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## CLASS OUTLINE – LECTURE 7a

### POLITICS AND INSTITUTIONS IN 12TH AND 13TH CENTURIES

**Mistakes in the Recorded Lecture** (What follows is right:)

1. The first crusade was conducted between 1096 and 1099
2. Those who deny that Irnerius did any teaching date the beginning of the *studium* in Roman law at Bologna to the 1130s.
3. “What touches all should be approved by all” is in CJ (5.59.5.2), not the Digest.

#### The Cast of Characters

<i>Popes</i>	<i>Emperors</i>
Alexander III, 1159–81	Frederick I, Barbarossa, 1152–90
Innocent III, 1198–1216	Henry VI, 1190–97
Gregory IX, 1227–41	Frederick II, 1215–50
Innocent IV, 1243–1254	Rudolf of Hapsburg, 1273–91
Boniface VIII, 1294–1303	Adolf of Nassau, 1292–98

<i>England</i>	<i>France</i>
Henry I, 1100–1135	
Henry II, 1154–1189	Louis VII, 1137–80
John, 1199–1216	Philip II, Augustus, 1180–1223
Henry III, 1216–1272	Louis IX, saint, 1226–70
Edward I, 1272–1307	Philip IV, the Fair, 1285–1314

<i>Iberian Peninsula</i>	<i>Sicily (in the broad sense)</i>
Alfons VI, Castile, 1065–1109	Roger II, 1130–1154
Raymond Berenger IV, Catalonia, 1131–62	
Peter II, Aragon, 1196–1213	
Ferdinand III, Castile, 1217–1252	Frederick II, 1197–1250
James I, Aragon, 1213–1276	Charles of Anjou, 1265–1285
Alfons X, the Wise, Castile, 1252–84	Peter of Aragon, 1282–85

Political and religious map of Europe 1097:

[http://www.law.harvard.edu/faculty/cdonahue/courses/CLH/images/europe\\_mediterranean\\_1097.jpg](http://www.law.harvard.edu/faculty/cdonahue/courses/CLH/images/europe_mediterranean_1097.jpg)



## II. Empire and Italy

1. The Diet of Worms (settlement of the investiture controversy) – 1122
2. The commune movement
  - a. Frederick Barbarossa crushes Roman commune – 1155
  - b. Lombard League supports Alexander III, defeats Barbarossa – 1176
3. Sicily and Naples
  - a. Constance of Sicily, daughter of the Norman king Roger II, marries Henry VI of Germany, their son was Frederick II
  - b. Frederick II deposed by Innocent IV at the council of Lyons in 1245
  - c. Charles of Anjou, the younger brother of Louis IX of France, conquers Sicily – 1266
4. Richard of Cornwall of England and Alfons the Wise of Castile vie for the imperial crown, but the electors give it to Rudolf of Hapsburg
5. The electors depose Adolf of Nassau – 1298
6. The effect of the collapse of the Hohenstaufen dynasty

The city-states of Italy (from a later period, but the origins were there in 1300):  
[http://www.law.harvard.edu/faculty/cdonahue/courses/CLH/images/Italy\\_1494\\_shepherd.jpg](http://www.law.harvard.edu/faculty/cdonahue/courses/CLH/images/Italy_1494_shepherd.jpg)



Europe in the middle of the fourteenth century:

[http://www.law.harvard.edu/faculty/cdonahue/courses/CLH/images/europe\\_1360.jpg](http://www.law.harvard.edu/faculty/cdonahue/courses/CLH/images/europe_1360.jpg)



### III. England

1. Relatively unified as a result of the Conquest in 1066.
2. Henry I develops the most powerful centralized fiscal and judicial institutions in all of Europe.
3. The Norman kings were also dukes of Normandy. Henry II's marriage to Eleanor of Aquitaine made him lord of an empire that included not only England but the western half of France as well. Control of such an empire demanded strong delegates in England to mind the store while Henry was away.
4. John lost Normandy in 1204 and with it much of the Angevin empire. The struggles that ensued with his own baronage and which led to Magna Carta in 1215 and the struggles of his son Henry III with the same baronage did not have to result in the development of parliament at the end of the 13th century but that institution is easier to understand if we keep those struggles in mind.

