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Law, Memory, and Priestly Office in Rome, c. 500

Abstract

This essay sets the development of Christian thinking about law and clerical office in the wider context of the discussion of office in the later Roman Empire. To this end it offers a reassessment of the work of Dionysius Exiguus (c. 470-c. 544). A monk from Scythia who worked in Rome, Dionysius is well known as the translator from Greek into Latin of the Acts of the great fourth- and fifth-century Church Councils, and as the compiler of a collection of papal decretals. These works are seen to be milestones in the development of the western canon law tradition: the emphasis on the future of Dionysius' work has obscured our view of its history. The essay attempts to place Dionysius' work in its immediate Roman context, in the context of fifth-century canonical activity, especially in North Africa, and in the more general context of the political culture of office-holding in the late Roman polity. Central here is the tension between bureaucratic regulation and autocratic room for manoeuvre. Dionysius did not attempt fully to resolve this tension; through his work as a compiler, he did attempt to contain it.

A 'woeful lack of rules': this was A. H. M. Jones' view of the late Roman Church as an institution. The many conflicts between bishops in the fourth and fifth centuries, he continued, 'well illustrate how great clerics exploited the anarchy of the Church'.¹ While a pointed corrective to triumphalist accounts of the so-called 'peace of the Church' which broke out after the Emperor Constantine's conversion, Jones' assessment is all the same wide of the mark. It was not a lack of rules, we suggest, but rather their profusion which created a context of schism and competition in late Roman ecclesiastical politics. Further, none of this was peculiar to the Church, which did no more than play host to the contradictions at the heart of wider imperial notions of law and of office.

In the ancient world, office was seen to be bound up in the person of its holder.² Office rewarded or recognized achieved moral and social status, not the other way round; it followed that personal disgrace amounted to official disqualification. In the later Roman Empire, however, as Jones

¹ A.H.M. Jones, *The Later Roman Empire, 284-602: a Social, Economic and Administrative survey*, 3 vols., (Oxford, 1964) II, 887-88. I am beholden to Kate Cooper, David d'Avray, Abigail Firey, Neil McLynn, Alice Raw, and Robin Whelan for their kindness and advice; likewise to the *EME* reviewers and editors, and to the other contributors to this volume. None should be held responsible for what follows.

² J.E. Lendon, *Empire of Honor: the Art of Government in the Roman World* (Oxford, 1997).

chronicled, there was a massive expansion in imperial bureaucracy.³ By modern standards, of course, the infrastructure was skeletal—but by ancient standards, the fourth-century Empire and its officials were a notably intrusive presence, themselves requiring regulation. From the mid-360s onwards, the Emperor issued a new law about the ranking of officials, and also former officials, every year.⁴ This was arbitrary and disruptive, perhaps deliberately so. In the later Empire, then, ‘office’ had become a site of lively confusion, as new notions of official rank ran up against an older economy of personal status.

This irresolution went right to the top. The emperor encouraged, indeed insisted upon participation in the world of his law—but he was himself reluctant to be bound by his own rules. In the late Roman world, as in Angevin England, bureaucracy and autocracy co-existed in profound tension with each other.⁵ The causes and consequences of this for the imperial polity are beyond the scope of this essay. Our goal is rather to establish this as a context in which to view the institutional culture of the Church in the later Empire, specifically the formation of the clerical hierarchy and the development of canon law.

Our focus is the best known of late ancient canonists, Dionysius Exiguus, who worked in Rome in the first half of the sixth century. Everyone acknowledges his contribution: Dionysius compiled a definitive translation from Greek into Latin of the canons of the great Church Councils, and a weighty collection of papal decretals.⁶ He also established the AD dating system: with this and with canon

³ Jones, *Later Roman Empire*, chs. XI-XVI remains the classic account. For a critical assessment, see P. Heather, ‘Running the Empire: Bureaucrats, Curials and Senators’, in D. Gwynn ed., *A.H.M. Jones and the Later Roman Empire* (Leiden, 2008), 97-118.

⁴ S. Schmidt-Hofner, ‘Ehrensachen. Ranggesetzgebung, Elitenkonkurrenz und die Funktionen des Rechts in der Spätantike’, *Chiron* 40 (2010), 209-43, discussed further below.

⁵ See above all C. Kelly, *Ruling the Later Roman Empire* (Cambridge, 2004); and the classic J.E.A. Jolliffe, *Angevin Kingship* (London, 1955); cf also J. Corke-Webster in this volume pp. XX [n. 7].

⁶ Of the various entries in works of reference, I have found most useful J. Rambaud Buhot, ‘Denys le Petit’ in *Dictionnaire de droit canonique* 4 (1949), 1131-1152; and A. Firey, ‘The Collectio Dionysiana’, posted 28.7.2008 at <http://ccl.rch.uky.edu/dionysiana-article>. For further bibliography, see L. Kery, *Canonical Collections of the Early Middle Ages (ca. 400-1140)*, (Washington, DC, 2002), 9-13.

law in place, Latin Christendom could sail forward to its medieval future.⁷ The danger here is, Dionysius becomes a blandly monumental figure. This both abstracts him from his late Roman context as a legal compiler, and it misses what was particular about his contribution. Not simply a dutiful transmitter of tradition, Dionysius was in fact its creative broker. It was hardly a straightforward process: what he sought to canonize was the profoundly unresolved character of the late Roman discussion of office.

1. Clerical Office and Canon Law

The story of Christian office and Christian legal culture is conventionally told in terms of a relatively straightforward passage from charismatic to institutional power.⁸ In early Christianity, as in the wider culture, office followed status: a 'presbyter' (elder) or an 'episcopos' (manager) acquired their position as a function of their pre-existing standing in the community. If this were damaged, physically or morally, they would lose their office. This is an archaic world, and many accounts of early Christianity whisk us away from it as quickly as possible. The third century is seen to witness acceptance of the principle that each community should have one manager, to whom those lower down the clerical hierarchy are answerable. By the time of the conversion of Constantine, on this view, bishops are ready to become officials of the Roman state, holding court, using the imperial transport system, and presiding in their provinces, whose boundaries mirror the secular ones.⁹

⁷ See e.g. J. Herrin, *The Formation of Christendom* (London, 1987), 5, 85.

⁸ See e.g. H. Campenhausen, *Kirchliches Amt und geistliche Vollmacht in den ersten drei Jahrhunderten* (Tübingen, 1953); C. Rapp, *Holy Bishops in Late Antiquity: the Nature of Christian Leadership in an Age of Transition* (Berkeley, CA, 2005) offers a reworking of these Weberian categories.

⁹ See e.g. H. Drake, *Constantine and the Bishops: the Politics of Intolerance* (Baltimore, 2000). K. Cooper, 'Christianity, Private Power, and the Law from Decius to Constantine', *J ECS* 19: 3 (2011), 327-43, is a revisionist account.

Christian legal culture is held to develop accordingly.¹⁰ Instrumental in this legalism are the meetings of bishops, first clearly visible in North Africa in the 250s. These meetings, convened perhaps on the pattern of Roman provincial assemblies, became a regular and imperially-sponsored affair in the Christian Empire.¹¹ Although the Council of Nicaea, notoriously, went unrecorded at the time, most of these councils generated ‘canons’--the term first used in the late 380s to mean Christian conciliar ‘norm’ or rule—transcribed, collected, and transmitted to the next generation.¹² Also counted as ‘canonical’, i.e. normative, from this period were the decretals of bishops of Rome.¹³ (A ‘decretal’, meaning a ruling on a particular case meant to have general applicability, is a term evidently borrowed from imperial legislation.) By the 420s, it seemed self-evident to Pope Celestine that all priests should know their canons.¹⁴

Undergirding this standard account of the development of canon law is a history of the theology of office. The transformation of the early Church of private households into the late Roman imperial Church is seen to involve a shift from a ‘Cyprianic’ to an ‘Augustinian’ view of clerical office. Cyprian of Carthage (d. 259) stood for charismatic power. A bishop held sway in so far as he conducted himself well. Conversely, insisted Cyprian, a schismatic bishop, at odds with the community he was supposed to ‘manage’, was no bishop at all: nothing such a man did had any validity. A century and a half later, Augustine of Hippo came to argue the contrary: episcopal office was impervious to the

¹⁰ See e.g. K. Pennington, ‘The Growth of Church Law’, in A. Casiday, F. Norris eds., *Cambridge History of Christianity* I (Cambridge, 2007), 386-42. C. Humfress, ‘The Early Church’, forthcoming in A. Winroth & I. Wei eds., *The Cambridge History of Canon Law* will provide something of a corrective. My thanks to the author for sharing this prior to publication.

