prudential cows. Only time will tell how Church of England Measures will fall to be interpreted in the secular courts.

Whilst Clayton and Tomlinson's *The Law of Human Rights* is destined to become the standard work of reference for lawyer and commentator alike, *The EU and Human Rights*, deftly edited by Philip Alston, provides (so the Preface tells us) a wide-ranging survey of the European Union in relation to human rights, analysing the legal, policy, institutional and philosophical aspects of both the internal and external dimensions of EU activities. It is an ambitious project, nicely executed by specialist contributors who have been imaginatively chosen and whose writing is of uniformly high standard. The papers were designed to inform the deliberations of a *Comité des Sages* which duly produced in October 1998 the document *Leading by Example: A Human Rights Agenda for the European Union in the Year 2000*. This concluded that 'the fragmented and hesitant nature of many of its initiatives has left the Union with a vast number of individual policies and programmes but without a real human rights policy as such'. Ironically, the collective effect of the papers is substantially to address this lacuna.

Those with an interest in law and religion should turn to chapter 10, written by Professor Conor Gearty of King's College, London, and bearing the enticing title 'The Internal and External "Other" in the Union Legal Order: Racism, Religious Intolerance and Xenophobia in Europe'. Gearty identifies 'a hard seed of hate' which he fears may germinate into a thriving movement of racism and religious intolerance. He deals with problems of definition by reference, for example, to the UN General Assembly's Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (25 November 1981). He engages in a thorough historical, theoretical and practical discussion and calls for a re-vamped European Centre for Ethnic and Religious Equality, having an enforcement rôle in partnership with the Commission. This paper, in common with all the others, lifts our sight beyond the minutiae of the 1998 Act and into the wider social and cultural dynamic by which the structure and functioning of the EU will be affected in ways far more subtle that the single currency.

The curious will note that neither book was able to predict or even hint at the decision of the Court of Appeal in *Wallbank v PCC of Aston Cantlow and Wilmcote* [2001] 3 All ER 393, 6 Ecc LJ 172. Clayton and Tomlinson provide a useful critique in their Supplement but singularly fail to explain why they failed to see it coming. In the field of human rights, I cannot help thinking, the best is yet to be.

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*THE MAKING OF GRATIAN'S* DECRETUM by *ANDERS WINROTH*, Cambridge University Press, 2000, xvi + 248pp, incl.index (Hardback. £40.00/$64.95) ISBN 0-521-63264-1.

Few would dispute that Gratian's *Decretum* or, more properly, his *Concordantia discordantium canonum* (Concordance of discordant canons) is the seminal legal text in the development of canon law as an intellectual discipline in the western Catholic Church. Traditionally, it has been ascribed to the twelfth century, being produced early in the 1140s in the nascent university law school at the Italian city of Bologna, its production being a key event in the renaissance of legal learning which took place there during the two centuries bounding either side of Gratian's work. The central

event in the juristic renaissance that occurred in northern Italy at that time is generally regarded as being the rediscovery of a full text of the Digest, a text which supplied the legal scholars with a repository of legal rules of high sophistication drawn in the main from the writings of the classical Roman jurists and compiled by a commission of civil servants, law professors and advocates in sixth century Byzantium acting under the direction and patronage of the Christian emperor Justinian.

The legal scholars of Bologna, beginning with the efforts of Pepo and his more famous pupil, Irnerius, treated the Digest as a text which contained virtually perfect law. It was for the lawyers the textual equivalent of the Bible for theologians, the text which would by careful study and analysis reveal, not truth as with the Bible, but justice in the form of written reason, *ratio scripta*, the phrase with which they manifested their veneration for the work. Believing in its perfection, they strove, through the use of dialectic, to harmonise the different portions of the text, to show that it contained no contradictions or other imperfections. This they achieved in glosses of ever increasing length and complexity, until by the middle years of the thirteenth century, Accursius was able to produce a complete gloss of the entire Digest, a work which lawyers continue to refer to as the *Glossa ordinaria*.

