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RAYMOND OF PENYAFORT DECRETALIST*

INTRODUCTION; I. LIFE AND WORKS, 1. *Bologna: Professor of Canon Law*, 2. *Barcelona: Master on Penance*, 3. *Rome: Pope's Chaplain and Confessor*, 4. *Barcelona – Bologna – Paris: Master of the Dominicans*, 5. *Barcelona: A Trustworthy Man*; II. TEACHINGS AND INFLUENCE, 1. *Fame of Sanctity*, 2. *Sources of Canon Law*, 3. *Political Thought and Ecclesiology*, 4. *Internal and External Forum*, 5. *Ius Commune and Canon Law*; III. AGENDA

INTRODUCTION

These pages are the extended version of the essay included in the volume *Great Christian Jurists in Spanish History* that will be published on April 2018 by Cambridge University Press¹. Following the path traced by the articles appeared in the *Revista Española de Derecho Canónico* and *Analecta Sacra Tarraconensia*², they offer an updated introduction on what has been done and on what remains to be done, this time focused on Raymond of Penyafort's contribution to canon law.

The first section picks up the biographical information of the nonagenarian canonist from the cities that marked his intense and extensive life itinerary: Barcelona, Bologna, Rome, Bologna – Paris, Barcelona³. It reviews the authen-

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¹ Details: <http://www.cambridge.org/us/academic/subjects/law/legal-history/great-christian-jurists-spanish-history?format=HB#Oc11RAIqGK8APM1Q.97> (visit: 08.02.18). On the project *Law and Christianity*: <https://www.cambridge.org/core/series/law-and-christianity/6D77992447E6BD14E748AE05E137D92B> (visit: 08.02.18).

² BAUCCELLS SERRA, R., *La personalidad y obras de S. Raimundo de Peñafort*, in *Revista Española de Derecho Canónico* 1 (1946) 7–47. GARCÍA Y GARCÍA, A., *Valor y proyección histórica de la obra jurídica de S. Raimundo de Peñafort*, in *Revista Española de Derecho Canónico* 18 (1963) 233–251; and RIBES MONTANÉ, P., *San Ramón de Penyafort y los estudios eclesíásticos*, in *Analecta Sacra Tarraconensia* 48 (1975) 85–142.

³ Cf. TEETAERT, A., *Raymond de Penyafort*, in VACANT, J. M. A. – MANGENOT, E. (ed.), *Dictionnaire de Théologie Catholique*, XIII. Paris 1937. 1806–1823. NAZ, R., *Raymond de Pennafort*, in NAZ, R. (ed.), *Dictionnaire du Droit Canonique*, VII. Paris 1959. 461–464. GARCÍA Y GARCÍA, A.,

tic works, according to the most probable chronology, and only rarely mentions the apocryphal and the writings of dubious attribution⁴. The second section selects some aspects of the contribution of Raymond of Penyafort to the universal and particular *ius canonicum*, and, more generally, to the *ius commune*, although it only contains a preliminary vision: it is a partial selection of some passages of his work that have earned him admiration and recognition on both sides of the Atlantic⁵.

Eight centuries of Raymundian studies attest the recognition that the Catalan decretalist has enjoyed in very different times and contexts⁶. It would be however adventurous to conclude that on Raymond of Penyafort one cannot say anything else. The last section suggests some pending issues about the work of most universal Spanish decretalist.

Peñafort, Raimundo de, in VAQUERO, Q. A. – MARTINEZ, T. M. – GATELL, J. V. (dir.), *Diccionario de Historia Eclesiástica de España*, III. Madrid 1973. 1958–1959. MOLANO, E., *Raimundo de Peñafort (Raymundus de Pennaforte) (ca. 1175–1275)*, in DOMINGO, R. (dir.), *Juristas Universales*, I: *Juristas antiguos*, Madrid-Barcelona 2004. 414–421. MOLANO, E., *Raimundo de Peñafort*, in OTADUY, J. – VIANA, A. – SEDANO, J. (dir.), *Diccionario General de Derecho Canónico*, VI. Pamplona 2012. 690–693.

⁴ Following dubious works have not been considered: (i) *Summa metrica iuris*; (ii) *Tractatus Fr. Raymundi de vii. vitiis capitalibus*; and (iii) *Tractatus de dispensationibus*. Neither the five apocryphals: (i) *Summa quando poenitens remitti debeat ad superiorem*; (ii) *Tractatus de bello et duello*; (iii) *De ratione visitandae diocesis et curandae subditorum salutis*; (iv) *Modus iuste negotiandi in gratiam mercatorum*; y (v) *Libellus pastoralis de cura et officio archidiaconi*. On this works cf. García y García, “Valor y proyección histórica”, cit.; cf. GARCÍA Y GARCÍA, A., *Tractatus de dispensationibus. ¿Una nueva obra de San Raimundo de Peñafort?*, in AZNAR GIL, F. R. (coord.), *Estudios de derecho matrimonial y procesal en homenaje al Profesor Dr. Juan Luis Acebal Luján*, Salamanca 1999. 15–28.

⁵ Raymond’s teachings have been taken into account by those who have studied the history off numerous legal institutions: WEIGAND, R., *Die bedingte Eheschliessung im kanonischen Recht I* (Münchener Theologische Studien III.; Kan. Abt. 16), München 1963. 400–402. WEIGAND, R., *Die Naturrechtslehre der Legisten und Dekretisten von Irenaeus bis Accursius und von Gratian bis Johannes Teutonicus* (Münchener Theologische Studien III.; Kan. Abt. 26), München 1967. 256–258. LIOTTA, F., *La continenza dei chierici*, Milano 1971. 373–387. MÜLLER, H., *Der Anteil der Laien an der Bischofswahl: Ein Beitrag zur Geschichte der Kanonistik von Gratian bis Gregor IX.* (Kanonistische Studien und Texte 29), Amsterdam 1977. 197–200. MINNUCCI, G., *La capacità processuale della donna nel pensiero canonistico classico*, II: *Dalle Scuole d’Oltralpe a S. Raimondo di Pennaforte* (Studi senesi, Quaderni 79), Milano 1994. 223–227.

⁶ Bibliography: MAS, L. G., *Biobibliografía de San Ramón de Penyafort*, in *Magister Raimundus: atti del convegno per il IV centenario della canonizzazione di San Raimondo de Penyafort: 1601–2001* (a cura di LONGO, C.), Roma 2003. 11–34. Cf. also the *Bio-Bibliographical Guide to Medieval and Early Modern Jurists*: http://amesfoundation.law.harvard.edu/BioBibCanonists/Report_Biobib2.php?record_id=a481 (visit: 08.02.18).

I. LIFE AND WORKS

1. *Bologna: Professor of Canon Law*

Raymond of Penyafort (*Raimundus de Pennaforte*) was born sometime between 1180 and 1185. Barcelona, Vilafranca del Penedés and the castle of Penyafort claim to be his birthplace. On November 20, 1204, Raymond appears as the *scriptor* of a sentence passed in Barcelona by «Raimundus de Rozanis» (Raymond de Rosanes), a canon of the cathedral⁷. This is the only documentation dating to this early period of Raymond's life. Based on this source –and on an old biography (*Sancta vita et miraculis fratris Raimundi*, c. 1318) and chronicles dating from 1254 to 1312⁸– modern biographers assume that Raymond studied liberal arts, theology, and law at the chapter school of Barcelona, and that he was a cleric, a scribe, a notary, and a teacher⁹.

On April 25, 1218, «Ramundus de Pennaforti» and three other Catalonians signed as witnesses of the loan that a certain «magistro Rammundo» gave to «Petrus de Richesen» in Bologna¹⁰. Raymond had probably arrived at the Italian city in 1211 and stayed there until about 1219¹¹. In Bologna, Raymond studied canon and roman law and became *iuris doctor*. In the prologue of the unfinished *Summa Iuris Canonici* (SIC) he calls himself professor: «Ego Raimundus Catalanus professor juris canonici»¹².

As professor of canon law at Bologna, Raymond lectured on Gratian's *Decretum* (DG) and in the first Decretals Collections (*Compilationes antiquae*), perhaps until the academic year 1218–1219. Parts of his teachings are preserved

⁷ Cf. RIUS SERRA, J. (ed.), *S. Raimundo de Penyafort. Diplomatario. Documentos, Cartas de San Raimundo de Penyafort, de Gregorio IX y de varios autores. Vida antigua, Crónicas, Procesos antiguos*, Barcelona 1954, num. I.

⁸ Cf. the *Vita antiqua* (RIUS SERRA, J., *Diplomatario*, 269–285) and the chronicles of Gérard Frachet (†1271) [RIUS SERRA, J., *Diplomatario*, 331–333], Etienne de Salagnac (†1290) [RIUS SERRA, J., *Diplomatario*, 334–335], Giovanni Colonna (†1290) [RIUS SERRA, J., *Diplomatario*, 335–336], (Bar)Tholomew of Lucca (†1321) [RIUS SERRA, J., *Diplomatario*, 337], Nicholas of Trevech (†1328) [RIUS SERRA, J., *Diplomatario*, 337–338], Bernard Gui (†1331) [RIUS SERRA, J., *Diplomatario*, 338–339] and Peter Marsilio (†1318) [RIUS SERRA, J., *Diplomatario*, 340–344].

⁹ Other scholars are more cautious, cf. VALLS I TABERNER, F., *San Ramón de Penyafort*, Barcelona 1936 (repr. 1998) 23–25.

¹⁰ Cf. VALLS I TABERNER, F. (ed.), *El Diplomatario de Sant Ramon de Penyafort*, in *Analecta sacra Tarraconensia* 5 (1929) 249–304, num. I.

¹¹ Cf. MANDONNET, P., *La carrière scolaire de Saint Raymond de Penyafort*, in *Annalecta Oridinis Praedicatorum* 18 (1920) 277–280. However, on the *terminus ad quem* cf. BAUCCELLS I REIG, J., *Documentación inédita de San Ramón de Penyafort y cuestiones relativas al supuesto canonicato barcelonés*, in *Escritos del Vedat* 7 (1977) 69–96, num. 1.

¹² Cf. BALME, F. – PABAN, C. – COLLOMB, J. (ed.), *Raymundiana seu documenta quae pertinent ad S. Raymundi de Pennaforti vitam et scripta* (Monumenta Ordinis Fratrum Praedicatorum Historia [IV] VI, I–II), Romae 1898–1901. II: num. III.

in the marginal glosses of some DG manuscripts¹³. It is uncertain whether other marginal comments signed by “r.” in an Austrian copy of the *Compilatio antiqua quarta* (1216) belong to Raymond¹⁴. As the loan of 1218 suggests, at the time when he studied and taught in Bologna there was at least another «magister Raimmundus» (Raymond of Vic?), and only a comparison of the Austrian glosses and Raymond’s genuine writings could help determine whether the Raymonds were the same; this research remains to be done. For similar reasons, the authorship of a short comment (*summula*) on canonical rules in regard to consanguinity and affinity –the *arbores consanguinitatis et affinitatis secundum reimundum*– has not been definitely established¹⁵. The reduction of the marital impediments of consanguinity and affinity until the fourth degree passed by the Fourth Lateran Council (1215) attracted the attention of the canonists, whose comments on the constitution 50 were collected in numerous works¹⁶.

