

## Fournier's Model and Its Merits

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At our conference at Zurich, 'the master narrative' in high medieval canon law history was at issue. In this context, 'the' master narrative is a model for legal development in the high Middle Ages found in many, indeed in most handbooks of canon law history.<sup>1</sup> It goes back to the French legal historian Paul Fournier and is best known from the version enshrined in the two-volume *Histoire* he wrote in collaboration with his pupil Gabriel Le Bras.<sup>2</sup> Well before the *Histoire* appeared in 1931–32, Fournier had sketched his model in several major articles.<sup>3</sup> By the time the *Histoire* was published, Fournier had studied

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- 1 Alfons Maria Stickler, *Historia iuris canonici latini, 1: Historia fontium* (Turin, 1950; repr. Zurich, 1970); Willibald M. Plöchl, *Geschichte des Kirchenrechts*, 3 in 5 vols (Vienna and Munich, 1960–70), 2:405–13; Antonio García y García, *Historia del derecho canónico: el primer milenio* (Salamanca, 1967); Constant van de Wiel, *History of Canon Law* (Leuven, 1991); Jean Gaudemet, *Église et cité: histoire du droit canonique* (Paris, 1994); James A. Brundage, *Medieval Canon Law* (London and New York, 1995), chapters 1–2; Peter Erdő, *Die Quellen des Kirchenrechts. Eine geschichtliche Einführung*, Adnotationes in ius canonicum 23 (Frankfurt, 2002); Gian Luigi Falchi and Brian Edwin Ferme, *Introduzione allo studio delle fonti dell'utrumque ius, Studia et documenta. Sectio iuris romani et historiae iuris 3* (Vatican City, 2006); Brian Edwin Ferme, *Introduction to the History of the Sources of Canon Law: The Ancient Law up to the Decretum of Gratian*, Gratianus (Montréal, 2007). The multi-volume *Histoire du droit et des institutions de l'Église en Occident* edited by Gabriel Le Bras also adopts Fournier's model, if more indirectly. While it covers canon law from the earliest time to the twentieth century, none of its twelve volumes is devoted to pre-Gratian collections, thus supplementing rather than replacing the work Le Bras had co-authored with Fournier (see next note). In addition, the general introduction clearly shows that Le Bras still was faithful to Fournier's model; see Gabriel Le Bras, *Prolégomènes, Histoire du droit et des institutions de l'Église en Occident 1* (Paris, 1955), esp. at p. 160. At the Second International Congress of Medieval Canon Law, Le Bras expressed the need for a revised new edition of the *Histoire*, but also pointed out the difficulties of such an enterprise; see the discussion on John Joseph Ryan, "Observations on the pre-Gratian Canonical Collections: Some Recent Work and Present Problems," in *Congrès de droit canonique médiéval: Louvain et Bruxelles 22–26 juillet 1958*, ed. Stephan Kuttner, Henri Wagnon, and Gérard Fransen, Bibliothèque de la revue d'histoire ecclésiastique 33 (Löwen, 1959), pp. 88–103.
  - 2 Paul Fournier, with the collaboration of Gabriel Le Bras, *Histoire des collections canoniques en Occident depuis les Fausses Décrétales jusqu'au Décret de Gratien*, 2 vols (Paris, 1931–32).
  - 3 Paul Fournier, "Le premier manuel canonique de la réforme du XI<sup>e</sup> siècle," *Mélanges d'archéologie et d'histoire de l'École française de Rome* 14 (1894), 147–223 and 285–90; idem, "Les collections attribuées à Yves de Chartres," *Bibliothèque de l'École des Chartes*, 57 (1896),

more pre-Gratian collections than probably any other scholar of his time. The *Histoire* often repeats verbatim passages from Fournier's articles, and neither the preface nor the footnotes leave any doubt that the *Histoire* was mainly his work.<sup>4</sup> It is therefore just to label the narrative found here and adopted by so many handbooks as 'Fournier's model'.

Given that Fournier's model in its key elements dates back to the nineteenth century, it is in itself remarkable how influential it is still today, and even scholars who reject many of Fournier's assumptions and doubt his conclusions still find it a model worth discussing. Indeed, while there are numerous studies that have explicitly challenged Fournier's interpretation of specific collections, and rejected his overall conclusions, so far no clear alternative model has been proposed that would have found wider acceptance. In this situation, Andreas Thier and I brought together a number of scholars with expertise in different fields of early and high medieval canon law history. In this sense the conference was also a way of paying respect to Paul Fournier and his model. It is therefore only apt to begin our collection with an article devoted to the details of his model, its genesis, and its merits. In order to do so, I will first sketch Fournier's academic career and provide some background for his studies on pre-Gratian canon law, before moving on to the *Histoire* itself and the 'model' it contains.

## 1 Paul Fournier and the Study of Medieval Canon Law in France (c.1880 to c.1930)

Paul Fournier (1853–1935) is best known for his contribution to the history of medieval canon law.<sup>5</sup> Indeed, there can be little doubt that he already in

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645–98, *Bibliothèque de l'École des Chartes* 58 (1897), 26–77, 293–326, 410–44, and 624–76; idem, "Un tournant de l'histoire du droit 1060–1140," *Nouvelle revue historique de droit français et étranger* 40 (1917), 129–80; idem, "Les collections canoniques romaines de l'époque de Grégoire VII," *Mémoires de l'Institut National de France, Académie des Inscriptions et Belles-Lettres* 41 (1918), 271–397. These (and other) important articles by Fournier were reprinted in his *Mélanges de droit canonique*, ed. Theo Kölzer, 2 vols (Aalen, 1983), 2:551–633 ("Premier manuel"), 1:451–678 ("Collections attribuées à Yves"), 2:373–424 ("Un tournant"), and 1:393–447 ("Collections canoniques romaines"), respectively.

4 See *Histoire* (see above, n. 2), pp. IX–X on Le Bras' contribution.

5 On Fournier, see above all Gabriel Le Bras, "Paul Fournier et l'histoire de l'Église de France," *Revue d'histoire de l'Église de France* 21 (1935), 532–49. See also the chapter on him the forthcoming volume *Great Christian Jurists in French History*, ed. Olivier Descamps and Rafael Domingo (Cambridge, 2019), written by Brigitte Basdevant-Gaudemet and Rafael Domingo which the latter kindly made available to me before publication. A shorter account is Jean Gaudemet, "Avant-propos," in Fournier, *Mélanges*, ed. Kölzer (see above, n. 3), 1:5–11.

his lifetime established himself as the leading authority in this field: he held the chair for canon law history at Paris, his *Histoire* co-written with his pupil Gabriel Le Bras became a set text for anyone interested in medieval canon law, he had an influential role in the *Société d'histoire du droit* (which he co-founded), the *Société d'histoire de l'Église de France* and the important *Revue historique du droit français et étranger*. He received a number of honorary degrees and was elected member of prestigious institutions both in France and abroad, including the *Legion of Honour*, the *Académie des inscriptions et belles-lettres*, and the *Institut de France*. In other words, Fournier's academic career very visibly was crowned by success.

Yet to understand his work, and in particular the *Historie*, it is equally important to remember that when Fournier began his scholarly career, it was far from clear that his studies would, one day, become classic texts in the field of the medieval history of canon law. In fact, there was no such academic sub-discipline by the time Fournier became interested in canon law history. Since the French Revolution of 1789, canon law had been banned from French universities, and medieval canon law history had a marginal role at best here. Legal history, as taught at French universities, was above all the history of Roman law, and general history was focussed on political history. In late-nineteenth century France, praise for the French Revolution and republican values went often hand in hand with anti-clerical sentiment, and this also extended to historiography: the role of the church in history was often depicted as negative, not least in widely-read accounts like Michelet's *Histoire de France*.<sup>6</sup>

It was this general background in which Fournier began his studies and soon turned to medieval canon law. He studied law from 1871 at Paris, and in 1875 also enrolled at the newly-founded *École des chartes*. In 1878, he submitted his doctoral thesis on Roman law, and the year he qualified as *archiviste-paléographe*. His thesis in law was devoted to Roman law, while his *École des chartes* thesis, published in 1880, was a very substantial study on the ecclesiastical courts in medieval France.<sup>7</sup> *Agrégé* in 1880, Fournier almost immediately was appointed professor for Roman law at Grenoble. Here, he taught Roman law and French legal history for more than three decades, but continue to publish on canon law history, above all analyses of pre-Gratian collections. Apart from his doctoral thesis, he does not seem to have published on Roman law.

6 Jules Michelet, *Histoire de France* (Paris, 1855), pp. 166–72.

7 Paul Fournier, *Des collèges industriels dans l'Empire romain* (Paris, 1878) and idem, *Les officialités au moyen-âge: étude sur l'organisation, la compétence et la procédure des tribunaux ecclésiastiques ordinaires en France, de 1180 à 1328* (Paris, 1880).

Instead, he continued to study above all medieval canon law. As already mentioned, Fournier's first major study was dedicated to medieval officialities. When he published it in 1880, he felt that this topic went against the *Zeitgeist*,<sup>8</sup> and compared to the vast majority of theses submitted at the *École de chartes*, its topic was indeed unusual.<sup>9</sup> Yet in the 1880s and 1890s, when Fournier published a series of seminal studies of various pre-Gratian collections (most notably his analysis of the *Collection in 74 Titles* and the Ivonian collections, respectively<sup>10</sup>), the general attitude towards medieval church history was slowly changing. Already in the early 1880s, a number of young catholic scholars had turned to medieval canon law topics, including (apart from Fournier) Jules-René Menu, Gustave Dupont, and Adhémar Esmein. Menu had done his thesis on the canonical collections attributed to Ivo of Chartres, and Dupont edited the register of the officiality of Cerisy; both published their books in 1880, the same year as Fournier's book on episcopal courts appeared in print.<sup>11</sup> Esmein, Fournier's senior by five years, was the first of the four to make an academic career. In 1881 he was appointed professor for law in Paris and joined the editorial board of the influential *Revue historique du droit français et étranger*; after the reform of the French universities in 1886 he started to teach canon law history at the *École supérieure*,<sup>12</sup> where he later was appointed professor, too. His interests ranged widely, but canon law history was one of his areas of specialization, making him probably the first French scholar since 1789 to have made an academic career by studying canon law history.

The topics these young scholars turned to—the canon law of marriage, ecclesiastical courts and procedures, the question of investiture—corresponded to a more general interest in these issues in late-nineteenth-century Europe.

