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1975

The French Recension of Compilatio Tertia

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The French recension of Compilatio tertia*

Petrus Beneventanus compiled a collection of Pope Innocent III's decretal letters in 1209 which covered the first twelve years of Innocent's pontificate. In 1209/10, Innocent authenticated the collection and sent it to the masters and students in Bologna. His bull (Devotioni vestrae), said Innocent, was to remove any scruples that the lawyers might have about using the collection in the schools and courts. The lawyers called the collection Compilatio tertia; it was the first officially sanctioned collection of papal decretals and has become a benchmark for the growing sophistication of European jurisprudence in the early thirteenth century.¹

The modern investigation of the Compilationes antiquae began in the sixteenth century when Antonius Augustinus edited the first four compilations and published them in 1576. His edition was later republished in Paris (1609 and 1621) and as part of an Opera omnia in Lucca (1769). In the late nineteenth century, Emil Friedberg edited the compilations again, basing his text on Augustinus' edition as well as readings from seven manuscripts which he found in German and Austrian libraries.² Friedberg's has remained the standard edition, although its defects are well known.³

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* I am particularly indebted to Professor Gérard Fransen for investigating the manuscripts of Compilatio tertia and quinta in the Bibliothèque nationale, Paris, and for collating Paris B.N. lat. 3929 and n.a.l. 2127 with Friedberg's text of the decretal Constitutis, and to Professor Stephan Kuttner for his advice and warm hospitality in Berkeley where the research and writing of this paper was done.

1 Kuttner, Repertorium 355-68; Lefebvre, L'Age classique 230-1. Lefebvre gives the date of the promulgatory bull, Devotioni vestre, as February 21, 1210, the very last day of Innocent's twelfth pontifical year. Kuttner, however, had pointed out that February 21 was only the terminus ad quem and that the exact date is not known. Also S. Kuttner, 'Johannes Teutonicus, das vierte Laterankonzil und die Compilatio quarta', Miscellanea Giovanni Mercati (Studi e Testi 121-125; CittA del Vaticano 1946) 5. 608-34.

2 The manuscripts which Friedberg used were: Munich Staatsbibl. 3879; Graz Univ. 106, 138, 374; Bamberg Staatsbibl. can. 19, 20; Leipzig Univ. 983. He listed the decrees of Compilatio tertia by incipit and explicit in his Compilationes antiquae (Leipzig 1882; rp. 1956) printing only those letters not included in the Gregoriana. The decrees which became part of the Gregoriana are edited in volume 2 of his Corpus iuris canonici (Leipzig 1881; rp. 1959). Friedberg's editorial principles are eccentric. A study of his text and apparatus reveals that sometimes he printed the text of 3 Comp. which Raymond of Pennafort excised in the foot-
When Augustinus collated the manuscripts he used for his edition of *Compilatio tertia*, he noted that four decretals were not in all of his manuscripts — he never completed a projected critical apparatus for the work so we do not know in how many or which manuscripts he found these decretals — and he placed these additions in an appendix with indications as to where he found them in the manuscripts. The editors of the Parisian edition of Augustinus' text decided, perhaps after having consulted manuscripts in local libraries, that the four decretals belonged rightfully under their respective titles, and they printed them without any indication that Augustinus had doubts whether they were a part of *Compilatio tertia*. The Luccan edition followed its Parisian predecessor. The edition of 1576 is rare, and Friedberg knew Augustinus' edition only from the Parisian text.

Friedberg's edition of the *Corpus iuris canonici* is hardly a model of scholarship, and his work on *Compilatio tertia* does not give lie to the generalization. Even though only one of Friedberg's manuscripts (Graz Univ. 374) contained the four decretals — in spite of what his footnotes to *Compilatio tertia* purport — Friedberg included the decretals in the main body of the collection because he thought that Graz Univ. 374 'in Italia XIV. demum saeculo scriptus, optimus tamen est, cum lectiones comp. II-IV saepissime cum registro consentiant'.

Further, he relied on the authority of Antonius Augustinus who, he thought, also placed these decretals in his text. Even though his apparatus to the Decretals of Gregory IX shows that he read Graz Univ. 374 carefully, he suppressed any evidence which disturbed his assumptions. For example, the Graz manuscript also contains six other decretals not in his other manuscripts or in Augustinus' edition, as well as the epilogue of Bernardus Compostellanus Antiquus' compilation, the *Collectio Romana*. Of this, however, there is no trace in Friedberg's notes.

Friedberg had the pieces of a fine puzzle, but he never seemed to have asked the obvious questions. Why were decretals added (or subtracted) from Innocent III's official collection? Why did the readings of Graz Univ. 374 correspond more closely to those in the papal registers than the other six manuscripts? Why did Raymond of Pennafort and Antonius Augustinus follow the readings found in the six manuscripts rather than the 'better' readings in Graz Univ. 374? The answer to these questions can be deduced from paleographical and literary evidence. Although a core of nine decretals and Bernard Compostellanus' epilogue notes, at other times in italics in the text. The same is true for most of the French additions discussed below.

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4 *Corpus iuris canonici* 2. xlvii. In 1895, A. Halban-Blumenstok, 'Die canonistischen Handschriften der kaiserlichen öffentlichen Bibliothek in St. Petersburg', *Deutsche Zeitschrift für Kirchenrecht* 5 (1895) 219-312, described the Leningrad MS of 3 Comp. and noted a number of the *extravagantes*. Friedberg was editor of the journal, but did not note that the Leningrad MS had some of the same additions as Graz 374.
were added to a number of manuscripts of *Compilatio tertia*, the Bolognese canonists did not gloss any of these additional decretals, and, with one exception (Graz Univ. 374), I have not found any Italian manuscript which contains the added material. The manuscripts in which these *extravagantes* occur were written by French scribes, and I think we may conclude that this expanded version of *Compilatio tertia* was probably used at Paris. I have examined almost fifty manuscripts which contain *Compilatio tertia*; of these sixteen exhibit French characteristics and will be referred to by the preceding letters.

