick to sprout feathers.[124]

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[124] John of Salisbury, Metalogicon, I.3 (ed. C. C. I. Webb, Joannis Saresberiensis . . . Metalogicon libri IIII (Oxford: 1929), 11, available in English as The Metalogicon of John of Salisbury: A Twelfth-Century Defense of the Verbal and Logical Arts of the Trivium, tr., intro, and notes, Daniel D. McGarry (Berkeley and Los Angeles: University of California Press, 1955), 15.

3. The Glossae

From the time of Irnerius, jurists expressed their thoughts above all in a literary form determined by untouchable, authoritative legislative texts and by an exegetic technique aimed at furthering understanding of the content of those texts. That literary form was the gloss and the jurists who made use of it are called glossators.

If over the years some professors and a good many students had not noted down their glossae on parchment as a way of documenting and remembering the lecturae, we would know little or nothing of that world of ideas, beliefs, and values today. Thanks to them, we can manage to know something -- on the condition that we keep in mind that the glossae were only an extremely feeble projection of a much fuller investment of both individual and collective reflection, and that we remember that they are a fragmentary and highly reductive expression of the oral activities that revolved around a central nucleus of the few certain, authoritative, and sacred texts.

The gloss is a brief annotation composed and written to explain a text and addressing either its terminology and its exterior trappings or its animating spirit and its underlying principles. The more usual position for a gloss was beside a legislative text on one margin of the page or the other. At times a word, a very few words, or even an entire passage in explanation of a term used in the text was written between one line of the text and another. The technical term for the first is a "marginal gloss"; for the second, an "interlinear gloss."

The jurists of the twelfth century and the first half of the thirteenth century made wide use of this literary form and of the technique it involved. The gloss continued to be used widely until at least the first decades of the fifteenth century, but its significance changed as the elaboration of theory and didactic methods for the transmission of legal knowledge evolved.

The glosses of innumerable masters remain in the hundreds of extant manuscripts of Justinian's Corpus iuris civilis, or the libri legales. Innumerable masters composed them: Martinus, Bulgarus, Rogerius, Albericus de Porta Ravennata, Henricus de Bayla, Placentinus, Pillius Medicinensis, Johannes Bassianus, Guilielmus de Cabriano, Azo, Hugolinus de Presbyteris, Jacobus Balduini, Carlo di Tocco, Benedetto da Isernia, Roffredus Beneventanus, and many others. Each one of these jurists composed glosses in the school and for the school, and in particular for that central exercise of official pedagogy that was the "lesson."

Glosses were short and synthetic; they strove for clarity and an efficacious use of few words. The text of a gloss might be written by the professor himself, before or after the lesson, or it might come from notes taken by one or more of the particularly gifted pupils. A professor's note is termed a glossa redacta; a student's note a glossa reportata.

A glossa redacta normally closes with a sign or "siglum" made up of one or more of the letters in the professor's name: for example, we have "y." or "w."

for Irnerius, "m." for Martinus, "b." for Bulgarus, "r.", "ro.", or "rog." for Rogerius, "Sy." for Simon Vicentinus, "Ro." or "Rof." for Roffredus, and so forth. The glossa reportata can be distinguished from the glossa redacta because at its end the reportator (the person who had listened to the lesson and then written the gloss) attested that he was not the author of the thought expressed but only the author of its formal redaction by noting "secundum m[artinum]" or "secundum b[ulgarum]" and the like. We need to take care, however, to distinguish between the "secundum . . ." of the glossae reportatae and a "secundum . . ." followed by a name, which introduced the opinion of another jurist, perhaps even of another generation, within the body of a glossa redacta or a glossa reportata.

4. Tradition and the Circulation of Glosses: Graphic and Didactic Grids, the Apparatus, Lecturae redactae, and Lecturae reportatae

No annotations written by the hand of twelfth-century jurists have yet been found. It is possible, however, and even probable that there are some autograph additions in the many extant copies of portions of the Corpus iuris civilis.

The copies available to us are all derived from lost originals. It often happened that as he was copying the text the copyist (usually a professional scribe) modified something in the original or in the copy before him. This might have happened for a number of reasons: the scribe might have been distracted; a word or a letter might have been difficult to decipher; the scribe's changes might have been made out of ignorance; he might have deliberately chosen to make them. Often a text used as a model for copying had already been used by a number of professors who had made additions to the original gloss, either to confirm its point of view by enriching or explicating its contents or to challenge its explanation (at times with a simple contra). In this case the glossator's sign, for example "m.", would be followed by a word or a phrase marked with someone else's siglum. Should the older sign be dropped -- the one, that is, identifying the author of the original gloss and placed between it and the more recent text -- the authorship of the older opinions would be lost. Furthermore, when one copyist transcribed both the older and the more recent parts of a composite gloss at one time and in one hand, it became more difficult to identify its component strata.