8 Fournier, *Officialités*, p. 1 (indeed the very first sentence): “Les temps où nous vivons semble peu favorable aux études d'histoire et de droit ecclésiastique.”

9 See N. N., “Chronique et mélanges,” *Bibliothèque de l'École des Chartes* 40 (1879), 132–35, at p. 132 for a list.

10 Fournier, “Le premier manuel” and idem, “Collections attribuées à Yves de Chartres” (see above, n. 3, for both articles).

11 Jules-René Menu, “Le droit canon au onzième siècle: recherches et nouvelle étude critique sur les recueils de droit canon attribués à Yves de Chartres” (diss. theol., Paris, 1880); *Le registre de l'officialité de Cerisy*, ed. Gustave Dupont (Caen, 1880).

12 See N.N., “Rapport sur l'École pratique des hautes études, 1885–1886,” *Annales de l'École pratique des hautes études* (1885), 3–225, here at pp. 223–24. His full name is Jean Paul Hippolyte Emmanuel Adhémar Esmein; in the reports, he is often referred to as ‘Jean’, but in his publications he preferred ‘Adhémar’. He is best known for his *Le mariage en droit canonique* (Paris, 1891), 2nd ed., 2 vols (Paris 1929–35), but his early publications also include “La question des investitures dans les lettres d'Yves de Chartres,” *Bibliothèque de l'École des Hautes-Études: sciences religieuses* 1 (1889), 139–78.

In France as in Germany and Italy, interest in medieval ecclesiastical history grew in the context of contemporary conflicts between the catholic church and secular governments, and also of conflicts within the catholic church both before and after the First Vatican Council of 1869–71. Civil marriage, the appointment of bishops, the relation between civil and ecclesiastical courts, and papal supremacy were among the topics which were both at the centre of heated political debate and a growing number of historical studies. Emil Friedberg is perhaps the best-known example of a canon law scholar who combined interest in medieval marriage legislation, the textual history of Gratian's *Decretum* and politics of the *Kulturkampf*.<sup>13</sup>

Fournier was very well aware of the German-language scholarship and the *Kulturkampf*, and like his (mainly protestant) counterparts saw historical scholarship as contributing to the debates of nineteenth-century politics. While still holding a chair for Roman law, and also having an academic side-interest in local history, Fournier established himself as a leading expert for the early medieval collections in France. From the mid-1880s on, he published analyses of almost every major collection compiled up to the twelfth century (with the notable exception of Gratian's *Decretum*). He carefully established the manuscript tradition of these collections, often distinguishing between various versions of the same collections; he then described the content and structure of the relevant collection, including comments on the sources the materials were taken from and way the material was arranged and, in some cases, manipulated. Given the state of the research at the time, the almost total absence of printed editions, and the limited time Fournier could spent with the manuscripts, his analyses are remarkably precise. Fournier's studies on the Ivonian collections, for example, surpassed all existing analyses of these collections, and the model of their relation he proposed was only challenged almost exactly a century later.<sup>14</sup> While many of these studies are 'technical' in nature—above all in establishing textual links to other collections and complicated questions of dating these interrelated works—many of these articles already contain the historical narrative which was spelled out in greatest clarity in the *Histoire*.

13 See Stefan Ruppert, *Kirchenrecht und Kulturkampf. Historische Legitimation, politische Mitwirkung und wissenschaftliche Begleitung durch die Schule Emil Ludwig Richters*, *Ius Ecclesiasticum* 70 (Tübingen 2002), especially chapter four (on Friedberg himself).

14 Fournier, "Collections attribuées à Yves de Chartres" (see above, n. 3). The model was first questioned by Martin Brett, "Urban II and the Collections Attributed to Ivo of Chartres," in *Proceedings of the Eighth International Congress of Medieval Canon Law: San Diego, University of California at La Jolla, 21–27 August 1988*, ed. Stanley Chodorow, M1C Subsidia 9 (Vatican City, 1992), pp. 27–46.

As will be analysed in detail below, Fournier mainly understood canon law collections as sources for the relation between secular and religious authorities, or 'church and state', as the common short-hand in contemporary politics and historiography was.<sup>15</sup> Indeed, it probably was Fournier's expertise on canon law and the question of 'church and state' in the Middle Ages which Fournier's growing reputation and success was based on. The concept of *laïcité* continued to spark controversies in France, and the 1905 laws on the separation of church and state in particular were opposed by many catholics who perceived them as de facto being direct against their religion. Yet unlike the time Fournier published his first studies on medieval canon law, around 1900 there was considerable scholarly interest in what was often seen as the pre-history of these conflicts in medieval times. In any case, Fournier in 1914 was appointed professor at Paris (succeeding Esmein), and in 1920 a chair for canon law history was created for him. This was a very significant move given that since the French Revolution canon law had been banned from French universities. It may well be that this was facilitated by Fournier's role as advisor to the French government after World War I. When Alsace-Moselle became French again in 1919 it acquired (and retains until today) a local law code which in some respects is strikingly different from the rest of France. Namely, the 1905 laws on the separation of church and state did not apply here; instead, many pre-1918 and indeed pre-1871 laws were retained. As a result, the Alsace-Moselle region is the only part of France where religious education is mandatory, theology is taught at universities, ministers (priests, pastors and rabbis) are paid by the state and bishops are appointed by the government. Here, Fournier's expertise on the history of 'church and state' was very welcome.

Starting with what most contemporaries, certainly including some of his academic teachers, regarded as an obscure field of studies, Fournier made a remarkable career. Yet it should not be forgotten that this success mostly came late in his life. He was in his late sixties when he gave the inaugural lecture for his chair in 1921. By this time, he had completed his analyses of pre-Gratian collections. Indeed, Fournier published markedly less after 1921, apart of course

15 See, for example, his choice of title for the short version of his École thesis: Paul Fournier, "Les conflits de juridiction entre l'église et le pouvoir séculier de 1180 à 1328," *Revue des questions historiques* 27 (1880), 432–64. Likewise, Esmein and later Monod stressed conflicts between 'church and state' in their studies on episcopal elections in the late eleventh century: Esmein, "La question des investitures" (see above, n. 12) and Bernard Monod, "L'Église et l'État au XIIe siècle: l'élection épiscopale de Beauvais de 1100 à 1104: Étienne de Garlande et Galon," *Mémoires de la société académique du département de l'Oise* 19 (1904–06), 53–74. On the Beauvais election (and Monod's study), see John Ott's article in this volume.

from writing the *Histoire* which appeared only in 1931–32, shortly after he had retired at the age of 76. The *Histoire* was one of Fournier's last publications, a magisterial synthesis of four decades of research.

## 2 General Outline of the *Histoire*

### 2.1 *Pre-Gratian Collections as Sources in their Own Right*

So the *Histoire* can rightly be seen as the sum of Fournier's studies in canon law history. It is based on an analysis of the canonical collections compiled in Western Europe up to the mid-twelfth century; apart from shorter notes on the earlier period, it mainly covers collections from the Pseudo-Isidorian Forgeries up to the *Decretum Gratiani*—excluding the *Decretum* itself but including a number of collections contemporary to or even slightly younger than it. The conventional short hand for all these works is 'pre-Gratian collections'.<sup>16</sup> As for the content, the *Histoire* covers 'canonical' collections in a very wide sense—'law books' containing only conciliar and papal legislation, penitential books, collections of more theological *sententiae*, and works containing any combination of these materials. Taken together, Fournier and Le Bras present the analysis of some one-hundred collections—most of them anonymous, and many only known to specialists both then and now. When the *Histoire* appeared, it was the most complete account of the pre-Gratian collections since the Ballerini brothers and Gallandi had published their works,<sup>17</sup> and until recently it has not been replaced.<sup>18</sup>

Compared to other overviews on canon law history of the nineteenth and early twentieth centuries, both the emphasis on collections (rather than dogma or institutions) and the chronological scope are significant. As the term 'pre-Gratian' suggests, these collections before had predominantly been studied with regard to the genesis of the *Decretum Gratiani*. Fournier and Le Bras, in contrast, studied them as sources in their own right, and by focussing on the

16 The concept was there with Berardi for the latest: Carlo Sebastiano Berardi, *De variis sacrorum canonum collectionibus ante Gratianum* (Turin, 1752). Until today, it is widely used, normally including (as here) some collections compiled after the *Decretum Gratiani* was made. The *Histoire*, interestingly, does not use the term.

17 Pietro and Girolamo Ballerini, "De antiquis tum editis tum ineditis collectionibus et collectoribus canonum ad Gratianum usque," in *Sancti Leonis Magni Romani pontificis opera*, ed. iidem (Venice, 1757), pp. i–cccxx; Andrea Gallandi, *De vetustis canonum collectionibus dissertationum sylloge: quibus virorum doctissimorum cura et studio elucubratis, de iuris ecclesiastici origine atque progressi luculenter differitur* (Venice, 1778).

18 See the on-going *History of Medieval Canon Law* edited by Wilfried Hartmann and Kenneth Pennington.

collections up to but excluding Gratian gave prominence to works otherwise often ignored. For in the second half of the nineteenth century, both the Pseudo-Isidorian Forgeries and Gratian had been subject to a number of path-breaking studies, and Hinschius and Friedberg produced editions that are still used today.<sup>19</sup> A few canon law collections were also studied for their part in the 'rediscovery of the Digest',<sup>20</sup> or as textual witnesses to lost papal registers.<sup>21</sup> Other collections compiled from the ninth to the twelfth century were given some attention as far as they played an immediate role in the compilation of Gratian.<sup>22</sup> In any case, these studies were highly specialized; handbooks of legal history would typically mention pre-Gratian collections only in passing,<sup>23</sup> often depicting them as quite primitive.<sup>24</sup> Medieval canon law in particular had a bad reputation for some legal scholars.<sup>25</sup> Independent of this, most legal

19 *Decretales pseudo-Isidorianae et Capitula Angilramni*, ed. Paul Hinschius (Leipzig, 1863); *Decretum magistri Gratiani*, ed. Emil Friedberg (Leipzig, 1879).

20 Most importantly, by Friedrich Carl von Savigny, *Geschichte des römischen Rechts im Mittelalter*, 2nd ed., 6 vols (Heidelberg, 1815–31) and later Max Conrat (Cohn), *Geschichte der Quellen und Literatur des römischen Rechts im frühen Mittelalter* (Leipzig, 1891).