D Douai Bibl. mun. 598  
F Frankfurt Stadtbibl. 28  
G Graz Univ. 374  
L Leningrad lat. F II uel. 1  
Lu Lyon Univ. 6  
Pa Paris B.N. lat. 3928  
Pb Paris B.N. lat. 3929  
Pc Paris B.N. lat. 3933  
Pd Paris B.N. n.a.l. 2127  
Pm Paris Bibl. Mazarine 1292  
R Reims Bibl. de la ville 691  
Ro Rouen Bibl. mun. 706  
S St. Omer Bibl. mun. 447  
Sa St. Omer Bibl. mun. 484  
Va Vat. lat. 1378  
Vb Vat. lat. 2509  
Vc Vat. lat. 2510 (sixteenth-century copy of Vat. lat. 1378)

The following manuscripts have only traces of the French recension.

H Hereford Cathed. Chap. P. 4. x  
N New Haven, Yale Univ. 423  
P Padua Ant. II. 35  
Pe Paris B.N. 14611

The most noticeable difference between the text of *Compilatio tertia* which Innocent III sent to Bologna and the French recension are the decretals which the anonymous redactor added. The number of these decretals varies from a high of sixteen found in Ro to D which has only five. In all I have found twenty-four decretals which have been added to the manuscripts listed above. The majority of the decretals were taken from Bernardus Compostellanus' *Collectio*  

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5 The manuscripts I have examined which do not contain any additional material are: Admont 22 and 55; — Bamberg Staatsbibl. Can. 19 and Can. 20; — Cordoba Bibl. del Cabildo 10; — Erlangen Univ. 349; — Florence Laur. S. Croce IV sin. 2; — Graz Univ. 106 and 138; — Karlsruhe Landesbibl. Aug. XL; — Kassel iur. 11; — Leipzig Univ. 983; — London Brit. Libr. (formerly BM) Royal 11 C. vii; — Melk 333 and 518; — Montecassino 46; — Munich Staatsbibl. lat. 3879; — Paris B.N. lat. 3930, 3931A, 3932, 14321, 15597, and n.a.l. 2191; — Vat lat. 1377, Borgh. 264 and Chis. E VII. 207; — Zwettl 30 and 34.
only three cannot be attributed to this collection: *Constitutis* which is in no other decretal collection or other known source, *Super quibusdam mandatum*, known only from the papal registers, but later incorporated into *Compilatio quarta*, and *Licet dilecti filii* which was taken from Alanus' collection.\(^6\) Add to this Bernardus' epilogue which is appended to almost every manuscript of the French recension which I have seen, and the *Collectio Romana* becomes the redactor's most important source.

In the list of decretals which follows, I have indicated in which manuscripts the decretal occurs, and where the decretal appears in the *Collectio Romana* and in *Compilatio tertia*. The title under which the decretal is placed is generally the same in both collections. I have also given a new edition of the decretal *Constitutis*. Although *Constitutis* was one of the four decretals which Augustinus and Friedberg knew and printed, both of their editions are based on manuscripts which garble the text to the point of incomprehensibility. *Constitutis* described a case in which a large number of litigants put forward a complicated series of allegations, but the legal point of the decretal was simple: a papally favored cleric should receive preference over all other candidates for a contested prebend. The textual problem which Augustinus and Friedberg encountered began very early in the manuscripts for only Paris B.N. lat. 3929 gives a proper reading at lines 14-16. I have noted decretals already in *Compilatio tertia* under a different title with an asterisk.

1. *Venerabili fratre*\(^*\), added between 3 Comp. 1.2.7 and 8, Bern. 1.4.11 = 3 Comp. 5.23.6 (X 5.40.22).
   MS: P
2. *Ilia cotidiana*, added between 3 Comp. 1.6.12 and 13, Bern. 1.8.13 = 4 Comp. 1.3.5 (X 1.6.39).
   MSS: D, G, H, Ro, Va, Vc
3. *Ex litteris*, added after 3 Comp. 1.9.7, Bern. 1.10.7, Po. 2347.
   MS: Vb
4. *Accedens ad presentiam*\(^*\), added before 3 Comp. 1.13.1, Bern. 1.15.1 = 3 Comp. 5.17.5 (X 5.34.14).
   MSS: L, Lu, Ro, Sa, Vb (after 3 Comp. 1.21.1 in Lu)
5. *Significasti nobis*, added after 3 Comp. 1.16.2, Bern. 1.17.1 = 4 Comp. 1.11.2 (X 1.23.8).
   MSS: L, Lu, Ro, S


6. *Diligenter attendens tua*, added between 3 Comp. 1.18.3 and 4, Bern. 1.21.4, Po. —. The decretal is known only from Bernardus and is printed by Singer, p. 47.

MS: Ro

7. *Constitutus in nostra*, added between 3 Comp. 1.18.4 and 5, Bern. 1.21.6 = 4 Comp. 1.12.4 (X —).

MSS: Lu, Ro, S, Vb

8. *Cum oportet episcopum,* added between 3 Comp. 1.20.4 and 5, Bern. 1.23.11 = 3 Comp. 5.1.6 (X 5.1.19).

MS: Vb

9. *Si diligentii,* added between 3 Comp. 1.21.3 and 4, Bern. 1.25.5 = 3 Comp. 2.17.7 (X 2.26.17). The decretal has the same form as the augmented version of *Si diligentii* (3 Comp. 2.17.7) discussed below (no. 4).

MSS: F, L, Pm, R, S, Vb

10. *Licet quod legalis*, added after 3 Comp. 2.2.5, Bern. 2.2.6 = 4 Comp. 2.2.4 (X —). Singer missed this letter in 4 Comp.; see Kuttner, 'Bernardus Compostellanus' 330.

MS: Ro (the decretal is truncated in Ro)

11. *Accedens et infra. Cum igitur*, added between 3 Comp. 2.3.2 (*Accedens*) and 3, Bern. 2.3.4. Decretal has the text of Bernardus' version of *Accedens* not Petrus Beneventanus', see X 2.6.2.

MS: Ro

12. *Cum boni iudicis*, added between 3 Comp. 2.12.8 and 9, Bern. 2.11.10 Po. 2115.