Shortly after the council, and after Johannes Teutonicus (1170–1245) had failed to achieve the endorsement of Innocent III (1198–1216) for his *Compilatio quarta* (1216), the young Catalanian professor left the exegetical pattern of the *Summae titulorum* and arranged in the SIC a system of his own¹⁷. In the

¹³ Cf. KUTTNER, S., *Repertorium der Kanonistik (1140–1234)*, Città del Vaticano 1937. 442. KUTTNER, S., *Bernardus Compostellanus Antiquus: A study in the glossators of the canon law*, in *Traditio* 1 (1943) 333. KUTTNER, S., *The Barcelona edition of St. Raymond’s first treatise of canon law*, in *Seminar* 1 (1950) 54, footnote 8, 60–61. KUTTNER, S., *Zur Entstehungsgeschichte der Summa de casibus poenitentiae*, in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung* 39 (1953) 419, footnote 2. WEIGAND, R., *Die Glossen zum Dekret Gratians. Studien zu den frühen Glossen und Glossenkompositionen* (Studia Gratiana XXV–XXVI), Roma 1991. 893 and 948.

¹⁴ Cf. KUTTNER, S., *Johannes Teutonicus, das vierte Laterankonzil und die Compilatio quarta*, in *Miscellanea Giovanni Mercati*, V. Città del Vaticano 1946. 624, footnote 8. KUTTNER, S., *Barcelona edition*, 54, footnote 8. KUTTNER, S., *Entstehungsgeschichte*, 419, footnote 3.

¹⁵ KUTTNER, S., *Barcelona edition*, 54–56. KUTTNER, S., *Entstehungsgeschichte*, 419. GARCÍA Y GARCÍA, A., *¡No es esto!*, in *Revista Española de Derecho Canónico* 35 (1979) 194–196. A modern edition of both commentaries (*summulae*): Ochoa, X. – Díez, A. (ed.), *Summa de matrimonio. Decretales novae. Responsiones ad dubitabilia. Quaestiones canonico-pastorales. Summula de consanguinitate et affinitate* (Universa Bibliotheca Iuris I-C), Roma 1978. 1079–1094 and 1095–1104.

¹⁶ On the impact of the Council, cf. GARCÍA Y GARCÍA, A. (ed.), *Constitutiones Concilii quarti Lateranensis una cum Commentariis glossatorum* (Monumenta Iuris Canonici Series A/2), Città del Vaticano 1981. 3–17. GARCÍA Y GARCÍA, A., *The Fourth Lateran Council and the Canonists*, in HARTMANN, W. – PENNINGTON, K. (ed.), *The History of Medieval Canon Law in the Classical Period, 1140–1234. From Gratian to the Decretals of Pope Gregory IX*, Washington D.C. 2008. 367–378. On the comments on the *arbores consanguinitatis et affinitatis*, cf. GARCÍA Y GARCÍA, A., *Glosas de Juan Teutónico, Vicente Hispano y Dámaso Húngaro a los ‘arbores consanguinitatis et affinitatis’*, in *ZRG Kan. Abt.* 68 (1982) 153–185. SCHADT, H., *Die Darstellungen der Arbores Consanguinitatis und der Arbores Affinitatis, Bildschemata in juristischen Handschriften*, Tübingen 1982.

¹⁷ First modern edition: RIUS SERRA, J. (ed.), *Sancti Raymundi de Penyafort Opera omnia, I: San Raymundo de Penyafort, Summa iuris*, Barcelona 1945, nonetheless, cf. the strong criticism of

foreword of the work, Raymond introduces his method (*modus agendi*) as follows: first of all, he divides each part (*particula*) into titles (*rubricae*), which sometime are similar to the *summaria* of Gratian's *Decretum* or to the titles of the *Compilationes antiquae*; second, he describes the subject matter (*materia*) of each title; third, he sets out short questions and answers (*quaestiones et solutiones earum*) as well as principles of law (*notule iuris ad rubricam*); and fourth and last, he provides beginners (*rudes*) with indications of where different subject matters (*materia*) are located in the DG and in the decretals collections, both in the texts and in the glosses (*tam in textu quam in glossa*). Raymond discussed the teachings of decretists and decretalists, among them Alain (*Alanus Anglicus*), Bazianus, Bernard (*Bernardus Papiensis*), Damase (*Damasus Hungarus*), Hugh of Pisa (*Huguccio*), John (*Johannes Faventinus? Galensis? Teutonicus?*), Laurent (*Laurentius Hispanus*), Martin, Peter (*Petrus Beneventanus?*), Tancred (*Tancredus*) and Vincent (*Vincentius Hispanus*). The correspondences between the *Summa super titulis decretalium* arranged by canonist Ambrosius about 1210–1215 and the SIC do not discredit Raymond's freshness¹⁸. The SIC is a comprehensive treatise on Canon law originally planned in seven parts (*particulae*): (i) *Varie species et differentie iuris*; (ii) *De ministris canonum, differentiis et officiis eorundem*; (iii) *De ordine iudiciario*; (iv) *De contractibus et rebus tam ecclesiarum quam clericorum*; (v) *De criminibus et penis*; (vi) *De sacramentis*; (vii) *De processione spiritus sancti*. Only parts one and two are preserved in the Borghese manuscript, which breaks off in the last title of part two (2.39 *De maioritate et obedientia*). These two parts could not have been finished before December 1, 1221, since Raymond quotes *Ecclesia uestra*, a decretal addressed by Honorius III (1216–1227) to the chapter of Rouen¹⁹.

2. Barcelona: Master on Penance

According to a copy made on 1231 of the original affidavit, the signature of «magistri Raimundi de Penna Forti» belongs to one of the witnesses of the donation that, on behalf of his uncle Bernat of Caldes, William the Caldes granted to the Bishop Berenguer of Palou (†1241) and to the Cathedral Chapter of Bar-

KUTTNER, S., *Barcelona edition*, 56–67. A new modern edition by OCHOA, X. – Díez, A. (ed.), *Summa de iure canonico* (Universa Bibliotheca Iuris I-A), Roma 1975, however again, cf. KUTTNER, S., *On the method of editing medieval authors*, in *The Jurist* 37 (1977) 385–386. GARCÍA Y GARCÍA, A., *La canonística ibérica (1150–1250) en la investigación reciente*, in *Bulletin of Medieval Canon Law* 11 (1981) 44, footnote 16.

¹⁸ Cf. AVELLILLO, J. A. M., *Influjo del canonista Ambrosius en S. Raimundo de Peñafort*, in *Revista Española de Derecho Canónico* 26 (1970) 329–355.

¹⁹ Cf. KUTTNER, S., *Barcelona edition*, 64–67.

celona on August 7, 1220²⁰. When Raymund returned to his homeland is just as uncertain as when he professed into the Dominican Order: the date «anno Domini MCCXXII in die Parasceves» (Good Friday, April 1, 1222), given by the register of deaths of the Convent of Saint Catherine in Barcelona, has been debated, because Raymond did not sign as «Frater Raimundus de Pennaforti» before 1229²¹. Owing to the silence of the sources, his condition of professor and canon of the cathedral chapter of Barcelona has also been questioned²².

In Barcelona, Raymond kept working on the SIC until he was presented with a new challenge: Suero Gómez, former fellow of Saint Dominic (1170–1221) and first provincial prior of the Friars Preachers in *Hispania*, asked him to collect cases of conscience in order to prepare a comprehensive and practical compendium that could help confessors administering the sacrament of penance²³. Since constitution 21 of the Fourth Lateran Council had established that «all the faithful of both sexes shall, after having reached the age of discretion, faithfully confess all their sins at least once a year to their own (parish) priest (...)», this literary genre became an urgent need²⁴. Raymond originally organized his *Summa de casibus* (SdC) into three books (*particulae*): crimes against God, crimes against neighbours and ministers²⁵. Within each book, he followed the first three steps of the method that he had used to write the SIC: titles (*rubricae*: 16 in the first book, 8 in the second, and 34 in the third), subject matter of each title (*materia*), and questions and answers (*quaestiones et solutiones earum*). He composed the first version of the SdC while living in the Convent of Saint Catherine, Barcelona, sometime between 1222 and 1228. There are no traces of the use of *Compilatio antiqua quinta* (1226). Once again, Raymond had in mind the teachings of his Bolognese colleagues: besides the authors mentioned in the SIC, the opinions of *Ruffinus* and *Melendus* appear in the SdC. The relevant num-

²⁰ Cf. BAUCCELLS I REIG, J., *Documentación*, num. 1.

²¹ Cf. BALME, F. – PABAN, C. – COLLOMB, J. (ed.), *Raymundiana*, II, num. V.

²² BAUCCELLS I REIG, J., *Documentación*, 85–90 suggests this chronology: Raymond taught in Bologna until 1218–1219; he returned to Barcelona between the summer of 1219 and the summer of 1220; he entered into the Dominican Order between 1223–1225; his name did not appear in the documents preserved in the record of the cathedral chapter of Barcelona dating back to his period; the «Magister Raimundus canonicus barcinonensis» that appears in the sources is Raymond Vic, not Raymond of Penyaafort.

²³ Cf. the *Vita antiqua* in BALME, F. – PABAN, C. – COLLOMB, J. (ed.), *Raymundiana*, I, num. XI.

²⁴ On the origins of this literary genre cf. KUTTNER, S., *Repertorium*, 208, 241, 412, 430, 435, 443, 446. GOERING, J., *The Internal Forum and the Literature of Penance and Confession*, in HARTMANN, W. – PENNINGTON, K. (ed.), *The History of Medieval Canon Law in the Classical Period*, 379–428. FERME, B., *The momentum towards confessio oris: the background to Lateran IV*, in *Annaeus* 7 (2010) 71–97.

²⁵ Printed editions of SdC offer the second version: Rome 1600, 1603 (reprinted 1967) and 1619; Avignon 1715; Lyon 1718; Paris–Lyon 1720; and Verona 1744. A modern edition: OCHOA, X – DÍEZ, A. (ed.), *Summa de poenitentia* (Universa Bibliotheca Iuris I-B), Roma 1976; but cf. GARCÍA Y GARCÍA, A., *¡No es esto!*, 187–196.

ber of correspondences between SIC and SdC strongly suggests that the author took advantage of the same materials, even those attributed to *Ambrosius*.

According to the records from the 1220 to 1229, Friar Raymond was well known and highly regarded in the ecclesiastical milieu of the *Ciutat Comtal*. On March 14, 1222, «Magister Raimundus (de Pennaforti)» mediated in the dispute between «Berengarius de Sancto Vincencio» and «Bernardo Rapaz», two canons of Barcelona²⁶. The Dominican was also the confidant of papal officers and kings. In 1228, Gregory IX sent John Algrin of Abbeville (Jean Halgrin d'Abbeville, *Johannes Algrin de Abbatisvilla*), cardinal bishop of Saint Sabina, to the Iberian Peninsula with the task of visiting the Spanish churches and verifying the introduction of the new Lateran constitutions. Raymond took part in this mission as «paenitentarius Legati». During 1228, the papal legate visited San Pedro de Cardeña (June, 10), Segovia (June, 16), Ávila (July, 20–21), San Pedro de Cardeña (August, 8), Astorga (September), Pola de Gordón (September, 29), Santiago de Compostela (November, 3) and Valladolid (end of the year), where a provincial council was celebrated. During 1229, John Algrin appears in Coimbra (January, 7) and Salamanca (February, 5). In Zaragoza, on March 20, 1229, James I and Leonor, kings of Aragón, submitted the validity of their marriage to the good sense and judgement of the papal legate. Friar «R(aimundi) paenitentiarium domini Legati» figures as one of the witnesses of the solemn royal oath²⁷. The papal legate called for a council of the Tarragona province in Lleida, and promulgated its constitutions on March 29, 1229. On April 29, in a council held in Tarazona, the cardinal declared the nullity of the marriage between James I, king of Aragón, and Leonor, the daughter of the king of Castile. From Tudela, the legate dispatched several issues on May 1 and 2, 1229. The legation continued in Calatayud (May, 20), Huesca (end of May), Ocaña (June 3), Cuenca (June 14 and 20), Sigüenza (July 17), León (August 8), Lerma (August 17), Ágreda (August 26), Zuera (August 31), Martorell (September 10), Barcelona (September 11 to 19), Vich (September 20) and Girona (September 25 to 26). Once his mission was concluded, Cardinal John gave accounts to Gregory IX in Perugia, during October, 1229²⁸.