It is less of a chore to grasp the mechanisms of collection and transmission at work in the glosses. A series of successive additions gave rise to "strata" or layers within a single gloss; such strata can be reconstructed along with the gloss, but they can also be traced within a network or grid composed of many glosses. We can in fact demonstrate that some types of addition were recurrent, which means that for every text within the same grid we can identify the individual strata, date them, and locate them geographically.

This "grid" was something quite distinct from the "stratum." A "grid" was a set of glosses that had not yet been cast in a definitive order, which means that their organization might have been fortuitous, or it might have resulted from a natural process when a professor made annotations to express either his own

thoughts or his reactions to previous grids. These grids, like the individual glosses, may have been redacti (by the professor) or reportati (by a student).

Thus a single lectura may have given rise to two or more "graphic grids" of glosses, one of which may have been redacted by the teacher and others "reported" by two or more students. Although the contents of the various glosses may display identical or similar elements, nonetheless the individual glosses may easily differ in their handwriting, their number, and their sequence simply because different minds and hands recorded them, selected among them, and documented them by writing them down. I use the term "didactic grid" to refer to a set of oral fragments of a course of lessons that were documented, hence have survived. This means that the only possible documentation of a didactic grid is through one or more graphic grids.

Something more complicated may have happened, however: a number of didactic grids (for example, fragments of lecturae from different years) that originally had been documented in various graphic grids may later have been reduced to a unified text, thus creating a new "book" (codex), when a professor or a student copied them or had a scribe copy them. When this occurred the individuality of the original multiple didactic grids may have been lost since the recopied grids, now documented as a whole, formed a single new graphic grid.[125]

The apparatus was something quite different. Logically it was just the same thing as a "stratum." In fact, it could reach back to preceding "strata," absorb them, and reduce them to homogeneity, and then become itself a "stratum" in a later apparatus. It differed from the "grid" in that it resulted from the order that a jurist had assigned to specific glosses, either written ex novo for the occasion or selected from among preexistent interlinear or marginal glosses in manuscripts already being used in the schools or for private study. It is dubious whether the earliest professors (Irnerius, the Four Doctors, Rogerius) wrote apparatus, but it is certain that scattered examples of their glossae remain, as well as grids of glosses, simple or stratified. It is also certain that Azo and Hugolinus de Presbyteris experimented with the idea and the basic outline of the apparatus. Azo in particular has left impressive examples in his apparatus to the Code, to the three parts of the Digest, and to the Institutes. The most complete and authoritative examples of the apparatus were those of Accursius, as we shall see.

The apparatus was thus a deliberate sequence of annotations commenting on the libri legales. In the apparatus each gloss had a fixed place, and their sequence was determined by the order and the number of the glossae.

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[125] For further discussion of the groups of glosses that I have proposed calling "grids" (reticoli), in contrast to the apparatus and the lecturae, see Manlio Bellomo, "Sulle tracce d'uso dei 'libri legales'," in Civiltà Comunale: Libro, scrittura, documento, Atti del Convegno, Genoa 8-11 November 1988 (Genoa: 1989), 33-51, esp. 50-51.

We have more direct evidence of a professor's lesson in the grid of glosses and more indirect evidence from the apparatus, whose nature as a composite work remote from direct and unmediated use in the schools is clear in the crystallization (or canonization) of the order, the number, and the form of the glosses that it gathered together. At times there is also evidence of the lesson in a lectura redacta (written down by the professor himself) or a lectura reportata (noted by a student). In both of these the lectura presents a set of annotations arising out of the school, created for the school, and reflecting the orality of the school lesson, as was also true of the "grid." The lectura differed from the grid in having a completeness and a continuity that were lacking in the "grid," but the lectura lacked the personal and more thorough elaboration that became possible when a work -- albeit based on teaching and done for the purposes of teaching -- was composed outside of the school, as was true of the apparatus.

5. Summae

The summa was a work of a quite different sort. Even though it too was linked to the school, it was not as fortuitous and fluid as the fragmentary written documentation of the school lessons. Unlike the glosses and their exegesis in brief, disconnected annotations, the summa became a precisely defined literary type; a personal, continuous, and fully elaborated exposition constructed according to a specific logical and formal architecture that at times owed much to Cicero.[126]

Before the appearance of the summa its way was prepared by treatises, some of which dealt with a specific subject (one example is a tractatus of Martinus Gosia on dowries),[127] and others of which were more like exceptionally full glosses. In general, however, the summa matured soon after the mid-twelfth century. One of the first hesitant attempts was Rogerius' interweaving of a Summa Codicis with the Summa Trecensis;[128] the genre later became clearer with the Summa Codicis and the Summa Institutionum of Placentinus and, above all, with Azo's weighty and thorough Summa Codicis.

Thus with the summae theoretical elaboration of the law and the circulation of ideas were condensed in works that could be defined in literary terms, that were

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[126] See Bellomo, Società e istituzioni in Italia, 456-59 and note 44.