21 In the context of the compilation of Jaffé's *Regesta* and the preparation of the MGH editions, many collections were scrutinized, but perhaps none more than the *Collectio Britannica*. See Paul Ewald, "Die Papstbriefe der Britischen Sammlung," *Neues Archiv der Gesellschaft für ältere deutsche Geschichtskunde* 5 (1880), 275–414 and 505–96, Theodor Mommsen, "Bemerkungen zu den Papstbriefen der Britischen Sammlung," *Neues Archiv der Gesellschaft für ältere deutsche Geschichtskunde* 15 (1890), 187–88 and Harry Bresslau, "Bemerkungen zu den Papstbriefen der Britischen Sammlung," *Neues Archiv der Gesellschaft für ältere deutsche Geschichtskunde* 15 (1890), 189–93.

22 E.g. Augustin Theiner, *Über Ivo's vermeintliches Decret. Ein Beitrag zur Geschichte des Kirchenrechts, und ins Besondere zur Kritik der Quellen des Gratian* (Mainz, 1832); Emil Ludwig Richter, *Beiträge zur Kenntnis der Quellen des kanonischen Rechts* (Leipzig, 1834); Friedrich Wilhelm Hermann Wassersleben, *Beiträge zur Geschichte der vorgratianischen Kirchenrechtsquellen* (Leipzig, 1839); Joseph Julius A. Hermann Hüffer, *Beiträge zur Geschichte der Quellen des Kirchenrechts und des römischen Rechts im Mittelalter* (Münster, 1862).

23 For example, Johann Friedrich Schulte, *Das katholische Kirchenrecht*, 2 vols (Giessen, 1856–60). Maassen's account would potentially have constituted an important exception, had more than the first volume appeared: Friedrich Maassen, *Geschichte der Quellen und der Literatur des canonischen Rechts im Abendlande bis zum Ausgange des Mittelalters*, 1: *Die Rechtssammlungen bis zur Mitte des 9. Jahrhunderts* (Graz, 1870).

24 Conrad Franz Roßhirt, *Geschichte des Rechts im Mittelalter. Erster Theil: Canonisches Recht* (Mainz, 1846), pp. 72–73: "Alle Schriftsteller vor Gratian hatten die vorhandenen Quellen willkürlich aneinander gestellt, wie z. B. Regino, Burchard, Ivo und der Verfasser der *tripartita*."

25 See Frederick Pollock and Frederic William Maitland, *The History of English Law before the Time of Edward I*, 2 vols (Cambridge, 1898), 1:24 on the *Decretum Gratiani* and the *Liber extra*: "The canonist emulated the civilian and for a long while maintained in the

historians agreed that great changes in the history of law were brought about by the forging (as in the case of Pseudo-Isidore), rediscovery (as in the case of the Digest) or the compilation (as in the case of the *Decretum Gratiani*) of major works, not in the mass of often anonymous collections that emerged in diverse places. Thus, as far as such collections from the early and high Middle Ages were studied, they were mainly of interest for papal letters, conciliar legislation, Roman law or other materials they contained—not as historical sources that were interesting in themselves.

Fournier and Le Bras, in contrast, studied the pre-Gratian collections in their own right. They made clear that these collections were the result of serious engagement with canonical tradition, and claimed them to have had a significant impact on canon law, and indeed on ecclesiastical history in general. For this approach, it was crucial that Fournier assumed that collections could reveal the compiler's intentions. Already in his earliest studies on pre-Gratian collections Fournier had asked for the 'originality' of these works,<sup>26</sup> and crucially, both in these articles and in the *Histoire*, this extended to minor, anonymous collections which before Fournier were hardly ever studied this way, if at all. Indeed, from early on Fournier studied even individual copies of canonical collections as separate works made for specific purposes and expressing original ideas.<sup>27</sup>

Thus, a large group of collections otherwise given less attention was treated prominently by the *Histoire*. The effect of this was even stronger due to the unusual decision not to cover Gratian.<sup>28</sup> This prepared the ground for a model of legal change that did not focus on the towering figure of Gratian. Indeed, Fournier famously argued that the 'turning point' of medieval legal history was the second half of the eleventh century—and not in the mid-twelfth century.<sup>29</sup> Gratian's *Decretum* in this view was only a 'synthesis' (Fournier) of earlier achievements, indeed one put together by a 'mediocre compiler'

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field of jurisprudence what seemed to be an equal combat. Unequal it was in truth. The *Decretum* is sad stuff when set beside the Digest and the study of Roman law never dies."

26 E.g. Fournier, "Premier manuel" (see above, n. 3), p. 202 ("originalité de la collection"). In the *Histoire*, all major collections are studied for their 'originality' and 'fundamental ideas'.

27 An early example is Paul Fournier, "Une forme particulière des *Fausses Décrétales*, d'après un manuscrit de la Grande-Chartreuse," *Bibliothèque de l'École des Chartes* 49 (1888), 325–49.

28 Fournier in *Histoire* (see above, n. 2), 1:VIII announced that Le Bras would publish a monograph on Gratian which famously never appeared.

29 See Fournier, "Tournant d'histoire," p. 159. Already idem, "Premier manuel," p. 290 hinted at the importance of the Gregorian collections (namely 74T) for Gratian. See above, n. 3 for both articles.

(Le Bras).<sup>30</sup> According to Fournier's model, Gratian owed much to the compilers of pre-Gratian collections like Bernold of Konstanz, Ivo of Chartres and Alger of Liège.<sup>31</sup> Between the 1090s and the time of Gratian, Fournier and Le Bras claimed, there was very little innovation in canon law.<sup>32</sup> Instead, the decisive change was brought about by the collections compiled between the ninth and the early twelfth centuries—the very period many legal scholars still regarded as 'Dark Ages' of legal history.<sup>33</sup>

## 2.2 *"Non pas l'histoire sèche des manuscrits, mais celle des idées": From Textual Analysis to the History of Ideas*

So the *Histoire* gave prominence to the pre-Gratian collections, much more so than many contemporary legal scholars were ready to do. This was only possible because Fournier developed a new approach to analyse these collections. It was based on solid source criticism. The *Histoire*, and even more so the specialized studies it built upon, show that Fournier took great care to establish for any collection he studied the date and place of origin, the number of extant manuscripts, the formal and the material sources, the selection criteria and arrangement of the canons, the treatment of individual texts (including their inscriptions and rubrics), and other formal aspects. In many cases, his analysis was the first since at least the eighteenth century. Even if lacking most scholarly resources available today for such an enterprise, Fournier came to conclusions that have stood the test of time remarkably well. Even more importantly, however, Fournier went beyond the analysis of the manuscript tradition, intertextual relations, and source criticism of the pre-Gratian collections. The key assumption that made his model stand out among the legal scholarship of his time, and also made the *Histoire* attractive to many non-specialist historians, was the approach to study them as transmitting not

30 Fournier, "Tournant d'histoire" (see above, n. 3), p. 159 ("synthèse"); Gabriel Le Bras, "Le Liber de misericordia et justitia d'Alger de Liège," *Nouvelle revue historique de droit français et étranger* 45 (1921), 80–118, here p. 117 ("compilateur d'esprit médiocre"). See also idem, "Alger de Liège et Gratien," *Revue des sciences philosophiques et théologiques* 20 (1931), 5–26.

31 Fournier, "Tournant d'histoire" (see above, n. 3), p. 159 (Gratian "redevable aux idées exposées par Yves, Bernold et Abélard de la méthode qu'il adopta et qui assura le succès de son œuvre"); *Histoire* (see above, n. 2), 2:359 (works of Ivo, Bernold and Alger as "ébauches de l'œuvre qui devait, quelques années plus tard, être réalisée dans des proportions très vastes par le maître bolonais Gratien").

32 *Histoire* (see above, n. 2), 2:351: "Entre Yves de Chartres et Gratien, les auteurs de collections canoniques n'élargissent guère ni leur curiosité ni leur information, ni leurs procédés."

33 See Pollock and Maitland, *History of English Law* (see above, n. 25), ch. 1 (with the heading "The Dark Age in legal history").

just texts but ‘ideas’ and expressing individual ‘tendencies.’<sup>34</sup> Indeed, Fournier went on to call certain collections ‘handbooks’ and ‘instruments’ of reform,<sup>35</sup> containing both the ‘spirit’ of reform and the specific normative texts that were useful to implement reform.

So how did Fournier and Le Bras establish ‘tendency,’ ‘spirit’ and ‘main idea’ of a given collection? In practice, they combined internal and external evidence, with sometimes very different weight given to single aspects. In the case of collections with named compilers, the life and works of the compiler were given considerable attention. In many cases, these compilers had also written prefaces to introduce their collection, and relatively frequently had left other writings as well. Very frequently, the *Histoire* would stress how a given collection expressed the same guiding principles that also appeared to motivate the compilers’ political action, in particular stressing what was known about the relation of the compiler either to secular rulers or the papacy. This approach was anything but unusual and based largely on the same sources that had been exploited by literary histories from medieval times to the *Histoire littéraire*.

A second approach to establish the ‘tendency’ of a compiler was to study forgeries and textual manipulation. In the case of forgeries, and in particular with the Pseudo-Isidorian Forgeries, such an approach was fairly conventional well before Fournier engaged with the subject in some of his earliest publications on canon law history.<sup>36</sup> The Forgeries had attracted many, often contradictory interpretations, not least concerning the ecclesiology they contained—was the stress on papal primacy in the False Decretals taken as evidence for the ‘papal’ tendency (even a Roman origin) of the forgeries, or was the exaltation of the papacy itself a means towards a different end, namely episcopal

34 *Histoire* (see above, n. 2), 1:8: “Non pas l’histoire sèche des manuscrits, mais celle des idées qu’ils transportent.”

35 *Ibid.*: “instruments entre les mains des réformateurs”; see also Fournier, “Premier manuel” (see above, n. 3).