¹¹ J. A. O. Larsen, ‘The Position of Provincial Assemblies in the Government and Society of the Late Roman Empire’, *CPh* 29 (1934), 209-20; J. Deininger, *Der Provinziallandtag der Römischen Kaiserzeit* (Berlin, 1965); H. Hess, *The Early Development of Canon Law and the Council of Sardica* (Oxford, 2002) gives an excellent overview of scholarship on church councils; see also, A. MacMullen, *Voting about God in Early Church Councils* (New Haven, 2006).

¹² K. Ohme, *Kanon ekklesiastikos: die Bedeutung des altkirchlichen Kanonbegriffs* (New York, 1998).

¹³ D. Jasper & H. Fuhrmann, *Papal Letters in the Early Middle Ages* (Washington, DC, 2001).

¹⁴ Celestine I, *Ep.* 5. 1, PL 50, 436A.

moral character of its holders. Once conferred, it was indelible—and so were the sacraments performed by a bishop, in particular those of baptism and ordination.¹⁵

How quickly Augustine's institutional clericalism prevailed is matter for debate. A traditionalist view is that he conquered all: initially in North Africa, and from there the Latin Church as a whole. A counter-view, no less venerable in fact, insists that western views of the priesthood remained closer to the charisma of the early Christianity for several centuries.¹⁶ In the late Roman period, this line of thought continues, Augustine's clericalism was not widely shared. Augustine himself did not develop its implications as did his later readers—among them, as we shall see, Dionysius.¹⁷ Arbitrating this debate so as to contribute to the history of sacerdotal theology is not the goal here. Instead, it will be argued that the continuing tension between Cyprian and Augustine's views in the fifth and sixth centuries registered the uneasy shifting of the balance in the later Empire as a whole: away from a society of status, towards one of official rank.

Clericalism in the Latin Church was thus a work in ambivalent progress. As we shall see, some basic principles of ranking had not yet been established: just as the Roman Emperor wanted to retain an element of discretionary power, so did the bishops of Rome, Constantinople, or Alexandria, and so too did bishops and priests lower down the scale. Thus disputes about papal primacy and the Donatist controversy—familiar, perhaps overly familiar, topics both—reflect a political culture unable

¹⁵ L. Saltet, *Les réordinations: Etude sur le sacrement de l'ordre* (Paris, 1907); A. Schebler, *Die Reordinationen in der "altkatholischen" Kirche unter besonderer Berücksichtigung der Anschauungen Rudolph Sohms* (Bonn, 1936).

¹⁶ The view of Weber's teacher in canon law, R. Sohm, *Das altkatholische Kirchenrecht und das Dekret Gratians* (Leipzig, 1918). On Sohm, see further P. Rychterova, S. Seit, R. Veit eds., *Das Charisma. Funktionen und symbolische Repräsentationen* (Berlin, 2009). For a recent restatement of something like Sohm's position, see R. Swanson, 'Apostolic Successors: Priests and Priesthood, Bishops and Episcopacy in Medieval Western Europe' in G. Peters, C. Colt Anderson eds., *A Companion to Priesthood and Holy Orders in the Middle Ages* (Leiden, 2016), 4-42.

¹⁷ J. Cowdrey, 'The Dissemination of Augustine's Doctrine of Holy Orders During the Later Patristic Age', *JTS* 20 (1969), 448-80; N. M. Haring, 'The Augustinian Axiom: *Nulli sacramento injuria facienda est*', *Mediaeval Studies* 16 (1954), 87-117.

at any level to decide on the rules of the game. There was plenty of room for manoeuvre, but it could also mean that conflicts continued ‘without end’, as participants found to their cost.¹⁸

All of this Dionysius surveyed at the turn of the sixth century, in a western empire without an emperor.¹⁹ His collection of canons and decretals re-stages the discussion of clerical office taking place around the Mediterranean since the 250s. As we shall see, various attempts have been made to parse his intentions. These may be misplaced: Dionysius’ achievement was not to advance a particular view, but to offer a series of containers for a tradition that was jagged and at odds with itself.

2. Canon law and Dionysius’ Collections

Dionysius frustrates us. He is the only early canon law collector about whom we can say anything; but of course we cannot say enough. From the prefaces to his canonical collections, and the notice accorded him in Cassiodorus’ *Institutes*, we know he was a ‘Scythian monk’, and a Greek speaker fluent also in Latin.²⁰ He came to Rome most likely in the late 490s, and remained there until his death in the 540s. At some point after the death of Pope Gelasius (496) and before the death of Pope Hormisdas (523), he took it upon himself to produce a new and definitive translation of conciliar rulings from Greek into Latin. This aspiration, ironically, engendered in his work a restless, unfinished quality: in search of establishing a resource that could brook no argument, Dionysius made three editions of Council canons, and a collection of papal decretals.²¹ Dating this activity with

¹⁸ For *rixa sine fine*, see Augustine, *Psalmus contra partem Donati* 141. For a parallel approach to law, conflict, and complexity, see D. d’Avray, ‘Stages of Papal Law’, *Journal of the British Academy* 5 (2017), 37-59

¹⁹ On post-imperial Christian identity, especially as it develops in North Africa, see K. Cooper, ‘Marriage, Law, and Christian Rhetoric in Vandal Africa’, in J. Conant & S. Stevens eds., *North Africa under Byzantium and Early Islam* (Washington, DC, 2016), 237-249.

²⁰ Cassiodorus, *Institutiones* 23, ed. R.A.B. Mynors (Oxford, 1937), 62.

²¹ The first edition of canons, transmitted in Vat. Lat 577, has been edited by A. Strewe, *Die Canonesammlung des Dionysius Exiguus in der ersten Redaktion* (Berlin, 1931); the second edition has not been edited: see PL 67, 137-230 for a reproduction of the text of Christopher Justell, based largely on a ninth-century Frankish

any precision is a hapless task. We know the *Decretal Collection* postdates one of the editions of council canons, and that the third edition of canons was produced under Hormisdas, but that is really all we can say.²² Our earliest manuscripts of all of these collections are eighth or ninth century.²³

Dionysius did not work alone. Alongside him were several anonymous canon law collectors.²⁴

Modern scholars have identified at least six collections likely to have been assembled possibly in Rome, probably in Italy in the late fifth to early sixth centuries. Two of these--the so-called Freising Collection and the Quesnelliana—are usually seen to have been compiled after the death of Gelasius, and just ahead of Dionysius.²⁵ It seems probable that he had sight of both.²⁶ Then there are four further Italian collections most likely assembled just after those of Dionysius, and in at least one case with direct sight of Dionysius' work.²⁷ One of these is transmitted in a manuscript produced c. 600; the others—like Dionysius' collections—are to be found in copies from the eighth century or

manuscript (Oxford Bod. Lib. e. Mus. 103). Of the third edition, only the preface has survived: see F. Glorie ed., *Scriptores 'Illyrici' Minores*, CCSL 85, 35–42. The *Decretal Collection* is also unedited: see PL 67, 230–316.

²² Traditionally the first edition is seen to date to c. 500, with the second edition and the *Decretal Collection* following soon after, and with the third edition after Hormisdas' accession in 514. As Rambaut-Buhot, 'Denys', notes, this is pure conjecture, and a case can be made for all of Dionysius' activity taking place under Hormisdas, conceivably in preparation for the reconciliation over Acacius in 519. When scholars refer to the *Dionysiana*, it is the second edition they have in mind.

²³ See Kery, *Canonical Collections*, 9–11 for a list, and Firey, 'Collectio Dionysiana' for an invaluable tabulation of the manuscripts and their contents.

²⁴ This is to reject the hypothesis of Peitz that Dionysius is responsible for all the early collections that we have. See W. Peitz & H. Foerster, 'Dionysius Exiguus-Studien: neue Wege der philologischen und historischen Text- und Quellenkritik' (Berlin, 1960), with the critique of C. Munier, 'L'oeuvre canonique de Denys le Petit, d'après les travaux du R. P. Wilhelm Peitz, S. J.', *Sacris Erudiri* 14 (1963), 236–50; now in id., *Vie conciliaire et collections canoniques en Occident, IV–XII siècles* (London, 1987).