The methodology of the Glossators, as this school of jurists came to be called, was somewhat inevitably turned upon other sources of law. It is no coincidence that throughout Europe at this time legal texts began to be collected, possibly as a prelude to scholarly examination, analysis and systematisation. The most obvious candidate for such study was the law of the Church, the only institution which could really be thought to rival in any sense the legal production of the Roman empire, with its canons and decrees extending back for virtually a millennium and actually having its roots in the classical age of Roman jurisprudence. Gratian's *Decretum* was the fruit of that endeavour. It was not merely a compilation of ecclesiastical legal sources, along the lines already achieved by scholars such as Anselm of Lucca, Burchard of Worms and Ivo of Chartres; it was a critical sytematisation of the principles and rules to be found in those sources, aimed at providing a comprehensive but systematic presentation of the law of the Church. It was to set the pattern for subsequent works on the canon law, works which would be added to the *Decretum*—Gregory IX's *Liber Extra*, Boniface VIII's *Liber Sext*, John XXII's *Clementinae* and the subsequent *Extravagantes*—which collectively would come to form the *Corpus iuris canonici*, the ecclesiastical equivalent of Justinian's *Corpus iuris civilis*, and which with the secular work would form the basis for the juristic development of both canon and civil law which in later centuries would come to be the European *ius commune*, from which the codified legal regimes of both modern civilian countries and the modern Roman Catholic Church would draw not merely their inspiration but much of the raw materials for their legal rules and more importantly their principles.

The importance of Gratian's *Decretum* within the western legal tradition cannot therefore be denied, but some of the traditional elements in the history of its composition have come under critical scrutiny. In 1979, John T. Noonan challenged the accepted version of Gratian's personal biography, and during the twentieth century generally there has been a growing awareness that what should be taken to constitute the text of the *Decretum* may not be quite the version that has become known through incorporation within the *editio Romana* of the *Corpus iuris canonici* in 1582. Indeed, even during the Middle Ages, scholars were aware that certain passages relating to canons later than Gratian had been incorporated into the text, the so-called *paleae*. It was the Polish scholar, Adam Vetulani, however, who noted that a substantial number of passages relating to Roman law appear to be later additions, and then it was noted that part III, *de consecratione*, did not adhere to the dialectic

method of Parts I and II of the *Decretum* and that the section on *de penitentia* (C. 33, q. 3) fitted but poorly with the surrounding text. Finally, the canons of the Second Lateran Council of 1139 were seen to fit awkwardly into the positions they occupied within the text, suggesting their later incorporation. A succession of scholars, including Jacqueline Rambaud, Gérard Fransen and Karol Wojtyla (better known today as Pope John Paul II) has laboured to achieve this perspective. Then, in 1984, Professor Peter Landau demonstrated that a mere handful of manuscript sources accounted for the direct sources of the bulk of the canons in the *Decretum*. In the main these were the collections of Anselm of Lucca, Ivo of Chartres' *Panormia*, the Pseudo-Ivonian *Collectio Tripartita*, Gregory of St Grisogono's *Polycarpus* and the so-called *Collection in Three Books*. In other words, Gratian had been heavily reliant upon a small number of sources in gathering the raw materials for his treatise.

Anders Winroth, who is Associate Professor of History at Yale, has taken up the challenge of establishing that the text of Gratian's *Decretum* as known from the *Corpus iuris canonici* is a later, second recension of the text. This he sets out to prove by examining shorter versions of Gratian's work which scholars in the main have taken to be abbreviated versions of it. Professor Winroth however believes that these shorter versions are really the first version of the work as produced by Gratian. He sets out to establish this by engaging with the texts and the sources from which they are known to have come. He is able by a meticulous, indeed painstaking, examination and analysis of certain *quaestiones* in them, to establish a convincing case to the effect that they are more rationally structured than the treatment of the same issues in the Vulgate text, where later materials have been incorporated less successfully into the argument and the loose-ends of their later incorporation are still evident. The two sections he subjects to this rigorous analysis are *causa 24*, dealing with heresy and excommunication and *causa 11, quaestio 3*, dealing with obedience and contempt. Despite the fact that only two such detailed analyses are made, the representative nature of the author's selection and the clarity of his findings result in an argument of considerable critical strength.

