

LES ENLUMINURES, LTD

2970 North Lake Shore Drive 11B
Chicago, Illinois 60657

tel. 1-773-929-5986
fax. 1-773-528-3976
chicago@lesenluminures.com

LES ENLUMINURES

Le Louvre des Antiquaires
2 place du Palais-Royal
75001 Paris

tél : 33 1 42 60 15 58
fax : 33 1 40 15 00 25
info@lesenluminures.com

[Canon Law]. *Summae* and *notabilia* on the *Decretales Gregorii IX*, the *Liber Sextus* and the *Clementinae*

In Latin, manuscript on parchment
[Southern France?, c. 1450-1475]

327 ff., on parchment, mostly in quires of 8 [collation nearly impracticable], contemporary foliation in upper righthand corner (last folios numbered 386 and 389 [missing ff. 387-388, certain folios disordered, ff. 236, 386, 389, missing ff. 1, 3-6, 19, 25, 72, 81, 88-89, 137-151, 153-170, 175-176, 183, 186, 194, 205, 216, 221, 229-230, 233, 237, 250-251, 259, 264, 288, 291, 293-294, 300, 305, 333, 340, 369, 382, 387-388,]), some quire signatures in red, some catchwords, written in a cursive script in brown ink, on up to 20 long lines (justification 60 x 100 mm), ruled in plummet, some prickings still visible, rubrics and headings in red throughout, paragraph marks in red, some capitals stroked in red, painted initials in red and blue, numerous marginal contemporary annotations, some textual passages or annotations underlined in red or blue. Bound in a modern imitation "Hollandaise" binding of parchment over pasteboards, back sewn on 5 raised thongs (Some inner staining to parchment, upper joint cracked, some marginal cuttings without affecting main body of text (possibly marginal annotations cut out)). Dimensions 105 x 155 mm.

Unique and unpublished manuscript consisting of *summae* ("summaries") and *notabilia* ("remarks") on canon law, most likely anonymous, which remains to be studied in comparison with other such manuscript compendia of didactic apparatus on the law that proliferated from the thirteenth through the fifteenth centuries as well as with the sixteenth-century editions that eventually incorporated certain *summae* and *notabilia*, while others fell into disuse.

PROVENANCE

1. Script and layout, corroborated by some early inscriptions in French, suggest southern France as a possible place of origin for this manuscript. Further comparisons are still needed, especially with other manuscripts preserving similar collections of *summae* and *notabilia*, which have been little studied.

2. French name penned in ink in a sixteenth-century hand on f. 272v: "Jehan Vignal" (unidentified).
3. Inscription in French in a later nineteenth-century (?) hand on f. 159 reads "1340. Ecrit l'an 1340," erroneously dating the manuscript.

TEXT

ff. 1-1v, [Table of contents], opening "De treuga et pace. xxxiii. / De pactis .xxxiiii.," rubric, *Secuntur rubrice secundi libri* [lacks beginning and ending];

ff. 2-13v, [*Notabilia Decretalium Gregorii IX*], Liber I, titulus II, "De constitutionibus", ch. II: "[*Cognoscentes*] [...] per decretum gratie..." [beginning incomplete]; Liber I, titulus II "De constitutionibus," ch. III: "*Translato. Nota. Quod judeus conversus per omnia...*"; ending with Liber I, titulus III, "De rescriptis", ch. XXVII: "*Postulasti. Nota. Qui impetrat beneficium tenetur...*";

ff. 14-18v, Manual of Confessors. [*Modus instruendi novitios in suis confessionibus faciendis*]: lacks beginning (incipit, "Hic est modus instruendi nouicios in suis confessionibus faciendis et primo recurrentum est ad septem peccata mortalia...") with rubrics in the margin: *Invidia / Ira / Accidia / Avaricia / Luxuria / Gula*; incipit, "[...] laudari si credidisti bona ex te..."; "Si in aliorum adversitate gaudens fuisti..."; "Si erga proximum motus per iram..."; explicit, [...] amara et verecunda ita quod fidendo non est confitendum. Amen"