36 Paul Fournier, “La question des fausses décrétales,” *Nouvelle revue historique de droit français et étranger* 11 (1887), 70–104 and 12 (1888), 103–09; *idem*, “De l’origine des Fausses Décrétales,” in *Congrès scientifique international des catholiques, tenu à Paris, avril 1888*, 2 vols (Paris, 1888), 2:403–19; *idem*, “Forme particulière” (see above, n. 27). For him, like many others, the starting point must have been Hinschius’ summary of the controversy: Paul Hinschius, “De collectione decretalium et canonum Isidori Mercatoris,” in *Decretales pseudo-Isidorianae et Capitula Angilramni*, ed. *idem* (Leipzig, 1863), pp. XI–CCXXXVIII, here at pp. CCXIII–CCXXIX. Hinschius was very clear that the sheer scope of the collection, its complexity and the internal contradictions strongly warned against looking for ‘the’ intention of the forgeries (*ibid.*, p. CCXV).

liberties?<sup>37</sup> In the context of the present article, the most interesting point about Fournier's early articles on these issues is less the conclusion he reached (that the forgeries were 'Roman' in nature but originated in northern France). Rather, it seems an attractive hypothesis that this debate on the 'tendency' of the Pseudo-Isidorian Forgeries provided Fournier with a model he applied to all pre-Gratian collections. Most of them did, of course, not introduce masses of newly forged materials, as Pseudo-Isidore had done, but the way Fournier studied even minute textual manipulation in other collections could well have been inspired by these debates. For example, he paid great attention to the changed inscriptions in a relatively small number of canons in Burchard's *Decretum* which had in common that they concealed the secular law origin of the canons in question and passed them as conciliar legislation. Partly, Fournier took this as evidence that Burchard was quite unscrupulous when it came to the integrity of his proof texts;<sup>38</sup> mainly, however, he took these seemingly small manipulations (which did not affect the main text of the canons in question) as evidence that Burchard, however loyal he personally may have been to the emperor, also insisted on the superiority of divine legislation—and for this reason passed canons from secular law as ecclesiastical sources so that his *Decretum* conveyed the impression that indeed all relevant canonical material stemmed from ecclesiastical authorities only.<sup>39</sup> While in the case of Burchard's manipulations there exceptionally was a certain scholarly tradition Fournier could build on,<sup>40</sup> he was the first to extend this approach to all collections.

Yet most pre-Gratian collections were not only anonymous but also relatively free from textual manipulations, so neither of these approaches would help to establish their 'tendency'. Indeed, the *Histoire* could not have been written the way it was, had Fournier not developed methods to establish the 'tendency' of anonymous collections that presented largely unaltered proof texts. One of

37 Emil Seckel, "Pseudoisidor," in *Real-Encyklopädie für protestantische Theologie und Kirche*, 24 vols (Berlin, 1896–1913), 16:1265–307. The *Histoire* (see above, n. 2), 1:232–33, in contrast, treats the pro-episcopal elements in Pseudo-Isidore as being less important.

38 *Histoire* (see above, n. 2), 1:381.

39 Fournier (*ibid.*) also quoted evidence to the contrary e.g. the canons which Burchard selected or, in very few cases, manipulated so they affirmed the joint action of secular rulers and ecclesiastical authorities, e.g. in the assembly of synods.

40 Karl Wilhelm Nitzsch, *Ministerialität und Bürgerthum im 11. und 12. Jahrhundert* (Leipzig, 1859), esp. p. 123; Julius Harttung, "Beiträge zur Geschichte Heinrichs II.: Die Synode von Seligenstadt und Burchards Decretum," *Forschungen zur deutschen Geschichte* 16 (1876), 587–93; Albert Hauck, "Ueber den liber decretorum Burchard's von Worms," *Berichte über die Verhandlungen der Königlich Sächsischen Gesellschaft der Wissenschaften zu Leipzig. Philologisch-historische Classe* 46 (1894), 65–86; *idem*, *Kirchengeschichte Deutschlands*, 5 vols (Berlin, 1887–1920), here at 3:435–40.

the guiding principles to achieve this was looking for selection criteria that seemed to govern any given collection. In this context, Fournier and Le Bras assumed that the inclusion of certain materials was a sign of endorsement and, even more interestingly, that the absence of certain materials often was to be explained by the opposition either to the texts themselves, or to the source they came from, or indeed to other collections that disseminated these canons.

This assumption had far-reaching consequences, and it was genuinely novel. Even as far as some legal scholars and church historians may have studied some collections in a similar way, they were quite reluctant to make use of these methods.<sup>41</sup> In any case it was only Fournier who in the late 1880s and early 1890s turned this into a systematic approach to understand all pre-Gratian collections. The basis, to be sure, was relatively conventional: any such analysis required first to carefully establish both the material and the formal sources, the selection criteria could vary greatly. Trained as a *chartist*,<sup>42</sup> and well familiar with the highly developed techniques of studying complex textual transmission, Fournier from the beginning of his career was well-placed to do the necessary manuscript studies. Yet the decisive step was, as the *Histoire* put it, to go beyond the ‘dry history of texts’<sup>43</sup>—namely, by using the minute analysis of textual interdependencies to look for the selection criteria applied by the respective compiler.

In many cases, Fournier and Le Bras assumed, the *topic* of the canons in question was decisive. Very frequently, they would quote single texts found in a collection as evidence of the compiler’s intention<sup>44</sup>; likewise, the absence of certain proof texts (especially if it was almost certain the compiler knew them) is frequently taken as a sign that the compiler was either not particularly interested in the subject matter or indeed opposed the relevant legislation for one reason or the other.<sup>45</sup> By the same token, the sheer number of canons dealing with a given offence in the *Histoire* serves as an indicator of the compiler’s preoccupations; if a collection contained an unusually high share of

41 While many German-speaking scholars of the time (e.g. Conrat, Hauck, Mirbt, Sackur, Sdralek, Seckel, and Thaner) were of course very familiar with both canon law and other sources of the so-called Investiture Contest, the studies on Burchard mentioned above are the only ones published before the 1890s that come close to Fournier’s approach. Mirbt, for one, certainly was very well placed to study the canonical collections for their tendencies explicitly declined to do: Carl Mirbt, *Die Publizistik im Zeitalter Gregors VII.* (Leipzig, 1894), pp. 620–21: “Ausdrücklich sei hervorgehoben, dass eine Würdigung der Streitschriftsteller als Kanonisten nicht beabsichtigt ist.”

42 For his academic career see above, pp. 6–10.

43 *Histoire*, 1:8 (as quoted above, n. 34).

44 See, for example, *Histoire* (see above, n. 2), 1:8 (on Burchard of Worms).

45 *Ibid.* (on Ivo of Chartres).

canons on a certain topic, the compiler is commonly said to promote 'reform' in this area. So if, for example, a collection included a certain number of canons dealing with clerical celibacy, this would often be taken as sign that the compiler supported the 'reform of the clergy'. The repetitiveness of pre-Gratian collections, sometimes quoted as a sign of a lack of legal culture, thus was taken as a hint of personal preferences.<sup>46</sup> As in the case of single texts, Fournier and Le Bras did also interpret (relative) silence on an issue as expressions of a lack of interest or indeed a form of opposition. For example, Fournier stressed that Burchard of Worms retained relatively little of the numerous canons dealing with papal primacy found in one of the earlier collections he took his material from (namely the tenth-century *Anselmo dedicata*). From this, Fournier concluded that while Burchard may have acknowledged papal primacy as such, his *Decretum* also was shaped by the intention to curb papal influence.<sup>47</sup> Such arguments are not limited to comparisons with known sources; for example, although none of Burchard's sources (or indeed any previous or contemporary collection) contained any canon law material dealing with investiture, Fournier repeatedly pointed at this 'gap' to establish which positions Burchard allegedly held in ecclesiastical politics.<sup>48</sup> He also assumed that contemporaries read collections in this way, and indeed that compilers anticipated that a large number of canons on an issue would be read as 'zealous' insistence on the canon law in question.<sup>49</sup>

A different kind of selection criterion Fournier and Le Bras paid attention to was the treatment of canonical texts depending on the sources they ultimately came from (the so-called *fontes materiales* or 'material sources'), or appeared to come from. Again, the assumption was that if a collection

46 Similar arguments were raised in the context of the Pseudo-Isidorian forgeries. See e.g. Seckel, "Pseudoisidor" (see above, n. 37), p. 279: "Die unendlichen Wiederholungen seiner Lieblingsgedanken, in denen Ps. seine Tendenzen offen zur Schau trägt, sind zutreffend auf das Prinzip der „Massenwirkung" (Wasserschleben) zurückgeführt worden."

47 See *Histoire* (see above, n. 2), 1:389–90. Contrasting the sheer number of canons on papal primacy in the *Anselmo dedicata* to the handful of texts found in Burchard's *Decretum*, they conclude: "C'est la pauvreté opposée à la richesse; évidemment cette pauvreté fut voulue par l'auteur du Décret."

48 Paul Fournier, "Le Décret de Burchard de Worms: ses caractères, son influence," *Revue d'histoire ecclésiastique* 12 (1911), 451–73 and 670–701, here at p. 690; the article is reprinted Fournier, *Mélanges de droit canonique*, ed. Kölzer (see above, n. 3), 1:393–447. See also idem, "Tournant d'histoire" (see above, n. 3), p. 134 and *Histoire* (see above, n. 2), 1:420: "Burchard ne mentionne ni les exemptions monastiques pour en prendre la défense, ni l'investiture par la crosse et l'anneau pour la réprouver."

49 Fournier, "Décret de Burchard" (see last note), p. 470 and *Histoire* (see above, n. 2), 1:390: "Si l'évêque de Worms a posé nettement le principe de la primatie romaine, il se garde d'y insister, comme s'il voulait éviter toute apparence de zèle sur un point délicat."

(compared to what was available to the compiler) contained an unusually high or low share of canons from certain sources, that this was the result of the compiler's choice, and often reflected which sources he regarded as reliable and which not. Fournier seems to have developed this conviction very early on, as it can already be found in one of his earliest canon law articles.<sup>50</sup> Again, the *Histoire* frequently draws on negative evidence in this context; e.g. the absence of transalpine materials in the collection of Anselm of Lucca or that of recent papal and synodal legislation in the *Farfa Collection* are explained by 'reservation' and 'hostility' towards the material sources of these texts.<sup>51</sup> Fournier and Le Bras very frequently argue how a compiler treated materials coming from specific material sources to establish the 'tendency' of a collection; no argument is used with greater frequency in the *Histoire*.