²⁵ The one named after its manuscript origin, the other after its early modern discoverer, Quesnel. See for descriptions F. Maassen, *Geschichte der Quellen und der Literatur des canonischen Rechts im Abendlande bis zum Ausgange des Mittelalters* (Graz, 1870), 476–86 (Freising) and 486–500 (Quesnelliana).

²⁶ On Dionysius' use of the Freising collection, see C. Munier, 'La tradition littéraire des dossiers africains', *Revue de Droit Canonique* 29 (1979), 41–52; in id. *Vie conciliaire*; on his use of the Quesnelliana, see J. Van der Speeten, 'Le dossier de Nicée dans la Quesnelliana', *Sacris Erudiri* 28 (1985), 383–50.

²⁷ The Sanblasiasana, the Chieti, the Vatican (named after their most important manuscripts) and the fourth, the Iustelliana, like the Quesnelliana, named after its early modern discoverer, Justell. See further Kery, *Canonical Collections*, 29–30, 24, 25, 41. Note that the Chieti collection is also known as the *Collectio Ingilramni* or *Teatina*; the Sanblasiana has been renamed the *Collectio Italica* by Eckhard Wirbeluaer (see below n. 34). This collection clearly uses Dionysius.

later.²⁸ In other words, our vision of all of this is refracted through Carolingian lenses in ways for which we may not be able to correct.²⁹

When we compare Dionysius' work to that of his immediate peers, a key distinguishing feature is the decision to separate out conciliar canons from papal decretals. The Freising compiler is happy to mix these together; the Quesnelliana marks a divide between them, but does not hesitate to house them in the same collection. Dionysius pointedly compiled a free-standing collection of decretals, with its own dedicatory preface, and its own system of giving titles to the decretals for easy reference.³⁰ What relation he intended between his decretal and canonical collections is not clear. Later scribes decided to copy them together, so we have no extant copy of the Decretal Collection on its own. In the four Italian collections immediately following Dionysius, and in subsequent Latin collections, the separation of canons from decretals becomes standard.

In terms of substance, two further features mark out Dionysius' work: firstly, the inclusion in the second edition of his conciliar collection of a new and compendious body of material from African Councils; secondly, the prominence given in the *Decretal Collection* to letters from Pope Innocent I (d. 417). For both of these bodies of text—the African conciliar material and Innocent's letters—Dionysius is the only witness. These features are easily observed: accounting for them is more difficult.

There have been three schools of thought on Dionysius since the late nineteenth century. We might label them, very crudely, constitutionalist, power-political, and post-modern--familiar suspects all,

²⁸ See Kery, *Canonical Collections*, 41: the Iustelliana is dated to c.600.

²⁹ On this problem, see A. Firey, 'Mutating Monsters: Approaches to "Living Texts" of the Carolingian Era', *Digital Proceedings of the Lawrence J. Schoenberg Symposium on Manuscript Studies in the Digital Age*: Vol. 2 : Iss. 1 (2010), Article 1, available at: <http://repository.upenn.edu/ljsproceedings/vol2/iss1/1>; and C. Leyser, 'Late Antiquity in the Medieval West' in P. Rousseau ed., *Blackwells Companion to Late Antiquity* (Oxford, 2009), 29-42.

³⁰ See Glorie ed., *Scriptores*, 45; partial tr. in R. Somerville and B. C. Brasington, *Prefaces to Canon Law Books in Latin Christianity: Selected Translations, 500–1245* (New Haven, 1998), 48.

speaking to wider trends in scholarship on law and the State. The constitutionalist Dionysius we see most clearly in the work of Friedrich Maassen, whose *Geschichte der Quellen und der Literatur des canonischen Rechts im Abendlande bis zum Ausgange des Mittelalters* remains a cornerstone of modern work on canon law. Maassen took it upon himself to enumerate the elements of the early medieval canon law tradition and, crucially, to describe the manuscripts in which they were copied. He stressed that these early collections were unofficial, private works which bore no comparison to the public lawcodes of the Roman Empire or the successor kingdoms.³¹ Maassen distinguished between ‘historical-chronological’ collections, and ‘systematic’ collections, in which the elements were organized by topic. Dionysius he placed as the first and shining example of the chronological approach (while acknowledging also that Dionysius did in fact take a ‘systematic’ approach to his material, in separating out councils from decretals.)³²

Maassen’s sense of Dionysius as a progressive force for order in an otherwise messy and inchoate tradition struck a chord with scholars in the next generation. In 1930, Gabriel Le Bras hailed in Dionysius’ work the triumph of ‘law over custom, universalism over local particularism, and of Rome over all the other churches’.³³ Nine years later, Herbert Wurm offered the foundational study of Dionysius’ collection of papal decretals. Wurm’s explanation for Dionysius’ subsequent influence was the clarity of his methods. Dionysius, in this (somewhat circular) view, was concerned above all to compile a collection of legal material that would be useful to subsequent generations.³⁴

Wurm was responding to a critique of Maassen’s approach offered by Eduard Schwartz, who had laboured for decades to produce the definitive edition of the canons of the ecumenical councils

³¹ Maassen, *Geschichte*, 3-7.

³² Maassen, *Geschichte*, 422-36.

³³ G. le Bras, ‘Notes pour servir à l’histoire des collections canoniques III: un moment décisif dans l’histoire de l’église et de droit canon: la renaissance gelasienne’, *RHD* 9 (1930), 506-18, at 508. The notion of a ‘Gelasian Renaissance’ no longer carries credibility: see Firey, ‘Collectio Dionysiana’, n. 17.

³⁴ H. Wurm, *Studien und Texte zur Dekretalensammlung des Dionysius Exiguus*, Kanonistische Studien und Texte, 16 (Bonn, 1939), esp 17-18.

(Nicaea, Constantinople, Ephesus, and Constantinople).³⁵ Schwartz's approach to his material was to ask the classic source critical question: *cui bono*? Late Roman and early medieval canonists were not disinterested archivists. They made collections to mount and to win arguments, by whatever polemical means necessary. Schwartz had a much stronger sense than did Maassen of the public character of early canon law—but it was a public sphere shot through with power politics, not with the triumph of principles of rational government.

With regard to Dionysius, then, Schwartz directed attention to the local political context in Rome. This was certainly fraught and full of opportunity for polemic. There were two, intersecting, conflicts in play: the Acacian and the Laurentian schisms. While this is not the place to rehearse an account of either in any detail, both constitute the immediate context for Dionysius' activities as a translator and canonist. In 484, Pope Felix excommunicated the patriarch Acacius for his continued recognition of bishops whom Rome regarded as heterodox. This was effrontery, countered the Emperor. Authority in the Church lay with the collective wisdom of bishops, not with any one see. Successive popes insisted that their petrine authority could indeed stand by itself.³⁶

In Rome itself, opinion on all this was divided: some, like Pope Gelasius, favoured taking a hard line with the Emperor, others, such as Gelasius' successor Anastasius, a more conciliatory approach. After Anastasius' death in 498, two rival candidates faced off to succeed him as bishop of Rome. A populist and clerical group backed the hardliner Symmachus—while a more diplomatically-inclined party of senators gathered behind the Archpriest Laurence, and sought to call Symmachus to

³⁵ See Wurm, 16; Schwartz, 'Die Kanonensammlungen der alten Reichskirche', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 56, *kanonistische Abteilung* 25 (1936), 1-114, at 110-114.

³⁶ See P. Blauddau, 'Motifs et structures de divisions ecclésiastiques. Le schisme acacien 484-519', *Annuaire Historiae Conciliorum* 39, (2007), p. 65-98, here at 79; see further id., *Le Siège de Rome et l'Orient (448-536). Etude géo-ecclésiologique* (Rome, 2012); J.-M. Kötter, *Zwischen Kaisern und Aposteln. Das Akakianische Schisma (485-519) als kirchlicher Ordnungskonflikt der Spätantike* (2013).

account for financial and sexual misconduct.³⁷ The Symmachans responded with an uncompromising statement of immunity from prosecution. The bishop of Rome, they asserted, could not be judged by his peers.³⁸ The dispute lasted for over a decade, generating violence in the streets and a lively pamphlet literature. From 508, the Symmachans had the upper hand, but the schism really ended only with Symmachus' death in 514. Five years later, following the accession of the Emperor Justin, his successor Pope Hormisdas finally managed to come an accommodation with the Emperor over Acacius.