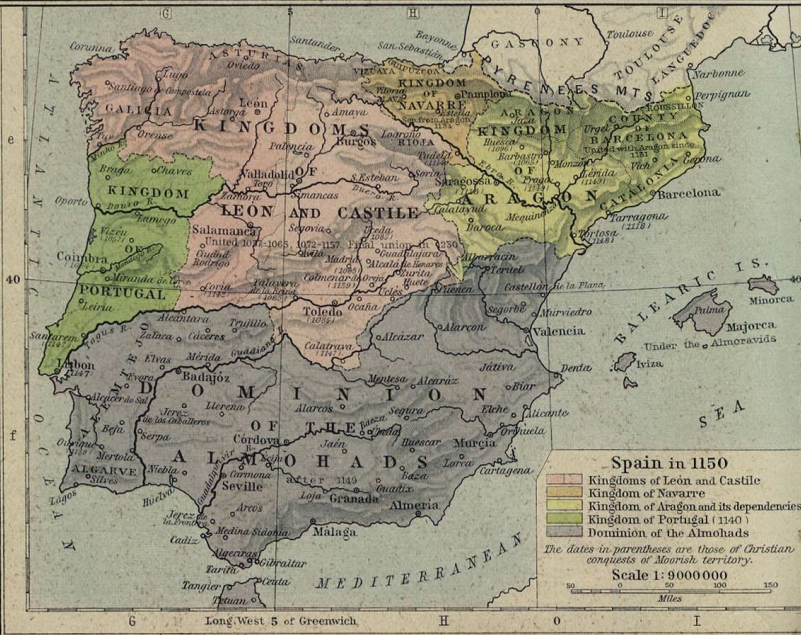
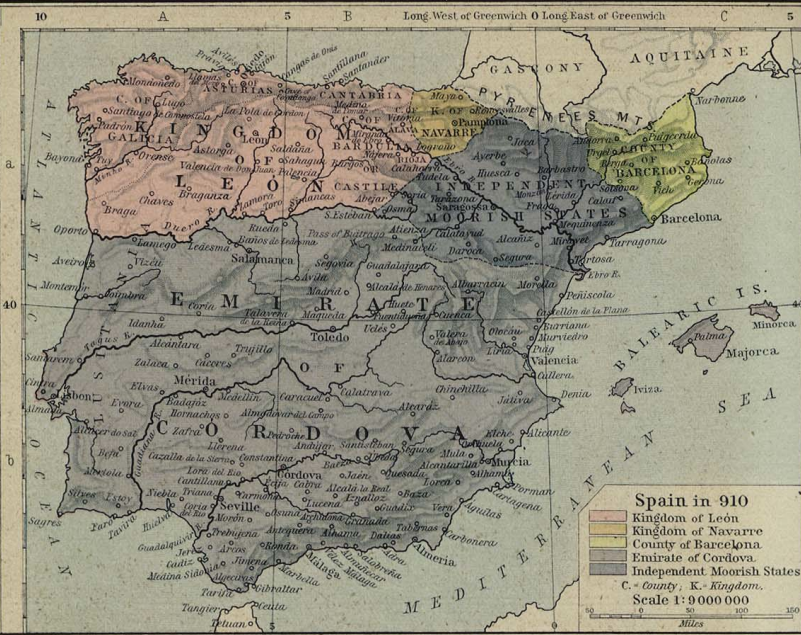
France, 1154–1184:

[http://www.law.harvard.edu/faculty/cdonahue/courses/CLH/images/france\\_1154\\_1184\\_france\\_0nly.jpg](http://www.law.harvard.edu/faculty/cdonahue/courses/CLH/images/france_1154_1184_france_0nly.jpg)