A third and final selection criterion used to establish the 'tendency' of a collection is the preference for certain 'formal sources' or *fontes formales*, that is, the very collections the compiler was actually taking his material from—whatever its ultimate source (or *fons materialis*) may have been. Already by asking which collection a compiler preferred over others as his formal source, Fournier and Le Bras assumed that the 'tendency' they established for pre-Gratian was also transparent for contemporary users of these works. Otherwise, medieval compilers could hardly have favoured or disfavoured earlier collections depending on whether they shared the tendency expressed therein. The most famous instance of this aspect of Fournier's model could be that the Gregorian compilers greatly preferred other Gregorian collections (namely the *Collection in 74 Titles*) over Burchard's *Decretum* in particular because they disagreed with Burchard's ecclesiology and other 'idées fondamentales' expressed in that collection.<sup>52</sup> Along the same lines, Fournier had asserted

50 Namely Fournier, "Forme particulière" (see above, n. 27), stressing that the abbreviated version of the Pseudo-Isidorian forgeries retained all material that seemed to come from papal letters or general councils.

51 *Histoire* (see above, n. 2), 2:32 (Anselm of Lucca "n'emploie qu'avec extrême réserve les matériaux d'origine insulaire ou transalpine") and 121 (Gregory of Catino "systématiquement passé sous silence la législation réformatrice qui s'était développée à Rome dans la dernière moitié du XI<sup>e</sup> siècle"), respectively.

52 Fournier, "Décret de Burchard" (see above, n. 48), pp. 691–92; idem, "Collections canoniques romaines" (see above, n. 3), p. 276; *Histoire* (see above, n. 2), 2:6. For criticism, see Detley Jasper, "Burchards Dekret in der Sicht der Gregorianer," in *Bischof Burchard von Worms, 1000–1025*, ed. Wilfried Hartmann, Quellen und Abhandlungen zur mittelrheinischen Kirchengeschichte 100 (Mainz, 2000), pp. 167–98. One could even doubt that Fournier's translation is accurate, see Christof Rolker, *Canon Law and the Letters of Ivo of Chartres*, Cambridge Studies in Medieval Life and Thought, Fourth Series 76 (Cambridge 2010), p. 64. It is worth noting that Fournier, while claiming frequently that the Gregorians

that pro-imperial but not Gregorian polemicists would use Burchard for their proof texts.<sup>53</sup> Indeed the same kind of argument, if sometimes articulated less dramatically, is found throughout the *Histoire*. It is most visible in cases where neither the compiler's biography nor the topics a collection covered are quoted to establish its 'tendency', but the very fact that it relies on certain formal sources. This is the case with many of the lesser collections (which are often only studied this way) but also more prominent collections like the *Caesaraugustana* which is described as a Gregorian reform collection mainly on account of the use of other Gregorian collections, not by establishing that it was paying special attention on the topics of the reform.<sup>54</sup>

### 2.3 'Ardent Partisans' and Other Groups

Fournier's model asserted that all collections, at least all 'major' ones, expressed specific ideas and tendencies, which could be explained by the circumstances of their compilation and above all the political intentions of the respective compiler. This in theory was an approach that stressed diversity rather than unity of the collections, as potentially every single collection was shaped by highly individual ideas. In practice, however, the *Histoire* stressed the unity of many collections much more than their diversity. Different as the compilers may have been, they were not working on their own; they were part of communities, networks and groups, and both the compilers and the collectors were shaped by predispositions shared with others.

Sometimes, compilers would express not so much individual sentiments but rather acted as representatives of the order they belonged to by their office's virtue. So if Abbo of Fleury in his collections devoted much more attention to monastic liberty and gathered many authorities protecting monks from

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would in general not quote from Burchard, in fact had compiled a long list of collections (including 'Gregorian' ones) that did exactly that: Paul Fournier, "Études critiques sur le Décret de Burchard de Worms," *Nouvelle revue historique de droit français et étranger* 34 (1910), 41–112, 213–21, 289–331, and 564–84.

53 Fournier, "Décret de Burchard" (see above, n. 48), p. 390, n. 391; for a correction of this view, see Jasper, "Burchards Dekret."

54 In fact, the only 'tendency' that is established on the basis of selecting materials on account of their content (not their source) is unrelated at best to Gregorian reform as understood by Fournier and Le Bras: Paul Fournier, "La collection canonique dite *Caesaraugustana*," *Nouvelle revue historique de droit français et étranger* 45 (1921), 53–79, here at p. 75, apparently on basis of the selection criteria behind the ninth book of the *Caesaraugustana* tentatively asserts that it supported the regular clergy rather than monks in what he described as "les conflits très vifs qui [...] mettaient aux prises les moines et les clergé séculier." All other characteristics of the collection, in contrast, are based explicitly on the formal sources the *Caesaraugustana* was compiled from.

interference from the local bishop, while Burchard of Worms devoted only a small part of his *Decretum* to monastic affairs and, as far as he did, mainly gathered authorities on the visitation and control of monastic property by the local bishop, they both acted according to the different roles they had as abbot and bishop.<sup>55</sup>

More frequently, though, the *Histoire* pointed to individual relations and friendship to explain the peculiarities of specific collections. For example, if Burchard's *Decretum* contained at least some elements expressing distance from secular power, Fournier argued that Burchard had accepted this from his collaborator Olbert, who in turn was influenced by his friend Wazo of Liège who was known for his criticism of Henry III.<sup>56</sup> For Fournier, it was apparently less important that the conflict he quotes took place more than two decades after the *Decretum* was finished (namely in 1044), or that Wazo is not known to have clashed with Henry before his election as bishop in 1041. Fournier was likewise convinced that pupils could be expected to produce collections very similar to those of their teachers, only that they were more likely to make mistakes. For example, the collections attributed to Ivo of Chartres in many respects were very similar but one of them (the *Panormia*) contained a remarkable number of misattributions; for Fournier, this could best be explained by the work of less experienced pupils nonetheless sharing the same convictions as their master.<sup>57</sup> Or to take another example, the similarities in the teaching of Bernold, Ivo and Alger according to Fournier could be explained by the fact that they all had been in contact with Urban II.<sup>58</sup> In other cases, collections expressing similar ideas were explained as the result of a collaborative enterprise. Based on a detailed textual analysis, Fournier concluded that Anselm of Lucca, Bonizo of Sutri and Deusdedit exchanged intermediate collections to help each other, and in an unusually speculative move also claimed that Ivo of Chartres had access to these materials.<sup>59</sup>

55 *Histoire* (see above, n. 2), 1:326 and 391, respectively.

56 *Ibid.*, 1:391 (repeated almost verbatim from Fournier, "Décret de Burchard," p. 461; see above, n. 48): "Nous ne saurions nous empêcher de penser que si le *Décret* décèle, sur certains points, une tendance plutôt réservée à l'égard du pouvoir civil, c'est dans l'influence d'Olbert, inspirée par Wazon, et plus ou moins acceptée par Burchard, qu'il faut en chercher la cause."

57 *Histoire* (see above, n. 2), 2:92–93 and 102–03.

58 Fournier, "Tournant d'histoire" (see above, n. 3), p. 157 (Bernold and Ivo "développèrent les idées émises par le pontife suprême"); the claim is repeated in *Histoire* (see above, n. 2), 2:358–59 but notably absent from the more detailed discussion of legal theory by Le Bras in the chapter on Alger, Bernold and Ivo (*ibid.*, pp. 335–44).

59 *Histoire* (see above, n. 2), 1:10 (Anselm, Deusdedit, Bonizo), 77 (Ivo) and 105 (Ivo), respectively.

The latter group of compilers are indeed described as an almost uniform group, namely as ‘partisans ardents’ (a very frequent epithet in the *Histoire*) of the Gregorian reform. The *Histoire* also highlighted how both Gregorian and imperial polemicists drew on canon law collections for proof texts, and indeed Fournier assumed that both sides relied on ‘their’ collections.<sup>60</sup> Stressing the personal and textual links between canon law and polemic, Fournier’s model thereby predicted that there were not only ‘Gregorian’ but also ‘imperial’ (or ‘anti-Gregorian’) collections. Indeed, already in one of his earliest articles on eleventh-century canon law Fournier had dealt with this question. In the same year he published his famous analysis of the *Collection in 74 Titles* as the ‘first manual of reform’,<sup>61</sup> he also published an article on the *Farfa Collection* as the product of the pro-imperial (indeed ‘anti-reform’) party.<sup>62</sup>

While these aspects—the office a compiler held, his personal contacts, and political allegiance—all may explain why collections often express the values and interests of specific groups rather than individuals, it is also important to stress that the *Histoire* does not make this a very strong argument. Except in the case of Burchard (representing ‘episcopal reform’ and the group of imperial bishops in particular), the *Histoire* rarely makes a case that specific collections were shaped by the interests of groups defined by their place in the ecclesiastical hierarchy. Friendship and personal contacts are also only relatively rarely quoted, mainly in cases where there was no textual evidence for the ‘tendency’ explained this way.<sup>63</sup> Above all, the frequent use of the term ‘partisan’ does not mean that the *Histoire* thought that most collections were compiled as ‘partisan collections’ driven by the interest of specific social groups. In the case of the *Farfa Collection*, the *Histoire* indeed asserts that it

60 Fournier, “Décret de Burchard” (see above, n. 48), p. 690; *Histoire* (see above, n. 2), 1:5. As mentioned above, many German-speaking scholars of the time had ignored the relation between canon law and polemics of the late eleventh century, e.g. Mirbt, *Publizistik*, pp. 620–21 (as quoted above, note 41).

61 Fournier, “Premier manuel” (see above, n. 3). On the collection itself, see below.

62 Idem, “La collezione canonica del regesto di Farfa,” *Archivio della Società Romana di Storia Patria* 17 (1894), 285–301, p. 300 (“monumento di legislazione canonica destinato all’uso di uno dei più importanti monasteri del partito imperiale”); *Histoire* (see above, n. 2), 2:121 (“parti des adversaires de la Réforme,” “milieu rebelle à l’Église,” “parti qui opposait à la Papauté une résistance obstinée”).

63 In particular, the idea that the Ivonian collections were inspired by the Gregorian reform was very difficult to establish from internal evidence, as the Ivonian collections shared much more material with non-Gregorian collections than with Gregorian ones, and the selection criteria according to Fournier’s standards often suggest opposition to rather than affirmation of what Fournier described as key issues of the Gregorian reform (lay investiture, papal primacy, papal legates): *Histoire* (see above, n. 2), 2:109–14.

was produced by, and for, a specific group; but the *Histoire* is unequivocal that the ‘partisans de la Réforme’ were a different case. Indeed for two reasons, according to Fournier and Le Bras, these ‘partisans’ were not compiling partisan collections. First, any real church reform (that is, ‘Reform’) was not driven by partisan interest, but the greater good of the whole church; and secondly, the similarities between these collections were explained not by interaction within the reform party but by shared values that motivated the compilers. The difference between ‘reform’ and ‘Reform’ was one of ideas, not between social groups.