Schwartz (and others have followed him) argued that Dionysius was a Laurentian.³⁹ In the preface to the first collection of council canons, he refers to an archpriest 'Laurence', whom Schwartz and others identify as Symmachus' opponent. In his *Decretal Collection*, as we shall see further below, he includes as its final text a letter from Pope Anastasius II that looked for a peaceful solution to the dispute over Acacius.⁴⁰ Schwartz saw Dionysius as attempting to broker an end to the Acacian Schism, in the face of the aggressive and tendentious claims of the Symmachans.

All of this is conjecture, as Wurm noted.⁴¹ The identification of Laurence in Dionysius preface with the Laurence of the schism is especially flimsy. There was surely more than one priest Laurence in Rome. The *Decretal Collection*, meanwhile, is dedicated to a priest Julian of the *titulus* of S Anastasia, a church which had connections to the Symmachan party;⁴² and it goes on to laud Gelasius, whose

³⁷ K. Sessa, *The Formation of Papal Authority in Late Antique Italy: Roman Bishops and the Domestic Sphere* (Cambridge, 2012), ch. 6 parses these accusations.

³⁸ S. Vacca, 'Il principio *Prima sedes a nemine iudicatur*', in G. Mele & N. Spaccapelo eds., *Il papato di San Simmaco (498-512)*, (Cagliari, 2000), 153-190'; and further E. Wirbelauer, *Zwei Päpste in Rom: Der Konflikt zwischen Symmachus und Laurentius (498-514)*, (Munich, 1993).

³⁹ Schwartz, 'Die Kanonensammlungen', 110-14; Wirbelauer, *Zwei Päpste*, 129-33; J. Moorhead, *Theoderic in Italy* (Oxford, 1992), 206-09 puts the case well.

⁴⁰ See below, p. **

⁴¹ Wurm, *Studien und Texte zur Dekretalensammlung*, 17-18; see also Firey 'Collectio Dionysiana', n. 34.

⁴² See Wurm, *Studien und Texte zur Dekretalensammlung*, 20 n. 41 for the problems with this: in some manuscripts, the reference to the *titulus* S. Anastasiae does not appear.

tradition the Symmachans claimed to be emulating.⁴³ Dionysius may have been fraternizing with the enemy—or again, the model of factional allegiance may be much too crude to capture what he was doing. Ultimately we have to admit the limits of our sources for a political reading of Dionysius' career: all we can say for certain is that he survived apparently unscathed (which is more than some Roman priests did, killed in street violence, or later, Boethius, executed by Theodoric), and that he was still operating in Rome under Hormisdas.⁴⁴

A 'post-modern' approach to Dionysius goes further, and warns of reading his work in terms of his life. Abstracted from his immediate context, and placed in a wider cultural frame, Dionysius becomes a compiler, one among several. Abigail Firey has forcefully suggested that a return to the manuscript evidence will take us away from an essentialized account of Dionysius as 'an author', and towards a historicized sense of the unstable set of resources associated with his name. We should note that this 'death of the author' approach has worked spectacularly well for the greatest medieval canonist, Gratian. Scholars searched in vain for more to say about Master Gratian, the mid twelfth-century Bologna scholar whose name is attached to the definitive canon law collection of the medieval Church. Then, thanks to painstaking work with the manuscripts, it was discovered that there were two 'Gratians', or at least two editions of the collection, whose design we now understand much better.⁴⁵ 'Dionysius', as we have already seen, went through (at least) three editions himself; his contemporaries recast what he had done for their own purposes; and his later copyists cheerfully added to and amalgamated his conciliar and decretal collections. On this view, it makes most sense to see his work as part of a collective effort of legal compilation.

⁴³ Dionysius, *Collectio Decretorum*, *pref.*, PL 67, 231B: 'Nam prae virtutis amore cuncta quae sunt utilia desideratis agnoscere, licet omnes venerandi juris observantiam moribus impleatis. Quantique sit apud Deum meriti beatus papa Gelasius, et nos qui eum praesentia corporali non vidimus, per vos alumnos eius facilius aestimamus.'

⁴⁴ See *Liber Pontificalis* 53, ed. L. Duchesne, 3 vols. (Paris, 1955), I, 260-61: the priests Dignissimus and Gordianus, along with other unnamed priests, are killed in street fighting. On the fall of Boethius, see now P. Heather, 'A Tale of Two Cities: Rome and Ravenna under Gothic Rule', in J. Herrin & J. Nelson eds., *Ravenna: its role in earlier medieval change and exchange* (London, 2016), 15-37 at 28-37. .

⁴⁵ A. Winroth, *The Making of Gratian's Decretum* (Cambridge, 2000).

Dionysius himself may object to this flattening out of his distinctive profile. While it is surely productive to see him as more than a product of local political conditions, the fact remains that, unlike other compilers, Dionysius did not hesitate to identify himself as an authority—no anonymity for him. The contrast between personal and impersonal authority is one we find in other areas of Christian culture at this juncture. Take monasticism: the compilers of the *Rule of the Master* and the *Rule of St Benedict* studiously presented their work impersonally. Theirs was the *magisterium* of tradition. Bishop Caesarius of Arles, by contrast, went out of his way to identify himself as the speaker in his monastic rules. His was an explicitly personalized model of authorship.⁴⁶ Put another way, the culture of literary compilation in the later Empire had its own politics, no less divided than clerical faction fighting in the streets of Rome.

Dionysius, we suggest, offered a multi-layered commentary on questions of authority, endlessly correcting for balance. He identified himself by name, but professed himself to be a faithful translator and collector of tradition. To one side, he arranged the accumulated wisdom of Church Councils, on the other, the personal decisions of bishops of Rome. And within both kinds of text, he weighed the characteristics of priestly office—did it depend on, or was it impervious to the personal failings of those who held it? This pursuit of balance may or may not reflect Dionysius' temperament or his immediate context: it certainly reflected the politics of codification in the later Empire, to which we now turn.

3. Law and Codification

Codification is perhaps always a political project—and never a neutral antiquarianism. In the Roman Empire, we see imperially-sponsored legal compilations taking shape at the end of the third

⁴⁶ C. Leyser, *Authority and Asceticism from Augustine to Gregory the Great* (Oxford, 2000), chs. 4 & 5.

century.⁴⁷ Compilation was a means of organizing incoherent traditions, or of generating consensus after the political event.⁴⁸ That said, codification and imperial power did not always line up.

Sebastian Schmidt-Hofner has shown that the Theodosian Code was a site of struggle between lawyers and the Emperor over the nature of the imperial rule.⁴⁹ Working from the late 420s under a child emperor, legal professionals sought to establish a definitive collection of all Roman law and juristic commentary. As he grew into his majority, Theodosius II both endorsed and resisted this project. He wanted to be seen as the guarantor of law in the Empire—but he also wanted room for manoeuvre. An exhaustive legal *summa* threatened this: the Theodosian Code as we have it is thus the prolegomenon to a still grander project of codification of all existing law that was strangled at birth.

This tension between autocracy and bureaucracy attended not only codification, but the substance of law itself in relation to bureaucracy. As Schmidt-Hofner has shown, from the mid-360s onwards, emperors began to issue decrees to do with office on a yearly basis.⁵⁰ These decrees, collected into Book VI of the Theodosian Code, are hard to parse: the rules seem to be in constant flux, as one ranking scheme replaces another. The key, Schmidt-Hofner argues, is to understand that they are not supposed to be coherent. The Emperor needed to retain an element of volatility at the centre of the system. He could not afford to have the rules run so smoothly as to make his personal patronage redundant. The message sent by the laws was that office-holders should never forget that the Emperor was the source of advancement. Promotion was not automatic, and even when granted, the recipient could not afford to stop looking over his shoulder, or looking up to the Emperor. Late

⁴⁷ See S. Schmidt-Hofner, in this volume.

⁴⁸ R. Lim, *Public Disputation, Power, and Social Order in Late Antiquity* (Berkeley, CA., 1995), esp. 218. See further A. Wickenhauser, 'Beitraege zur Geschichte der Stenographie auf den Synoden des vierten Jahrhundert nach Christus', *Jahrbuch fuer Stenographie* 59 (1908), 4-9, 33-39.