IV. France

1. Where England began the 12th century strong, France began it weak. The French king was surrounded by powerful vassals, including the king of England, the count of Flanders, the duke of Burgundy, the count of Blois and Champagne, and the count of Toulouse.
2. The French king had effective power only in the royal domain, at the beginning of the 12th century only a relatively small region around Paris and Orléans.
3. Philip Augustus recovered for the French crown all of the northern domains of the English king, Normandy, Brittany, Maine, Anjou and Poitou, and developed central financial institutions within the royal domain. He parallels the role of Henry I of England, a half a century later.
4. The Albigensian crusade in the beginning of the thirteenth century ended by uniting the great province of Languedoc to the French crown, and eliminating the independence of the count of Toulouse and virtually eliminating the power of Aragon on the northern side of the Pyrenees.
5. Louis IX and Philip the Fair were able to consolidate these achievements, to develop institutions both judicial and financial that would ensure both royal order and royal control within this greatly expanded royal domain. By the end of Philip's reign, we have clear indications of an institution known as the *parlement* of Paris and the beginning of an institution called the estates general. These institutions divided between them what was done in England in one parliament.



V. Castile and Aragon

1. In the 11th century the Christians in the northern fringe of the peninsula were organized into small kingdoms: Leon, Castile, Navarre, Aragon, and the county of Barcelona.
2. By the beginning of the 12th century Alfons VI of Castile succeeded in uniting the crowns of Leon and Castile and recovering the center of Spain, as far south as Toledo.
3. In the mid-12th century, Portugal became a separate kingdom.

4. In 1137, Raymond Berenguer IV, count of Barcelona, united Catalonia with Aragon by marrying the heiress to the Aragonese crown. Peter II of Aragon sided with the Albigensians and lost most of the control that Aragon had in southern France. His son, however, James I, conquered the Balearic Islands; later he reconquered Valencia from the Moors. He established his son Peter on the throne of Sicily (the island only) and Sicily became divided from the kingdom of Naples, a situation that was to last into the 15th century.
5. In the meantime, James's contemporary Ferdinand III of Castile recovered most the center of what is now Spain for Castile. By 1250 all remained in Moorish hands was a small area around Granada.

It was to remain in Moorish hands until 1492, 18 yrs. after the crowns of Castile and Aragon were united under Ferdinand of Aragon and Isabella of Castile. Alfons X of Castile had the job of consolidation and establishing institutions. He was only partially successful. Alfons never succeeded completely in bringing the nobility under his control. Leon, though it was united with Castile, had its separate cortes, an institution that roughly corresponds to the English parliament. Similarly, though the kingdom of Aragon, the county of Barcelona (now increasingly called Catalonia) and the principality of Valencia were all united under one crown, each had its own cortes. The nobility was strong in Aragon and Valencia, the cities in Catalonia. Navarre was not united with the rest of Spain until the 16th century.

#### VI. **The Growth of Institutions: Representative Institutions and Courts**

1. Diet of Roncaglia, 1158, Frederick Barbarossa:
  - a. counsel
  - b. oath-taking
  - c. judgment
  - d. urban element
  - e. the four doctors
  - f. the urban judges
2. By the end of the thirteenth century if not before these elements have been reinforced, at least in some areas, by some theory:
  - a. the idea of corporation (*universitas*)
  - b. the idea of power to bind (*plena potestas*)
  - c. the idea of consent (*quod omnes tangit debet ab omnibus approbari*)
  - d. the idea of *status* – state in both senses of the English word and ‘estate’
3. As the 12th and 13th centuries see a proliferation of institutions, developing out of older ideas of counsel, oath-taking and judgment, out of the growth of administration, out of the growth of corporate life, out of the church, it should not surprise us that things that look more like what we would call courts appear as spinoffs in different places.
  - a. the king or the pope or the emperor is the greatest judge of all
  - b. to give judgment in the central assembly was the most solemn kind of judgment one could give



- c. judges associated with the growth of administration
- d. by the middle of the 13th century almost every bishop in the West had his own court
- e. we are least well informed about justice at the lowest levels, particularly in rural areas

**Empire and Papacy – mid-12th through 13th Centuries**

**Empire and Papacy – Alexander III to Boniface VIII:**

1159–1181 – Pope Alexander III (controversy with Frederick I (Barbarossa) (emperor, 1152–1190; controversy with Henry II of England (1154–1189) leading to the martyrdom of Thomas Becket (archbishop of Canterbury, 1162–1170); Third Lateran Council (1179); development of the institution of papal judges delegate; large number of decretal letters)

1198–1216 – Pope Innocent III (high point of temporal power of the papacy; England becomes a papal fief (1213); Fourth Lateran Council (1215))