The database *In principio* records two other copies of this manuscript: Schlägl, Prämonstratenser-Stiftsbibl., 43 (457.17) (fourteenth century) and Namur, Musée archéologique de la Province de Namur, fonds de la Ville, 87.

ff. 19-125, [*Notabilia Decretalium Gregorii IX*], Liber I, tituli I-XLI: starts Liber I, titulus I, "De summa trinitate et fide catholica", ch. I, rubric, "*De summa trinitate et fide catholica. Innocentius III in concilio generali. Firmiter credimus. Hec constitutio usque ad § primum tractat...*"; Liber I, titulus II, "De constitutionibus", ch. III; Augustinus super illud epistole ad Hebreos .vii. capitulo. *Translato*. [...] Quod de uno connexorum statuitur ad aliud extenditur; Liber I, titulus II, "De constiutionibus," ch. VIII: *Cum accessissent* followed by summary: "Dignitas sublata de ecclesia per statutum capituli postea confirmatum..." [Friedberg (1881, repr. 2000), col. 9]; Liber I, titulus III, "De rescriptis," ch. III: *Ceterum* followed by summary: "Si in secundo rescripto adversarii eiusdem cause de primo non fit mention, valet primum..." [Friedberg (1881, repr. 2000), col. 17]; ends Liber I, titulus XLI, ch. VIII: *Constitutus*, followed by summary: "Si bona materna pertinencia..." [not found in Friedberg (1881, repr. 2000), that presents a different summary][missing from titulus XLI, ch. IX to titulus XLIII, ch. XIII (end of Liber I)];

ff. 126-126v, [*Notabilia Decretalium Gregorii IX*], Liber II, titulus VI, "Ut lite non contesta", ch. V: *Quoniam frequenter*, followed by summary "Lite non contestata regulariter non sunt..." [differing from Friedberg (1881, repr. 2000), col. 263];

ff. 127-127v, [*Notabilia Decretalium Gregorii IX*], Liber III, titulus XXIV, "De donationibus", ch. VIII: *Inter dilectos filios hospitalarios...*; Liber III, titulus XXIV, "De donationibus," ch. IX: *Apostolice*, followed by summary: "Donatio quinquagesime..." [Friedberg (1881, repr. 2000), col. 536]; ending with beginning of Liber III, titulus XXVI, "De testamentis et ultimis voluntatibus," ch. I, *Quorundam prelatus ecclesie de bonis...*;

ff. 128-129, folios misbound (these should be placed after f. 327): [*Notabilia Libri Sexti et Clementinarum*], Liber Sextus, "De verborum significationibus," ch. V: *Exit qui seminat*, followed by summary: "Seminare semen suum..."; *Clementinae*, rubric, *De eodem clementinarum: Sepe contingit*, followed by summary: "Judex qui datus est simpliciter..."; rubric, *Regulas iuris* and heading: *Regulas iuris in sexto* (ff. 129-129v);

ff. 130-159v, [*Notabilia Decretalium Gregorii IX*], Liber II, tituli XX-XXX: starts with Liber II, titulus XX, "De testibus et attestationibus," ch. XXI: *Judei*, followed by summary: "Christianus contra Iudeum" [Friedberg (1881, repr. 2000), col. 322]; ends with Liber II, titulus XXX, "De confirmatione utili vel inutili," ch. VIII: *Venerabiles*, followed by summary: "In confirmationibus factis ex certa scientia..." [Friedberg (1881, repr. 2000), col. 447] (Liber II, titulus VI is found above on ff. 126-126v);

ff. 160-232, [*Notabilia Decretalium Gregorii IX et Libri Sexti*], Liber III, tituli I-L: starts with Liber III, titulus I, "De vita et honestate clericorum," ch. V: *Clericus neque comam nutriat, neque barbam* and followed by ch. VI: *Clericus*, followed by summary "Clericus non in sacris ordinibus..." [Summary does not follow that of Friedberg]; ends with Liber III, titulus L, "Ne clerici vel monachi...", ch. X: *Super specula*, followed by summary "Constitutio concilii Turonensis que puniti religiosos..." [Friedberg (1881, repr. 2000), col. 660] (Liber III, titulus XXIV is found on ff. 127-127v); fol. 232: rubric, *In Sexto; Ut periculosa*, followed by summary "Excommunicati sunt religiosi teniens habitum...";