[127] Martinus Gosia De iure dotium tractatus, in Studies in the Glossators of the Roman Law: Newly Discovered Writings of the Twelfth Century, ed. Hermann Kantorowicz with William Warwick Buckland (Cambridge: Cambridge University Press, 1938, reprinted with additions and corrections by Peter Weimar Aalen: Scientia Verlag, 1969), 255-66.

[128] See André Gouron, "L'élaboration de la 'Summa Trecensis'," in Sodalitas: Scritti in onore di Antonio Guarino (Naples: Jovene, 1985), 3682-96; Gouron, "L'auteur et la patrie de la Summa Trecensis," Ius Commune 12 (1984): 1-38.

written in a homogeneous manner, and that reflected an original thinking process whose development and expression were controlled by the author.

The great legal collections of the church also came to have important works of interpretation, but these were only in part comparable to the works of the civilians. In the twelfth century, the text that for decades had served as a base for annotations explicating and supplementing its thought was Gratian's Decretum -- the work of an individual, thus less constraining and less inflexible than the libri legales. Although glosses and supplementary grids to the Decretum did exist, it inspired summae almost immediately. These summae differed from their civil-law counterparts, however, in that they did not follow a preordained logical structure. They were more similar to the civilians' apparatus in that they included minute notations in the form of glosses arranged to follow one after the other rather than being absorbed into a continuous, flowing prose. Some canon-law summae that stand out for their techniques of composition and their form are those of Rolandus, Rufinus, and John of Faenza (Johannes Faventinus), all twelfth-century jurists, and Stephen of Tournai (Stephanus Tornacensis) and Huguccio, who lived into the early thirteenth century.

6. The Punctatio librorum and the Three Phases of Instruction

Toward the middle of the thirteenth century we can begin to see signs of a phenomenon that marked university teaching for a very long time. The student corporations, the universitates, put pressure on the professors to present their lessons in a more orderly fashion and to distribute them better throughout the academic year. We do not know with certainly whether or not such demands were met, but a number of indications suggest that for some decades at least the university statutes were respected and reflected in practice.

Instruction was divided into three distinct activities. Beginning in some schools in the mid-twelfth century, the lectura was accompanied by two other exercises, solemn disputation on particular quaestiones ex facto emergentes and special sessions in which the topics of the lesson were treated in more detail than was possible in the official lesson. Thus there came to be three distinct forms of instruction: the traditional lectura, now (as we shall see) revitalized, the quaestio publice disputata, and the repetitio.

Students had begun to show signs of concern and dissatisfaction with the lectura. Some scrupulous professors (and some who made a show of their rectitude) declared their intention to read the whole of Justinian's compilation: in the mid-thirteenth century Odofredus tells us as much of himself, comparing his deportment to that of colleagues past and present, with the clear intent of discrediting their fame or their success.[129] Other professors followed the easier path, however, and read only random selections from the Code or the Digestum

[129] Odofredus, Proemio to the Digestum vetus (MS Paris, lat. 4489, fol. 102), in Savigny, Geschichte des römischen Rechts, 3:541-42, note d.

vetus, beginning over every year and yielding to the temptation to treat the easier passages at length and ignore the obscure or difficult ones. Bartolus of Saxoferrato remarked that such professors passed over the hard passages sicco pede -- without getting their feet wet.[130]

The students' solution to their ongoing dissatisfaction was to subject their professors to discipline and to write precise professorial obligations into the statutes of the student universities (in Bologna in 1252 and the years following). This discipline was known as the punctatio librorum.[131]

Through their universitates, the students declared that the passages to be read and explicated in the lesson must be determined in advance by an analytic selection process entrusted to a student commission working with professorial assistance. This commission drew up lists of the texts selected and divided them into a number of groups, or puncta. For each punctum it set a period of time, called a terminus, that it considered sufficient, and it obliged the professor to read the text or texts in the punctum within that time limit. The terminus varied seasonally from a maximum of fifteen days in the winter to a minimum of twelve days in the summer, following the ecclesiastical computation of time that divided each of the two parts of the day, light and dark, into a fixed number of hours, thus shortening the "hour" in the winter and lengthening it in the summer, as opposed to the Roman system of telling time, which divided the day -- daylight and nighttime hours alike -- into twenty-four equal hourly units.

The procedure specified in the punctatio librorum and the resulting lists subjected the professors to fairly rigid constraints. The professor who failed to read the texts of a given punctum within the allotted time had to pay a sizable fine (according to complex mechanisms involving denunciation of the violation and guarantees for the payment of the fine). Now that he was accountable for his time, the professor forbade the students from speaking during the lectura, since when prolonged discussion got out of hand it exposed him to the risk of failing to fulfill his obligations and having to pay the fine.

Thus the lectura became wholly magistralis, and the quaestiones that the professor felt obliged to treat during the lesson, carefully gauging the time he had available for elucidation and elaboration, were called quaestiones magistrales as well.