1227–1241 – Pope Gregory IX (relaxes pressure on Frederick II (emperor, 1211–1250); *Decretals* published (1234)

1243–1254 – Pope Innocent IV (deposes Frederick II at Council of Lyons (1245); with Frederick’s death in 1250 northern Italian Guelfs and Angevins (followers of Charles of Anjou, brother of Louis IX of France (1226–1270), and king of Naples and Sicily, 1268–1282) drive imperial power from Italy)

1294–1303 – Pope Boniface VIII (struggle with Philip the Fair of France (1285–1314) ends with the pope’s death; the papacy now becomes subject to the power of France)

**Popes, Emperors and Kings mid-12th through 13th century:**

<i>Popes</i>	<i>Emperors</i>	<i>England</i>	<i>France</i>
Alexander III, 1159–81	Frederick I, Barbarossa, 1152–90	Henry I, 1100–1135	
Innocent III, 1198–1216	Henry VI, 1190–97	Henry II, 1154–1189	Louis VII, 1137–80
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Boniface VIII, 1294–1303	Adolf of Nassau, 1292–98	Edward I, 1272–1307	Philip IV, the Fair, 1285–1314

**VII. *Regnum and sacerdotium*, 800–1300: A Better Way to Look at the Story?**

1. The reform movement (from 1000 into the 13th century) is much broader than the investiture controversy (1073 to 1122).
2. The theory of the reform movement
  - a. Moral reform of both clergy and laity
  - b. Separation of clerical from lay, to symbolize the separation of spiritual from temporal
  - c. The control of the temporal by the spiritual
3. The theory in support of *regnum*

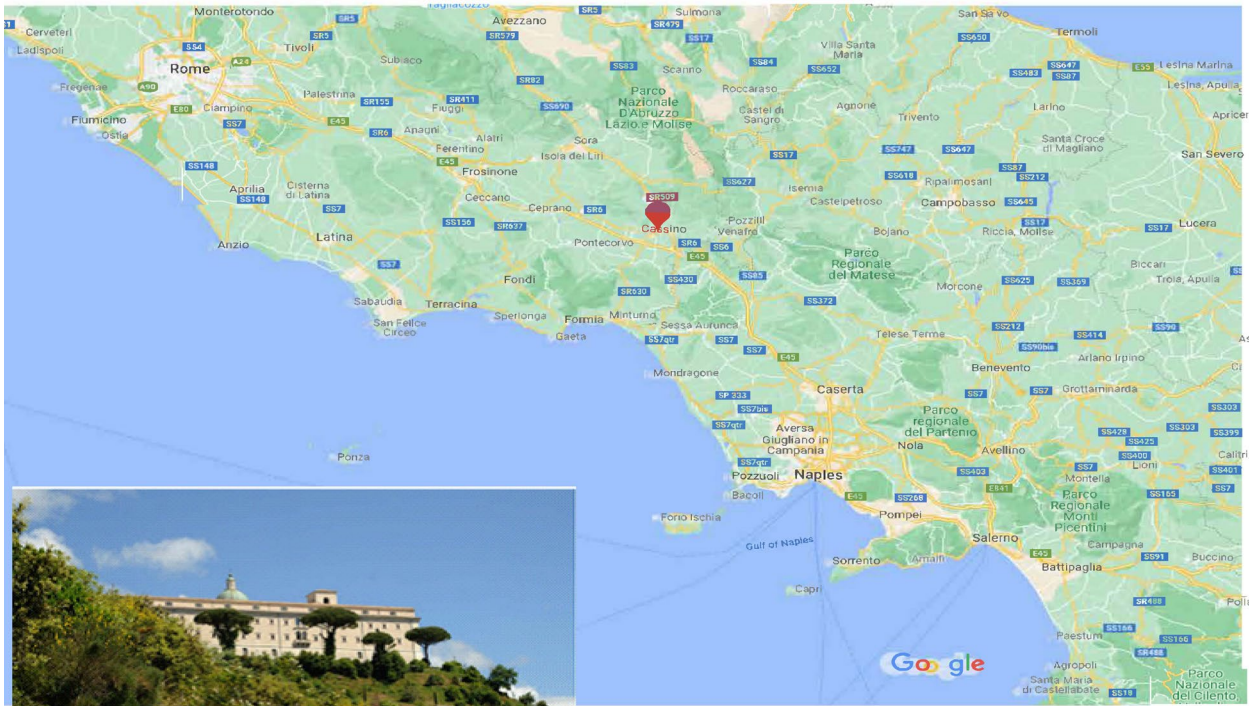
- a. Secular power comes from God
  - b. Theocratic kingship
  - c. Roman law
4. A move to the rule of law?
- a. On the secular side: the development of hereditary monarchies and lordships
  - b. On the secular side: parliaments
  - c. The development of courts, those of the church and those of the secular authorities, taming the exercise of local power