MSS: D, F, G, Lu, Pm, R, Ro, Sa, Va, Vb, Vc

13. *Cum secundum*, added between 3 Comp. 3.5.3 and 4 (5), Bern. 3.7.4., Po. 420. Text is printed in Augustinus and Friedberg, but is not a part of the Bolognese edition of 3 Comp. Friedberg's numbering of the decretales under the title *de prebendis* should be changed accordingly.

MSS: F, G, L, Lu, Pm, Ro, S, Va, Vc

14. *Constitutis*, added between 3 Comp. 3.5.8 (9) and 9 (11), Po. 3871. The decretal was printed by Augustinus and Friedberg, but is not known from any other source except as an addition to 3 Comp. in the French recension.

MSS: D, F, G, L, Lu, Pb, Pd, R, Ro, S, Sa, Va, Vc. I have used Pb as my main text and have collated all other manuscripts with it. Readings from Augustinus' edition are noted with A. Except for proper names, I have eliminated all readings which are not supported by three manuscripts.

Vac designates Va and its sixteenth-century copy Vc.

propositus quod cum in ecclesia Mediolanensi quedam prebenda uacaret, et ipse non solum in eadem ecclesia intitulatus, uerum etiam receptus in canonicum et in fratrem fuisset, eadem prebenda erat ei merito conferenda, et infra. Contrarium predictus magister iam dictorum clericorum O. S. G. prostrator proposuit, quod cum ipsi tres a fratribus supradicte ecclesie recepti fuerint in canonicos et in fratres, uni eorum debeat prebenda preminata conferri. Alcherius tamen petiiit ex aduero ut sibi eiusdem ecclesie titulato prebenda ipsa de gratia conferretur, presertim cum et aliorum receptio, si qua fuerit, contra canones fuerit attemptata. \cite{R} uero B. supradicte procurator proposuit quod hii v. in ecclesia Mediolanensi fuerant tantummodo intitulati unde ipse qui erat similiter intitulatus, ad obtinendum ipsam prebenda erat aliis merito preferendus, qui a nobis meruerat in subdiaconum ordinari. Nos autem hiis et aliis quod coram ipso cardinali predicto fuere proposita, plenius intellectis, nolentes quod in iure suo predictorum clericrorum aliquis legeretur, venerabili fratri nostro Papienio episcopo dedimus in mandatis, ut vocatis, quos uideret esse vocandos, inquireret plenius ueritatem, et si receptionem eorum qui se proponebant fuerit talem per quam eis ad obtinendum predictam prebendum esset ius aliquod acquisitum, ipsam uni eorum potioribus iuuaretur meritis assignaret.

Quod si nulli illorum in predictam prebenda inueniret ius aliquod acquisitum, prefato subdiacono nostro prebendam concederet memoratam. Qui postmodum partibus conuocatis ante suam presentiam et auditis que coram eo fuere proposita talem sententiam promulgavit, quod in supradicta prebenda nulli predictorum ius fuerat acquisitum, et sic eandem prebendam supradicto subdiacono auctoritate apostolica concessit. Postmodum autem iterato ad nostram presentiam accedentes super predictam sententiam iam dicti episcopi coram nobis aliquamdiu litigauerunt. Nos autem auditis diligentem quod fuere proposita, uenerabilis fratis nostri pronuntiauimus sententiam ipsam rationabiliter esse latam, eamque ratam habentes apostolica auctoritate confirmauimus.

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\textsuperscript{7} in eadem ecclesia non solum \textit{tr.} AGLLuPdSVac \textsuperscript{9} et infra Pb: \textit{om. cell.}
Since the French recension contains no material which is post-1210, the decretal probably dates from 1198-1210. In this period, there were three different cardinal deacons of S. Maria de Portico, all having the initial G., so the reference to the judge-delegate is not helpful for narrowing the date of the decretal.\(^8\) The two previous editions and all the manuscripts except Pb have serious textual omissions at lines 17-19. Friedberg respected Augustinus’ talents for editing texts so much that even though the Graz manuscript had a text which could have helped him to solve the problem, he followed Augustinus and relegated G’s reading to a footnote. It is notable that within the French recension, F, L, Lu and S show the same close affinity that they do in their apparatus of glosses.\(^9\)

15. *Licet dilecti filii,* added between 3 Comp. 3.7.3 and 4, Alanus (W), appendix, c. 55 (A 1.9.3) = 4 Comp. 1.6.1 (X 1.10.3).  
MSS: F, G, L, Lu, R, Ro, S, Sa, Va, Vc

16. *Ex parte tua,* added between 3 Comp. 3.23.3 and 4 (5), Bern. 3.24.5, Po. 2389. Text is printed in Friedberg.  
MSS: F, G, L, Lu, N, Ro, S, Sa, Va, Vb, Vc

17. *Exposuisti,* added between 3 Comp. 3.23.3 and 4 (5).  
Bern. 3.24.3, Po. — (PL 216. 1208).  
MSS: H, Pe

18. *Licet et infra. Quia igitur,* added after 3 Comp. 3.26.5, Bern. 3.27.6, Po. 445.  
MS: Vb

19. *Veniens ad presentiam,* added between 3 Comp. 3.33.4 and 5, Bern. 3.32.5, Po. 2933.  
MSS: F, G, L, Ro, Sa, Va, Vb, Vc

20. *Veniens ad apostolicam sedem,* added before 3 Comp. 4.13.1 (2), Bern. 4.13.2, Po. 1752. Text is printed in Friedberg.  
MSS: F, G, L, Ro, Sa, Va, Vb, Vc

21. *Tua nos duxit,* Bern. 4.14.6 = 3 Comp. 2.15.10 (X 2.24.24) The decretal is either added in the place of Elsi necesse, 3 Comp. 4.15.1, with Elsi necesse then moved behind 3 Comp. 4.15.3 (F, G, L, Lu, Ro, Va, Vc) or before Elsi necesse (Sa, Vb). R has Tua nos in place of Elsi necesse, but adds Elsi necesse to the margin.  
MSS: F, G, L, Lu, R, Ro, Sa, Va, Vb, Vc

22. *Cum dilecti filii,* added between 3 Comp. 5.17.5 and 6, Bern. 5.18.6 = 3 Comp. 5.1.7 (X 5.2.2). Although the decretal begins Cum dilecti filii in the Collectio Romana and in 3 Comp. 5.1.7, all the French manuscripts give Cum dilecti filii.  
MSS: D, F, G, L, Lu, R, Ro, S, Va, Vb, Vc

23. *Quante presumptionis,* added before 3 Comp. 5.21.1, Bern. 5.22.2 = 4 Comp. 5.15.3 (X 5.39.47). In Sa the decretal is found between 3 Comp. 5.20.1 and 2.  
MSS: D, F, G, L, Lu, R, Ro, S, Vb, Vc

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24. *Super quibusdam*, added after 3 Comp. 5.23.10, not in any known collection, but in 4 Comp. 5.16.1 (X 5.40.26). May be just an appendix in Pe and not an addition to the text of the compilation.