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[130] Bartolus of Saxoferrato, Commentaria in Dig.28.2.11, de liberis et posthumis.l.In suis, no. 1 (Venetiis 1615), fol. 90va: "et Accursius, doctores et scribae sicco pede eam transeunt."

[131] On the punctatio, see Manlio Bellomo, Saggio sull'Università nell'età del diritto comune (Catania: Giannotta, 1979), 203, 205-208. On the dating of the oldest university statute in Bologna that contained a registration of puncta, see Domenico Maffei, "Un trattato di Bonaccorso degli Elisei e i più antichi statuti dello Studio di Bologna nel manoscritto M 22 della Robbins Collection," Bulletin of Medieval Canon Law, 5 (1975): 73-101; Miroslav Bohácek, "Puncta Codicis v rukopisu XVII.A.10 Národnítho Musea v Praze (Puncta Codicis der Handschrift XVII.A.10 des Prager National-Museums)," Studies o rukopisech 20 (1981): 3-22.

7. The Repetitio

Thus the punctatio librorum took away the students' right to speak during the lectura. Now that the professor risked having to pay a fine if he failed to complete the punctum within the allotted number of days he was no longer willing to give over part of his precious time to general discussion. And when time was no longer available to go more deeply into the topics treated in the lesson and debate them then and there, room needed to be made within the academic framework for the satisfaction of both these needs. The mechanisms for doing this were the repetitio and the quaestio publice disputata (a question disputed publicly).

Within the lesson the professor could expound completely only some of the legislative texts included in the puncta. What is more, there were other texts that contained problems that needed to be investigated in greater depth, articulated in specific ways, or, when it proved necessary or useful, discussed by being subjected to objections and questions (cum oppositis et quesitis). For this reason some texts were the object of a particular didactic activity known as the repetitio, called necessaria because every professor was obliged to hold at least one such session per year. In practical terms it was certainly a freer exercise because ample time was made available to discuss each topic.

The repetitio took place only one day a week (in Bologna, for example, on Mondays) in the afternoon and during a time-span shorter than the academic year, from St. Luke's Day (18 October), when teaching activities began, to Christmas, and again from Easter to the Kalends of August.

The repetitio seems to have been held both for the students of one school and for students from an entire sector of jurisprudence -- all the civilians, for example, or all the canonists -- who were invited to attend open sessions outside their school.

In Bologna, in fact, an order of priority was respected that makes sense only if the repetitio is understood as a didactic activity that brought together students from various schools. Professors of the schools that were recognized by the student universitates were called on to hold repetitiones in order of age, from the youngest to the oldest, and each teacher was obliged to give only one repetitio. This system meant that only rarely was a repetitio necessaria offered by the same professor who had given a formal lesson on the legislative text to which the repetitio referred.

Accompanying the repetitiones necessariae that the university statutes obliged the professor to offer, there were repetitiones voluntariae that every master was free to organize in connection with the needs of his own course of lessons.

There were also other sessions (not to be confused with the official repetitiones, either necessariae or voluntariae) carried on by private repetitores not recognized by the universitates scholarium. The professional qualifications of these repetitores varied greatly and were at times dubious or nonexistent. Such

persons served as assistants, offering supplementary didactic support to students in difficulty because of their scanty cultural background, their limited intellectual capacities, or their wavering motivation.

The structure of the official repetitio differed little from the formal lesson, the lectura. Both involved explication of a legislative text of the Corpus iuris civilis or the Corpus iuris canonici. The two forms of instruction may have differed in thoroughness and in their procedures, but this is difficult to ascertain from the way the original oral repetitio is presented in the remaining documentation. In fact, we have evidence of instances in which the professor himself succinctly noted down the essence of his own oral discourse (in which case we have a repetitio redacta) of one of his pupils did so (repetitio reportata); in other instances the oral presentation was thoroughly reworked and elaborated when it was transferred to parchment and to definitive written form; in still others an original, more detailed redaction was summarized and abridged to give the nub of the argument for the purposes of a lectura.[132]

8. The Quaestio disputata

The third form of instructional activity was the quaestio disputata.[133] The origins of this exercise go back to around the mid-twelfth century, and the oldest examples take us back to one school and to the extremely concise texts of the quaestiones in schola Bulgari disputatae. Very little remains of what was actually said other than a very brief listing of the legal texts discussed. Even less remains of the professor's final solutions, nearly always expressed with one word of assent or refusal, a simple sic (yes) or a sharp non (no).