On November 29, the pope asked Friar Prior and «fratri Raimundo Ordinis Praedicatorum Barcinone» to go through the French provinces of Arles and Narbone trying to enrol Christians in the war against Muslims on the island of Mallorca²⁹. As far as the city of Mallorca fell down into Christian hands on December 31, 1229, it is uncertain whether Raymond accomplished the task. Be this as it may, this was the first of a large string of papal errands.

²⁶ Cf. VALLS I TABERNER, F., *Diplomatari*, num. II.

²⁷ Cf. BALME, F. – PABAN, C. – COLLOMB, J. (ed.), *Raymundiana*, II, num. VI.

²⁸ On the itinerary, councils and programme of John of Abbeville, cf. LINEHAN, P., *The Spanish Church and the Papacy in the Thirteenth Century*, Cambridge 1971. Chapter II.

²⁹ Cf. BALME, F. – PABAN, C. – COLLOMB, J. (ed.), *Raymundiana*, II, num. VII.

3. Rome: Pope's Chaplain and Confessor

Raymond would have been offered a post in the roman curia after the cardinal report, although it is true that there are no documentary evidences. He is supposed to have been summoned to Rome in mid-1230, when Gregory IX (1227–1241) appointed him «capellanum et poenitentiarum nostrum»³⁰. If the anecdote that circulated among canonists since the times of Johannes de Deo (†1267) is to be believed, by this time the pope, annoyed by the pathetic shape of a collection of decretals, decided to arrange a new one³¹. Why he selected Raymond is unknown, although his career as professor in Bologna and his writings were sufficient qualifications. Raymond would have started the work in 1230 or 1231. Did he receive instructions? Did he work alone? The only certainty is that the volume was finished by September 5, 1234, when the pope ordered that Raymond's collection—called the *Compilatio Domini Gregorii Pape noni*, the *Decretales Gregorii VIII*, the *Gregoriana* or the *Liber Extra* (X)³²—should be the only one used in ecclesiastical courts and schools of canon law, and banned the making of new collections without papal permission³³. According to *Rex Pacificus*, the papal bull, some of the constitutions and decretals of Gregory's predecessors collected in different volumes were similar, while others were contradictory and still others were verbose. Other papal constitutions and decretals outside these volumes led judges and students to wonder whether they were valid. Therefore, Gregory asked his chaplain to smooth out these misunderstandings in a new book that would include Gregory's constitutions and decretals to resolve doubts. Gregory IX authorized his chaplain to suppress, shorten, and revise any text found in the *Compilationes antiquae*³⁴.

³⁰ On the office, cf. GÖLLER, E., *Die päpstliche Pönitentiarie von ihrem Ursprung bis zu ihrer Umgestaltung unter Pius V, I: Die päpstliche Pönitentiarie bis Eugen IV. – 1. Darstellung*, Roma 1907. 75–212, who calls Raymond «Der bedeutendste unter allem Pönitentiarum» (153).

³¹ Cf. BERTRAM, M., *Die Dekretalen Gregors IX. Kompilation oder Kodifikation?*, in LONGO, C. (a cura di), *Magister Raimundus: atti del convegno per il IV centenario della canonizzazione di San Raimondo de Penyafort: 1601-2001*, Roma 2003. 61-86. BERTRAM, M., *Decretales de Gregorio IX*, in OTADUY, J. – VIANA, A. – SEDANO, J. (dir.), *Diccionario General de Derecho Canónico*, II. 916–923.

³² The official edition of the Roman Catholic Church is known as the *Editio romana: Decretales D. Gergorii Papae IX suae integritati una cum glossi restitutae*, Romae 1582. Critical edition: FRIEDBERG, AE. (ed.), *Corpus Iuris Canonici Editio Lipsiensis secunda. Pars secunda Decretalium Collectiones*, Lipsiae 1879 (repr. Graz 1959).

³³ Cf. GREGORIUS IX, *Bulla, Rex Pacificus*: AUVRAY, L. (ed.), *Les registres de Grégoire IX*, Paris 1896. I, num 2083: «Dilectis filiis doctoribus et scolaribus universis Parisius commorantibus».

³⁴ Cf. VAN HOVE, A., *Prolegomena. Commentarium Lovaniense in Codicem iuris canonici V/1. Mechliniae – Romae 1945*, n. 363 (note 2). VAN HOVE, A., *De decretalium Gregorii IX origine historica, utilitate et momento*, in *Ius Pontificium XIV* (1934) 102–120.

From the *Compilatio antiqua prima* (c. 1189–1191), the index for the compilation of the decretals was well established³⁵. Raymond preserved the division in five books –*iudex, iudicia, clerus, connubia* and *crimen*– and received all the titles of Bernard’s collection with only one exception: *De sobole suscepta ex secundis nuptiis* (*I Comp.* 4.15). He borrowed another twenty-nine titles from *Compilatio secunda* (12), *tertia* (16), and *quarta* (1), and added five entirely new ones: *De officio iudicis* (X 1.32 = *Inst.* 4.17), *De litis contestatione* (X 2.5 = *Cod. Just.* 3.9), *De custodia eucharistia chrismatis et aliorum sacramentorum* (X 3.44), *De calumniatoribus* (X 5.2 = *Dig.* 3.6, and *Cod. Just.* 9.46) and *De infantibus et languidis expositis* (X 5.11 = *Cod. Just.* 8.51).

When selecting the decretals, Raymond seemed quite conservative: 90 percent of his collection consists in a compendium and a reorganisation of the texts of the precedent compilations. He added 195 newly formulated chapters under the name of Gregory IX (10 percent). Going further than Gregory’s authorization, he altered the text of the pope’s predecessors: not only did he erase all that was repetitious, superfluous, contradictory, or verbose, but he also made excisions, interpolations, or alterations of words that sometimes reflected controversies of interpretation in the *Compilationes antiquae* that arose in the schools³⁶.

It is not possible to determine the length of Raymond’s stay at the Roman Curia, nor the reasons of his return to Barcelona. Gregory IX granted absolutions and remissions or imposed canonical penances (by means of) «per (dilectum) filium Fratrem Raimundum (cappellanum et) penitentiarum nostrum» in February, May, June, October and November 1234³⁷. Before the end of the year, Raymond selected six decretals of the «nova compilatio» (i.e. the *Liber Extra*) that talked about excommunication, simony and usury, and collected them to help his «Venerabilibus et carissimis Patribus et Fratibus» in the order to administer the sacrament of penance³⁸. Still, in 1234 Gregory IX was asked by the prior of the Dominicans and the minister of the Franciscans Friars, both established in Tunisia, about some practical issues related to the daily coexistence between Christians and Muslims in this kingdom. Once more, the pope turned

³⁵ Cf. FRIEDBERG, AE., *Quinque Compilationes Antiquae nec non Collectio Canonum Lipsiensis*, Lipsiae 1882; cf. PENNINGTON, K., *Decretal Collections 1190–1234*, in HARTMANN, W. – PENNINGTON, K. (ed.), *The History of Medieval Canon Law in the Classical Period*, 293–317.

³⁶ Cf. HORWITZ, S., *Magistri and magisterium: Saint Raymond of Peñafort and the Gregoriana*, in *Escritos del Vedat* 7 (1977) 209–238. HORWITZ, S., *Reshaping a decretal chapter: Tua nobis and the canonists*, in PENNINGTON, K. – SOMERVILLE, R. (ed.), *Law, church, and society: Essays in honor of Stephan Kuttner*, Philadelphia 1977. 207–221.

³⁷ Cf. RIUS SERRA, J., *Diplomatario*, num. IX, X, XI, XIVc and XV.

³⁸ The six decretales are of Gregory IX, none have a date and none were edited by Auvray. These are X 5.39.54 *Quum voluntate*, X 5.3.45 *Si quis ordinaverit*, X 5.19.19 *Naviganti*, X 5.27.10 *Si celebrat*, X 5.39.56 *Duobus collata* and X 5.3.46 *Mandato nostro*. Edition of this short collection known as *Sex decretales fratris ordinis preedicatorum transmise*: DíEZ, A. (ed.), *Decretales novae Sancti Raymundi a Pennaforte*, in *Claretianum* 12 (1972) 347–360.

to his chaplain, whose answer is a concise and clear casuistic guide on how to interpret and apply the banning of trade with pagans, usury and slavery passed by the last two general councils («in utroque Concilio prohibita»), i.e. canons 24, 25 and 26 of the Third Lateran Council (1179) and constitutions 67 and 71 of the Fourth Lateran Council (1215)³⁹.

Not long after the dissemination of *Rex Pacificus* to the doctors and students of the Universities of Bologna and Paris (September 5, 1234), Raymond revisited his SdC. The work would have begun in Rome and finished in Barcelona (1235–1236). First he updated the handbook with the new legislation and adapted the legal references to the *Liber Extra*. The making of a new collection of sixty-two decretals of Gregory IX, known as the *Constitutiones novae*, at the request of the members of his order could also be linked with this aspect of the revision⁴⁰. But the main concern of the papal chaplain was to complete the SdC with a fourth *particula* on marriage law.

Indeed, the first recension of the SdC in three *particulae* had not considered this subject. Copyists fulfilled the omission with Tancred's *Summa de sponsalibus et matrimonio*, added as a supplement to Raymond's SdC. Tancred († c.1236) wrote his *Summa* between 1211 and 1213 and updated it after the Fourth Lateran Council (1215)⁴¹. When preparing the new version of the SdC, Raymond borrowed long paragraphs from the *Summa* of his colleague, adapted them to the new legislation, and wrote new pieces on the subject. The final result was a *Summa de matrimonio* (SdM) that copyists and editors presented as the fourth book (*quarta particula*) of the SdC⁴². Raymond's explanations of the canonical discipline are organised into three parts: «primo, de sponsalibus et matrimonio; secundo, de quindecim impedimentis matrimonii; tertio, qualiter ad matrimonium coniungendum vel disiungendum agatur» (SdM, *proemium*). These main subjects are completed with short reflections on legitimate children, dowries and donations between spouses. The method is similar to that used for the writing of the SdC: «ponendo rubricas in locis debitis, et dubitationes diversas ad rubricas singulas pertinentes» (SdM, *proemium*). The rubrics of SdM are 25: (i) *De sponsalibus*; (ii) *De matrimonio*; (iii) *De errore personae*; (iv) *De impedimento conditionis*; (v) *De voto*; (vi) *De cognatione carnali*; (vii) *De cog-*

³⁹ Cf. RIUS SERRA, J., *Diplomatario*, num. XVII. On the conciliar legislation, cf. DUGGAN, A., *Conciliar Law 1123–1215: The Legislation of the Four Lateran Councils*, in HARTMANN, W. – PENNINGTON, K. (ed.), *The History of Medieval Canon Law in the Classical Period*, 318–366.

⁴⁰ Edition of the *incipits*: OCHOA, X. – DíEZ, A. (ed.), *Summa de matrimonio*, 1007–1018.

⁴¹ Edition of the *Summa de sponsalibus*: WUNDERLICH, A. (ed.), *Tancredi summa de matrimonio*, Göttingen 1841. Cf. VALLS I TABERNER, F., *Intorno alla «Summa de sponsalibus et matrimonio» del maestro Tancredo da Bologna*, in *Rivista di storia del diritto italiano* 11 (1938) 367–382. VIEJO-XIMÉNEZ, J. M., *Tancredo*, in OTADUY, J. – VIANA, A. – SEDANO, J. (dir.), *Diccionario General de Derecho Canónico*, VII, 535–537.