⁴⁹ S. Schmidt-Hofner, 'Law and a Debate About Monarchy in Early Fifth Century Constantinople', forthcoming. On child emperors, see M. McEvoy, *Child Emperor Rule in the late Roman West, AD 367-455* (Oxford, 2013).

⁵⁰ Schmidt-Hofner, 'Ehrensachen'.

Roman law making was a febrile project—invested in a rhetoric of the system and its completion, all the while, like Penelope, undoing its own work and beginning again.

All of these insights can help us with Dionysius. He belonged to a generation who perceived canon law to have reached critical mass. In Rome in particular at the turn of the sixth century, it was a resource ready for codification.⁵¹ Tradition pointed in several different directions, which required glossing or indeed managing. But there were limits to the kind of synthesis that was possible, or perhaps even desirable. Like the compilers of the Theodosian Code, Dionysius sought to circumscribe without entirely eliminating the power of discretion.

Councils

Dionysius' collection of council canons did not lack for ambition in its appeal to the past. At its grandest, he sought to offer his readers an arc, from apostolic times down to the Council of Chalcedon in 451. In the first and second editions, Dionysius began with the *Canones Apostolorum*, a collection of eighty four canons (itself part of a larger collection the so-called Apostolic Constitutions, now seen to date from the late fourth century).⁵² There followed his translations of the canons of the eight councils of the fourth century: Nicaea, Ancyra, Neocaesarea, Gangra, Antioch, Laodicea, Constantinople, and Serdica (out of place chronologically, for reasons we explain below), and then Chalcedon.

⁵¹ F. de Marini Avonzo, 'Secular and Clerical Culture in Dionysius' Exiguus' Rome', in *Proceedings of the Sixth International Congress of Medieval Canon Law, Berkeley, California, 28-July-2 August 1980*, ed. S. Kuttner & K. Pennington (Vatican, 1985), 83–92.

⁵² The claim of these 'Apostolic Canons' to date back to the apostles was not universally accepted: in his third edition of his collection, Dionysius excluded this text, 'which everyone has not accepted', ed. Glorie, *Scriptores*, 51, tr. Somerville & Brasington, *Prefaces*, 49. For the texts themselves, see *Les Constitutions apostoliques*, ed. M. Metzger. 3 vols., SC 320, 329, 336 (Paris, 1985-87).

Dionysius inherited a normative body of legal resource.⁵³ Scholars have expended a huge amount of effort in assessing the extent to which he improved upon existing translations of this material.⁵⁴ We do not intend to revisit that here more than is necessary. Our main contention is this: to a body of materials already heavily focussed on clerical office, Dionysius added extra layers of complication. The choice to begin with the Apostolic Canons may be taken as emblematic of his priorities. The very first canon is ‘de ordinatione episcopi’, immediately followed by ‘de ordinatione presbyterii, diaconis et ceterorum’.⁵⁵ From the beginning, the Christian community is seen to be organized around the clerical hierarchy.

Assessing Dionysius’ contribution requires some survey of what he replaced. Latin versions of Greek council canons were in circulation from the early fifth century. In so far as any reconstruction is possible (as these are not directly transmitted) there were two: the ‘Isidoran’ version, so named because it was the basis for the version received in Spain by Isidore of Seville,⁵⁶ and the so-called Prisca version produced later in the fifth century, also in Rome.⁵⁷ This takes its name from Dionysius, who claimed that his translation was better than the ‘former’ translation. Our earliest witness to the Isidoran version is the Friesing Collection; the Prisca meanwhile is witnessed first in the four Italian collections seen to postdate Dionysius. By the early 530s, however, we have evidence that Dionysius’

⁵³ See now C. W. B. Stephens, *Canon Law and Episcopal Authority: the Canons of Antioch and Sardica* (Oxford, 2015); and for the Byzantine future of this tradition, D. Wagschal, *Law and Legality in the Greek East: the Byzantine Canonical Tradition, 381-883* (Oxford, 2015).

⁵⁴ See n. 57.

⁵⁵ Dionysius, *Collectio canonum* 1-2, PL 67, 141.

⁵⁶ See Maassen, *Geschichte* 80-85, distinguishing between the original Isidoran version in the Freising manuscript and the *Isidora vulgata*. More recently, the Isidoran version has been called the *Corpus Canonum Africanum* to reflect its origins. See Kery, *Canonical Collections* 1-2; also H. Mordek, ‘Karthago oder Rom? Zu den Anfängen der kirchlichen Rechtsquellen im Abendland’, in *Studia Alphonsi Stickler* (Rome, 1992), 359-74. On the Spanish context, see further R. Stocking, *Bishops, Councils, and Consensus in the Visigothic Kingdom, 589-633* (Michigan, 2000); my thanks to David Addison for drawing my attention to this.

⁵⁷ C. H. Turner, ‘Chapters in the History of Latin MSS of Canons V. The Version Called Prisca: (a) The Justel MS (J) now Bodl. E. Mus. 100-102, and the *editio princeps* (Paris, 1661); and ‘Chapters in the History of Latin MSS of Canons VI. The Version called Prisca: (b) The Chieti MS (= I), now Vat. Regin. 1997’, *JTS* 30 (July, 1929), 337-46, and 31 (Oct, 1929), 9-20. Identifying and establishing the text of these two versions, the Isidoran and the Prisca, was Turner’s life’s work: the early twentieth century Dionysius. Turner effectively supports Dionysius’ claim that his translation was more accurate than that the Prisca. But see now M. Sommar, ‘Dionysius Exiguus’ Creative Editing’, in *Proceedings of the Twelfth International Congress of Medieval Canon Law, Washington, D C., 1-7 August 2004*, ed. U-R. Blumenthal & K. Pennington (Vatican, 2009), 209-22.

translations were in circulation. Cassiodorus was to claim, 'Today the Roman Church makes continual use of them.'⁵⁸

In terms of substance, as we have noted, the key difference between Dionysius' conciliar collection (in his second edition) and his peers are his inclusion of African materials; and, as we should now note, his separation out of the Council of Serdica from the Council of Nicaea. To understand the significance of these choices, we have to revisit North Africa in the early fifth century.

Latin canon law was decisively affected by the litigious persistence of an obscure North African priest, Apiarius of Sicca.⁵⁹ We know little about him, other than that he was a bishop's nightmare, both wayward and doggedly convinced of his own rectitude. In 418, having been disciplined, Apiarius appealed to Rome, going over the head of his bishop and of the Bishop of Carthage--who understood himself to be the African primate with the final jurisdiction over Apiarius' case. Months later, on 29 May 419, legates from the pope arrived to meet the assembled African bishops at Carthage. What happened next is well known. The Africans disputed Apiarius' right to appeal; in response, the Romans produced some canons which they claimed were from Nicaea; with faux naivete, the Africans questioned the authenticity of these canons. It is likely that they knew very well that the Romans had confused the Nicene canons with those of the Council of Serdica (held eighteen years later 342).⁶⁰ Six months later, delegates from Constantinople arrived and duly confirmed the African position.

This case, it is widely acknowledged, sees the 'activation' of canon law in the Latin West. To justify their position, the African bishops assembled a dossier of canons, the *Gesta de causa Apiarii*, in

⁵⁸ 'Usu celeberrimo ecclesia Romana complectitur': Cassiodorus, *Institutiones* 23, ed. Mynors, 62. For evidence of Roman and other use, see Maassen, *Geschichte*, 437-40; K. Zechiel-Eckes, *Die Concordia canonum des Cresconius: Studien und Edition* 2 vols. (Frankfurt, 1992), I, 75ff.

⁵⁹ J. Merdinger, *Rome and the African Church in the Time of Augustine* (New Haven, 1997, 111- 35, 183-99 gives an accessible account.