MS: Pe

25. Epilogue of Bernardus Compostellanus to his *Collectio Romana*; text is printed by Singer, p. 114-115. R is the only complete manuscript of the French recension to which the epilogue is not attached.

MSS: D, F, G, L, Lu, Ro, S, Sa (added to index), Vb

Since the Bolognese lawyers did not cite or gloss these decretals, the four decretals which Friedberg included in his text ought to be dropped from the Bolognese edition, and the chapters within the titles renumbered (no. 13, 14, 16, and 20). It is noteworthy that six of these decretals were incorporated into 4 Comp. (no. 2, 7, 10, 15, 23, 24), while seven were duplicate decretals in 3 Comp. (marked with * above) (no. 1, 4, 8, 9, 11, 21, 22). Petrus Beneventanus had put these seven in different titles, but the French redactor restored them to their respective titles in the *Collectio Romana* when he added them to *Compilatio tertia*.

The additional decretals are the most obvious features of the French recension, but the redactor reworked the texts of other decretals which were also in the *Collectio Romana* and eliminated the textual changes which Petrus Beneventanus had made in the Bolognese version of *Compilatio tertia*. In the *Collectio Romana*, Bernardus Compostellanus had adhered to the wording which he found in the papal registers, but Petrus Beneventanus had often changed words or phrases to make the texts more elegant legally or more lucid than they were in the original. Further, Petrus often shaped his decretals differently from the form which Bernardus gave them in his collection. Although the redactor never excised any material from the Bolognese recension, he did add sections to decretals where the *Collectio Romana* presented them in a longer form. Such sections when omitted in official compilations are called *partes decisa* by modern historians; they were referred to as *intercisiones* by medieval lawyers. The *intercisiones* which

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10 I am presently studying Petrus Beneventanus’ methodology and will present a paper on the subject at the Fifth International Congress of Medieval Canon Law at Salamanca, Spain.

11 The canonists also used the term ‘clausula’ to describe the sections of a decretal letter. Vincentius Hispanus referred to *intercisiones* in his gloss to *Rex pacificus s.v. aliam*, Vat. lat. 6769, fol. 3r (Paris B.N. lat. 3967 and 3968, fol. 1r): ‘Arg. quod nulla decretalis uacans extra compilationem in qua sit intercisiu vel in qua continetur “etc. et infra” nisi tota exibeatur debet admitti, quia ex eo quod hic non continetur cum sit intercisa, nisi tota exibeatur magis est dubia, ff. de eden. l.i § Edere. infra de fide instrum. Pastoralis. Exibenda est enim integra ut eius substantia uideatur, xevi. di. Bene (MS Vnde) quidem. ff. de transact. De hiis. Considerari tamen debet in quo loco sit intercisiu, arg. infra de fide instrum. Ex litteris’. An anonymous canonist wrote an addition at 4 Comp. 5.3.1 to Johannes Teutonicus’ gloss s.v. *unitis prebende* in Admont 22, fol. 263v, and cited an *intercisiu* which was only in Alanus’ collection. ‘Et uidetur expressum extra. iii. de rescript. Constitutus, sed non est ibi inter-
I have found in the French recension follow, and since Friedberg printed them from G in his apparatus or text, I shall refer to Friedberg's footnotes to localize the texts.12

1. 'ita ut procurator — confirmandam', 3 Comp. 1.6.10 (X 1.6.25) = Bern. 1.8.10, at note 12.
   MSS: D, F, G, H, L, Pe, Pm, R, Ro, S, Sa, Va, Vb, Vc

2. 'que in medio sedis — exempta', 3 Comp. 1.21.4 (X 1.33.8) = Bern. 1.25.6, at note 3.
   MSS: D, F, G, L, Lu, R, Ro, S, Sa, Va, Vb, Vc

3. 'Cum itaque iudices — presentarent' and 'Quia vero memoratus — formaretur', added to 3 Comp. 1.25.2 (X 1.43.5) = Bern. 1.9.1, at notes 15 and 22. F. Kempf noted that the section 'Quia vero memoratus is marked in the register.'13

4. 'Penses animo — subsequatur' and 'Verum quia tibi — potestate', added to 3 Comp. 2.17.7 (X 2.26.17) = Bern. 1.25.5, at notes 4 and 41. This decretal was added to the French recension of Compilatio tertia under the title De maioritate et obedientia (see no. 9 above).

5. 'Cum igitur cardinalis predictus que coram eo proposita sunt vobis fideliter retulisset et infra'. 3 Comp. 2.19.3 (X 2.28.45) = Bern. 2.18.5, at note 13.
   MSS: F, G, H, L, Lu, R (ex marg.), Ro, S, Sa, Va, Vb, Vc

6. 'procedebat gladius bis acutus — auctorem', 3 Comp. 3.12.1 (X. 3.11.3) = Bern. 3.14.2, at note 3.
   MSS: D, F, G, L, Lu, R, Ro, S, Sa, Va, Vb, Vc

7. 'Quocirca discretioni — observari', 3 Comp. 3.21.1 (X 3.28.10) = Bern. 3.22.2, at note 25.