⁴² Edition: OCHOA, X. – DíEZ, A. (ed.), *Summa de matrimonio*, 901–98; nonetheless, cf. GARCÍA Y GARCÍA, A., *¡No es esto!*, 187–196. GARCÍA Y GARCÍA, A., *La canonística*, 44, footnote 16.

natione spirituali; (viii) *De cognatione legali*; (ix) *De impedimento criminis*; (x) *De dispari cultu*; (xi) *De impedimento violentiae sive metus*; (xii) *De impedimento ordinis*; (xiii) *De impedimento ligationis*; (xiv) *De publicae honestatis iustitia*; (xv) *De affinitate*; (xvi) *De impotentia coeundi*; (xvii) *De impedimento feriarum*; (xviii) *De matrimonio contra interdictum Ecclesiae contracto*; (xix) *Qualiter et quando mulier potest aliquem petere in virum, vel restitutionem viri, si fuerit spoliata, et e converso*; (xx) *De divortio propter consanguinitatem vel aliud perpetuum impedimentum*; (xxi) *Qualiter accusatio sit facienda in matrimonio*; (xxii) *De divortio propter fornicationem*; (xxiii) *De numero testium tam in matrimonio quam in aliis casibus*; (xxiv) *Qui filii sint legitimi, et qui non*; (xxv) *De dotibus et donationibus propter nuptias*⁴³.

After the SdC was reviewed, Friar Raymond answered the thirty-four questions laid out by Ranoldo, prior of the Dominicans in the Province of Dacia between 1228 and 1238. Some of the issues were related to the Order of Preachers – for example, the scope of the master’s power. Others, being more of a pastoral nature, outlined the problems faced by prelates and confessors of Dacia in dealing with excommunicated people, apostates and priests’ concubines. Raymond also included explanations on the celebration of the Eucharist, the granting of indulgences, and ecclesiastical benefits. In his concise answers, Raymond mentions some of the «decretales novas» of Gregory IX («[...] et respice decretalem novam, extra, de sententia excommunicationis, Cum voluntate»), as well as passages of the second version of the SdC («[...] de hiis tamen notavi in Summa de penitentia»)⁴⁴.

4. Barcelona – Bologna – Paris: Master of the Dominicans

Some chronicles suggest that the intense pace at the Curia affected Raymond’s health⁴⁵. The explanation seems plausible. On the contrary, there is no evidence that Gregory wanted to reward his services with the archbishopric of Tarragona, a position that the Dominican would have rejected⁴⁶. The last issues that the

⁴³ On the SdM, cf. DE HEREDIA Y VALLE, I. P., *La Summa de matrimonio de san Raimundo de Penafort*, in LONGO, C. (a cura di), *Magister Raimundus*, 111–164.

⁴⁴ Cf. CREYTENS, R., *Operetta sconosciuta di Raimundo da Peñafort: «Responsa ad quaesita fr. Ranoldi O.P. provincialis Dacie»*, in *Escritos del Vedat* 10 (1980) 141–154.

⁴⁵ So the *Brevis abstractio de vita sancti Raimundi* (s. XV): «Post vero multos labores quos sanctus Raimundus pro ecclesia sustinuit incidit in egritudinem magnam. Cui medici dixerunt quod si volebat mortis vitare periculum, oportebat eum ad terram propriam, id est Barchinonae redire.» (COLLELL, A. [ed.], *Raymundiana*, in *Analecta sacra Tarraconensia* 30 [1957] 63–95, num. 16).

⁴⁶ Cf. Giovanni Colonna’s biography and, in more detail the *Vita antiqua* bajo under the title «Quomodo humiliter Archiepiscopatum renuit» (BALME, F. – PABAN, C. – COLLOMB, J. (ed.), *Raymundiana*, I, nums. IV and XI, pp. 6, 23–24).

chaplain and penitentiary could have dispatched with Gregory IX in Rome date back to May 1236⁴⁷. On October 15, 1236, he was already back in Catalonia, where he took part in the Courts of Monzón that had been summoned by James I of Aragón⁴⁸. In Barcelona, Raymond would not have enjoyed a well-deserved rest, as he received two delicate papal assignments in February 1237: to remit the excommunication in which King James I had incurred when preventing the elected bishop of Zaragoza to travel to Tarragona to receive the episcopal consecration; and to accept, also on behalf of Gregory IX, the resignation of the archbishop of Tarragona, William of Montgri⁴⁹. The pope entrusted his chaplain with the granting of absolutions and dispensations, as well as with episcopal nominations and resignations in February, April and July 1237⁵⁰. A tragic and unexpected event forced him to leave the convent of Saint Catherine.

Jordan of Saxony (1190–1237) second Master of the Dominicans died on February 13, 1237, in a shipwreck while travelling to the Holy Land. The general vicar of the order, Albert the Great (c. 1200–1280), called the XVI General Chapter, held in Bologna on May 22, 1238. Raymond was unanimously elected the third master of the Preachers⁵¹. A commission of four friars was sent to Barcelona, and Raymond accepted the post. He travelled to Bologna, Rome and Paris, where he presided over the XVII General Chapter on May 15, 1239. At this meeting, Raymond presented a new version of the *Liber consuetudinum* of 1228 and started the drafting of the new constitutions of the order, a process that required the endorsement of three consecutive chapters. Pleading sickness and exhaustion, Raymond stepped down from office on July 3, 1240, during the general chapter of the order held in Bologna. The resignation was accepted and Raymond returned to Barcelona, where he would remain until the end of his days⁵². The XVIII General Chapter passed the constitutions that received their final ratification in Paris in 1241⁵³.

Released from the responsibilities of the office, the Dominican of Saint Catherine kept being considered a reliable collaborator and a wise counsellor by both civil and ecclesiastical authorities. On January 1, 1241, Raymond is men-

⁴⁷ Cf. RIUS SERRA, J., *Diplomatario*, num. XXV.

⁴⁸ RIUS SERRA, J., *Diplomatario*, num. XXVIII.

⁴⁹ RIUS SERRA, J., *Diplomatario*, nums. XXVIII–XXXI.

⁵⁰ RIUS SERRA, J., *Diplomatario*, nums. XXXIII–XXXIX.

⁵¹ Cf. BALME, F. – PABAN, C. – COLLOMB, J. (ed.), *Raymundiana*, II, num. V. RIUS SERRA, J., *Diplomatario*, num. XLI, and also pp. 345–346. COLLELL, A. (ed.), *Raymundiana*, num. 2. On this stage of Raymond's life cf. LONGO, C., *San Raimondo maestro dell'ordine domenicano (1238–1240)*, in LONGO, C. (a cura di), *Magister Raimundus*, 35–50.

⁵² RIUS SERRA, J., *Diplomatario*, num. XLI, and also p. 346.

⁵³ Cf. BALME, F. – PABAN, C. – COLLOMB, J. (ed.), *Raymundiana*, II, num. LXIII. COLLELL, A. (ed.), *Raymundiana*, num. 3. Edition: CREYTENS, R., *Les constitutions des Frères Prêcheurs dans la rédaction de s. Raymond de Peñafort (1241)*, in *Archivium Fratrum Predicatorum* 18 (1948) 5–68, esp. 29–68.

tioned, together with three Dominicans, in the will of King James⁵⁴. In his will of August 20, 1241, Berenguer of Palou, bishop of Barcelona, ordered that any decisions concerning the legacy heritage to his diocese were consulted with the prior of the convent of Saint Catherine and with Friar Raymond⁵⁵.

After the death of Berenguer, the cathedral chapter asked the archbishop of Tarragona to continue the inquisition against the heresy that the deceased prelate had carried out in their diocese. Probably bearing in mind that on May 26, 1232, Gregory IX had ordered the archbishop of Tarragona and its suffragans to pursue heresy in the dioceses of the province⁵⁶, Peter of Albalat (1238–1251) welcomed the request. Moreover, constitution 4 of the Fourth Lateran Council threatened those negligent or remiss prelates «in cleansing his diocese of the ferment of heretical wickedness» with the penalty of deposition. The inquisition was not, however, a simple task: the decretals and the conciliar canons of the title *De haereticis* (X 5.7) ordered the pursuit of the heresy but did not include a particular procedure. In 1241 or 1242, Peter of Albalat consulted with «fratre Raymondo de Pennaforti, penitentiario domini Pape (...) et aliis viris prudentibus» on how to proceed against heretics «secundum statuta et provisionem Sedis Apostolice»⁵⁷. Modern scholars presume that the rules given by the bishop –and passed by the III Provincial Council of Tarragona on May 13, 1242– replicate the responses of the papal chaplain and therefore include them in the catalogue of his genuine writings with the title *Directorium (inquisitorum)*. Indeed, the instructions of Peter of Albalat and Raymond of Penyafort are an analytical compendium of clarifications grouped into twelve sections and comprised the following issues: definitions of the behaviours that the inquisitor should consider deserving a sanction (1, 4, 10); the treatment of the reformed heretics (2); margin that the judge has in moderating penalties (3); the responsibilities and duties of the priests who absolved heretics in the sacrament of confession (5, 9); models of convictions or acquittals (1, 6); oaths imposed on heretics, those suspected of heresy and those who support their orthodoxy or state their conversion (6, 11); information on the procedure against those who are accused or convicted *post mortem*, or those who die in the process (7, 8, 12); and a range of penalties (12).

It was not the first time that Raymond advised the Catalan bishops on matters of inquisition. On April 30, 1235, Gregory IX sent a «notam fratris

⁵⁴ Cf. BALME, F. – PABAN, C. – COLLOMB, J. (ed.), *Raymundiana*, II, num. LXII.

⁵⁵ BALME, F. – PABAN, C. – COLLOMB, J. (ed.), *Raymundiana*, II, num. LXIV.

⁵⁶ Cf. RIUS SERRA, J., *Diplomatario*, num. VIII.

⁵⁷ RIUS SERRA, J., *Diplomatario*, LXIV. On the *Directorium*, cf. ERRERA, A., *Il Directorium inquisitoriale di san Raimondo*, in LONGO, C. (a cura di), *Magister Raimundus*, 165–192. TORRAS, S. G., *Ramon de Penyafort i el Procediment inquisitorial contra els Heretjges*, in *Revista de Dret Històric Català* 13 (2014) 143–76.

Raymundi» to Archbishop William of Montgrí, Peter of Albalat's predecessor, with instructions on how to treat heretics and their families, the rights and duties of the inquisitor «a sede Apostolica constitutus» in relation to diocesan bishops, as well as on how to treat retracted heretics⁵⁸. The report of the papal confessor –which is also included in the list of his genuine works, entitled *Credo*– defines the personal limits of the jurisdiction of the inquisitor, provides criteria to assess the responsibility of those who help the heretics by ignorance, and highlights the procedural precautions to be taken before a conviction when the testimonies are contradictory. In 1238, Friar Raymond advised Ponce de Villamor, Bishop of Urgel, to act «secundum concilium, statuta domini Papae noviter contra hereticos promulgata» in relation to those accused of heresy in his diocese⁵⁹.

5. *Barcelona: A Trustworthy Man*

Raymond held the title «capellani et paenitentiarium Papae» during the pontificates of Innocence IV (1243–1254)⁶⁰, Alexander IV (1254–1261)⁶¹, Urban IV (1261–1264)⁶², Clement IV (1265–1268)⁶³ and Gregory X (1271–1276). In the papal records from 1242 to 1275, he appears as the confidant for extraordinary ecclesiastical affairs –such as absolutions and dispensations, resignations and depositions, elections and nominations– of the province of Tarragona and neighboring dioceses. Just four months before his death, Raymond settled, on behalf of Gregory X and «appellatione remota», the dispute that confronted Franciscans and Mercedarian Friars over the construction of an oratory in Tarragona⁶⁴.