ff. 232-247v, [*Notabilia Decretalium Gregorii IX*], Liber IV, tituli I-XXI; starts with Liber IV, titulus I, "De sponsalibus et matrimonies," ch. 1: *De Francia*, followed by summary attributable to John of Legnano or Antonius de Butrio (?): "Matrimonium solo consensu contrahitur licet consuetudines et solemnitates..." [see Friedberg (1881, repr. 2000), col. 661]; f. 247: Liber IV, titulus XX, "De donationibus inter virum et uxorem...", ch. 3: *De prudentia*, followed by summary: "Delegatus datus in causam matrimonii..." [see Friedberg (1881, repr. 2000), col. 725]; ending with beginning of Liber IV, titulus XXI, "De secundis nuptiis," ch. 1: *Cappellanum...*;

ff. 248-327, [*Notabilia Decretalium Gregorii IX, Libri Sexti et Clementinarum*], Liber V, tituli I-XL; starts with Liber V, titulus I, "De accusationibus", ch. 6: *De his*, followed by summary: "De crimine semel accusatus..." [summary differs from the one published in Friedberg (1881, repr. 2000), col. 734]; ending with Liber V, titulus XL, "De verborum significationibus," ch. 33: *Transmissae*, followed by summary: "Verbum moderationis diminutionem..." [see Friedberg (1881, repr. 2000), col. 926]; fol. 327v: rubric, *De eodem in VI^o* [Friedberg (1881, repr. 2000), col. 1107].

From the time of its composition in the thirteenth century, the five books of Decretals of Pope Gregory IX (1227-1241) became the fundamental text of canon law, which governed many aspects of secular as well as clerical life. This was what Gregory intended when he ordered his confessor, Raymond of Peñafort (died 1275), to organize into one authoritative text the existing five compilations of canon law with their subsequent additions, including his own. In 1234, Gregory sent the newly completed work to the universities of Paris and Bologna, and before 1263 a *Glossa ordinaria* to the Decretals was composed by Bernard of Parma. Pope Boniface VIII ordered three canonists to compile the next collection of papal decretals, known as the "Liber Sextus" completed in 1298. Other collections of decretals followed shortly afterwards, including the "Clementinae" (named after Pope Clement VII) and the "Extravagantes Johannis XXII" (named after Pope John XXII).

Such a crucial text rapidly acquired commentators and glossators, known as "decretalists," whose writings were destined to facilitate the use of the massive body of material. The present manuscript with its pedagogical apparatus is an example of the numerous practical works produced to accompany law books as aids for teachers and students in the fourteenth and fifteenth centuries; these included abstracts (*summae*), illustrations (*casus*) and remarks (*notabilia*), assembled into the *apparatus*, *lecturae* and *commentarii* (on this body of literature, see corresponding articles in Naz, as cited below). Many of these took the form of abridged compendia of canon law, such as this one.

This manuscript supplies incipits and excerpts of decretals taken from the five books of *Decretales Gregorii IX* and some from the *Liber Sextus* and *Clementinae*, followed by brief *summae* and *notabilia* as composed and codified by canonists from the thirteenth to the fifteenth centuries. Some of these *notabilia* can be ascribed to important canonists. One in particular for Book IV in the present manuscript may be by John of Legnano (c. 1320-1383), whose *Commentaria in Decretales* are still unpublished (cf. f. 232, "Matrimonium solo consensus..."; manuscripts in Florence, Bibl. Laurentiana, MS Edili, 54, ff. 1-47r, and Naples, BN, MS I.A.9 (b)). John of Legnano (c. 1320-1383) was professor of law at Bologna, closely connected to the papal activities of his day, and author of the *Commentaria in Decretales*, completed by 1366, a date given in several of the extant manuscripts, and the *Commentaria in Clementinas* (for a list of manuscripts, see McCall, pp. 415-437). An alternative author,

whose work contains the same incipit, is Antonius de Butrio (c. 1338-1408) whose *Commentaria in quinque libros decretalium* was published in 1473 (MSS. Vat. Lat. 2242, ff. 303ra-390vb; Nürnberg, MS Cent. II, 63, ff. 1r-107v; and Krakow, BJ, 349, ff. 97r-194v). Born in Bologna, Antonius de Butrio (c. 1338-1408) was celebrated primarily as a teacher of law and composer of juristic writings.