Later, this activity became more important, more demanding, and more solemn. At this point the quaestio began to be disputed publicly before a vast

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[132] For significant examples of these various types of repetitio, see Federico Martino, Dottrine di giuristi e realtà cittadine nell'Italia del Trecento: Ranieri Arsendi a Pisa e a Padova (Catania: Tringale, 1984); C. H. Bezemer, Les répétitions de Jacques de Révigny: Recherches sur la répétition comme forme d'enseignement juridique et comme genre littéraire, suivies d'un inventaire de textes (Leiden: E. J. Brill, 1987). The latter work has a serious lacuna in its bibliographical information in that it fails to cite the Martino work just cited. Furthermore, generalizations drawn from research concentrating specifically on Jacques de Révigny lend rigidity to both the general opposition expressed in the book's subtitle and to some specific conclusions (see, for example, p. 70, note 202 and pp. 23-25) and leads to some internal contradictions: the point made on p. 70, note 202 is contradicted on pp. 23-24. In spite of these reservations, the book is to be commended as an attempt to focus on some of the principal problems of juridical repetitiones during the late Middle Ages. For a more attentive and simpler presentation, see C. H. Bezemer, "Style et langage dans les répétitions de quelques romanistes médiévaux, ou sur l'importance de reconnaître les répétitions," in Langage et droit à travers l'histoire: Réalités et fictions, ed. G. van Dievoet, Ph. Godding, D. van den Auweele (Louvain and Paris: Peeters, 1989), 73-79.

[133] See Aspetti dell'insegnamento giuridico nelle Università medievali (Reggio Calabria: Parallelo 38, 1974-), vol. 1, Le "quaestiones disputatae": Saggi di Manlio Bellomo.

audience of the students from all the city's schools. Such debates were thus known as quaestiones publice disputatae.

A talent for disputation -- the liberaliter disputare -- was a trait typical of academic cultural and the world of the schools. Debates pitted reason against reason, argument against argument. Modi arguendi (methods of debating) were forged and stored like an artisan's tools in the house of the master, taking the master's name, until vast alluvial deposits were laid down of the techniques of disputation contributed by teachers and their pupils. At times disputations turned violent when a puerile libido rixandi (lust for fighting) broke out,[134] passion gained the upper hand over intelligence, and the encounter ended "non ratione, sed stomacho" (not with reason, but with guts).[135]

In any event, the potential inherent in disputation was clear from the outset. Disputation revealed theoretical perspectives that were all the more extraordinarily fertile as the flexibility of the quaestio as an instrument for forging a global vision of the system of the Ius commune became apparent. The disputation usually centered on a question arising out of everyday life. Ideally, the topic should not be covered by either the laws of Justinian, in the civil field, or the codifications of the church, in canon law,[136] or, at a later date, by local customary or statutory law. In such cases the quaestio was ex facto emergens. If instead the facts to be debated were connected with cases that had already attracted the attention of a local legislator or fell under feudal customary law, the relative quaestiones were called quaestiones statutorum or quaestiones feudorum.

Toward the end of the thirteenth century it became clear that, in principle, a quaestio could be set up regarding any topic whatsoever as long as the situation was not treated in the Corpus iuris civilis. When, by command of the emperor, such a case had been made subject to a certain and absolute law, it would be, technically, a casus legis and not admissible to question by disputation.

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[134] This expression appears in a fragment from the theological school of Anselm of Laon (1050-1117); it is transmitted in the MS Bamberg, Statsbibl., lat. 10, fol. 69v, and is cited in Odon Lottin, "Nouveaux fragments théologiques de l'école d'Anselme de Laon: Quelques autres manuscrits allemands," Recherche téologique ancienne et médiévale 13 (1946): 267.

[135] Rabanus Maurus (784-850), Enarrationes in Epistulas Pauli, lib.25, tit.III (PL, 112, col. 689).

[136] Nonetheless, it was possible for the topic of the quaestio to refer to a casus legis, on the condition that the latter be kept in mind as a presupposition for a debate centering on a practice or a norm analogous to the codified one but that was not included in the "codification." One example of this is a quaestio of Riccardo Malombra, the topic for which is based on a decretal in part contained in the Liber Sextus (hence based on a casus legis) but which wends its way through doubts arising from practice and from the interpretation of the decretal Ad extirpanda of Innocent IV (15 May 1252) and other similar measures not included in the Liber Sextus or in the Clementinae. See Manlio Bellomo, "Giuristi e inquisitori del Trecento: Ricerca su testi di Iacopo Belvisi, Taddeo Pepoli, Riccardo Malombra e Giovanni Calderini," in Per Francesco Calasso: Studi degli allievi (Rome: Bulzoni, 1978), 9-57, esp. 36-43 and 22, n. 21.

In this manner, two realms of legal knowledge came to be defined. One of these was the terrain of the "certain," the terrain of the Ius commune, civil and canon, which involved normative solutions, technical arguments, and legal concepts and doctrines. The only doubts that the interpreter might entertain in this realm were in the limited perspective of aiming at a better comprehension of what existed and was certain because it was "true." The other realm was the terrain of the "probable," where what is might not be, and where there might be a negation to correspond to every affirmation. This was the terrain of real-life events not subsumed into the norms of the Corpus iuris civilis or those of the church; activities and situations that may or may not have been regulated by the ius proprium (customary law, statutes, royal laws, and so forth).