#### 2.4 *From ‘reform’ to ‘Reform’: The Historical Narrative of the Histoire*

This is not the place to discuss Fournier’s own political and religious convictions, which evidently shaped his academic work. Yet to understand the difference between ‘reform’ and ‘Reform’ in ‘Fournier’s model’, one certainly has to take in account his general perception of ecclesiastical history. As stated in the *Histoire*, Fournier saw the history of the church as a perennial struggle between decadence and progress, marked by tensions between fragmentation and unity, punctuated by alternating periods of anarchy and order.<sup>64</sup> ‘Reform’, in this context, was the general term for all tendencies (and even modest attempts) towards unity, stability, and order.

Already the subtitles of the single volumes of the *Histoire* (‘From Carolingian Reform to the Gregorian Reform’) and chapter heading like ‘Anarchy and Reform’ leave little doubt that this view deeply shaped the historical narrative of his masterpiece. The *Histoire* is a story of reforms and Reforms, with the pre-Gratian collections being both the product and the media of these reforms.

The plural is important here. While Fournier’s use of the term ‘reform collection’ was very generous,<sup>65</sup> he carefully differentiated *which* reform a given collection belonged to. The *Histoire* distinguished between major and minor collections, and for all of the former (and some of the latter) established which reform movement it belonged to. The first volume of the *Histoire* dealt with collections produced or inspired by the Carolingian reform, the Pseudo-Isidorian reformers, and a reform movement associated with Emperor Henry II; the second volume exclusively dealt with the Gregorian Reform era. It is the attachment of all (major) pre-Gratian collections to these reform movements

64 *Histoire* (see above, n. 2), 2:109–14 and 360; see Fournier, “Question” (see above, n. 36), p. 100.

65 See in particular *Histoire* (see above, n. 2), 1:1X and 352–61. Fournier’s early articles on Pseudo-Isidore (idem, “Question”; idem, “Origine”; see above, n. 36 for both articles) and even his *thèse* are also instructive in this context: Fournier, *Officialités* (see above, n. 7).

that integrates legal history and church history, and therefore contains the crucial elements of the historical narrative of Fournier's model.

### 2.5 'Carolingian Reform' and 'Pseudo-Isidorian Reform'

Given Fournier's view of alternating phases of anarchy and order, it is not surprising that the *Histoire* in its preliminary chapters provides a very grim picture of early medieval church history, that is, the time before the Carolingian reform. The Merovingian age according to the *Histoire* period was marked by 'disorder' and 'anarchy' both at a textual and at the societal level. The canonical collections compiled were useless at best,<sup>66</sup> and many of the penitential books that gained influence were positively dangerous; their spread is described in terms of conquest and infection.<sup>67</sup> Even the Carolingian reform only temporarily changed the state of the Frankish church for the better,<sup>68</sup> mainly because it put the local churches in contact with the papacy again.<sup>69</sup> Like other scholars before them, Fournier and Le Bras saw the rediscovery, dissemination and recombination of canonical collections (namely the *Hadriana-Dionysiana*, the *Hispana* and the *Dacheriana*) as part of this reform; some of the new ('Roman') penitentials and a number of minor canon law collections are also described as 'inspired' by the same reform. Somewhat less conventionally, Regino's *Libri duo* are also counted as a belated expression of the Carolingian reform, partly on account of his material sources, partly because of his 'tendency' to accept royal intervention in church affairs.<sup>70</sup> In the end, Carolingian reform failed, or rather was perverted, as it effectively meant legalizing the seizure of church property and interference of royal and noble houses with church affairs.<sup>71</sup> While the collections rediscovered or newly compiled in the context of the reform were no doubt reform collections, they all showed defects; above all, they failed to centralize church law, which Fournier and Le Bras saw as a decisive criterion of any real reform.<sup>72</sup>

66 *Histoire* (see above, n. 2), 1:85 on the *Collectio Hibernensis*.

67 *Ibid.*, 1:85 ('invasion'), 86 ('conquêtes'), 87 ('contagion').

68 *Ibid.*, 1:85.

69 *Ibid.*, 1:85 and 251.

70 *Ibid.*, 1:251 on Regino being "dominé par les idées maîtresses de la Réforme carolingienne, comme le prouve la place prépondérante qu'il donne aux capitulaires, aux conciles et aux écrits pénitentiels du IXe siècle." For Regino's position on royal legislation as another important 'tendency', see *Histoire*, 1:267.

71 *Ibid.*, 1:121–22.

72 *Ibid.*, 1:122: "malgré leur rigoureuse orthodoxie, il est permis de les [the *Hadriana*, *Hispana* and *Dacheriana* collections, CR] placer en marge de la tradition unitaire." At best, they 'provisionally' and 'imperfectly' achieved some reform goal according to Fournier (*ibid.*, p. 120).

Rather, it was only with the Pseudo-Isidorian forgers (or ‘réformateurs isidoriens’, as the *Histoire* prefers to call them) that church reform began in earnest. The failure of the Carolingian reform, as far as it was led by secular rulers, according to the *Histoire* made a new reform necessary, and this time by an ecclesiastical party that did not rely on secular rulers but rather on ‘Roman’ authority. Unlike the Carolingian reforms, this was church ‘Reform’ with a capital ‘R’.<sup>73</sup> The main goal of the reformers, the *Histoire* asserted, was freedom of the church from secular interference and the restitution of church property.<sup>74</sup> For this, the forgers relied on papal authority.<sup>75</sup> They did not, Fournier insisted, strengthen (let alone invent) papal primacy.<sup>76</sup> Rather, papal primacy according to Fournier was well established and only quoted by the forgers to strengthen their own case.<sup>77</sup> In general, while the forgers may have produced new texts, by doing so they restored ancient law.<sup>78</sup> The orientation towards the papacy and ancient church law, not the place of origin or active papal support made this movement ‘Roman’ in nature.<sup>79</sup> To implement reform, it was crucial to spread these materials, and to replace existing texts—namely ‘suspect’ penitential canons and conciliar canons of the Frankish church.<sup>80</sup>

However, especially if measured by these standards, the reform largely failed. Neither did penitential canons disappear from the canonical collections, nor did the Pseudo-Isidorian forgeries (despite all the copies the *Histoire* duly mentioned) have a decisive impact on newly-compiled collections.<sup>81</sup>

73 See *ibid.*, 1:120–22 on Carolingian reforms with the help of secular rulers “hostile à la Réforme.” Indeed, only reforms inspired by Pseudo-Isidore and/or Gregorian ideas are consistently spelled with a capital ‘R’ in the *Histoire*; all other reforms (Carolingian, episcopal, imperial, local) are not.

74 *Ibid.*, 1:120–22; see Paul Fournier, “Études sur les fausses décrétales,” *Revue d’histoire ecclésiastique* 7 (1906), 33–51, 301–16, 543–64, 761–84, and *Revue d’histoire ecclésiastique* 8 (1907), 19–56, here at p. 301.

75 *Histoire* (see above, n. 2), 1:132; according to Fournier, even bishops themselves were well aware that episcopal reforms were doomed to fail (*ibid.*, p. 120). In his earlier study on Pseudo-Isidore, Fournier had stressed that all ‘successful reformers’ had had turned to Rome for guidance and inspiration; bishops together with secular rulers are described as potential opponents of reform: Fournier, “Question” (see above, n. 36), p. 103.

76 *Histoire* (see above, n. 2), 1:133 and 231–33; see already Fournier, “Question” (see above, n. 36), p. 100 and *idem*, “Études” (see above, n. 74), pp. 26–27.

77 See esp. Fournier, “Question” (see above, n. 36), p. 100.

78 *Histoire* (see above, n. 2), 1:232.

79 *Ibid.*

80 *Ibid.*

81 *Ibid.* Fuhrmann famously summarized his own analysis of the evidence as “many manuscripts but little impact” of the Forgeries: Horst Fuhrmann, *Einfluß und Verbreitung der pseudoisidorischen Fälschungen. Von ihrem Auftauchen bis in die neuere Zeit*, 3 vols, *Schriften der Monumenta Germaniae historica* 24 (Stuttgart, 1972–74), 1:232; *idem*, “The

The only exception was the *Anselmo dedicata*, which the *Histoire* on account of its high share of Pseudo-Isidorian material, the large number of canons asserting papal primacy and the absence of 'dubious' (i.e. non-Roman) proof texts call a collection expressing 'purely ecclesiastical' reform inspired by Pseudo-Isidore.<sup>82</sup> All other collections compiled between Pseudo-Isidore and the early eleventh century are explicitly called 'minor' collections.<sup>83</sup> With the exception of the collection of Abbo of Fleury,<sup>84</sup> none of them is described as expressing any specific 'idea'; at best, these collection helped to disseminate (already existing) reform ideas.<sup>85</sup> Repeatedly, indeed almost invariably, the *Histoire* stressed that these collections had no discernible influence on later collections, were mostly short, and lacked internal structure.<sup>86</sup> Fournier and Le

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Pseudo-Isidorian forgeries," in Detlev Jasper and Horst Fuhrmann (eds.), *Papal Letters in the Early Middle Ages*, History of Medieval Canon Law (Washington, D.C., 2001), pp. 135–95, at p. 184.

82 *Histoire* (see above, n. 2), 1:235 and 234, respectively.

83 *Histoire* (see above, n. 2), 1:234 ('collections majeures' vs. 'collections mineures') and pp. 268–362 (description of 'minor' collections).

84 *Histoire* (see above, n. 2), 1:234.

85 E.g. the collection in Milan, Biblioteca Ambrosiana, A 46 is described as 'farrago' (*ibid.*), but given the high share of Pseudo-Isidorian materials, it is also said to be "en général inspiré de l'esprit qui animait les réformateurs pseudo-isidorien" (*ibid.*, p. 331). Likewise, the collection in Vatican City, Biblioteca Apostolica Vaticana, Vat. lat. 3830 is described as "produit de l'esprit de réforme propagé à cette époque dans les monastères italiens, et encouragé par Henri II" (*ibid.*, p. 454) apparently on account of the formal and material sources. In both cases, there is little other evidence to support these claims.