The Dominican enjoyed the confidence of the king of Aragón; his heir, Prince Peter; and the nobles of Catalonia. In a secret letter sent to James I around 1258, Raymond regretted that his health had not allowed him to deal with cer-

⁵⁸ RIUS SERRA, J., *Diplomatario*, nums. XIX and XX. Modern edition: OCHOA, X. – Díez, A. (ed.), *Summa de matrimonio*, 1045–1048. Cf. MAS, L. G., *San Ramon de Penyafort y la Inquisición en la Alta Catalunya*, in *Praedicatores Inquisitores, I: The Dominican and the Mediaeval Inquisition: Acts of the 1st International Seminar on the Dominicans and the Inquisition (Rome; 23–25 février 2002)* [Dissertationes historicae 29], Roma 2004. 85–104.

⁵⁹ RIUS SERRA, J., *Diplomatario*, num. XL. On the jurisdiction of bishops and archbishops cf. also the regular mail correspondence between Raymond and Benet of Rocaberti, archbishop of Tarragona, in connection with the inquisition of heretics in the city of Berga after the suspension of the bishop of Urgel: VALLS I TABERNER, F., *Diplomatari*, nums. XVII - XX.

⁶⁰ Cf. VALLS I TABERNER, F., *Diplomatari*, nums. VI (1247), VII (1248), VIII (1248), IX (1248), XIII (1252), XIV (1253) and XV (1253); RIUS SERRA, J., *Diplomatario*, nums. LXIX (1247).

⁶¹ VALLS I TABERNER, F., *Diplomatari*, nums. XVI (1255), XXI (1256) and XXIV (1260).

⁶² VALLS I TABERNER, F., *Diplomatari*, num. XXVII (1263).

⁶³ VALLS I TABERNER, F., *Diplomatari*, num. XXXI (1266); RIUS SERRA, J., *Diplomatario*, num. CXXV (1266).

⁶⁴ VALLS I TABERNER, F., *Diplomatari*, num. XXXVI (1274).

tain business and also thanked the monarch for his interest in the evolution of his disease «*istis diebus longe solito graviore*»⁶⁵. The Dominican of Saint Catherine is one of the persons on whom King James usually counted for all sorts of ecclesiastical or civil advice, from the examination of books written by Jews «*in toto districtu nostro ubique commorantibus*»⁶⁶ to the irrevocable confirmation of Barcelona's legal tender⁶⁷. Raymond defended the case of Raymond of Saint Catherine, who complained about James I because the king had withdrawn his right to weigh flour in the city of Barcelona before the term set for the end of the concession⁶⁸. Infant Peter, the future King Peter III of Aragón (1276–1285), took the papal chaplain as witness of his secret protests against the donations made by his father⁶⁹. The Catalan nobles entrusted the judgment on their marriage alliances or the solution of their conflicts with churches and monasteries to the recognized canonist⁷⁰. In the last stage of his life, Raymond of Penyafort participated in juristic acts related to the knowledge and execution of last wills, as well as property disputes resolved by arbitration or amicable agreements⁷¹.

Politics and law were not the only issues that occupied the Catalan Dominican, whom the historians of his order called «*zelator fidei propagandae inter sarracenos*»⁷². During the last stage of his life, especially since his resignation from the Generalate, Raymond seconded the decisions taken at the general and provincial chapters in relation to the missions in North Africa and the Iberian Peninsula. As he explained to the master general around 1246, he expected two fruits from the ministry of his Dominican brothers: the pastoral care of Christians –mercenaries, servants, apostates and captives– and the conversions «*inter Sarracenos (...) maxime potentiores*»⁷³. He himself had taught that Jews and Saracens should be invited to faith «*auctoritatibus, rationibus et blandimentis potius quam asperitatibus*» (SdC 1.4.1), so he committed to the foundation and maintenance of a school of languages in Tunisia (*Studium arabicum* from 1245 to c. 1258), in Murcia (*Studium arabicum et hebraicum* from 1266 to c. 1280)

⁶⁵ VALLS I TABERNER, F., *Diplomatari*, num. XXIII.

⁶⁶ VALLS I TABERNER, F., *Diplomatari*, nums. XXVIII–XXX.

⁶⁷ VALLS I TABERNER, F., *Diplomatari*, num. XXXV.

⁶⁸ Cf. BAUCCELLS I REIG, J., *Documentación*, num. 2.

⁶⁹ Cf. VALLS I TABERNER, F., *Diplomatari*, nums. XXV and XXXII.

⁷⁰ Cf. COLLELL, A. (ed.), *Raymundiana*, nums. 9, 10, 11 and 12.

⁷¹ Cf. VALLS I TABERNER, F., *Diplomatari*, nums. IV, X, XI and XXXIII.

⁷² Gerard Frachet (c. 1254): *Fratris Gerardi de Fracheto O.P. Vitae fratrum ordinis praedicatorum: necnon Cronica ordinis ab anno MCCIII usque ad MCCLIV*, Lovanii 1896. 332.

⁷³ COLL, J. M., *Escuelas de lenguas orientales en los siglos XIII y XIV (Período Raimundiano)*, in *Analecta sacra Tarraconensia* 17 (1944) 115–138, appendix 2. Cf. REILLO, A. G., *El árabe como lengua extranjera en el s. XIII: medicina para convertir*, in *El saber en al-Andalus. Textos y estudios* 4 (2005) 147–187.

and probably also in Barcelona (*Studium arabicum* from 1259 to 1266)⁷⁴. On July 15, 1260, Alexander IV granted «dilecto filio fratris Raymundo de Pennaforti» the power to send, «auctoritate apostolica», missionaries to Tunisia «et alias barbaras nationes, tam in conversione infidelium quam etiam in corroboratione fidelium»⁷⁵. In this context, historians give some credibility to Pedro Marsilio (†1318), for whom Raymond, «Conversionem etiam infidelium ardentius desiderans», would have asked Thomas Aquinas the writing of a work «contra infidelium errores»⁷⁶.

Raymond of Penyafort died on January 6, 1275 (1274 anno incarnationis)⁷⁷.

II. TEACHINGS AND INFLUENCE

1. *Fame of Sanctity*

«Secutus est honor regius orientem». According to the *Vita antiqua*, Alfonso X of Castile (1252–1284) and James I of Aragón presided over the funerals⁷⁸. Few canonists have enjoyed similar recognition. The Christians jurists whose sanctity of life and prestige aroused a unanimous movement for their canonization are also quite few. The canonization process of the Catalan Dominican started four years after his death, when the Provincial Council of Tarragona sent a request to that effect to Nicholas III (1277–1280). It was December, 13, 1279. The subsequent efforts of Peter III of Aragón (1276–1285) had as little success as it had the petitions of the counselors of the city of Barcelona, the counselors of the main cities of Aragón, the Friar Preachers of Barcelona and the Dominican Priors of Catalonia and Aragón sent to the pope from 1282 to 1298. In 1317, a Provincial Council held in Tarragona and the Courts of Perpignan reiterated the request to John XXII (1316–1334). Peter IV of Aragón (1336–1387) insisted before Pope Clement VI (1342–1352). Finally, Philip II King of Spain (1556–1598) urged Clement VIII (1592–1605) to complete the process. Raymond of Penyafort was canonized in 1601: «sanctum esse definivimus, ac Sanctorum Confessorum numero, et catalogo adscribendum esse decrevimus»⁷⁹.

⁷⁴ Cf. RIBES MONTANÉ, P., *San Ramón de Penyafort*, 46–57; CORTABARRÍA BEITIA, Á., *San Ramón de Penyafort y las escuelas dominicanas de lenguas*, in *Escritos del Vedat* 7 (1977) 125–154. IBÁÑEZ, J. F., *Funcionamiento pedagógico y proyección cultural de los estudios de árabe y de hebreo promovidos por San Ramón de Penyafort*, in *Escritos del Vedat* 7 (1977) 155–175.

⁷⁵ Cf. VALLS I TABERNER, F., *Diplomatari*, num. XXIV.

⁷⁶ Cf. RIUS SERRA, J., *Diplomatario*, 341.

⁷⁷ RIUS SERRA, J., *Diplomatario*, num. CXXXIV. COLLELL, A. (ed.), *Raymundiana*, nums. 14 and 15.

⁷⁸ Cf. BALME, F. – PABAN, C. – COLLOMB, J. (ed.), *Raymundiana*, I, num. XI, p. 37.

⁷⁹ The requests are collected in RIUS SERRA, J., *Diplomatario*, nums. CXXXV, CXXXVI–CXXXVII, CXXXIX–CXLI and CXLIII–CXLV. Clemens' Decree of canonization was printed

In addition to his holiness and miracles, the proponents always highlighted the role of the pope's chaplain in the making of the *Liber Extra* as far as the autorship of the SdC. Throughout the history of canon law, Raymond is the second milestone of what has been called Gratian's century (1140–1234), the germinal stage of the classical canon law⁸⁰. *Ratio* and *auctoritas*, the two forces that transformed the discipline of the church into a harmonious body of principles and institutions, a system of law independent from the civil power, met at him in a singular way. A conscientious jurist and tireless collaborator of the lawmaker, Raymond is one of the leading figures of the European *ius commune*.

2. Sources of Canon Law

The Catalonian Dominican was primarily a canonist (decretalist). With Gratian's *Decretum*, canon law had become an autonomous discipline. From the second half of the twelfth century, the decretals of the popes reached a high degree of technical perfection. At the end of the century, Bernard of Pavia (†1213) was inspired by the tripartite division of Gayo to organize the *ius novuum*. One can recognize a large number of titles of his *Breviarium extravagantium* –the *Compilatio Antiqua prima*– in the books of the *Corpus Juris Civilis*. To explain the ecclesiastical rules, Bernard and his colleagues used categories of Roman law, giving rise to institutions of increasingly precise contours. As a general rule, they commented Gratian's *Decretum* (*glossae*, *apparatus glossarum*, *summae*) and the titles of the decretals collections (*summae titulorum*). Raymond's writings are a clear example of the technical level achieved by the generation of canonists that straddle the twelfth and thirteenth centuries. The SIC and the SdC do not follow the order of the legal books, which is what distinguishes the Catalonian master from the Bolognese commentators. However the definitions, the distinctions and the classifications by means of which he explains canon law were commonplaces among his contemporaries⁸¹. The two *particulae* of the unfinished SIC are a good example.

in the edition of the SdC Verona 1744, xxvii–xlvi. Cf. also HODEL, P. B., *La canonisation de saint Raymond*, in LONGO, C. (a cura di), *Magister Raimundus*, 51–60.

⁸⁰ Cf. HARTMANN, W. – PENNINGTON, K. (ed.), *The History of Medieval Canon Law in the Classical Period, The History of Medieval Canon Law in the Classical Period, 1140–1234: from Gratian to the decretals of Pope Gregory IX*, Washington D.C. 2008. KUTTNER, S., *Gratian and the Schools of Law, 1140–1234* (Variorum Collected Studies Series, 185), London 1983.

⁸¹ According to Martín Avedillo, “Influjo del canonista Ambrosius”, 350–353, Bernard of Pavia did not influence Raymund of Penyafort, who used Ambrosius' *summa* to write his SIC (p. 334). A careful analysis of the parallels adduced in pp. 332–334 –some of which are repeated in Bernard's *summa*– allows us to question the criterion of direct literary dependencies on which the enunciated conclusion seems to rest.