8. 'Richardum Ianuansem civem ad persolvendum VIII libras Ianuensis monete Hugoni pauperi latori presentium', 3 Comp. 4.15.3 (X 4.20.7) = Bern. 4.15.3, at note 3. Here the French redactor did not add to the text, but changed the wording so that it conformed to the Collectio Romana and the papal register.
   MSS: D, F, G, L, Lu, R, Ro, Sa, Va, Vb, Vc

In at least one decretal, the redactor added a section which is in the papal registers, but not in any known collection. Petrus Beneventanus had divided Tuis questionibus into two parts and placed them under different titles (3 Comp. 2.12.12 and 3.5.11), but left out the last section of the decretal as it had been enregistered.

cisio illa, sed est in Alano, de prebend. Constitutus' (Alanus 3.4.7, in both recensions). The intercisio is 'Interim — concedendo'. The verbal form intercisa appears in the twelfth century, see J. F. von Schulte, introduction to Paucapalea, Summa über das Decretum Gratiani (Giessen 1890) xix. Prof. Kuttner brought my attention to this passage.

12 Because G had these additions, Friedberg printed them either in his text or apparatus.

The redactor joined the discarded section with 3 Comp. 2.12.12 (X 2.20.39); text is printed in PL 215.1372.

   MSS: D, F, G, H, L, Lu, Pe, Pm, R, Ro, S, Sa, Va, Vb, Vc

More puzzling are a few passages which the redactor added to decretals, but for which we have no source. Although the decretal in which the addition occurs is in the papal register, the section is not in the enregistered version or in any other collection. Although we might suspect such passages, the sections seem to be genuine stylistically. There are two significant examples of this type of change in the first book of *Compilatio tertia*. The first is in a letter sent to Corbie in May, 1208. The date is in Innocent III's eleventh pontifical year and therefore not included in the *Collectio Romana* whose last letter is from the tenth year.\(^\text{14}\)

10. 3 Comp. 1.3.6 (X 1.4.7), added after "consuetudinem allegarum" (note 7):
   "dicentes quod pro electionis confirmatione vel obtinenda etiam benedictione vel licentia de uno ad aliud monasterium transeundi summus pontifex vel eius legati non erant aliquatenus requirendi, cum in illis partibus consuetudo talis haec tenuis sit servata'.
   MSS: D, F, G, H, L, Lu, N, P, Pe, Pm, R, Ro, S, Sa, Vb

The second *intercisio* occurred in a letter sent to Estergom, Hungary in December, 1204 and included in the *Collectio Romana*. The *intercisio* however is not in the *Collectio Romana*, nor in the registers nor any other canonical collection. Although the addition could be seen as an explanatory note to the text which was later incorporated into the decretal (evidence of DNS), the compiler may have had an unknown version of the letter before him. The text which Friedberg gave in his footnotes is not supported by the manuscripts, and I give the common reading.

11. 3 Comp. 1.4.5 (X 1.5.5) = Bern. 1.6.5, added after "per postulationem huiusmodi", (note 4):
   "quam fecerat capitulum Strigon. de archiepiscopo Coloc. non consentientibus suffraganeis Strigon. ecclesiae quidem in electione vendicabant'.
   MSS: D, N, S (DNS: *intercisio ex marg. addita est*) F, G, L, Lu, P, Pe, Ro, S, Sa, Vb

Another category of textual changes which the redactor made were similar to those which Raymond of Pennafort made in many of the decretals which he incorporated into the *Gregoriana*: an addition of a few words which served to clarify a portion of the decretal's text. I have found no other source for these changes other than the redactor's hand.

\(^{14}\) Kuttner, 'Bernardus Compostellanus' 327.
12. 3 Comp. 1.2.3 (X 1.3.14) = Bern. 1.3.14, added after ‘iurisdictio revo-
cetur’. (note 15):
‘per generales litteras attributa’.
MSS: D, F, G, L, Lu, R, Ro, S, Va, Vb, Vc

13. 3 Comp. 1.4.3 (X 1.5.3) = Bern. 1.6.3, at note 9:
congruentem H, idoneam et congruentem PLLuRoSVa-
VbVc, idoneam et competentem DGR

This example is particularly interesting because it shows the hand of not one
but probably several redactors. The word ‘congruentem’ was a problem for
the canonists in this context because the decretal referred to a ‘persona con-
gruens’ who should be elected by the canons of Ravenna. The adjective ‘con-
gruens’ perplexed the canonists for it was an unusual word to describe a legally
acceptable candidate who was usually referred to as ‘competens’ or ‘idoneus’,
and as the various readings in the manuscripts show, the redactor(s) made several
emendations. Like text no. 16 below (vilia) the textual change may have begun
as a gloss.

14. 3 Comp. 3.8.9 (X 3.8.12), added after ‘propter negligentiam vestram’
(note 8):
‘Iuxta auctoritatem Lateranensis concilii’.
MSS: F, G, L, Lu, Ro, S, Sa, Va, Vb, Vc
The reference is to c. 8 of the Third Lateran Council [1 Comp. 3.8.2
(X 3.8.2)].

15. 3 Comp. 5.2.6 (X 5.3.34), added after ‘pure consentiant’ (at note 16,
misplaced in Friedberg):
‘absque conditione vel aliqua pactione’
MSS: D, F, G, L, Lu, R, Ro, Sa, Va, Vb, Vc

Finally, there are additions which are not as well represented in the manu-
scripts as the above texts and probably cannot be considered a part of the French
redaction. These additions are generally similar to glosses which were at one
time in the margin, but later incorporated into the text. Vilia and virtutes in
text 16 occurs as an interlinear gloss in Ro, but is a marginal gloss in S. In both
manuscripts, though, the gloss is in the same hand as the decretal’s text.

16. 3 Comp. 1.21.2 (X 1.33.6), two words added after ‘evellas’ and ‘plantes’
(note 47):
‘ut evellas, vitia, et dissipes, aedificesset plantes, virtutes’.
MSS: D, G, Ro, Sa, Va, Vc

17. 3 Comp. 3.26.2 (X 3.34.7) = Bern. 3.27.1, added after ‘Reddite quae
sunt Dei Deo’ (note 14):
‘que Caesaris Caesaris’.
MS: G

To sum up. Shortly after Petrus Beneventanus completed his compilation of
Compilatio tertia and Pope Innocent III sent the collection on to the school at
Bologna, an anonymous French canonist reworked the text completely. He
collated the decretales with those in Bernardus Compostellanus’ Collectio Romana
and brought the texts back into congruence with both Bernard and the papal registers. The redactor thought highly of the Collectio Romana, and Bernardus' collection was the most important source of the changes which were made in the French recension. The redactor also had other sources which are no longer known to us: most likely other collections or the originals of papal decretals. The revision was not a haphazard piece of patchwork, but a thoroughly thought-out redaction.

