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## Tripartite Legal Knowledge

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## Tripartite Legal Knowledge\*

Since the turn of the millennium, historical research has become increasingly interested in knowledge-based societies and their cultures, not least medieval ones. Whereas legal historical medieval studies have joined the interdisciplinary discussion about the notion of order as well as that of law, the notion of knowledge, and especially that of legal knowledge, has not been in the focus of interest. This observation serves as the starting point for Stephan Dusil's habilitation thesis, which he submitted in 2016 at the Faculty of Law of the University of Zurich and which is now available as a monograph.

The author's aim is to present the formation of knowledge of canon law and its transformations (15, 68) from the era of the *Decretum* of Burchard of Worms (after 1000) until the *Glossa ordinaria* of Johannes Teutonicus (around 1215), though he focuses primarily on the period between 1050 and 1140. His particular object of investigation is the papal primacy of jurisdiction; his findings are then verified using the example of celibacy (17f.). Concerning the question of order, the author refers to preliminary works from the domain of historical canon law research (15f.) but develops his own concept of legal knowledge.

Consequently, this term is at the centre of his work. Dusil distinguishes between singular legal knowledge (i.e. knowledge of one single norm), complex legal knowledge (i.e. knowledge of different norms belonging to the same topic) and relational legal knowledge (i.e. knowledge of norms connected with one another through glosses, references, etc.) (11f.). He applies this tripartite definition of legal knowledge to his analysis of the sources by looking at them from three different perspectives: from the perspective of knowledge generated by the compilers (470), their working methods and techniques in dealing with normative

texts (e.g. order, rubrication, distinction) (65–67), and their self-reflection on their own methods, appearing principally in prologues of pre-Gratian canonical collections (14).

The different perspectives are reflected in Dusil's specific approach. In the introduction (1f.), he highlights the triad of order, knowledge and law. In the first chapter (»*Knowledge* on primacy of jurisdiction and celibacy. Question and methodological approach«, 3–68 [*all translations by the reviewer*]), the author does not only establish his own notion of knowledge by implementing theoretical approaches of related disciplines, but he also presents the contemporary canon law of the Catholic Church regarding his object of investigation as well as its historical context. Chapters two (»Starting point: Canonical collections in the 11<sup>th</sup> and 12<sup>th</sup> centuries«, 69–183) and three (»The made and the imagined order. Proposals of order and their implementation«, 185–328) deal with the pre-Gratian period. In the second chapter, Dusil focuses on a content analysis of selected canonical collections and the methods of their compilers. In the third, the author takes into account the *artes liberales* as the prerequisites of the science of canon law and theology, and examines their impact on the order of legal knowledge. In chapter four (»A Janus-faced collection? The *Decretum Gratiani*«, 329–412), Dusil represents an analysis of both recensions of Gratian's *Decretum*. At the end of the chapter, the author concludes that the first recension was rooted in the tradition of controversy literature of the Investiture Contest, the second recension in the tradition of pre-Gratian canonical collections (396–400).<sup>1</sup> In chapter five (»Relational legal knowledge. Canon law between canonical collections and *Glossa ordinaria*«, 413–468), Dusil concludes the analysis of the sources and provides an outlook on some writings of the decretists. For this

\* STEPHAN DUSIL, *Wissensordnungen des Rechts im Wandel. Päpstlicher Jurisdiktionsprimat und Zölibat zwischen 1000 und 1215* (Mediaevalia Lovaniensia. Series I/Studia XLVII), Leuven: Leuven University Press 2018, XII + 629 p., ISBN 978-94-6270-133-5

1 See now also STEPHAN DUSIL, *The Decretum of Gratian: A Janus-Faced Collection*, in: CHRISTOF ROLKER (ed.), *New Discourses in Medieval Canon Law Research. Challenging the Master Narrative* (Medieval Law and Its Practice 28), Leiden/Boston 2019, 127–144.

purpose, the author is strongly orientated towards the reception of pre-Gratian canonical collections, particularly of the *Decretum* of Burchard of Worms. In the sixth and final chapter (»Legal knowledge in the long 12<sup>th</sup> century«, 469–508), Dusil systemizes his findings in order to offer them to the scholars of related disciplines. He comes to the conclusion that Gratian's *Decretum* is not so much a »watershed« (508), but rather a milestone in the history of the science of canon law. He shows that we can observe sophisticated adaptations of knowledge using innovative instruments already in pre-Gratian canonical collections and thus trace the changing knowledge orders (480f.) (primarily regarding the primacy of jurisdiction [474–476]). A list of abbreviations (511–514) is followed by »manuscripts studies« (scribal abbreviations [515], an appendix [516–523] and glosses [523–534] referring to the *Collection in 74 Titles*). In combination with a bibliography of sources (535–547) as well as of literature (548–602), indices of manuscripts (603–607), of persons (609–612), of canonical collections (613–622) and of various other source texts (623–629), they make the monograph accessible.