The first part of the SIC is a treatise on the sources of Law. It explains distinctions D.1 to D.20 of the DG and the first three titles of the first book of the *Compilationes antiquae* relying on a scheme of twelve titles. It is certainly an original index, but decretalists' *Summae super decretalibus* supplied Raymond with the guidelines to delve into every topic. Explanations on ecclesiastical constitutions, for instance, follow Bernard's outline, as the comparative table shows⁸²:

Bernard's <i>Summa</i> (SB) <i>De constitutionibus</i> (I Comp. 1.1)	Raymond <i>De constitutionibus</i> (SIC 1.5)
(...) videamus in primis, quid sit constitutio, quis possit constituere, quae causa faciendi constitutionem, quid eius officium, quae cui valeat prauidicare	Videamus quid sit constitutio, quis possit constituere, quae causa faciendi constitutionem, quod eius officium, quae, cui prauidicet

The same is true concerning the explanations on the rescripts:

Bernard's <i>Summa</i> (SB) <i>De rescriptis et eorum interpretationibus</i> (I Comp. 1.2)	Raymond <i>De rescriptis et eorum interpretationibus</i> (SIC 1.7)
Diximus de constitutionibus. Sed quia saepe rescriptum vim habet constitutionis, de rescriptis subiiciamus, videntes, quid hic dicatur rescriptum, quis possit facere rescriptum, quas vires habeat in causis, et de eius interpretatione.	Post tractatum de constitutionibus agendum est de rescriptis, quia saepe habent vim constitutionis. Videamus ergo quid sit rescriptum, quis possit facere tale rescriptum quod vim habeat constitutionis, quando rescriptum habeat vim constitutionis, et de interpretatione rescriptorum, et quod cui prauidicet.

⁸² Cf. LASPEYRES, E. A. TH. (ed.), *Bernardi Papiensis Faventini Episcopi Summa Decretalium*, Regensburg 1860 (repr. Graz 1956).

Not to multiply examples further, it may suffice to add one extra table on custom:

Bernard's <i>Summa</i> (SB) <i>De consuetudine</i> (I Comp. 1.3)	Raymond <i>De consuetudine</i> (SIC 1.9)
Audivimus de iure scripto. Nunc audiamus de iure non scripto, scil. de consuetudine; unde videndum quid sit consuetudo, unde dicatur, quae eius species, quem locum habeat in causis, quae consuetudo legi vel constitutioni praeiudicet, quae in duabus contrariis consuetudinibus debeat praevalere.	Diximus de iure scripto; sequitur ut de iure non scripto, de consuetudine, videlicet, videamus, inquirentes quid sit consuetudo, unde dicatur, quae eius species, quem locum habeat in causis, quae consuetudo legi vel constitutioni praeiudicet, quae duarum consuetudinum contrariarum praevalent.

The threefold «*divisio iuris*» –*naturalis, gentium, civilis* (SIC 1.1 – 3)– is taken from Gratian, as far as the explanations on the origin of law (SIC 1.4). Regarding the «*constitutio*», Raymond completes the definition of D.2 c.4 by stressing the notes that distinguish this rule from divine and customary law: «*Constitutio est ius humanum in scriptis redactum*» (SIC 1.5.2 = SB 1.1.1). While the emperor and the praetorian prefect may issue general civil constitutions, the cities can only approve municipal laws «*dum tamen lex illa iuris naturalis vel scripti contineat aequitatem*» (SIC 1.5.3). In the church, the pope and the general council enacted «*constitutiones generales*» (SIC 1.5.3). Particular ecclesiastical constitutions are those passed by the «*synodus patriarchalis, metropolitana et episcopalis*» and cannot be «*contra ius*» (SIC 1.5.3). The distinction *constitutio generalis* – *constitutio particularis* is founded on Augustine, for whom all the ecclesiastical matters have three different sources: the «*autoritas scripturarum*», the «*traditio universalis*», and the «*particularis instructio*» (D.11 c.8). The dynamic divine law – human law and general law – particular law is organized around two principles: first the human power, civil or ecclesiastical, interposed between equity and law (*Cod. Just.* 1.14.1: «*[...] nobis solis [...]*»); and second the no contradiction between rules (*Cod. Just.* 1.26.2: «*[...] minime legibus vel constitutionibus contraria [...]*»). Thus, when on the same fact there are two different constitutions one must take into account their nature. If both are general, the contradiction is solved by Paulo's rule (*Dig.* 1.3.26 and 28): «*(...) prima tollitur per posteriorem, si directe sibi contradicant. Si autem non contradicant directe, posterior recipit interpretationem secundum priorem*» (SIC 1.5.5). But when the two conflicting constitutions are particular, it is necessary to consider the authority from which they came. In the event that the authorities are of the

same level, «posterior tollit primam» (SIC 1.5.5). On the other hand, if they came from unequal authorities, the contradiction is solved according to the principle of hierarchy, i.e. «praevallet constitutio facta a superiori etiamsi sit anterior», although this solution is only valid when «superior potest super illa re facere constitutionem» (SIC 1.5.5). Finally, in the case of equal authorities another principle must be also taken into account: «(...) episcopus nihil potest in episcopatu alterius constituere» (SIC 1.5.5).

If one pays attention to their source, the ecclesiastical constitutions are canons (*canones*), decrees (*decreta*) and decretals (*decretales epistulas*) (SIC 1.5.6). *Canon* is the constitution passed «in concilio universalis». *Decretum* is the constitution established by the Pope «de consilio cardinalium ad nullius consultationem». A *decretalis epistula* is ordered by the Pope «vel solus vel cum cardinalibus ad consultationem alicuius». When one considers their content, the «constitutiones appellatae canonicae» are *dogma*, if they deal with the Christian doctrine; *mandatum*, if they regulate habits; *interdictum*, if they do not establish any penalty; and finally, *sanctiones*, when they establish a penalty (SIC 1.5.6). The no-retroactivity nature of all kind of constitutions («non trahitur ad praeterita, sed tantum ad futura») have two exceptions: the constitutions on natural law, and those that explicitly refer to past events (SIC 1.5.7).

SIC explains that there are three kinds of councils. Universal is the council held «auctoritate Papae vel eius legati habentis ad hoc speciale mandatum» (SIC 1.6.1). «Primas seu Metropolitanus (...) cum suis suffraganeis» celebrate the provincial council, and the metropolitan call it «sine auctoritate Primatis» (SIC 1.6.1). Finally, the episcopal council is held «auctoritate episcopi» (SIC 1.6.1). While the universal council «asstringit universos», the provincial forces only those who are «in illa provincia», and the episcopal, those who «sunt in episcopatu».

As for the ecclesiastical rescripts, Raymond warns that, strictly speaking, a rescript is «(...) quod Papa vel solus vel cum cardinalibus ad consultationem concedit» (SC 1.7.2). In a broad sense, the word also refers to the letters containing the request. Only the rescript «secundum ius», or at least «praeter ius», can be named an «epistula decretalis» and therefore is a true ecclesiastical constitution, i.e. «(...) habet auctoritatem canonis in causis definiendis» (SC 1.7.4 = SB 1.2.3). By contrast, a rescript «contra ius, reiciendum est, vel recurrendum est ad regestum, vel exspectanda est secunda iussio» (SIC 1.7.4).

There are four types of interpretation of constitutions and rescripts (SIC 1.7.5 = SDB 1.2.4). The general, necessary and written interpretation belongs to the prince (*Cod. Just.* 2.14.1). The general and necessary, yet not written, interpretation is typical of the custom (*Dig.* 1.3.37). The judicial interpretation is necessary and written but not general (*Dig.* 1.3.38). Although the interpretation of the doctors is not general neither necessary nor put in writing «tamen non est contemnenda» (*Cod. Just.* 1.17.1.12).

3. *Political Thought and Ecclesiology*

Raymond is a Christian jurist but it must not be forgotten that he is also a prominent figure of the medieval Christianity. His vision of the church and the world is in debt to Innocent III's political theology, a doctrine that also impregnated the constitutions of the Fourth Lateran Council (1215). The pretext of the «ratione peccati» and the conviction that the pope has received «utrumque gladium» from God, for example, inspire his clarifications on the relationship between laws (civil law) and canons (canon law) as well as his reflections on the origin of power, both civil and ecclesiastical (SIC 1.11). Another relevant aspect of the ecclesiology of the Catalonian Dominican is the concept of the clerics as «ministri canones». Both issues are analysed below separately.

Raymond states that «in causis spiritualis», ecclesiastical constitutions abrogate contrary civil laws. Spiritual causes are those related to the health of the soul «id est, sine quibus anima salvari non potest vel impeditur ad salutem» (SIC 1.11.1). Civil laws that allow usury, marriage, divorce or anything else against the provisions of the canons are not valid «nam imperatores, reges et omnis homo pertinet ad iudicium ecclesiasticum ratione peccati» (SIC 1.11.1). Civil laws dealing with ecclesiastical persons and ecclesiastical matters are also invalid, because on these two issues the emperor or any layman «nihil potest disponere» (SIC 1.11.2). In all other «causas saecularibus», civil laws are valid and they can be invoked «coram iudice saeculari». However, since the empire and the priesthood derive from the same principle, in the aforementioned cases, that is, in the spiritual ones, the pope can annul them in his own sphere.

For Raymond, indeed, all power comes from God, including the power of the emperor. The key issue to understand the relationships between the two branches of Christianity is this: «Sed numquid immediate, an mediate habet Imperator imperium a Deo?». While some authors stand up for the immediate reception, Raymond favors mediate reception since, from his point of view, «Papa enim habet a Domino utrumque gladium, et alterius scilicet temporalis concedit Imperatori» (SIC 1.11.4). The Dominican also adheres to the *translatio imperii* supported by Innocent III (III *Comp.* 1.6.19 = X 1.6.34): there is only one emperor, since the «Romana Ecclesia transtulit imperium ab Oriente in germanos» (SIC 1.11.5). As far as the emperor is «dominus mundi» and since God established that there are «duas potestates quibus regeretur hic mundus, sacerdotium et imperium», the kings have to pay him taxes, save a special exemption. At this point, Raymond turns to *ius italicum* (*Dig.* 50.15.8) to declare the Gauls and the citizens of Narbonne and Barcelona exempt. In his view, the kings of France and Spain are not subject to taxes «quia praescripserunt longissimo tempore» (SIC 1.11.6). Finally, Raymond advocates for the complete separation of jurisdictions: if an ecclesiastical judge hears a civil case between

laymen, by ordinary or delegated jurisdiction, he must proceed according to the canons, not according to the civil laws (SIC 1.11.7).

Bernard of Pavia introduced his comment to the title *De electione et electi potestate et iuramento* (*I Comp.* 1.4) with the following *illatio*: once the treaty on law is concluded (that is, *I Comp.* 1.1-3), «ad tractandum de eius ministris scilicet de clericis accedamus» (SB 1.4). Raymond also states that the clerics are «ministri canones», a concept inspired by Roman law (*Dig.* 1.2.2.13): little matter that the city had a law «nisi sint ministri per quos regantur» (SIC 2.1.1). Ecclesiastical ministers include twelve categories, from the «summum Pontifex» to the «rectores ecclesiarum», although it is not a closed roster because there are other ministers «secundum varias consuetudines et diversas, iuxta diversitatem ecclesiarum, multipliciter variantur» (SIC 2.1.2). Raymond first reviews the territorial organization of the church, which parallels the ancient Roman divisions. The pope «debet collocari in urbe». Patriarchs or primates are placed in provincial capitals, i.e. in those cities where the gentiles «ante Christi adventum ponebant suos primates sive primi flamines». Archbishops or metropolitans are placed in major cities «in quibus gentiles ponebant suos archiflamines». Bishops preside in other cities, one in each, except in exceptional instances. Finally, archdeacons, probosts, deans and other lower offices should be placed in front of each ecclesiastical dignity or administration –in the cathedral church, or in the villages or castles– preventing that «plura officia sunt uni committenda» (SIC 2.1.3). At the top of the ecclesiastical hierarchy, the pope, «summum inter omnes», possesses full power, «habet plenitudinem potestatis». Raymond counts thirty-four matters –all related to faith, bishops, dioceses, vows, oaths, crimes, customs councils, excommunications, appeals, ordinations and sources of canon law– that are the exclusive competence of the Apostolic See: only the pope, for instance, can «generale concilium celebrare», or «condere legem generalem» (SIC 2.1.4). This title of the SIC describes the competences of each ecclesiastical office and explains the principles governing their special relations: except in the cases provided by law, patriarchs and primates, archbishops and Metropolitans have no jurisdiction over their respective suffragans.