⁶⁰ On the Council of Serdica, see Hess, *Early Development*.

which they drew on their own earlier canonical resources. From the 390s onwards, Catholic bishops had started to meet almost annually under the leadership of Aurelian of Carthage and his protégé Augustine of Hippo. In the 38 years down to 426, they met 29 times. Two records survive of these meetings: the so-called *Hippo Breviary*, which is a summary of the decisions taken at Hippo in 393 and then again at Carthage in 397; and the *Register of the Church at Carthage*, which is an abbreviated record of the meetings at Carthage from 397 onwards. These documents, in some ways no more than sketchy minutes of meetings, were the basis for the *Gesta de causa Apiarii*, and proved to have a long afterlife.⁶¹

The Apiarian case was clearly an embarrassment to the Roman Church. The *Gesta de causa Apiarii* were taken back to Rome, severally edited, and they appear in all of the early canonical collections produced in the age of Dionysius.⁶² In the Freising collection, in fact, the editor looks to refight the argument, so that this time Rome wins. He prefaces the *Gesta* with an insistence that the African hierarchy was wrong to deny Apiarius his right of appeal to Rome. The collector also makes a point of reinstating the Roman conflation of the Nicene and the Serdican canons; and he goes on to manipulate the material to undermine the African case.⁶³

We can now turn back to Dionysius himself. His position is finely judged. In his first edition, the Apiarian dossier appears, in the manipulated version of the Freising collection—but without the prefatory protestations of the Freising compiler, and, crucially, without the confusion of the canons of Nicaea and Serdica. Instead the Serdican canons are placed out of chronological sequence, after the Council of Constantinople of 381. The same features characterize the second edition. Then comes the new material: to the Apiarian canons, Dionysius adds the *Register of the Church at Carthage*, from 393 to 418. The inclusion was somewhat clumsy. As shown by F. L. Cross in the early

⁶¹ These texts are edited by C. Munier, *Concilia Africae* A. 345 – A. 525', CCSL 159 (Turnhout, 1974), 33-53 (Hippo Breviary), 173-235 (Carthage Register). For discussion, see Mordek, 'Karthago oder Rom?'.

⁶² Munier, 'La tradition littéraire' rehearses their composition and diffusion.

⁶³ Maassen, *Geschichte*, 955-58.

1960s, Dionysius forced the complicated archive of thirty years of African conciliar activity into the template of his Greek material, to create the fiction that there was one Council of Carthage.⁶⁴ In his third edition, the Carthaginian *Register* was again removed.

How much to make of this? Was this, as Cross implies, simply a scholar looking to assemble a comprehensive collection—or is there a more active agenda? And why did Apiarius' Africa matter so much in Rome three generations later? There has been very little discussion of these questions, and we can make only tentative suggestions. It seems unlikely that Dionysius was arguing against Rome—but when compared to the open partisanship of the Freising collector, Dionysius' strategy appears to be one of disarmingly full disclosure. The Africans had been right, he did not hesitate to aver: the papal legates of 419 had indeed confused Nicaea with Serdica.

By the same token, Dionysius included the full archive of the church at Carthage, albeit with some chronological contortions. As readers of this material would have seen, this did not all redound to the glory of Carthage. What the Carthage *Register* in fact revealed was the humiliating inability of the bishop of Carthage to control the North African church.⁶⁵ This was obvious in the continuing struggle against the Donatists, where the Catholic hierarchy had sought to draw down the power of the Roman Church and of the Emperor to suppress their local rivals. But there were also tensions within the Catholic phalanx. The organizing principles of the clerical hierarchy in Africa were unclear and under debate. Age, not rank, defined seniority, and this in two different ways. Firstly, there were 'the Elders', lay people with an undefined advisory scope in the African Church.⁶⁶ Secondly, in all provinces except Africa Proconsularis, there was no fixed metropolitan: the senior bishop was the

⁶⁴ F. R. Cross, 'History and Fiction in the African Canons', *JTS* n.s. 12 (1961), 227-47. As Cross shows, Dionysius' record of the Acts of the Council of Carthage in 419 involves a transparent literary artifice in which the Acts of previous councils going back to 390 are read out on Day One of the 419 meeting.

⁶⁵ N. McLynn, 'The Conference of Carthage Reconsidered', in R. Miles ed., *The Donatist Schism: Controversy and Contexts* (Liverpool, 2016), 220-48 sheds much light here. In a joint project, we intend a more fundamental revision of established views.

⁶⁶ B. Shaw, 'The Elders of Christian Africa', in P. Brind'Amour ed., *Mélanges offerts à R. P. Etienne Gareau*, Ottawa, Editions de l'Université d'Ottawa = numéro spéc. de *Cahiers des études Anciennes* (1982), 207-226

oldest man, and the other bishops were ranked according to age.⁶⁷ In Africa Proconsularis, however, the bishop of Carthage was the metropolitan no matter what. Carthage also claimed to be the ranking see with primatial powers over all Africa. As the case of Apiarius showed, however, the more powers Carthage claimed, the more its underlings appealed over its head. Asserting Carthaginian primacy over Africa meant, effectively, opening up Carthage to scrutiny from Rome.⁶⁸ The bishop of Carthage and his supporters—pre-eminently Augustine of Hippo—had cast a legal net, and they were now caught within it. If the *Register* of Carthage is a witness to the power of African legal self-consciousness, it is also a sign of the ultimate weakness of the Carthaginian position.

Dionysius, in other words, did not need to argue Rome's case over Carthage: simply including the full Carthage *Register* made the point far more effectively. But there was more to this than a simple assertion of Roman primacy. At the heart of the African case, there was a specific bind about clerical office. How do you get rid of a bad priest? For all the firepower directed against him, Apiarius was not stripped of office. He resurfaced some six years later in Rome, where his suit was entertained by Pope Celestine. Here he finally met his comeuppance. In the gleeful account of the Aurelian of Carthage, after three days of deflection, he could no longer conceal the depths of his moral turpitude, and he made a full confession of any number of sexual offences.⁶⁹

Why did all this matter in Rome at the turn of the sixth century? Some explanations lie close to hand. When Dionysius wrote, Africa's legal binds had become Rome's. What to do about the legacy of a bishop—Acacius—perceived to be corrupt? And what to do in a context where the charge of sexual disgrace attended not a rural priest in North Africa, but the bishop of Rome himself, Symmachus? Could he be judged by his peers—or was he really, as his defenders claimed, above this?⁷⁰

⁶⁷ J. Gaudemet, *L'Eglise dans l'Empire romain* (Paris, 1958), 340.

⁶⁸ C. Munier, 'Un canon inédit du XXe concile de Carthage: "Ut nullus ad Romanam ecclesiam audeat appellare"', in id., *Vie conciliaire*, ch. VIII.

⁶⁹ Aurelius of Carthage to Pope Celestine, 'Optaremus', ed. Munier, *Concilia*, 169-72.

⁷⁰ See above, n. 38.

Decretals

Artfully transparent, then, in his conciliar collections, in his *Decretal Collection*, Dionysius actively pursued the theme of clerical office. He set out for all to see the spectrum of possible positions on priestly ordination and its validity. A version of this debate had been running since the 250s, but it had focussed largely on the question of baptism. Ordination did not, in fact, feature strongly in either Cyprian's or Augustine's discussions. It was, we suggest, Dionysius who refocussed attention onto ordination, and who channelled this through the pronouncements of the successors of Peter, the first of the apostles to receive the laying on of hands.

Decretal collections were younger than collections of conciliar decrees. Exactly when popes started issuing decretals is a matter for debate, which we do not seek to resolve here. The traditional position holds that in the 380s, possibly with Damasus, but certainly with Pope Siricius, a papal response to a specific issue was intended to have general applicability, i.e. to be a decretal.⁷¹ A more cautious view holds that 'decretalization' was a retrospective conferral of authority on letters that initially were just that: letters sent to adjudicate particular cases. From the mid-fifth century, it is agreed, we have evidence that decretals started to be collected together and treated as sources of canonical authority.⁷² The issue of agency is obscure: it seems that popes themselves were not directly organizing this process. At the turn of the sixth century, then, decretal collections were perhaps no more than one or two generations old, and they were not officially sponsored: their compilers had more room to manoeuvre than with the conciliar material, where as we have seen, a set of public documents--the African dossiers--was already in place.

⁷¹ K. Zechiel-Eckes, *Die erste Dekretale: der Brief Papst Siricius' an Bischof Himerius von Tarragona vom Jahr 385 (JK 255)*, MGH Studien und Texte 55 (Hannover, 2013). We may look forward to the appearance of D. d'Avray, *The First Papal Laws*, an edition, translation, and discussion of the whole corpus of early decretals.

⁷² G. Dunn, 'The Emergence of Papal Decretals: the Evidence of Zosimus of Rome', in G. Greatrex, H. Elton, with L. McMahon eds., *Shifting Genres in Late Antiquity* (Farnham, 2015), 81-92.