86 It is therefore striking that the *Collectio in Twelve Parts* (= 12P) is counted among the 'minor' collections; it is a very substantial, fairly well-structured collection extant in several manuscripts, as Fournier knew very well. Yet, the *Histoire* (see above, n. 2), 2:442 stressed that its influence was limited (at least compared to the exceptionally successful *Decretum* of Burchard of Worms) and soon 'outdated': "L'influence de la collection en douze livres, à la différence de celle du Décret, ne fut guère sensible [...]. D'ailleurs, avant qu'elle eût le temps de se faire accepter, le mouvement grégorien, auquel notre collection est étrangère, devait s'affirmer, la cause de la réforme entraînait ainsi dans une phase nouvelle, et pour ses partisans, la *Collectio XII partium* se trouvait arriérée et démodée." If Fournier's analysis of the 12P is unusually vague, this may partly have to do with the structure of 12P but also that scholarship on the collection only relatively recently had moved beyond what the Ballerini brothers had written about this collection (Ballerini and Ballerini, "De antiquis collectionibus," here at PL 56:322; see above, n. 17). Fournier himself had long seen 12P as one of many Burchard-derivatives; see Paul Fournier, "De quelques collections canoniques issues du Décret de Burchard," in *Mélanges Paul Fabre: études d'histoire du moyen âge* (Paris, 1902), pp. 189–214, p. 214; by 1911, he knew the Troyes manuscript of 12P–Troyes, Médiathèque du Grand Troyes (olim Bibliothèque municipale), Fonds ancien 246—but did not recognize it as a 12P copy. Rather, he treated it as another Burchard-derivative (*idem*, "Décret de Burchard," p. 689; see above, n. 46). Ten years later, he had developed the model that was repeated in the *Histoire*; see *idem*, "La collection

Bras concluded that the reform that produced the Pseudo-Isidorian Forgeries was short-lived.<sup>87</sup>

## 2.6 'Imperial Reform'

The result of this was 'anarchy'—both at a textual level (collections which were often abridged, without clear structure and contained sometimes contradictory canons from very diverse sources<sup>88</sup>) and in secular and ecclesiastical affairs at large.<sup>89</sup> This, according to the *Histoire*, gave rise to a new reform movement which was promoted by episcopal and monastic reformers, but mainly by Emperor Henry II.<sup>90</sup> The collections Fournier and Le Bras identified as expressing the ideals of this reform are Burchard of Worms and the South-Italian *Collection in Five Books* (= *5L*), an interesting coupling given that the two emerged far apart from each other in quite different environments and share little materials; in the case of *5L*, the main link to Henry II are five (of well above 1,000!) canons taken from an imperial council held in early 1014.<sup>91</sup> In the case of Burchard, his biography made it very easy to link him to Henry, but Fournier also argued that some elements of his *Decretum* showed his reservation towards the emperor.<sup>92</sup> The argument that both collections represented 'imperial reform' was partly based on the treatment of the Pseudo-Isidorian material by Burchard and its absence from *5L*, and on the positive attitude of both collections towards imperial legislation. This, however, according to the *Histoire* also explained one of the main weaknesses of this reform, as it relied on secular rulers and failed to sufficiently insist on papal supremacy.<sup>93</sup> This was also the main reason why

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canonique dite 'Collectio xii partium': étude sur un recueil canonique allemand du XI<sup>e</sup> siècle," *Revue d'histoire de l'Église de France* 17 (1921), 31–62 and 229–59.

87 *Histoire* (see above, n. 2), 1:235.

88 *Ibid.*, 1:235; see also *ibid.*, 1:61 on disorder in the penitentials causing 'anarchie' in society.

89 *Ibid.*, 1:61 ('anarchie renaissait dans l'Église'). See also the comments on "la tendance centrifuge, qui produit l'anarchie" (*ibid.*, 1:360).

90 *Ibid.*, 1:360 ('réforme imperiale').

91 Myron Wojtowycsch, "Die Kanones *Henrici regis*. Bemerkungen zur römischen Synode vom Februar 1014," in *Papsttum, Kirche und Recht im Mittelalter. Festschrift für Horst Fuhrmann zum 65. Geburtstag*, ed. Hubert Mordek (Tübingen, 1991), pp. 155–68 argued that it could have taken place in Rome rather than in Ravenna, as was traditionally thought.

92 Fournier, "Études critiques" (see above, n. 52), pp. 572–74.

93 *Histoire* (see above, n. 2), 2:355 on Burchard and *5L*: "[...] ni l'une ni l'autre n'établissaient solidement dans l'Église la suprématie d'un centre législatif et judiciaire, seul capable d'en refaire et d'en conserver l'unité. Les recueils qu'elles engendrèrent souffraient des mêmes vices et de la même impuissance."

they, still according to the *Histoire*, lost influence almost immediately after the papal reform began with the pontificate of Leo IX.<sup>94</sup>

### 2.7 *The 'Gregorian Reforms' and the 'Turning Point' in Canon Law History*

The most important reform in Fournier's model no doubt is the Gregorian Reform—always spelled with a capital 'R' in the *Histoire* and always referring to the 'reform programme' thought to be common to the popes from Leo IX to Paschal II and their supporters. Yet it was Gregory VII whose name was (and often still is) attached to it; for Fournier like for many scholars, Gregory's pontificate began with Leo IX, as Fliche put it.<sup>95</sup> The *Histoire* certainly reinforced the already widely-held belief that the Gregorian reform movement was an almost all-encompassing, centralized enterprise under the firm direction of the pope.<sup>96</sup> What the *Histoire*, for the first time, argued was that the collections compiled in the century before Gratian were an integral part of the Gregorian reform. On the one hand, they were almost all (either directly or indirectly) 'inspired' by the reform; on the other hand, they were themselves media of the reform, disseminating and implementing both general ideas and specific goals of the reform. The main goal of the reform and the reform collections, according to the *Histoire*, was the freedom of the church from secular interference, the reform of the clergy and—both as an instrument and as an end in its own right—the establishment of a strong papacy. All this was laid out in ancient church law, which the compilers under papal direction rediscovered, and increasingly also in the legislation of the reform popes themselves, which the compilers in Fournier's view were eager to disseminate. At the same time, the

94 The idea has been criticized severely, as both collections continued to be copied and used intensely; see, for example, Horst Fuhrmann, "Über den Reformgeist der 74-Titel-Sammlung (Diversorum patrum sententiae)," in *Festschrift für Hermann Heimpel*, 3 vols, Veröffentlichungen des Max-Planck-Instituts für Geschichte 36 (Göttingen 1972), 2:1101–20.

95 See the opening sentences in Augustine Fliche, *Études sur la polémique religieuse à l'époque de Grégoire VII* (Paris, 1916), p. 1: "Pour la plupart des historiens qui ont traité de la réforme religieuse du XI<sup>e</sup> siècle, le pontificat de Grégoire VII commence dès 1048 [sic], avec l'avènement de Léon IX. C'est au moine Hildebrand que reviendrait l'honneur de toutes les idées et de toutes les initiatives qui orientèrent l'Église vers la réforme à laquelle il attache son nom." A now classic criticism of the idea of a supposed 'Gregorian reform programme' is John T. Gilchrist, "Was There a Gregorian Reform Movement in the Eleventh Century?," *Study Sessions of the Canadian Catholic Historical Association* 37 (1970), 1–10; repr. in idem *Canon Law in the Age of Reform, 11th–12th Century*, Variorum Collected Studies Series 406 (Aldershot, 1993), no. VII.

96 Fliche in particular was impressed by the *Histoire*; see his enthusiastic review: *Revue d'histoire de l'Église de France* 19 (1933), 219–26.

reformers strove to purge canonical tradition from legislation that was not (at least implicitly) approved of by the papacy.<sup>97</sup> This, in Fournier's model, also explained why the reformers sought to replace the influential *Decretum* of Burchard of Worms.<sup>98</sup> Alongside the 'new' texts (including rediscovered ancient traditions), and almost as a side effect, this also led to the development of new legal hermeneutics, again directly inspired by the reform papacy according to Fournier and Le Bras. This, in a nutshell, is the key argument of the second volume of the *Histoire* and probably the argument for which Fournier and Le Bras are best known until today. Special attention is therefore needed to understand this argument which was absolutely novel by the time Fournier first articulated it,<sup>99</sup> and won wide acceptance for a long time.<sup>100</sup>

Let us look at the *Histoire* and the collections in detail. Again, the division of materials deserves close attention. The first volume of the *Histoire* had mainly distinguished between 'major' and 'minor' collections, and studied the 'tendency' of the former to establish how the collections conceived, disseminated and adopted concepts of reform. Volume two of the *Histoire* is similar but not identical. While in the first volume the 'major' collections are clearly those which are extant in more copies than any 'minor' collection, in volume two different criteria apply. Importantly, there are at least three different groups of collections. The first chapter of the second volume treats a group of four Italian collections which according to Fournier and Le Bras have in common that they were inspired by the 'pure' spirit of the Gregorian reform movement, namely the *Collection in 74 Titles* (= *74T*) and the collections of Atto of San Marco, Anselm of Lucca and Deusdedit. They are 'major' collections in the sense that the *Histoire* treats them as important, but as far as their dissemination is concerned, and also concerning their quality and structure, they are very different from each other; only one is extant in a two-digit number of manuscripts. The second group of collections are those attributed to Ivo of Chartres which were 'inspired' (as Fournier insisted) by the Gregorian reform but showed a marked reserve towards many Gregorian positions.<sup>101</sup> All

97 *Histoire* (see above, n. 2), esp. 2:4–14.

98 Fournier, "Tournant d'histoire" (see above, n. 3), pp. 131–39; *Histoire* (see above, n. 2), esp. 2:4–14 and 355.

99 The most important early article is Fournier, "Premier manuel"; the earliest fully-fledged version is found in idem, "Tournant d'histoire," and idem, "Collections canoniques romaines." See above, n. 3 for all three articles.

100 A well-known revival of the key argument is Harold Joseph Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, Mass. and London, 1983). See also the works mentioned in n. 1 above.

101 *Histoire* (see above, n. 2), 2:109–14.

three were used in the compilation of relatively many other collections, and the *Panormia* was exceptionally influential; in addition, both the *Tripartita* and the *Panormia* supplied Gratian with his material. The next two chapters are devoted to a large number of 'local' collections; Fournier and Le Bras divide them into Italian and non-Italian collections, and further sub-divide both chapters by whether or not they were influenced by the Italian collections or the Ivonian ones, respectively. A fifth chapter, finally, treats the relation between canon law and theology, and in this context analyses collections like that of Alger of Liège which otherwise is often treated as a canonical collection.