4. Internal and External Forum

Raymond of Penyafort was an author of the internal forum⁸³. Unlike the unfinished SIC, the SdC spread and enjoyed wide acceptance throughout Europe. Around 1245, William of Rennes (*Willelmus Redonensis*) wrote an *apparatus*

⁸³ Cf. VON SCHULTE, J. F., *Die Geschichte der Quellen und Literatur des Canonischen Rechts von Gratian bis auf die Gegenwart*, II: *Die Geschichte der Quellen und Literatur von Papst Gregor IX bis zum Concil von Trient*, Stuttgart 1877 (repr. New Jersey 2000) 408.

glossarum, which accompanied copies of the work since the second half of the thirteenth century. Long excerpts from the SdC are recognizable at the end of the English *Speculum iuniorum* (c. 1250), an anonymous compendium of pastoral and confessional teachings. Another anonymous master's collection, made sometime between 1260 and 1280, generally begins each topic with Raymond's teachings. John of Freiburg (*Johannes Friburgensis lector de ordine praedicatorum*) composed an alphabetical index (*Tabula*) of the materials contained in both the SdC and in William of Rennes' *apparatus*. He also wrote a *Summa confessorum* (c. 1297-98) organized into titles and very dependent on SdC that was used as a supplement of Raymond's work in the schools of the order⁸⁴.

Adaptations and summaries of Raymond's handbook were written in the thirteenth and early fourteenth centuries. *Symonia (...) ut ius patronatus* and *Symonia (...) secundum Vicentium* only cover the first three books of the SdC and did not refer to Gregorian legislation. *Quid est et unde dicatur* discuss the decretals of Gregory IX. *Quid sit symonia* and *Quoniam inter crimina* summarize the four books of Raymond's text and William of Rennes' *apparatus*. The abbreviations *Qui stat (...) premitit* and *Verbum abbreviatum* also comprise the four books. The anonymous author of *Quia non pigris* selected fragments of the SdC and arranged them «in tres partes», following the structure of Conrad of Hoxeter's *summa*⁸⁵. Burchard of Strasbourg's *Summa casuum* is an adaptation of SdC written before the Council of Vienne (1313). The Franciscan Friar Astesanus of Asti recognised that one of the sources he used for his *Summa de casibus* (c. 1317) was Raymond's work. A German author known as Adam even composed a versified summary of the SdC⁸⁶.

Designed as a handbook for confessors, the impact of SdC overflowed the boundaries of the teaching and the pastoral practice of the sacrament of penance. Due to the vague and moving limits between the internal and the external forum, the work became a vehicle for the transmission of the new law of the Church (*ius novum*) and the teachings of the canonists (decretists and decretalists) on a wide variety of issues. In the title *De purgationibus et inquisitionibus* (SdC 2.31), for instance, the constitution *Qualiter et quando* of the Fourth Lateran Council (1215) is taken as a reference to stress the usefulness and necessity of the canonical process as the instance responsible for punishing crimes, a legal framework that ensures the protection of the rights of those who have been vilified (SdC 2.31.2). First of all, the SdC lists the cautions that accompany the accusation (the *legitima inscriptio*), the denunciation (the *caritativa admonitio*) or the inquisition (the *clamosa insinuatio*) and also explains the *actio per modum*

⁸⁴ GOERING, J., *The Internal Forum*, 418-22.

⁸⁵ PENNINGTON, K., *Summae on Raymond of Pennafort's Summa de casibus in the Bayerische Staatsbibliothek, Munich*, in *Traditio* 27 (1971) 471-480.

⁸⁶ VON SCHULTE, J. F., *Geshichte der Quellen*, 425-428.

exceptionis, a way of asking the judge to declare inadmissible an accusation or a testimony. Then Raymond describes the distinctive traits of the inquisition, that is, the procedure for the crimes known from *clamore et fama*: the defendant must be present, unless he has been declared in contempt; to ensure his defence, he must know the *capitula* that are subject to inquisition, and the name of those who have defamed him; and finally the judge must move to the place where the person who is under inquiry lives to investigate his life and reputation (*fama*). Only after taking these cautions, may the judge - inquisitor sign a conviction if sufficient evidences have been gathered. But if the judge is not certain of guilt, and the bad reputation persists, the defendant is to be summoned to a private meeting and then to another public one before witnesses to try to modify his behaviour and, thus, remove the discord (*clamor*) surrounding his person⁸⁷.

Thanks to the SdC the five-fold division of criteria of the just war –*persona, res, causa, animus, auctoritas*– entered into general use. The formula, set up by *Laurentius Hispanus* and adopted by *Johannes Teutonicus* in his *Glossa Ordinaria* to the DG, was expanded by Raymond under some of the various requirements: the person (*persona*) waging the war had to be a Christian layperson (*Gloss. Ord.* to C.23 q.2 / SdC), or a cleric «in necessitate ineuitabile» (SdC 2.5.12); the object (*res*) of the war had to be either the recovery of stolen goods or the defense of the homeland (*Gloss. Ord.* / SdC); the necessity of waging the war (*Gloss. Ord.* / SdC) constituted the just cause (*causa*); the just intention of the belligerent (*animus*) excluded the desire to punish (*Gloss.*), as well as hatred, revenge and passion (SdC), and implies piety, justice and obedience (SdC); the war had to be waged on princely authority (*auctoritas*) (*Gloss. Ord.* / SdC) or on ecclesiastical authority when fighting faith (SdC)⁸⁸.

5. *Ius Commune and Canon Law*

Ratio and auctoritas. Although Raymond did not cooperate with the first editors of the *Libro de las Leyes* (the *Siete Partidas* or *Seven-Part Code*, c. 1255–1263), they or the consecutive teams of experts, used the first three parts of the SdC for the composition of the *Primera Partida*. This is suggested by the parallels bet-

⁸⁷ Cf. MINNUCCI, G., *Istituti di diritto processuale nella 'Summa de poenitentia et de matrimonio' di san Raimondo di Penyafort*, in LONGO, C. (a cura di), *Magister Raimundus*, 87–109.

⁸⁸ Cf. RUSSELL, F. H., *The Just War in the Middle Ages*, Cambridge 1975. 128–129; the author analyses other teachings of the SdC on the role of the Church in war (pp. 190–191), the conduct of war (pp. 156–160, 185–187), the consequences of war (pp. 165–166), and the crusades (pp. 203–204, 207–209). Cf. also VALLS I TABERNER, F., *El problema de la licitud de la guerra según San Ramón de Peñafort*, in *Mélanges Altamira*, Madrid 1936. 160–183 (= *San Ramón de Penyafort*, Barcelona 1998. 201–213).

ween the two texts and also by the fact that this section of Alfonso X's Code welcomes Raymond's opinions, which sometimes are contrary to those of Hugh of Pisa, *Laurentius Hispanus*, Melendo and others. To highlight the influence of the *Summa de matrimonio*—the fourth book of the SdC—in the *Cuarta Partida*, it has been said that this fourth part is a Spanish version of Raymond's work. Although this image could offer an unreliable picture, Raymond's presence in the *Siete Partidas* is not only obvious in the parallels with the SdC: those who work at the various stages of the composition borrowed directly or indirectly to the *Liber Extra* of Gregory IX⁸⁹. The *Siete Partidas*, a compendium of the *ius commune*, occupied an important place in the legal systems of the realms and regions that belonged to the Spanish Crown, on both sides of the Atlantic, until the modern codification movement. The Wise King of Castile is one of the twenty-three lawgivers depicted in the marble relief portraits over the gallery doors of the US House of Representatives for their work in establishing the principles that underlie American law.

Raymond's contribution to universal canon law is also perceived in the relief of the US House Chamber dedicated to Gregory IX. The Catalanian Friar was not a lawgiver because, as Gratian asserts, «negotiis diffiniendis non solum est necessaria scientia, sed etiam potestas.» (D.20 pr.) The pope relied on the *auctoritas* of his chaplain to put an end to the confusing situation of the *ius novum*. Raymond did not restrict himself to eliminating the superfluous passages of the decretals («resecatis superfluis»): in some cases, especially in the 195 pieces attributed to Gregory IX, he reshaped the text to achieve a certain degree of abstraction⁹⁰. The details of the enactment process of the *Liber Extra* are unknown, but from *Rex Pacificus* one can conclude that the collection became official: «Volentes igitur, ut hac tantum compilatione universi utantur in iudiciis et in scholis, districtius prohibemus, ne quis praesumat aliam facere absque auctoritate sedis apostolicae speciali». The *Liber Extra* is not a *Codex*: Gregory IX did not intend to appropriate the decretals of his predecessors, as Justinian did (*Cod. Just.* 1.17.1.6: «[...] omnia enim merito nostra facimus, quia ex nobis omnis eis impertietur auctoritas»), nor did the canonical discipline lose its ca-

⁸⁹ Cf. BIDAGOR, R., *El derecho de las Decretales y las Partidas de Alfonso el Sabio de España*, in *Acta Congressus Juridici Internationalis VII saeculo a Decretalibus Gregorio IX et XIV a Codice Iustiniano promulgatis*, III. Roma 1936. 297–313. GIMÉNEZ, J. – DE CARVAJAL, M., *El Decreto y las Decretales fuentes de la primera partida de Alfonso el Sabio*, in *Anthologica annua* 2 (1954) 239–248. GIMÉNEZ, J. – DE CARVAJAL, M., *San Raimundo de Peñafort y las Partidas de Alfonso X el Sabio*, in *Anthologica annua* 3 (1955) 201–338. GARCÍA Y GARCÍA, A., *Fuentes canónicas de las Partidas*, in *Glossae* 3 (1992) 93–101.

⁹⁰ KUTTNER, S., *Raymond of Peñafort as editor: The “decretales” and “constitutiones” of Gregory IX*, in *Bulletin of Medieval Canon Law* 12 (1982) 65–80.

suistic and unsystematic character⁹¹. The collection became known in 1235. Universities incorporated the *Liber Extra* to their teaching programmes. The production of academic writings began immediately: c. 1234–1243, *Vincentius Hispanus* wrote the first *apparatus* on the *Liber Extra*; between c. 1234–1241 and 1266, *Bernardus Parmensis* (†1266) reviewed on four occasions the *apparatus* that the school received as the ordinary gloss⁹². In the second half of the thirteenth century, the *Liber Extra* was translated into French. The Castilian version dates back to about 1300⁹³. As the second part of the *Corpus Iuris Canonici*, Gregory IX's collection was in force in the Catholic Church until 1917. Since the first *Codex Iuris Canonici* did not intend to put ecclesiastical tradition aside (c.6), a quick glance at the tables of the sources of its canons show the weight that the *Liber Extra* has had on the ecclesiastical discipline⁹⁴. Outside the Catholic Church, Raymond of Penyafort's collection was applicable or was the supplementary law in various Christian kingdoms, and even in some modern national States, who recognised the civil validity of the ecclesiastical institutions of family or inheritance law. In Spain, since 1944, the merits in the field of Justice, distinguished civil deeds or important civil services in the field of Law are rewarded with the *Cruz de San Raimundo de Peñafort*⁹⁵.