The didactic exercise that took shape in the quaestio publice disputata was thus tied to (one might say rooted in) a basic conviction that the Ius commune had both the value and the function of certain and eternal law. Like all debate, it was fundamentally oral.

We would know little about these disputations (perhaps only that they existed) if the students of the Middle Ages had not set rules for them in the statutes of their universitates and, in particular, if they had not required written documentation of those statutes.

The statutes tell us, first, that the topic of a disputation could not be a casus legis, an article of faith, a passage from holy writ, or anything that might cause disorder and discord within the student world.

Second, they established that the disputation must be open to students of all the schools in the city (although debates were still held within a single school, just as they had been in the twelfth and early thirteenth centuries). When the debate was open to all students the quaestio was publice disputata. The debate itself was preceded by a series of obligations: each professor, in turn, was to disputare publicly during the period between Ash Wednesday and Pentecost, and toward that end he was to prepare a cedula (a small piece of parchment) on which the topic and the problem (quid juris?) were written; this cedula must be handed in to the general beadle eight days or more before the disputation; the general beadle then was to inform all the schools (of civil law if the quaestio was in iure civili or of canon law if it was in iure canonico). At the disputation itself the rectores of the two universitates scholarium, who held power over all the students of all schools, played a prominent role, directing the proceedings and granting or refusing students the right to speak. The professor who proposed the topic was responsible, first, for describing the situation and explaining the juridical problem connected with it and, eventually, for giving his solution. The students who asked to speak also played an important role in the proceedings, each one being called on by the rectores in an order of precedence that involved noble birth, wealth, and seniority. Each student was permitted to develop only one argumentum, either in favor of (pro) a hypothetical solution to the problem or against it (contra). At the end, the professor, who gave his own solution, had the right to declare either the pro or the contra faction as the winner, or else he might dissatisfy both sides by

proposing a third and compromise solution. In any event, he was obliged to respond to the various argumenta that he rejected.

Within eight days of the public debate, the professor was required to complete redaction of a text faithfully and (when possible) briefly documenting what had been said orally. Some professors injected little or none of their own personality into a listing of the arguments put forth by the students; others, as they wrote, put the stamp of their own thought and knowledge on the variety of student contributions, thus creating a more homogeneous written text of marked intellectual originality.

When he had finished writing up his summary, the professor was required to hand in the original of his report to the general beadle, who kept it with other such loose folios that accumulated through time. At some later date, curiosity might move someone -- a professor, a merchant, a stationarius, the beadle himself, or others -- to have the many parchments on deposit copied in the form of a book (codex). In this way anthologies were formed by period, by city, or by author that on some occasions were very modest productions indeed but on others had new massae incorporated into them that turned them into libri magni containing an immense amount of material. A very small number of copies of such libri magni quaestionum disputatarum have been preserved, either in whole or in part. Two particularly rich and complete examples are in the Vatican Library.[137]

9. Tradition and Renewal in the Thirteenth Century

The first phase of didactic experimentation in the schools of law came to an end during the course of the thirteenth century with the definition of all the principal forms of exegetic techniques relating to the Corpus iuris civilis and to the most authoritative (the Decretum) or official church texts (the Liber Extra in particular). These forms were the gloss, the grid, the apparatus, the lectura redacta and the lectura reportata, the summa (in its civil-law and canon-law variants), and, along with the lectura, the repetitio and the quaestio disputata (both in schola and publice). During the same thirteenth century, however, new perspectives opened up and jurists began to test out the extraordinarily expressive possibilities implicit in the many written forms in use. Some of these offered ways to broaden the

[137] These are the MSS Vaticano, Arch. S. Pietro A.29 and Vaticano, Chigi E.VIII.245. When I had the good fortune to discover them (at a time when it was doubted that libri magni had ever existed), I brought them to the attention of scholars and made partial use of them in Manlio Bellomo, "Due 'Libri magni quaestionum disputatarum' e le 'quaestiones' di Riccardo da Saliceto," Studi Senesi, ser. 3, 18 (1969): 256-91. For later utilization, see Bellomo, Aspetti dell'insegnamento giuridico; Bellomo, "Le istituzioni particolari e i problemi del potere: Dibattiti scolastici dei secoli XIII-XIV," in Studi in memoria di Giuliana D'Amelio, 2 vols (Milan: Giuffrè, 1978), 1:1-40; Bellomo, "Giuristi e inquisitori del Trecento"; Bellomo, "Giuristi cremonesi e scuole padovane: Ricerca su Nicola da Cremona," in Studi in onore di Ugo Gualazzini, 3 vols (Milan: Giuffrè, 1981), 1:81-112.

horizons of jurisprudence, and, recombined to include or exclude certain elements, they led to the creation of new modes of exposition.