The date of the French recension is impossible to pinpoint. In all the added material which can be dated, there is no text later than 1209 — except for Super quibusdam (no. 24 above, 1210) which may be an appendix. The manuscripts of the French recension have apparatus from the early glossators who commented on the collection (Vincentius, before 1215, D, Pm, R, Ro, Sa, Va and Johannes Teutonicus, ca. 1217-18, F, L, Lu, S) as well as Tancred's Ordinary Gloss which is dated ca. 1220 (G, Pa, Vb). Paleographically, the manuscripts all seem to date from the period ca. 1215 to 1230. Hence the evidence indicates that the French recension followed fairly closely on the heels of the official collection and had a continuous popularity until the compilation itself was superseded in 1234.

The French recension of Compilatio tertia forces us to reevaluate our assumptions about what an official collection was. Historians have hitherto assumed — mainly because there was little evidence to the contrary — that the canonists accepted Innocent's collection much as modern lawyers would receive a new legal code or as the Roman lawyers received Justinian's codification. Although Stephan Kuttner has observed that the decretal collections of Innocent III, Honorius III and Gregory IX were distinctly different from Justinian's codification both in content and in intent as manifested in their respective promulgatory letters,15 some historians have continued to emphasize the similarities of the Roman and canonical codifications.16 The French redactor did not treat Innocent's collection as an inviolable text, and his handling of texts is far removed from modern ideas about legislative codes. The French redactor's shaping of Compilatio tertia accentuates the differences between medieval and modern notions of what law is and how it is used. Law is preeminently a practical discipline, and the decretal collections were not primarily collections of papal legislative decrees, but rather, for the most part, reports of cases heard in ecclesiastical courts or responses given to consultations. Thus

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16 W. Ullmann, Law and politics in the Middle Ages (Ithaca 1975) 142-3. 'The Liber Extra[s]… main contents were decretals… which were endowed with legal force — exactly the same procedure adopted by Justinian'. Leleivre, L'Age classique 240-1. 'On saisit ainsi l'influence qu'a pu avoir le Code de Justinien, dont l'œuvre est ici imitée'.
when the French redactor changed the form of a decretal by adding an *inlercisio* which Petrus Beneventanus had excised, he did not infringe upon papal prerogatives, but only added more detail to the case which the decretal described. By adding decretales to *Compilatio tertia*, he offered another example — perhaps with a slightly different fact situation — which illustrated the working of ecclesiastical law. Each genuine papal decretal had an authority of its own even if it was not included in any collection, official or otherwise. The French recension proves that the canonists did not think the collection itself, or Innocent III’s sanction of it, added authority to the material within the collection — a view of codification which both Tribonian and his modern counterpart would find quite baffling.

There are some indications in the writings of the canonists that even after the publication of the *Gregoriana* this concept of codification did not change dramatically. Johannes Teutonicus stated in his apparatus to *Compilatio tertia* that Innocent’s collection did not preclude the use of other decretal letters,¹⁷ and Tancred agreed.¹⁸ The canonists also seem to have tampered with Honorius III’s decretal collection, but not on the same scale as the French recension. There are four decretals added to a number of manuscripts of *Compilatio quinta* which are not glossed by the glossators, Zoen Tencararius and Jacobus de Albenga, and for that reason would not have been part of the original compilation.¹⁹ Finally, when Pope Gregory IX sent his decretal collection to the schools with the promulgatory letter, *Rex pacificus*, he admonished the canonists not to use any other collection in the schools and courts and forebade the compilation of another collection without the special permission of the Apostolic See. Again the canonists asked whether they could cite decretals in earlier compilations. Neither Innocent III nor Honorius III had precluded using other collections, but *Rex pacificus* might be interpreted as prohibiting the use of post-1234 decretals not included in the collection. Post-1234 decretals presented no legal problem and could be cited freely. Vincentius Hispanus and Goffredus Tranensis²⁰ both argued that the *Compilationes antiquae* could be used. Vincentius said that such decretals were still valid not because they were part of any

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¹⁷ Text is printed in ‘Manuscripts of Johannes Teutonicus’ 22-3.
¹⁸ Tancred to *Devotioni vestre* s.v. *uti possitis*, Vat. lat. 1377, fol. 148r: ‘Set si extra compilationes istas inueniatur decretalis et allegetur, numquid secundum eam iudicandum erit? Respondeo si constat illam esse decretalem per bullam siue quia publice insinuata est, uel etiam si consonat iuri communi, tunc secundum eam iudicandum erit. Alioquin consulendus est dominus papa super illa, ut infra de fide instrum. Pastoralis. t.’
¹⁹ For a discussion of 5 Comp. see appendix I to this paper.
²⁰ Goffredus to *Rex pacificus*, s.v. *prohibemus*, Vienna lat. 2197, fol. 1r: ‘Non ergo prohibetur allegari ueterern compilationem, set prohibetur ne alia fiat sine speciali licentia apostolice sedis. gof.’
collection, but because of their ‘ratio’ and content.\textsuperscript{21} In another gloss, he noted that \textit{Rex pacificus} did not abrogate the Fourth Lateran constitutions, for conciliar canons were not mentioned, and the Lateran canons could be found in the papal registers. The \textit{Compilationes antiquae} of Innocent and Honorius were not changed as far as the fiction of law, which he defined as meaning that the compilations were still valid in the form which their decretes now had in the \textit{Gregoriana} (\textit{finguntur enim sic fuisse scripte decretales ab initio sicut sunt hic}), but \textit{decretales extravagantes} could be cited even though they were not included in the \textit{Gregoriana}.\textsuperscript{22}

Some later canonists did not take such a latitudinarian view of \textit{Rex pacificus} and reflect a stricter interpretation of what the codification meant. Bernardus Parmensis stated that anyone who read or used an earlier collection should be excommunicated.\textsuperscript{23} Hostiensis concurred, but observed that an old decretal could be read to show the historical development of a problem or the ‘ratio’ of the old law.\textsuperscript{24} Both Bernardus and Hostiensis thought that Gregory IX’s intention was exclusive and that the codification gave decretes a special validity and authority which excluded letters did not possess, even though they may be consonant with the \textit{ius commune}. In their view, not only did the \textit{Gregoriana...}
supersede the *Compilationes antiquae*, but also excluded the compilations from the courts and schools.