Raymond's contribution to particular canon law has also had a lasting influence. The new constitutions of the Dominicans passed by the general chapters from 1239 to 1241 have remained to the twentieth century as the official text, with suppressions and additions owing to later enactments of the general chapters. The *Directorium (inquisitorum)* is one of the parts of the collection approved by the Provincial Council of Lleida – Tarragona (1329–1330) at the request of John, Patriarch of Alexandria and administrator of the Archdiocese of Tarra-

⁹¹ Cf. KUTTNER, S., *Il Codice di diritto canonico nella storia*, in *Commemorazione del cinquantesimo anniversario della promulgazione del Codex iuris canonici, celebrata alla augusta presenza del Santo padre Paolo VI il 27 maggio 1967*, Roma 1967. 17–39. In English: *The code of canon law in historical perspective*, in *The Jurist* 28 (1968) 129–148. Spanish version: *El Código de Derecho Canónico en la Historia*, in *Revista Española de Derecho Canónico* 24 (1968) 301–314.

⁹² Cf. KUTTNER, S. – SMALLEY, B., *The Glossa Ordinaria to the Gregorian Decretals*, in *English Historical Review* 60 (1945) 97–105. KUTTNER, S., *Notes on the Glossa Ordinaria of Bernard of Parma*, in *Bulletin of Medieval Canon Law* 11 (1981) 86–93. PENNINGTON, K., *Vincentius Hispanus*, in STRAYER, J. (ed.), *Dictionary of the Middle Ages*, 12. New York 1989. 455–456.

⁹³ PUIGARNAU, J. M. (ed.), *Decretales de Gregorio IX. Versión medieval española*, I–III. Barcelona 1939–1943.

⁹⁴ Cf. SEREDI, J. (ed.), *Codicis Iuris Canonici. Fontes. IX: Tabellae*, Città del Vaticano 1939. 55–102; and PONTIFICIA COMMISSIO CODICI IURIS CANONICI AUTHENTICE INTERPRETANDO, *Codex Iuris Canonici auctoritate Ioannis Pauli pp. II promulgatus. Fontium annotatione et indice analitico-alphabetico auctus*, Città del Vaticano 1989.

⁹⁵ BOE 38 (07.02.1944): 1072–1073.

gona⁹⁶. *Nicolaus Eymericus* (1320–1399) collected the instructions of Peter of Albalat – Raymond of Penyafort in the second part of his *Directorium Inquisitorum*, a handbook on the Spanish Inquisition until to the sixteenth century.

III. AGENDA

Decretalists of the second generation of the Bolognese school –i.e. those who taught between 1210 and 1225– have recently been classified into three categories: “the great”, “the not so great” and the “lesser figures”⁹⁷. Raymond of Penyafort has been placed in the second group. His fleeting performance in the classrooms and the scarce diffusion of the handful of writings that are directly linked to his academic activity have determined his position in the ranking. In favour of the Catalan decretalist, it should be said that his glosses are little or not at all known, and that the unfinished SIC has not received enough attention.

(i) Glosses on DG. Raymond did not write a complete *apparatus*, what is not a strong argument to indefinitely postpone the study of his glosses. Sporadic comments of other “not so great” decretalists, even those written by the “minor figures”, have helped to understand the making of the most widespread *apparatus* as well as the methods of the decretalists. Raymond of Penyafort’s glosses appear in the supplementary layers of the manuscripts with the *glossa ordinaria*, whose first version was finished by *Joahannes Teutonicus* c. 1216⁹⁸. The glosses of the fourth layer in Tours, Bibliothèque Municipale, 559 could be the *reportatio* of Raymond’s lectures⁹⁹. These glosses should be compared with the glosses attributed to “R.” in the third layer of de Città del Vaticano, Bibl. Ap., Vat. lat. 1367¹⁰⁰, and in the fifth layer of Paris, Bibliothèque National, lat.

⁹⁶ Cf. VALLS I TABERNER, F., *Notes sobre la legislació eclesiàstica provincial que integra la compilació canònica tarraconense del Patriarca d’Alexandria*, in *Analecta Sacra Tarraconensis* (1935) 250–272.

⁹⁷ Cf. PENNINGTON, K., *The Decretalists 1190–1234*, 210–245. *The Decretalists from 1210 to 1234* (pp. 227–237) are classified in three groups: «the great» (*Laurentius Hispanus*, *Vicentius Hispanus*, *Joahannes Teutonicus* y Tancredo), «the not great» (*Albertus*, *Johannes Galensis*, *Damasus Hungarus*, *Jacobus* de Albenga, Zoën y Raimundo de Peñafort), and the «lesser figures» (*Johannes Garsias Hispanus*, *Martinus Zamorensis*, *Philip d’Aquilaia*, *Marcoldus*, *Petrus Hispanus Portugalensis* y *Ambrosius*) [p. 228].

⁹⁸ Cf. WEIGAND, R., *The Development of the Glossa Ordinaria to Gratian’s Decretum*, HARTMANN, W. – PENNINGTON, K. (ed.), *The History of Medieval Canon Law in the Classical Period*, 55–97, esp. 82–86 (*glossa ordinaria*), pp. 86–88 (*Additons to the Glossa ordinaria by Bartholomaeus Brixensis and Others*, donde incluye las glosas de Raimundo). In pp. 88–91 studies *The Revised Recension of the Glossa ordinaria by Bartholomaeus Brixensis*.

⁹⁹ Cf. WEIGAND, R., *Die Glossen*, 948.

¹⁰⁰ Cf. KUTTNER, S., *Bernardus Compostellanus*, 333. WEIGAND, R., *The Development*, Longo, C 87.

3903¹⁰¹. Did the revision of the *glossa ordinaria* by Bartolome de Brescia c. 1234–1241 echo Raymond’s glosses?

(ii) Glosses to the *Compilatio antiqua quarta*. Who hides behind the “r.” glosses to *Johannes Tuetonicus*’ collection in Admont, Stiftsbibliothek, 22, fol. 246^v–270^v? To assign them to one of the “r.” masters active in Bologna in the first two decades of the XII century, Raymond of Penyafort’s authentic writings could serve as a starting point, without forgetting the contemporary news known by other sources, as well as the teachings attributed to “Raymundus” by the decretalists in the later centuries¹⁰². If the the young Catalan were finally the author, Raymond would have followed the steps of Jacobo de Albegna (*Jacobus Albanus*), *Petrus Hispanus Portugalensis* or *Martinus Zamorensis*, whose academic activity in Bologna was not conditioned by the attitude of Innocent III towards the *Compilatio quarta*.

(iii) *Summa Iuris Canonici*. In the first two decades of the 12th century, distancing from the *Compilationes antiquae* and conceiving an original system to explain the *ius novum canonicum*, in dialogue with the DG, was an audacious innovation. In Bologna, the decretalists kept being attached to the titles (and the letter) of the collections. Although Raymond did not complete the work, the index and the two *particulae* of the SIC reveal a brilliant ability to analyse and synthesise. The transcription of the manuscript Bamberg, Staatsbibliothek, Canon. 19 (P.II.6), fol. 258^{ra-vb} published on 1975 could be taken as basis to make an edition of the SIC that meets the demands of the historical-critical method¹⁰³. This editing work would also serve to establish the relationships of the SIC with the *summae titulorum* of Bernard of Pavia, *Ambrosius* and other Bolognese decretalists.

The influence of Raymond of Penyafort grew progressively since his departure from Bologna. In Barcelona and Rome the decretalist was highly regarded. He acquired a prestige that exceeds any classification attempt. Collaborator of popes, kings and ecclesiastics, writer, counsellor and promoter of pastoral missions, his extra academic activity had a political and pastoral dimension. Very soon, however, the works of the decretalist took his author back to the classroom. In 1234 Gregory IX sent the *Liber Extra* to the Universities of Bologna

¹⁰¹ Cf. WEIGAND, R., *Die Glossen*, 893.

¹⁰² Cf. GARCÍA Y GARCÍA, A., *Valor y proyección*, 247 and footnote 43.

¹⁰³ Remarks made by KUTTNER (“On the method”, cit.) and GARCÍA Y GARCÍA (*La canonística ibérica*, cit.) are still valid. The new edition should follow the guidelines of the Stephan Kuttner Institute of Medieval Canon Law: *Some methodological considerations*, *Traditio* 11 (1955) 435–439. *Notes for contributors*, in *Traditio* 12 (1956) 623–626. *Notes on the presentation of text and apparatus in editing works of the decretists and decretalists*, in *Traditio* 15 (1959) 452–464. Cf. LARRAINZAR, C., *Métodos para la edición de fuentes canónicas manuscritas y modernas*, in *Revista Española de Derecho Canónico* 69 (2012) 631–684.

and Paris. The SdC was disseminated throughout Europe and was the subject of summaries and comments during the life of its author. Since the XIII century, both the *Liber Extra* and the SdC are present in the libraries and in the programs of the higher education centers in which Law and Theology is taught. Still today these works challenge historians of the sources and science of canon law.

(iv) *Summa de casibus*. The critical edition of the first version of the SdC remains to be done. Thanks to the scrutinies made since the sixties of the last century, the manuscript tradition is better known¹⁰⁴. The *Notes* on the presentation of text and *apparatus* in editing works of the decretists and decretalists should guide the work. Once this edition was concluded, the opportunity to undertake a second project could be assessed: replacing the edition of the second version of the SdC published in 1976.

e) *Liber Extra*. The editorial work of Raymond has attracted the attention of the modern decretalists. They have focused, first, on the suppressions, revisions and alterations of the *decretales epistolae* of the predecessors of Gregory IX included in the *Compilationes antiquae*. In relation to this materials, future studies should take into account that Raymond was not limited to the mechanical elimination of contradictions, repetitions and superfluous words; and sometimes he contrasted the texts with other collections¹⁰⁵. Secondly, modern scholars have analysed the way in which Raymond selected and shaped the decretals of Gregory IX prior to 1234. In this case, the purpose and scope of the editing work have been determined when the pontifical records or the archives of the addressees preserve the originals. Other *constitutiones nostrae* with short inscriptions –*Gregorius* or *Idem*– do not seem to have been part of a decretal, nor to be published before the *Liber Extra*.¹⁰⁶ From the editorial work on these materials it can be concluded that, unlike conventional collectors, Raymond intervened directly in the process of elaboration and production of canon law.

The accomplishment of these and other tasks will assure the presence of Raymond of Penafort in the Universities in the next decades.

¹⁰⁴ Cf. GARCÍA Y GARCÍA, A., *Valor y proyección*, 236–238. GARCÍA Y GARCÍA, A., *Los manuscritos jurídicos medievales de la Hispanic Society of America*, in *Revista Española de Derecho Canónico* 18 (1963) 501–560. GARCÍA Y GARCÍA, A., *Canonística Hispanica*, in *Traditio* 22 (1966) 468–469. GARCÍA Y GARCÍA, A., *Canonística Hispanica (III)*, in *Traditio* 26 (1970) 457–469, esp. 461. BESTUL, TH. H., *An Unrecorded Manuscript of the Summa de Poenitentia of Raymund of Pennaforte*, in *Manuscripta* 32 (1988) 206–207. MANN, J. D., *Unstudied Manuscripts of the Summa de Poenitentia of Raymond de Pennaforte*, in *Manuscripta* 34 (1990) 45–49.

¹⁰⁵ For instance with the *Compilatio romana* (1208), cf. KUTTNER, S., *Bernardus Compostellanus*, 333. RENO, E. A., *The Authoritative Text: Raymond of Penafort's Editing of the "Decretals of Gregory IX" (1234)* (Ph.D. diss.; Columbia University, 2011), offers eloquent examples of Raymond's work on the *decretales epistolae* of the *Compilationes antiquae*, pp. 146–257.

¹⁰⁶ KUTTNER, S., *Raymond of Peñafort*, 68–72. Examples in RENO, E. A., *The Authoritative Text*, 316–512; cf. also WETZSTEIN, TH., *Resecatis superfluis? Raymond von Peñafort und der Liber Extra*, in *ZRG Kan. Abt.* 92 (2006) 355–391.