To take the first point first, use of the quaestiones became so massive and so widespread that by 1274 it was made mandatory even by the statutes of the student organizations. This means that by then jurists wanted to enlarge their investigations to reach beyond the confines of the libri legales, civil and canon: they wanted to venture outside the field of the "certain" for a fuller and freer exploration of the field of the "probable."

They turned their attention to an imposing set of cases not expressly mentioned in or regulated by the libri legales, hence that were new quaestiones ex facto emergentes. Since these cases lacked a governing precept, the jurists combed the libri legales for all plausible hints and cues that might help them to construct logically correct arguments in view of a reasonable and satisfactory solutio.

Garnering plausible hints from the libri legales implied recalling to memory one or more of the existent texts of the Corpus iuris civilis and subjecting them to dialectical reasoning -- argument a maiori, a fortiori, a simili, and so forth -- in order to extend their normative content beyond the situations originally cited in the various provisions.

In the construction of their argumentum the jurists used modi arguendi or propositiones maiores or minores derived from Aristotelian philosophy, above all from the so-called "Aristotle Major," the major works of Aristotle that dominated all of culture after their rediscovery and dissemination in the thirteenth century. Furthermore, they experimented with those techniques to render them sufficiently flexible to provide solutions ("probable," not "certain" solutions) for each case under consideration. Although the jurists' point of departure was an event taken from everyday experience, the ways in which they sought a "norm" for it -- which did not exist in the Ius commune -- were decidedly based in theory. Not only was their procedure theoretical; it denied or strayed from the Ius commune so little that the logical arguments the jurists constructed in support of the (probable) "norm" could not even have existed if they had not been able to draw upon a text of the Corpus iuris civilis or a rule from one of the church codifications. They always needed a "certain" text to give support -- even weak support tortuously arrived at -- in order to legitimize the entire logical operation. When, at the turn of the thirteenth century, one student who later became famous, Bernardus Dorna, came, ill-prepared and somewhat bewildered, to Azo's school, he attempted to base an argument on a verse of the Latin poet Ovid. The master's reaction was swift: a jurist did not reason outside the orbit of the common law ("Non licet allegare nisi Iustiniani leges"; It is not permitted to cite anything except the laws of Justinian).[138]

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[138] Azo of Bologna, Quaestiones, 10, Scolaris quidam, in Ernst Landsberg, ed., Die Quaestiones des Azo (Freiburg im Breisgau: J. C. B. Mohr, P. Siebeck, 1888), 74.

There was more. The jurist's everyday activities involved concrete life experiences that found expression in the lectura or the quaestio disputata and determined a selection among the legislative texts that could be employed for argumentation, noting those that should be avoided or, at the most, could be used in disputations and quaestiones. Selection also involved a choice among laws of the same type, imperial or papal. The only norms that could be used for the reasoning that underlay the arguments or as the kernel of an argument were the imperial laws included in the Corpus iuris civilis and the church laws collected in Gratian's Decretum, the Liber Extra of Gregory IX, the Liber Sextus of Boniface VIII, and the few "codifications" that were included in the Corpus iuris canonici (the Clementinae, the Extravagantes Johannis XXII, and the Extravagantes communes). All other norms, of which there were many, particularly in the field of canon law, had to be ignored, even if they were the laws most frequently applied in the courts and in legal practice. The judgment that legal thought in the schools of the late thirteenth and the fourteenth centuries showed "practice-oriented tendencies" is clearly unfounded.

10. Lecturae per viam quaestionum and Lecturae per viam additionum

The experience gained in the public and solemn disputation of quaestiones, an exercise that was not formally a part of regular instruction, carried over into the lectura, the primary vehicle for teaching. Indeed, that experience gave both matter and form to the lesson because the professors devoted considerable time to the quaestiones, to the problems on which they focused, and to their implications and solutions, to the point of constructing an entire course per viam quaestionum.

On certain occasions, when a famous professor gave the lectura and reelaborated quaestiones in it, his class notes were sought after, copied, and widely circulated, as in the case of the Supleciones of Guido of Suzzara.[139] More often, though, we only have bits and pieces to document the fluid thought of the oral lesson; we have only an ephemeral echo (in the didactic grids) or lucid written fragments (in graphic grids) that fixed that orally expressed thought on parchment and made it knowable outside the restricted circle of people who had the good fortune to hear the professor's voice. Historiography calls these fragments "living texts,"[140] not because, as formal logic might indicate, they were texts that were

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[139] Federico Martino, Ricerche sull'opera di Guido da Suzzara: Le "Supleciones" (Catania: Tringale, 1981).

