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[ANONYMOUS ?], *Commetary on Canon Law*
In Latin, manuscript on parchment
[Southern France or Italy, c. 1300]

27 folios, fragment (collation: ii + 1(3) + 2(8) + 3(8) + 4(8) + ii), no catchwords or signatures, foliation appears in two distinct bands in modern pencil, with older band misfoliating leaves beginning at f. 5r, written in a tight, rounded, and highly abridged gothic bookhand in light brown ink, on two columns, ruled in plummet (justification each column 40 x 115 mm), rubrics in bright red, some initials touched in red, rubric headings to the body of the text appear throughout, with some never completed, paragraph marks use alternating red and blue, scribe uses Roman numerals "L" (verso) "III" (recto) as headings in red and blue, 2-line initials used to introduce chapters in alternating red or blue ink with red or blue penwork extending into the margins, a few contemporary marginal annotations appear throughout, marginal rubric notation on fol. 3r scratched out, trimmed borders affect some marginalia. Bound in a modern full rigid vellum binding, two modern paper fly leaves precede and follow text, spine showing title "Juris canonici Fragm. MSS" in black ink with capital letters in rubric and gold, overall in very good condition, minor stains to parchment on ff. 6-8 not affecting text, ff. 7 and 8 lack right corners due to natural conditions of parchment. Dimensions 190 x 145 mm.

Neatly written fragment from an unidentified but evidently uncommon commentary on canon law, with most of Book III, concerning the ordination of priests and other aspects of their behavior. Further research is required to identify properly the fragmentary text and to understand its importance in the history of canonical commentaries.

PROVENANCE

1. Script, decoration, and preparation of the parchment all point to an origin in southern France or perhaps Italy around 1300, or the first quarter of the fourteenth century
2. Bookplate removed from the front pastedown, and the number "519" encircled and written in modern pencil on front pastedown where bookplate once existed; the number "45" appears in pencil on fol. 1r in footer margin. This appears to be in the

same hand as the older pencil foliation.

3. Two erased text notes on the rear paste down: in the upper half appears several lines of erased pencil text in French, of which on the words "Collection des pages ..." can be made out. At the bottom of the rear paste down appears a very faded pencil text with the possible word "UCOIGLI" [?]; the text "[FRAGMENT DE DROIT CANON] (Paris?), fin xiiiie--debut xive siecle" appears in heavy modern pencil hand on the back pastedown over the erased pencil text.

TEXT

f. 1r, [fragment begins], incipit, "Item prior fieri semper ed tam diebus feriatis quia non feriatis tam die quam de nocte et a praecedente per uiam, ut hoc totum legitur instituto de liberties";

f. 1v, rubric, *De corpore uiciatis* ; incipit, "Sequitur ut de corpore uiciatis tractatum subiciamus. Inquirentes qui dicantur corpore uiciati";

ff. 1v-3r, rubric [missing], [*De filiis presbiterorum et ceteris illegitima natis*, incipit, "De filiis presbiterorum et ceteris illegitima natis, videamus quare prohibentur ordinari qui dispensatio circa eos fiat. Quis possit cum eis dispensare";

f. 3r, rubric, *De eo qui distulit baptizari*; incipit, "Siquis adultus dum sanus esset distulerit baptizari, et postea tunore mortis constitutus in egritudine fecit se baptizari, non potest praemoritui distinctio lvii siquis";

f. 3rv, *De peregrinis et ignotis* [rubric]. Uideamus qui dicantur hic peregrini uel ignoti, quare tales repellerentur a promotione, quomodo admittantur peregrini possunt large apellari omnis qui non sunt de episcopatu ordinantis.

ff. 3v-6r, *De etate ordinandorum et temporibus ordinantium* [rubric]. Repellitur quis ab ordinatione et electione propter defectum etatis distinctio lxxvii in ueteri extra de ecclesia dudum.

f. 6rv, *De impedimentum sexus* [rubric]. Postquam circa tractatum ordinum aliquantulam fecimus disgressionem redeuntes ad propositum de impedimento sexus pauca subiciamus, unde non que femina non potest recipere characterem alicuius ordinis clericalis....

ff. 6v-9r, rubric missing, [*De sacramentorum?*], incipit, "Quoniam quorundam sacramentorum [?]tatio irregularitatem inducit, merito[?] praedicta impedimenta, de hoc aliqua sunt tangenda pauca";

f. 9rv, [(rubric missing)] incipit, Post tractatum omnium impedimentorum subiungitur quodam impedimentum quia conclusion, et sigillum uidelicet, que sit bone fame naturaliter infirmorum corda percuciantur, et uiturperetur misterium nostrum...