Professor Winroth concludes from these findings that the manuscripts containing what was thought to be an abbreviated version of Gratian's work actually contain an earlier, first recension of it. It is this first recension, he argues, with its greater cohesion and clarity of structure which was actually the *Decretum* written by Gratian. The second recension, he believes, is the work known to us from the *Corpus iuris canonici*, and this work is unlikely to have been compiled by the same man, for it is difficult to believe that the, by comparison, crude manner of the incorporation of later canons and passages from the Justinianic corpus could have been executed by the author of the earlier, more elegant, treatise. The author therefore argues for an earlier date for the composition of the first recension which was in his view the actual *Decretum* of Gratian. Moreover, the fact that this first recension contained no knowledge of Roman law, other than what the author had gleaned from his earlier canonical sources, suggests in his view that the traditional account of the revival of Romanist learning at Bologna also stands in need of revision. Professor Winroth believes that the systematic study of the Roman legal texts had not properly begun when Gratian wrote the first recension of the *Decretum*, but that it was well under way by the time the second recension came to be written. Winroth places the two recensions within the period 1139–1158. Accordingly, he concludes that the rebirth of Roman legal learning did not properly begin at Bologna until the 1130s, much later than is traditionally thought, and, perhaps more importantly, that civilian legal learning did not antedate and inspire canonical jurisprudence but rather that they developed hand in hand from the beginning. Here, he believes, the true birth of the *ius commune* is to be found.

Professor Winroth's conclusions propose and entail a significant reassessment of the origins of continental jurisprudence. He recognizes that there is still much work to be done, and that his contribution stands in a line of development extending back at least to Vetulani and Stephan Kuttner. His findings with regard to the history of the composition of the *Decretum* are compelling, but your reviewer feels less secure with his reassessment of the relationship between civilian and canonical learning. The acceptance of this part of his thesis must await a more detailed consideration of how his findings and suggestions combine with knowledge of the timing of the spread of Roman legal learning from Bologna across Europe. A cursory comparison of his chronology with, for instance, that for the introduction of Roman law teaching into England as evidenced in the work begun by the late Francis De Zulueta and completed by Professor Peter Stein (*The Teaching of Roman Law in England around 1200* (London 1990)), would appear to present no obvious problems, but it is difficult to accept that the reputation of the Bolognese school could have developed so rapidly as to attract students there in such numbers and to lead to scholars being invited to other lands to expound their learning if the work of the Glossators had hardly begun at the close of the 1130s.

Professor Winroth's book is based upon work originally undertaken as part of his doctoral thesis at Columbia University. The soundness of his research methods, the rigour of his analysis and the careful manner in which he draws his conclusions are evident throughout the volume. One detriment of this is that the book still savours of the dissertation, with a style and approach which appears to address the needs of convincing an examiner of the academic credibility of the work rather than convincing the reader of the propriety of its conclusions. The first chapter, in which the author introduces the reader to his theme, sets the stage for what promises to be an academic detective story. What follows, however, often reads more like an official police report. This criticism is perhaps a little unfair, in that Anders Winroth is almost undoubtedly writing for a specialist audience of Gratian scholars, but nevertheless his story is of interest to many more with an interest in the beginnings of the European *ius commune.*

In short, the author is to be congratulated on having written a challenging and scholarly account of the manner in which one of the western world's most important legal treatises was composed. He has asked questions which cannot fail to provoke further research and response from scholars interested in the beginnings of mediaeval and modern jurisprudence. While the work itself may well be required reading only for the specialist, its arguments and findings deserve and will undoubtedly attain a much wider audience among historians not only of the law and legal science, but also those concerned more generally with the history of ideas.

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*ILLUMINATING THE LAW: MEDIEVAL LEGAL MANUSCRIPTS IN CAMBRIDGE COLLECTIONS, FITZWILLIAM MUSEUM, CAMBRIDGE* edited by Susan L'Engle and Robert Gibbs, Harvey Miller Publications, Imprint of Brepols Publishers, London/Toronto, 2001, pp.263 (pbk £30.00) ISBN 1-872501-53-2

This lavishly illustrated catalogue is an important publication in its own right, to be read quite independently of the exhibition it accompanied, held at the Fitzwilliam Museum, Cambridge at the end of 2001. Dr Stella Panayotova is to be congratulated for coordinating the project so successfully. The material, often neglected in the