This fifth chapter mainly is important for the claim that the reform papacy inspired the development of new methods ultimately applied by Gratian (but also Abelard and Peter Lombard).<sup>102</sup> The main argument concerning the compilation of collections as part of the Gregorian reform is contained in the previous chapters, and most importantly in the relation between the collections dealt in these chapters. Every chapter is contributed to a distinct part of Fournier's main thesis.

The claim that Gregory VII himself played a role in the compilation of any canon law collection was mainly argued for the Italian collections in the first chapters; three of the four compilers were well-known supporters of Gregory, namely Atto of San Marco, Anselm of Lucca and Deusdedit, and for the anonymous *74T* Fournier had argued vehemently that it was compiled at the curia of Leo IX.<sup>103</sup> For all four collections, Fournier could quote internal evidence supporting the idea that these collections were 'Gregorian', too.<sup>104</sup> However, for the claim that the Gregorian reform had a decisive impact on

102 Fournier, "Tournant d'histoire" (see above, n. 3); Le Bras, "Alger de Liège et Gratien" (see above, n. 30); *Histoire* (see above, n. 2), 2:334–50. The classic reply is Stephan Kuttner, "Urban II and the Doctrine of Interpretation: A Turning Point?," *Studia Gratiana* 15 (1972), 55–85; repr. in idem, *The History of Ideas and Doctrines of Canon Law in the Middle Ages*, 2nd ed., Variorum Collected Studies Series 113 (London, 1992), no. IV. See also Rolker, *Canon Law* (see above, n. 52), pp. 295–303.

103 Paul Fournier, "Une collection canonique italienne du commencement du 12e siècle," *Annales de l'enseignement supérieur de Grenoble* 6 (1894), 343–438; *Histoire* (see above, n. 2), 2:16. This has largely been disproven by Linda Fowler-Magerl, "The Use of the Letters of Pope Gregory I in Northeastern France and Lorraine before 1100," in *Ins Wasser geworfen und Ozeane durchquert. Festschrift für Knut Wolfgang Nörr*, ed. Mario Ascheri et al. (Cologne, 2003), pp. 237–60; see also Fuhrmann, "Reformgeist" (see above, n. 92).

104 But see Fuhrmann, "Reformgeist" (see above, n. 92); Kathleen G. Cushing, *Papacy and Law in the Gregorian Revolution: The Canonistic Work of Anselm of Lucca*, Oxford Historical Monographs (Oxford, 1998); eadem, "Polemic or Handbook? Recension Bb of Anselm of Lucca's *Collectio canonum*," in *Bishops, Texts and the Use of Canon Law around 1100: Essays in the Honour of Martin Brett*, ed. Bruce Clark Brasington and Kathleen G. Cushing, Church, Faith and Culture in the Middle Ages (Aldershot, 2008), pp. 69–77.

canon law, Fournier could hardly rely on these three collections, as their influence was limited. Notably the collection of Atto of San Marco which Fournier at many occasions quoted as the exemplar of a Gregorian collection stood out as having extremely limited influence.<sup>105</sup>

Here, the Ivonian collections came into play; while the collections, as Fournier himself conceded, were markedly less ‘Gregorian’ than the Italian collections discussed before,<sup>106</sup> and contained little material coming either from these collections or the reform papacy, they were very influential indeed, both directly and via numerous collections including, above all, the *Decretum Gratiani*. What they lacked in ‘purity’ they made up in influence; given the lack of textual links to the reform, it was all the more important first that Ivo was a Gregorian and secondly that the collections (namely the *Panormia*) attributed to him were indeed his own work.<sup>107</sup>

Just as the Ivonian collections were one step removed from the ‘pure’ idea of reform, the ‘local’ collections were even further apart, and also lacking in quality, originality, and influence. In the *Histoire*, they are mainly studied as disseminating the texts and ideas they in turn took from ‘major’ collections.<sup>108</sup> For example, in a sub-chapter on ‘cisalpine collections influenced by Ivo’, six collections are said to have been influenced, if indirectly, by the Gregorian reform because they draw (though not exclusively, and in different degrees) on the Ivonian collections.<sup>109</sup> Yet the eight ‘cisalpine collections independent of Ivo’ treated together in another sub-chapter also turn out to be reform collections ‘inspired’ ultimately by the Gregorian reform.<sup>110</sup> So more or less

105 It is extant in only one manuscript; the rather radical claims in the preface, which Fournier frequently cites, have no parallel in any other collection. On the preface, see Fournier, “Décret de Burchard” (see above, n. 46), p. 692, idem, “Tournant d’histoire” (see above, n. 3), p. 137, and *Histoire* (see above, n. 2), 2:6 and 21–24.

106 *Histoire* (see above, n. 2), 2:109–14.

107 I have challenged both claims elsewhere: Rolker, *Canon Law* (see above, n. 52).

108 Interestingly, this includes several collections which elsewhere are seen as rather ‘major’ collections, above all the *Liber* of Bonizo of Sutri.

109 See *Histoire* (see above, n. 2), 2:265–313.

110 Ibid. According to Fournier, the collection of Lanfranc “contenait la substance de l’œuvre réformatrice d’Isidore” (ibid., p. 228); it is quoted as proof that the development of canon law in England in the eleventh and twelfth centuries was fundamentally in line with that of continental Europe (ibid., p. 229). The *Collection in Seventeen Books* is described as an abridged version of Burchard brought in line with (Gregorian) reform: “En réalité, notre recueil est un Burchard abrégé et complété dans l’esprit de la Réforme” (ibid., p. 233). The *Collection in Four Books*, reworking 74*T* with Pseudo-Isidorian material and letters of Gregory I, for this reason is said to be “fidèle aux inspiration de l’esprit romain, qui était celui de la Réforme, par conséquent de la collection en 74 titres” (ibid., p. 237). The *Collection of Tarragona* compiler, using 74*T* and *Liber pontificalis*, is called a “partisan

all 'minor' collections show that the 'major' works were read and used in many places. Unspectacular as every single one may be, their diversity, their geographical dispersal and their sheer number gave credibility to Fournier's claim that the reform had had, in whatever form, a profound impact and indeed changed the law of the church.

Clearly this was a top-down-model, beginning with the 'purest' form of the reform (that is, the *idea* of reform), inspiring a small number of collections containing a 'pure' version of it which in turn is taken up in collections that for one reason or the other only preserved some of this purity, but contributed to its wide dissemination. The gradual diluting of the reform is explained as a 'necessity of life'—not all compilers were able to accept the radical claims, and many (namely Ivo of Chartres) are said to deliberately have made 'compromises' which allowed the reform to win wider acceptance, although at the cost of losing some of its purity.

All methods outlined above to establish 'tendencies' are applied, but in very different combinations. For the Italian Gregorian collections, both textual parallels to programmatic Gregorian texts and the compilers' biographies were crucial to argue that they were the spearhead of the Gregorian reform in law. In the case of the Ivonian collections, the main argument hinges on Ivo's personality and the question of authorship in particular for the *Panormia*. The 'local' collections, finally, are studied by different methods, but most frequently the textual relations to either the Ivonian collections or *74T* is quoted to establish their place in the hierarchy of reform collections.

### 3 Summary

Fournier's articles and later the *Histoire* presented the reader with a novel way to interpret pre-Gratian collections otherwise often seen as rather impenetrable by many historians. It also connected the history of canon law with the history of ideas and a (rather ultramontane) narrative of church reform. Different

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dévoué du Saint-Siège et de la Réforme" (ibid., p. 247). The Bordeaux collection, combining Burchard with *74T*, exceptionally, is not described as having a specific tendency; only its appendix is highlighted as "décidément favorables à la primauté du Pontife romain" (ibid., p. 250). The *Collection in Thirteen Books* is called a Gregorian collection, "l'œuvre d'un partisan détermine de la réforme ecclésiastique et de l'autorité pontificale" (ibid., p. 258). For the Arras collection, no reform tendency is stated but Fournier highlights that the most recent material are letters of Gregory VII (ibid., p. 260). The Saint-Victorine *Collection in Nine Books* too according to Fournier is a reform collection "dévoué à la cause de la Réforme et la mémoire de Grégoire VII" (ibid., p. 265).

aspects of Fournier's model were, and still are, attractive to different audiences. For his contemporaries, the questions of church reform, 'church and state', 'Investiture Contest' and the personality of Gregory VII may have been most important in their judgement of the *Histoire*. In the controversies over Gregory VII which continued well into the twentieth century, the close link between the reform papacy, ancient church law and high medieval canonical collections the *Histoire* proposed were particularly attractive for those who read it as an apology of Gregorian reform as both necessary and just.<sup>111</sup> Yet in the long run it was probably more important that the *Histoire* had much to offer for historians working with very different methods and on topics well beyond the Gregorian reform. For many scholars working mainly on the textual tradition of canonical texts, Fournier's model was attractive as it gave new significance to their minute analyses; but it was likewise attractive for the history of ideas, as a whole new genre of sources could now be studied for the transmission of ideas. And although Fournier and Le Bras themselves did not exploit this aspect, it also contained clues how canonical collections could be linked to a study of social groups which used collections to define themselves, to maintain cohesion and to act collectively.

These merits are independent from the doubts that have been raised concerning many of Fournier's claims pertaining to specific collections, and for this reason any references to such doubts have been consigned to the footnotes in this article. Likewise, while Fournier almost always used his then novel method to fit almost all pre-Gratian collections in his historical narrative of perennial reform, the merits of his model do not depend on the grand narrative enshrined in the *Histoire*. We need not adopt either Fournier's view on church history, nor his assumption about 'Reform', and certainly not his specific view of the Gregorian reform to adopt his methods. One does not even need to share his optimism that most collections had one and only one 'tendency'; in fact, while Fournier was sometimes very bold in his interpretations and quick to label collections as 'inspired by Gregorian reform', he also in many cases was ready not to pronounce any judgement, came to conclusions that ran against his own assumptions, and in several cases provided evidence for quite contrary interpretations. If scholars in the past two decades in particular have argued against Fournier's historical narrative of 'reform', they often relied on Fournier's methods, and this way have confirmed the merits of Fournier's model.

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111 See Augustine Fliche, *La Réforme grégorienne*, 3 vols (Leuven and Paris, 1924–37) in particular.