Dionysius exploited the creative potential of the genre of the decretal collection. It has been established that he had only limited access to papal archives; and that he was almost certainly building on earlier efforts—as represented, again, by the Freising and Quesnelliana collections, although there are others.⁷³ Eight decretals are generally found in these earliest collections;⁷⁴ Dionysius seems to have built his collection around these, but he vastly expanded, adding thirty more, to make the largest early medieval decretal collection.⁷⁵ In the form that Dionysius assembled it, however, his collection survives in only three manuscripts.⁷⁶ Part of its success and its importance lies in its establishing a textual space into which future canonists could add.

The early decretalists built out from the common core of shared material to showcase particular popes. Thus the Friesing Collection had focussed on Celestine, the Quesnelliana on Leo: Dionysius chose Innocent.⁷⁷ The core of eight letters included four from Innocent; to these Dionysius added a further sixteen. As with the African conciliar material from the Carthage *Register*, Dionysius is our only witness to these texts. His purposes, we suggest, were specific: this corpus of twenty letters of Innocent serve to bring into focus the question of clerical ordination.

As with the African material, we must turn back to the early fifth century, and to the context in which Pope Innocent wrote. Again we find a troublesome cleric: Innocent had cause to write a series of letters to bishops in Illyricum, regarding one of their number, Bonosus of Nis.⁷⁸ When Innocent intervened in the years after 410, the case was nearly twenty years old. In the early 390s, Bonosus had been spreading what was regarded as heterodox teaching about the Virgin Mary. A circle of

⁷³ See Wurm, *Studien und Texte zur Dekretalensammlung*, 87-103

⁷⁴ JK 255: Siricius to Himerius; JK 286: Innocent to Victricius; JK 293: Innocent to Exsuperius of Toulouse; JK 303: Innocent to Macedonia & Dacia: Ventum est; JK 311: Innocent to Decentius of Gubbio; JK 339: Zosimus to Hesychius of Salona; JK 369: Celestine to Vienne & Narbonne; JK 371: Celestine to Apulia & Calabria

⁷⁵ Siricius (one); Innocent I (twenty); Zosimus (two); Boniface I (three, plus a rescript from Honorius); Celestine I (three); Leo I (seven); Gelasius I (one); Anastasius II to Emperor Anastasius (one; technically not a decretal).

⁷⁶ Par. Lat. 3845, Par. Lat. 3837, and Vat. Lat. 5845. See Kery, *Canonical Collections*, 10-11.

⁷⁷ Innocent's decretals have been studied in *extenso* by Geoffrey Dunn—see e.g. the studies cited below. and we can look forward to David d'Avray's edition, translation, and discussion of the corpus.

⁷⁸ More traditionally, of Serdica. I follow Innocent and Dunn in seeing him as of Nis.

disciples had gathered around him, threatening to entrench as a rival hierarchy. Bonosus had died in the early fifth century, but he had set his peers a pastoral challenge: what to do with the priests he had ordained who wished now to return the orthodox fold?

Innocent's best-known answer to this, which featured in all the early decretal collections, took an uncompromising position. Those ordained by Bonosus after his lapse into heresy were not validly ordained.⁷⁹

It is to the contrary affirmed that he who has lost *honor*, cannot give *honor*: nor can the other man have received anything if there was nothing in the giver which he could have received. Given that he definitely could not give what he did not have, it follows that the *damnatio*, which he did have, he transmitted through the wicked laying on of hands; and given that the other man was made an accomplice to the *damnatio*, how he is supposed to have received the *honor*, is beyond me.⁸⁰

Innocent here reached back to Cyprian, that a priest in schism with his community was no longer able to function as such: nothing he did was valid.⁸¹ In fact, he went somewhat further than Cyprian in insisting that all a heretical bishop could inflict on those he ordained was wounding and injury. These 'non-priests' could be received back into the body of the faithful as laity, but they were 'damaged goods'. They could never be properly ordained to the priesthood.

⁷⁹ G. Dunn, 'Innocent I and the Illyrian Churches on the Question of Heretical Ordination', *Journal of the Australian Early Medieval Association* 4 (2008), 65-81, with the literature there cited.

⁸⁰ Innocent I, *Ep.* 17.7 = *Ventum est*: 'Sed e contra asseritur, eum qui honorem amisit, honorem dare non posse: nec illum aliquid accepisse, quia nihil in dante erat, quod ille possit accipere. Certe quia quod non habuit dare non potuit, damnationem utique, quam habuit, per pravam manus impositionem dedit: et quia comparticeps factus est damnationis, quomodo debeat honorem accipere, invenire non possum.' *Honor* in the sense of office and honour seems untranslatable; *damnatio* is its opposite.

⁸¹ Cyprian, *Ep.* 70. 2: 'Quis autem dare potest quod ipse non habeat, aut quomodo potest spiritalia gerere qui ipse amiserit spiritum sanctum?', which itself refers both to Paul, I Cor 4:7--'Quid enim habes quod non accepisti?'--and also to Ulpian 50.17.54: 'Nemo plus iuris ad alium transferre potest, quam ipse haberet.', a reference I owe to Susan Reynolds.

This was a well-known decretal. By contrast, unique to Dionysius's collection were other, earlier letters where Innocent had considered the case of those priests who had been ordained by Bonosus *before* he was declared a heretic.⁸² These ordinations, Innocent had ruled, were valid. There was no reason not to accept these priests back into the fold, after a rite of reconciliation. Innocent's overall position was coherent, but it contrasted with the line taken by Aurelian of Carthage, in readmitting Donatist clergy who wished to rejoin the Catholic fold—a decision readers of Dionysius' canonical collection (in its second edition) could follow as it unfolded.⁸³

At the close of the *Decretal Collection*, Dionysius restages the issue of priestly office and its permanence with texts from his own day. The penultimate text he includes comes from Gelasius.⁸⁴ It is a long text, the only decretal of Gelasius to have been transmitted. It contains various injunctions about disqualification for the priesthood. Gelasius reprises what are effectively Old Testament purity tests, including physical deformity. Later, he stipulates that any priest mutilating themselves was to be deprived of their office. This again was traditional—the first decree of Nicaea forbids self-castration.⁸⁵

These prescriptions, then, throw into sharper relief the letter that follows from Pope Anastasius to the Emperor Anastasius II. This was not, in fact, a decretal. Anastasius wrote with specific regard to the patriarch Acacius. His position differed from that of Gelasius: he was prepared to compromise. He saw no reason to condemn whole sections of the ecclesiastical hierarchy in the eastern Mediterranean. A schismatic priest like Acacius did not vitiate the entire Church.

⁸² G. Dunn, 'The Letter of Innocent I to Marcian of Nis', in D. Bojovic ed., *Saint Emperor Constantine and Christianity* (Nis, 2013), 319-38.

⁸³ See esp. Council of Carthage, June 401, ed. Munier, *Concilia*, 194; discussed by Cowdrey, 'St Augustine's Doctrine of Holy Orders', at 453-54 and n. 3 on 453.

⁸⁴ Gelasius, *Ep.* 14, *Necessaria rerum* (JK 636).

⁸⁵ Gelasius *Ep.* 14.2-3; 17. Cf Gelasius, *Frag* 9, as discussed by K. Sessa, 'Cleric' in C. Chin ed., *Late Antique Knowing: Explorations in Intellectual History* (Berkeley, 2015), 218-39: having been deposed because mutilated in war, a priest appeals to Gelasius and his office is restored to him.

For if the rays of the sun that we see, when they shine through the foulest of places, are not stained by any defiling contact, then how much more is the power of he who made the visible sun unconstrained by any unworthiness of his servants? For the benefits conferred through an unworthy man—whatever even Judas, although he was a blasphemer and thief, did as a member of the apostles in accordance with the rank entrusted to him—did not suffer any diminution from him.... Whatever therefore any minister in the church does for the sake of humanity that seems to be in his own official capacity, this is in fact to be understood as entirely contained within the management of the deity. Thus did Paul, he through whom Christ spoke, affirm, ‘I have planted, Apollos watered; but God gave the increase’ [I Cor 3: 6].⁸⁶

Anastasius here took a position diametrically opposed to Pope Innocent in his discussion of Bonosus’ priests. Ordination by an ordained minister was permanent, and could neither be withdrawn or repeated. He deployed here exactly Augustine’s argument against the Donatists; and indeed he drew directly on Augustine’s *Contra Epistulam Parmenii*.⁸⁷ This is a precious reference, the only explicit one to this text before the ninth century. It might have remained a curiosity, had it not been canonized by Dionysius.