ff. 9v-10v, rubric, *De electionibus postulationibus confirmationibus renunciationibus et usurpationibus*; incipit, "Item possent hic multa de electionibus postulationibus, confirmationibus, et renunciantibus eorundem, quod licet propter sui prolixitatem non prosequantur";

ff. 10v-12v, rubric, *De differentiis officiorum*; incipit, "Dictum est supra de qualitate ordinandorum et diversitatem ministrorum vnam quia in uno corpore multa membra habemus ut ait apostolus";

ff. 12v-13r, rubric missing [*De promotione ad ordines*]; incipit, "Dictum est supra de promotione tam ad ordines quam ad dignitates";

ff. 13r-15r, rubric missing [*De qualitate promovendorum*]; incipit, "Ostensum est supra de qualitate promovendorum";

ff. 15r-17v, rubric missing [*De scandalo videndo*]; incipit, "Supra titulo proximo facta est mentio de scandalo vnum videndus quid sit scandalum, et unum dicatur, et quid sit scandalizare proximum";

ff. 17v-19v, rubric missing, [*De dispensationibus*]; incipit, "Dictum est de dispensationibus qui purgant ab irregularitatibus et infamia vivere";

ff. 19v-21v, rubric, *De penis*; incipit, "De criminibus multipliciter sed quam crimina punienda sunt, recte de penis est agendum";

ff. 21v-27v, rubric, *De summa precepti diffinitionis et excommunicationis*; incipit, "Dictum est contra in scriptura de criminibus et circumstantiis eorundem, sed quae hec per summam terminantur."

This is an unidentified collection of canons from Book III of a text concerning the ordination of priests and other aspects of their behavior, roughly following Gratian's *Decretals*. The commentary reorders the *Distinctiones* of Gratian and cuts some out of what appears there. The commentaries are organized under *tituli* rather than the more usual *distinctiones* and *questio*. Our manuscript fragment is not one of the better known commentaries (e.g., Bernardus Papiensis Faventini, Joannes Andreas, Bonifacius, Dinus de Mugello, Rufinus, Stephen of Tournai, Jean le Moine, etc.), but it appears to share rubrics with a group of treatises known under various titles as *De irregularitate*, *Tractatus de irregularitate*, or *Casus qui inducunt irregularitatem*. Further research is required to identify properly the fragmentary text and to understand its importance in the history of canonical commentaries.

LITERATURE

Bernard of Pavia. *Summa decretalium. Ad librorum manuscriptorum fidem cum aliis eiusdem scriptoris anecdotis*. Graz, 1956.

Boniface VIII. *Sextus decretalium liber a Bonifacio octavo in Concilio Lugdunense editus...*, Venetiis, 1572.

Brundage, James. *Medieval Canon Law*, London, 1995.

Gregory IX. *Decretales Gregorii Noni Pont. Max: cum glossis ordinarijs, argumentis, casibus litteralibus, & adnotationibus tam veterum quam recentium iuris consultorum illustratam*. Venetiis, 1572.

L'Engle, Susan and Robert Gibbs. *Illuminating the Law. Legal Manuscripts in Cambridge Collections*. An exhibition in Cambridge, Fitzwilliam Museum, 3 November-16 December 2001. Brepols, 2001.

Richter, E. L. and Friedberg, E., eds. *Corpus Iuris Canonici*, 2 vols. Leipzig, 1879-81, reprint Graz, 1959 (for the *Liber Sextus*, II, 933-1124).

ONLINE RESOURCES

Gratian Online

[http://mdz.bib-](http://mdz.bib-bvb.de/digbib/gratian/text/@Generic__BookView;cs=default;ts=default)

[bvb.de/digbib/gratian/text/@Generic__BookView;cs=default;ts=default](http://mdz.bib-bvb.de/digbib/gratian/text/@Generic__BookView;cs=default;ts=default)

Gregory IX Online

[http://www.fh-](http://www.fh-augsburg.de/~harsch/Chronologia/Lspost13/GregoriusIX/gre_0000.html)

[augsburg.de/~harsch/Chronologia/Lspost13/GregoriusIX/gre_0000.html](http://www.fh-augsburg.de/~harsch/Chronologia/Lspost13/GregoriusIX/gre_0000.html)

History of Medieval Canon Law in 11 volumes edited by Wilfried Hartmann and Kenneth Pennington, esp. vol. 11 (in progress)

<http://faculty.cua.edu/pennington/djhftit.htm>.

Medieval Manuscripts of Canon Law and Roman Law: Dr. Giovanna Murano's (University of Florence) list of canon law incipits; and Professor Dolezalek's (University of Leipzig) data base. With many useful links.

<http://decwww.rz.uni-leipzig.de/~jurarom/manuscr/>

Canon Law Homepage

<http://canonlaw.anglican.org/>

Law Library Microform Consortium (non-profit library cooperative that makes available the world's largest collection of legal literature and government documents in microform). Section 12 on Canon Law.

<http://www.llmc.com/>

Stephen Kuttner Institute for Medieval Canon Law

http://www.lrz-muenchen.de/~SKIMCL/linksammlung_english.htm#Canon%20Law