[140] The first historian who spoke of "living texts" in this connection was Stephan Kuttner: see Kuttner, "Relazione," Acta commemorationis et conventus quae saeculo VIII post Decretum Gratiani compositum facta sunt . . . A. MCMLII, in Studi Gratiana, 18 vols (Bologna: Institutum Iuridicum Universitatis Studiorum, 1958), 5:106-12. Kuttner has repeated this notion on several occasions and it is shared by many contemporary historians. For bibliographic information, see Bellomo, "Legere, repetere, disputare: Introduzione ad una ricerca sulle 'quaestiones' civilistiche," in Bellomo, Aspetti dell'insegnamento giuridico nelle università medievali (Reggio Calabria:

still inherently flexible or open to modification but because the thought that lay behind them and gave rise to them was vital and fluid. It was also much richer, more variegated, and more complex than it would seem from the dead and fragmentary remaining documentation.

The manuscripts of both the libri legales (the Corpus iuris civilis) and the great church "codifications" frequently show significant traces of these cultural and didactic processes; we can analyze internal evidence of their use to reconstruct a basic line of legal thought in late thirteenth- and fourteenth-century Europe.[141]

By that date the text of the civil and canon law was accompanied by a standard, or "ordinary," apparatus. Thousands of additions (additiones) to these two sets of writings were collected and disseminated, incorporating and in part documenting ongoing juristic thought in continual transformation. Furthermore, the fact that professors in the schools read the texts of Justinian and the ordinary apparatus that completed them opened up the way for even more annotations and comparisons, which enriched legal science but eventually invited revision of both problematics and methodology.

This was how the lecturae per viam additionum came into being. These were lecturae of varying length and importance whose reconstruction always raises problems because only rarely were they redactae by the professor who read the books of law and their accompanying ordinary apparatus. They are a rich source of information, however, since they often record and summarize quaestiones and consilia -- that is, everyday cases debated in the classroom or the courts. On occasion they note repetitiones in full or in summary. The transcription of quaestiones and repetitiones in a lectura per viam additionum may not reflect the original shape and oral character of the lectura itself: this happened when someone who owned a codex (a book) was moved (and had enough blank space in the volume) to embellish the document with a lectura containing quaestiones and repetitiones extraneous to the original lesson.

11. From Lecturae to Commentaria

It was out of this context that the Lecturae of Cino da Pistoia sprang, as well as the Commentaria of Johannes Andreae, Bartolus of Saxoferrato, Bartolomeo da Saliceto, and a very few other jurists of the fourteenth and the early fifteenth

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Parallelo 38, 1974-), vol. 1, Le "quaestiones disputatae": Saggi di Manlio Bellomo, 55, n.87.

[141] A research team at the Istituto Storico Germanico di Roma working under my direction and with the sponsorship of the Gerda Henkel Stiftung of Düsseldorf is in the process of investigating this topic. See also Manlio Bellomo, "Scuole giuridiche e università studentesche in Italia," in Luoghi e metodi di insegnamento nell'Italia medioevale (secoli XII-XIV), ed. Luciano Grargan and Oronzo Limone, Atti del Convegno di Lecce-Otranto, 6-8 October 1986 (Galatina: Congedo, 1989), 121-40.

centuries (Paulus de Castro, for example, among the civilians, and Nicolaus de Tudeschis [Panormitanus] among the canonists).

Commentaria have at least two characteristics that distinguish them from the other works of the time. From the point of view of their form they were the product of a personal and meditated reelaboration of a range of heterogeneous materials that had accumulated, layer after layer per viam additionum, during the course of lecturae on Justinian's laws and on the Glossa Ordinaria of Accursius. Thus they were works in a particular "form" that the author had chosen deliberately for a definitive expression of his thought. From the point of view of their substance they were works of homogeneous content covering one complete part of the libri legales, the Code, for example, or the Digestum vetus.

Because the commentarium was a new literary genre and, above all, because of the fame and the authority of the Commentaria of Bartolus of Saxoferrato, historiography calls all fourteenth-century jurists "commentators," a term that is decidedly inappropriate or inadequate for a good many of these men.

The differences between the commentum and the lectura, in its various documented forms and even in its written fragments, had a number of consequences. First, only the commentum was made up of a definite text and that circulated in the written form conceived by its author. For this reason, we find it in the same form in a variety of manuscripts.

Second, both the lectura per viam additionum and the lectura per viam quaestionum showed variations in their documentation because even one course of lessons could appear in different formal guises that reflected the talents or the interests of the person who captured in one of more written phrases thoughts that the professor had exposed orally. When this happened, the circulation of that thought was not linked to the stability or the unity of one written "form" precisely because the original means of expression was oral. Hence only rarely is there any literal correspondence among manuscripts, even when they document the same thought and the same lesson.

Third, a partial reelaboration of this varied documentation led to reworking the material (that is, the additiones) that had accumulated on the margins of the libri legales and Accursius's Glossa. At times it was the professor himself who selected additiones written or rewritten by himself or by others and who arranged them in a stable order; at other times this task was done by someone else who made use of the texts -- a student, another professor, or a practicing jurist or judge sensitive to the use of the Ius commune. These two procedures alternate in the Supleciones of Guido of Suzzara and the Casus of Riccardo da Saliceto.