⁸⁶ Anastasius II, *Ep.* 1. vii, to Emperor Anastasius, ed. A. Thiel, *Epistolae Romanorum pontificum genuinae et quae ad eos scriptae sunt a S. Hilario usque ad Pelagium II*, 2 vols. (Brunsberg, 1868), I, 621-2. ‘Nam si visibilis solis istius radii, quam per loca foetidissima transeunt, nulla contactus inquinatio maculantur, multo magis illius, qui istum visibilem fecit, virtus nulla ministri indigne constringitur. Nam et Judas, quum fuerit sacrilegus atque fur, quidquid egit inter apostolos pro dignitate commissa, beneficia per indignum data nulla ex hoc detrimenta senserunt... Quidquid ergo ad hominum profectum quilibet in Ecclesia minister pro officio suo videtur operari, hoc totum contineri divinitatis effectum, ita ille per quem Christus loquitur Paulus affirmat: ‘Ego plantavi, Apollo rigavit, sed Deus incrementum dedit’.

⁸⁷ Augustine, *Contra Ep. Parmeniani* II.13. 28, 31: ‘Nam illud quod quidam eorum veritate convicti dicere coeperunt, “Baptismum quidem non amittit qui recedit ab Ecclesia, sed jus tamen dandi amittit;” multis modis apparet frustra et inaniter dici. Primo, quia nulla ostenditur causa cur ille qui ipsum Baptismum amittere non potest, jus dandi potest amittere. Utrumque enim Sacramentum est; et quadam consecratione utrumque homini datur: illud, cum baptizatur; istud, cum ordinatur; ideoque in Catholica utrumque non licet iterari. [...] Nec ullo modo isti expedire se possunt, cum eis proponitur cur sanctitas Sacramenti et haberi et dari possit ab eo quem intus sceleratum jam Deus damnavit, et tunc incipiat ab eo dari non posse, cum ab hominibus damnatus fuerit, cum tamen nec tunc eam possit amittere.’

Dionysius' inclusion of this letter of Anastasius has been given a minimalist and a maximalist reading. The former, as advanced by Wurm, takes the view that if he includes unusual material, then it is simply because it is unusual, and he wishes to preserve it for posterity. Comparison here is made between Dionysius and the *Collectio Avellana* compiler, operating in the 550s, two thirds of whose material is not transmitted anywhere else.⁸⁸ The maximalist reading, against which Wurm set his face, was that Dionysius sought here to extend an olive branch to the Church in the East, and to side with the Laurentian party in Rome as it descended into schism.⁸⁹

Both readings risk setting Dionysius' ambitions too low. Seen in the context of the whole collection, Dionysius here brought to term his discussion of clerical office in terms of personal status and official rank. What he arrives at, consciously or not, is a profoundly Augustinian position. It was not that he sided with Anastasius against Gelasius: we may not infer this. What we can say is that Dionysius, like Augustine, refused triumphalism. In the *City of God*, as Robert Markus above all has shown, Augustine came to the view that no human institution---not the Roman state, not the church, and certainly no particular faction within the church--could claim with certainty to be a privileged vessel of God's grace on earth. In the sixth age, the *saeculum*, the most that anyone in authority could hope for was to keep a modicum of peace, in imperfect anticipation of the full peace that would reign in the heavenly Jerusalem at the end of time. Dionysius is, we suggest, a prophet of 'the secular' in Augustine's sense. The point of aspiring to a universal canonical collection, and of translating Greek canons into Latin, was to remind all parties of the wider whole to which they belonged, and of their powerlessness in the face of divine grace. The primary responsibility of the clerical hierarchy was to witness the limits of politics in the here and now.⁹⁰

⁸⁸ On the Avellana, see Kery, *Canonical Collections*, 37-8. A collection of essays ed. A. Evers is forthcoming.

⁸⁹ Wurm, *Studien und Texte zur Dekretalensammlung*, 18-19, n. 39.

⁹⁰ Augustine, *Civ Dei* XIX, as expounded by R. A. Markus, *Saeculum: History and Society in the Theology of St Augustine* (Cambridge, 1970). See further id., 'Tempora Christiana revisited' in R. Dodaro, G. Lawless eds., *Augustine and his Critics* (Cambridge, 1999).

What did this mean in practical terms? Recirculating Anastasius' conciliatory letter may have helped, but the Acacian schism continued for another two decades. Dionysius' role as a broker in the Laurentian Schism is harder to discern, but we could come at it like this. It is noticeable that the Schism, which generated an intensive pamphlet literature, did not go the way of previous disputes, whether Donatist, Monophysite, or indeed Acacian. In Rome, both sides traded accusations as to the suitability of their candidates for the papal throne. Symmachus, in particular, was accused of poor stewardship of resources, and of various sexual misdemeanours (which may have amounted to the same thing). Both sides also vied to bend institutional memory in their direction: one of the products of the Schism was the *Liber Pontificalis*, a record of popes and their priests going back to Peter, existing in partisan recensions.⁹¹ But at no point, seemingly, did the Roman clergy divide into two rival hierarchies; neither side seems to have called into question the validity of the sacraments performed by the other—as they were calling into question Acacius' ordinations. The *Liber Pontificalis* is a testament to Roman sacerdotal pride.

Dionysius' achievement, on this hypothesis, was to have modelled a way to contain explosion. His *Decretal Collection* functioned as a lead casket for an almost impossibly volatile tradition. In it he placed impatient decretals of Pope Innocent about the renegade bishop Bonosus, and then the emollient letter of Anastasius—and then he closed the lid, and handed the collection over to his patrons in the Roman Church. The fact that this was not, unlike the African canons, an 'official' collection will only have increased its utility. Those who received it could make what use they wanted.⁹²

⁹¹ See further K. Cooper & J. Hillner eds., *Religion, Dynasty, and Patronage in Early Christian Rome, 300-900* (Cambridge, 2010), 1-19.

⁹² Blaudeau, *Le siège de Rome et l'Orient*, 24-29

Afterword

Clerical office in the later Roman Empire was, if not in a state of ‘anarchy’ (as per A. H. M. Jones), then certainly in one of ‘flux’.⁹³ Wherever one turns—to North Africa, to the Balkans, to Rome and Constantinople—it is not hard to find clerical hierarchies in a state of irresolution, with rival claims and accusations pressed to their limits, and with ecclesiastical law pressed into service here.⁹⁴ This reflects not only the relative novelty of Christian office to public power, but the nature of law and office itself in the later Empire.

At the same time, there is a shift in the culture of law and office attendant on the rise of Christianity. The Roman official expected to retire. He might, as various imperial constitutions insisted, expect to retain a publicly respected sense of *honor*—but retire he did.⁹⁵ Only the Emperor would expect to stay in post until his death. Now, improbably, the same was true of priests and bishops. By the end of the sixth century, one scholar has recently concluded, there were 100,000 priests in the lands that had made up the Roman Empire.⁹⁶ We are lead to an improbable conclusion: what happens after the fall of Rome is the development of a new conception of office, articulated via a new body of law.

⁹³ Sessa, ‘Cleric’, 232.

⁹⁴ On the development of clerical institutional culture, see C. Sotinel, ‘The bishops of Italy in late antique society: a new elite?’ in *ead.*, *Church and Society in Late Antique Italy and Beyond* (Farnham, 2010), ch. VIII. cf. *ead.*, ‘The Bishop’s Men: Episcopal Power in the City’ in *ead.*, *Church and Society*, ch. VII at 15: ‘It is thus difficult to establish a distinction between what derives from the exercise of episcopal office and what from the social status of the bishop before his assuming the episcopate’.

⁹⁵ E.g. CTh 6.7.1, 6.8.1, and esp 6. 9. 2: ‘Even though there should be a difference between the time of magistracy and that of private life, the dignity of the office they have relinquished shall make these men equal and similar in honor.’, tr. C. Pharr, *The Theodosian Code* (Philadelphia, 1954), 129.

⁹⁶ I. Wood, *The Transformation of the Roman West* (Leeds, 2018), 67.