Finally, one must conclude that the schools had even more influence on the shape of canon law than many historians have thought. The canonists reworked their texts — the *paleae* added to Gratian's *Decretum* may be the first sign of their independence — and even changed official collections to suit their needs. The canonists in France adapted and supplemented *Compilatio tertia* while the evidence shows that changes were also made in *Compilatio quinta*. Even after Raymond of Pennafort compiled the *Gregoriana*, the canonists interpolated decretales into the text (see below, Appendix II), but a detailed investigation of this activity remains to be done. But whatever the results of such a study, the ultimate conclusion of this essay is that a modern critical edition of *Compilatio tertia* is needed; Friedberg is just not adequate.

**APPENDIX I**

*Extravagantes in Compilatio quinta*

In a recent study, Leonard Boyle argues convincingly that markings (X's) which he noted in the margins of Pope Honorius III's registers were made by Tancred to indicate which decretales he wished to consider for his new compilation. In passing, he also pointed out that the markings may be a guide for deciding whether four decretales which Friedberg and earlier editors of *Compilatio quinta* had eliminated from the text should be restored.1 With both Professor Fransen's and Professor Boyle's help, I have tabulated the four decretales in ten manuscripts of *Compilatio quinta*:

A Admont 22  
C Cordoba Bibl. del Cabildo 10  
G Graz Univ. 374  
L London B. M. Royal 11 C. vii  
Lu Lucerne Zentralbibl. P misc. 2  
P Paris B.N. lat. 3933  
Pa Paris B.N. lat. 15997  
Pb Paris B.N. n.a.l. 2127  
T Tours Bibl. mun. 565  
V Vienna 2077

1 Professor Boyle kindly allowed me to read the typescript of an article which will appear in a Festschrift for G. Battelli. P. Rabikauskas, 'Auditor litterarum contradictarum et commissions de juges délégués sous le pontificat d'Honorius III', *BEC* 132 (1974) 213-44 discusses the X's in the registers and comes to conclusions which are similar to Professor Boyle's.
1. *Cum olim — indulgendum*, Po. 5405, added between 5 Comp. 2.4.1 and 2. MSS: G, Lu, P, Pb

Innocentius Cironius printed *Cum olim* in his edition of *Compilatio quinta* (Tolosae 1645) 78-81. Cironius used three manuscripts from Albi for his edition, but he found *Cum olim* in only one of them. J. Riegger did not find the decretal in V and consequently eliminated the text from his revision of Cironius' edition (Vienna 1761). Friedberg printed the text in a footnote.


3. *Sapientia — habelis*, Pressutti 5233, both decretals added after 5 Comp. 3.20.1.

   MSS: G, Lu, P, Pa, Pb, V

   Boyle discusses these decretals in V and prints the text of the letters.

4. *Exspectavimus — specialem*, Pressutti 2268, added after 5 Comp. 3.20.4.

   MSS: G, L, Lu, P, Pb, T, V

Friedberg printed the decretal in a footnote. *Exspectavimus* is added as an appendix to *Compilatio quarta* in Bamberg Can. 19 and Vienna 2183 and as an appendix to *Compilatio quinta* in C.²

As with the decretals added to the French recension of *Compilatio tertia*, the Bolognese glossators did not comment on the additions to *Compilatio quinta*. The lawyers did, although rarely, cite them in their commentaries, and their method of citation indicates that they did not consider the decretals as part of Tancred's collection. The most interesting example is *Exspectavimus*. The section of the decretal *Exspectavimus* which was added to some manuscripts of *Compilatio quinta* (seven out of the ten which I have seen) contained an admonition of Honorius III that pluralism was not to be tolerated because of the general prohibition of the Fourth Lateran Council unless a special papal dispensation had been obtained. Whether clerics needed papal or only episcopal dispensation to hold several benefices was a complicated issue, and the canonists displayed some ingenuity when they discussed the problem. Significantly, most of the canonists thought that a strict prohibition of episcopal dispensations for plural benefices was ill-advised and favored a less rigorous statement than that in *Exspectavimus*.³ The decretal itself was well known even before *Compilatio quinta*. Raymond of Pennafort cited the decretal as an *extravagans* of Honorius III, and an anonymous canonist referred to it as a *constitutio Honorii* in an addition to the Ordinary Gloss of Gratian's *Decretum*.⁴ When he made his selection of decretals for the new collection, Tancred probably left the decretal out purposely, for we know from his glosses that his opinion was not that of Honorius in *Exspectavi-

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⁴ Texts in Kuttner, ‘Entstehungsgeschichte’ 431 and Pennington, ‘Canonists and pluralism’ 42.
Finally, when Zoen discussed the problem of pluralism in his apparatus to *Compilatio quinta*, he referred to *Exspectavimus* as ‘extra titulos’, a clear indication that he did not think the decretal was a part of Tancred’s compilation. I have found only one reference to *Exspectavimus* cited as a part of *Compilatio quinta* in the literary tradition, while *Sapientia* was cited in the course a work which was not a product of the schools. The most persuasive evidence that the four decretals were not part of *Compilatio quinta* is that none of them was glossed. In sum, decretals were also added to *Compilatio quinta*, and in at least one of the cases, *Exspecavimus*, the addition was the result of a debate which can be traced in the writings of the glossators.