The merit of Dusil's work is to be found in the fact that he is the first to explore knowledge related to canon law. By doing so, the author has broken new ground in the research on the science of canon law in the High Middle Ages. Even though scholars have shown interest in questions and approaches of the history of methods for some time, the notion of knowledge has not been included systematically in

these considerations. In this respect, Dusil's work offers an innovative approach to the sources of canon law, especially those of the High Middle Ages. Many detailed observations, adding important information to the current state of research, complete the work and invite further discussion. For example, it remains to be discussed if Ivo of Chartres in his doctrine of dispensation really defined only the Decalogue as immutable norms.<sup>2</sup>

The accomplishment of Dusil's work is not diminished by the fact that the author is not able to explain every change in the orders of knowledge on the basis of his premises. This is probably caused by his attempt to leave to one side any political or ecclesiological intentions of the compilers (64f.). However, as law and its knowledge are »always both the result and the instrument of political, social and economic interests«,<sup>3</sup> one possible explanation of the analyzed changes is thus intentionally left out. Nevertheless, even Dusil accounts for changes in knowledge regarding the primacy of jurisdiction »politically« and with reference to »the emergence of the papacy« (476). This does not quite accord with his chosen approach. However, this is not so much a flaw of the book but rather inevitable, and, most importantly, points to the forthcoming journey of discovery of ecclesiastical legal knowledge in the High Middle Ages to which Dusil's monograph invites its readers. Meanwhile, the author himself has already taken the next step by raising awareness of the possibilities and limits of visual representations of knowledge.<sup>4</sup> ■

2 *Lex aeterna* in Ivo's work should perhaps rather be understood in the sense of Augustin, *Contra Faustum*, lib. 22, c. 27, 621, 13 f. (Corpus Scriptorum Ecclesiasticorum Latino-rum 25,1), as *ratio diuina uel uoluntas dei*, which is defined by the form of texts and not by the *sedes materiae*, since out of the doctrine of dispensation developed a »theory of law and legislation« (223) that does not only limit the popes' legislative competence through the Decalogue, but also in every situation [*ubi uero aperte Dominus uel eius apostoli et eos sequentes sancti patres sententialiter aliquid diffinierunt*] (Placidus of Nonantola, *Liber de honore ecclesiae*, c. 70, 597, 33–35 [Monumenta Germaniae His-

torica. Libelli de lite 2]; then also *Collectio canonum trium librorum*, lib. 2, tit. 9, c. 28 [Monumenta Iuris Canonici. Series B: Corpus Collectionum 8,1], and the second recension of Gratian's *Decretum*, C. 25, q. 1, c. 6). It therefore seems likely that for the science of canon law in the High Middle Ages all canonical norms formulated until the end of the patristic period were immutable, provided they were in the form of a legal proposition (*sententialiter aliquid*); consequently, the Decalogue was for Ivo only one example of immutable norms.

3 ANDREAS THIER, *Zwischen Kultur, Herrschaftsordnung und Dogmatik: Erkenntnisdimensionen rechtshisto-*

*rischer Forschung*, in: *Rechtsgeschichte – Legal History Rg 23* (2015), 270–273, 271, <http://dx.doi.org/10.12946/rg23/270-273>.

4 STEPHAN DUSIL, *Visuelle Wissensvermittlung in der Gratian-Handschrift Köln*, Diözesan- und Dombibliothek, 128, in: HARALD HORST (ed.), *Mittelalterliche Handschriften der Kölner Dombibliothek*. Siebtes Symposium der Diözesan- und Dombibliothek Köln zu den Dom-Manuskripten (25. und 26. November 2016) (Libelli Rhenani 70), Köln 2018, 115–137.