Here is how the manuscript is organized. Either the first words (in a larger script) or a lengthy excerpt of the chapter of a given book (signaled by a paragraph mark and the abbreviation "tex") come first. These are followed by *summae*, short abstracts destined to summarize in a few sentences the content of a given chapter. The *summae* are in turn followed by *notabilia* (indicated to the reader by rubricated "nota"), which are shorter remarks used to express even more concisely a law (also called "brocards") (Berlioz [1994], p. 172, pl. 2. Not found in the incunabula editions, a certain number of these *summae* and *notabilia* became an integral part of the more elaborate apparatus found in sixteenth-century editions where precede the actual chapters and present short summaries of them. In these editions of the *Corpus iuris canonici* they are accompanied also by various glosses or commentaries.

The extensive manuscript tradition of *summae* and *notabilia* is so complex that a full study of it would be unusually daunting. Most collections of *summae* and *notabilia* are unique, composed as school books, exercises, or vademecum that extract material from diverse sources of special interest to the compiler. Usually anonymous, unedited, and without uniform incipits and explicits, they are poorly identified and described in library catalogues. Any such study would need to begin with the task of identifying the manuscripts and their authors, when possible, and placing them in their particular contexts. In such a way, a clearer idea of the evolution of this genre would emerge. The present manuscript contributes an important element to future research, the most promising of which would be to determine why certain *summae* and *notabilia* eventually became "canonical" in sixteenth-century editions whereas others fell into disuse.

LITERATURE

Berlioz, J. *Identifier sources et citations*, Turnhout, Brepols, 1994.

Bloomfield, M. *Incipits of Latin Works on the Virtues and Vices: 1100-1500...*, Cambridge, Massachusetts, Medieval Academy of America, 1979.

Brundage, James. *Medieval Canon Law*, London, Longman, 1997.

Fransen, G. *Les décrétales et les collections de décrétales* [Typologie des sources du Moyen Age occidental, 2], Turnhout, Brepols, 1972.

Friedberg, E. ed. *Corpus Iuris Canonici Editio Lipsiensis. . . Pars secunda. Decretalium Collectiones. Decretales Gregorii P. IX., Liber Sextus Decretalium Bonifacii P. VIII., Clementis P. V. Constitutiones. . .*, Lipsiae, Ex officina Bernhardi Tauchnitz, 1881 [reprint The Lawbook Exchange, 2000].

Gaudemet, J. *Les sources du droit canonique, VIIIe-XXe siècle*, Paris, Cerf, 1993.

Kuttner, S. *A Catalogue of Canon and Roman Law Manuscripts in the Vatican Library*, 2 vols., Rome, Biblioteca apostolica Vaticana, 1986.

Kuttner, S. *The History of Ideas and Doctrines of Canon Law in the Middle Ages*, Aldershot, Brookfield, Variorum, 1992.

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*. Turhout, Brepols, 2001.

McCall, John. "The Writings of John of Legnano with a List of Manuscripts," *Traditio*, 23 (1967), pp. 415-437.

Michaud-Quantin P. *Sommes de casuistique et manuels de confession au moyen âge*, Louvain, Montreal, Librairie dominicaine, 1962.

Naz, R. (ed.). *Dictionnaire de droit canonique. . .*, Paris, Letouzey et Ané, 1924-1965.

ONLINE RESOURCES

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/>

Canon Law Homepage

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

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) database

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

<http://www.uni-leipzig.de/~jurarom/manuscr/dat/initican.htm>

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>.

Bio-Biographical Listing of Medieval Canonists

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