**APPENDIX II**

*Extravagantes in the Gregoriana*

It has been known for some time that decretals of Pope Gregory IX were added to some manuscripts of the *Gregoriana* (*Liber extra*). In his edition of the Decretals, I. H. Böhmer noticed that two decretals which were later incorporated into Boniface VIII’s Sext were added to one of his manuscripts from Berlin (*Ecclesia quae VI 1.21.1* and *Mediators VI 2.20.1*), although Friedberg eliminated any mention in his apparatus of such decretals which he may have discovered in manuscripts he used. P.-J. Kessler devoted a part of his article on the *Novellae* of Innocent IV to all of the thirteenth-century *extravagantes* — a large number of Gregory IX’s decretals among them — which he had found in the *Gregoriana* and in the *Novellae*, but he did not always clearly identify them or investigate their origins.

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5 ‘Canonists and pluralism’ 43.
6 Zoen to 5 Comp. 3.4.3 (X 3.5.33) s.v. *inconcusse*, Tours Bibl. mun. 565, fol. 24v: ‘Simile supra de uita et honest. cler. Si diligent. lib. eodem et extra tit. Expectavimus’.
7 In an additional gloss to 4 Comp. 3.2.4 (X 3.5.28) in Graz Univ. 106, fol. 257r, an unknown lawyer added: ‘Hee glossa hodle non habet locum per id quod habes extra. v. de relig. dom. c. ult. et extra. v. de prebend. Quesiuisti’. The ultimate chapter to which the writer referred must be *Exspectavimus*. Two canonists cite *Exspectavimus* under the title *de relig. domibus* (here and in a text printed in ‘Canonists and pluralism’ 42) in 5 Comp. 5 Comp. did not have a title *de relig. domibus*, and *Exspectavimus* was inserted into the almost equivalent title, *de statu monachorum* (all the MSS I have seen have *de statu monachorum*). The section of the decretal in 5 Comp. has nothing to do with monks. This raises two questions I cannot answer: Why was *Exspectavimus* not added to an appropriate title (e.g. *de prebendis*) and why do these two glosses cite a title which does not exist in 5 Comp.? The text which cited *Sapienlia* is printed by B. Griesser, ‘Einer juridische Instruktion über das Vorgehen bei einer Klosterreform in päpstlichen Auftrag’, ZRG Kan. Abt. 39 (1953) 434-42.
8 ed. (Halle and Magdeburg 1747) col. 209 and 315.
One of the most ubiquitous decretals, *Non solum* (VI 3.14.2), is a case in point. Kessler found this decretal in thirty-eight different manuscripts, but the decretal was attributed to Gregory IX in some manuscripts, to Innocent IV in others, while the *Editio Romana* of the Sext ascribed it to Pope Alexander IV. Actually, the decretal was first issued by Gregory IX in 1236 and must have been inserted into some manuscripts of the *Gregoriana* a short time later. In 1244, Innocent IV repromulgated the decretal, and the schools soon began to include Innocent's version of *Non solum* — which was only slightly different from the wording of Gregory's decretal — in both the *Gregoriana* and the *Novellae*. There was also a period of transition in which Gregory's letter was attributed to Innocent (e.g. Vat. lat. 9868, fol. 95v and Cambridge, Harvard Univ. Law School 71, fol. 8r-v). One may conclude on the basis of the information which Böhmer and Kessler present — although detailed manuscript studies are lacking — that in the period between 1234 and 1245 (the date of Innocent IV's first collection of *Novellae*), the schools sometimes added decretals to Raymond of Pennafort's collection. Subsequently, when Innocent IV ordered that his decretals be 'inserted under their proper titles', he was not making an innovation; although he is the first pope to order that decretals be added to the *Gregoriana*, he may have been influenced by usage in the schools.

There is literary evidence for the schools' influence as well. In his apparatus to *Pastoralis*, Hostiensis cited four decretals of Gregory IX which he called *extravagantes Gregorii* and said that they were to be found in some books. Two of these decretals, he noted, were in accord with *ius commune* (*Ipso iure* VI 1.3.1 and *Mediatores* VI 2.10.1), but two others (*Nullum* — and *Ecclesia* VI 1.21.1) dealt with controversial matters, and a judge should not render a judgment according to their provisions. Rather, he should consult the pope. Hostiensis commented on two of these decretals (*Nullum* and *Mediatores*) in his *Com-

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10 Innocent IV's version of *Non solum* is printed by Friedberg. Gregory IX's original version can be found conveniently in the *Bullarium Franciscanum* 1.197-8 (Auvray 3172 and 3173, 4 June 1236).

mentary, but wrote that the decretals were to be found in some books but not in others.\textsuperscript{12} Kessler has found much evidence that these \textit{extravagantes} were both cited and glossed.\textsuperscript{13}

These \textit{extravagantes} still have to be studied thoroughly, but the broad outline of the schools’ use of them is fairly clear. Although the French recension of \textit{Compilatio tertia} did not gain acceptance in the Italian schools, the canonists used the device of the \textit{decretalis extravagans} to update or expand both \textit{Compilatio quinta} and the \textit{Gregoriana}. Innocent followed this practice explicitly when he issued his first two decretal collections, although he seems to have conceived of his final collection as an independent work.\textsuperscript{14} Finally, when the Sext was compiled at the end of the century, many of these \textit{extravagantes} were made a part of the official \textit{Corpus iuris canonici}.

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\textit{Kenneth Pennington}

\textsuperscript{12} \textit{Commentaria} to \textit{Nullum}: ‘Hoc est quoddam extravagans domini Gregorii Pape quod aliqui libri habent in loco authentici, aliqui non’ [vol. 1, fol. 103r]. To \textit{Mediatores}: ‘Hoc est quoddam extravagans Gregorianum quod quidam libri habent, quidam non’ [vol. 1, fol. 107v].


\textsuperscript{14} Kessler, ‘Untersuchungen’ 31 (1942) 211-2, argues that Innocent IV implied in his letter \textit{Ad explicandos nodos} that his last collection was not to be inserted into the \textit{Gregoriana}; the manuscripts show that the schools still inserted the third collection of the \textit{Novellae} into the \textit{Gregoriana} under their proper titles, although Kessler lists only two examples of it: Königsberg 1760 and Mainz 490.