### The 'big bang'

#### The Origins of the *Studium* at Bologna:

a. Codex Florentinus (formerly Pisanus), the grandfather of all western manuscripts of Justinian's *Digest*, was in the library at Pisa from the 12th to the 15th century (1406), when it was taken to Florence as war booty, and where it has remained ever since. It dates from the late 6th century, and may be an official copy of the *Digest*. The manuscript may have been copied at Monte Cassino, during the abbacy of Desiderius, 1058–86 (later Pope Victor III, 1086–87). Beneventan marginal notes in the manuscript suggest that there may be some truth to story that the manuscript was at Amalfi (just south of Naples), but whether it was taken by Pisans when they captured Amalfi in 1135 cannot be certain. (The proximity of Monte Cassino to Amalfi can be seen on this [map](#), and below.)

Google Maps Monte Cassino



Monte Cassino

b. Recent work would put less emphasis on the importance of the Codex Florentinus in the development of the Vulgate edition of the Digest. The Digest is cited in a plea of 1076. A version of it may even have been known in Pavia as early as the 1030s. There is very little in the Vulgate Digest that has to have come from the Codex Florentinus.

c. Another probable legend? According to Odofredus (d. 1265): “A certain Sir Pepo began on his own authority to read in laws; nonetheless whatever there was of his science was of no moment. But Sir Yrnerius while he was teaching in arts in that city, when legal books were brought in, began on his own to study, and studying began to teach in laws, and he was of great name and was the first illuminator of our science, and since he was the first to make glosses in your books, we call him the lamplight of the law.”

d. Who was Pepo? He was probably not the schismatic bishop of Bologna in the 1080s, although that has been suggested. That he existed is certain, but very little is known about him.

e. Irnerius is better known, or, at least, a man named Warnerius or Guarenus, who is probably the same man. He appears in 14 documents, a number of which bear his signature. In 1112 and again 1113, he is a *causidicus*, or advocate, in pleas (the latter presided over by Matilda of Canossa, countess of Tuscany [1046–1115]). Between 1116 and 1118, he is described *iudex Bononiensis* (a Bolognese judge) in 11 documents connected the emperor Henry V during the latter’s second journey to Italy. He last appears in a charter of December 1125, where he continues to be called a Bolognese judge and assisted the monastery of Polirone (patronized by Matilda of Canossa and her followers) in an arbitration. The countess Matilda was a consistent supporter of the papacy during the Investiture Controversy, and, hence, an opponent of Henry IV and Henry V. That Irnerius is found in documents associated with both with Matilda and her party and with Henry V is surprising. He may have been a professional, in the sense that he could work for both sides and command the respect of both.

f. The pro-imperial chronicler Landulfus *junior*, writing probably in the 1120s or 1130s, tells of an intervention of a ‘Master Guarnerius de Bononia and many legal experts’ in the election in March 1118 at Rome of Maurizio Bourdin, who became the antipope Gregory VIII. A papal council held at Reims on 30 October 1119 excommunicated Garnerius along with Henry V. The excommunication was revoked, probably when that of Henry V was revoked in 1122, when the investiture controversy was settled.

g. Writing probably in the late 1160s or early 1170s, the third of the authors who goes under the name of Otto Morena, describing the supposed appearance of the ‘four doctors’ at Roncaglia sometime in the mid-1150s, tells us:

Sir Guarnerius, the old doctor [the word literally means ‘teacher’] was the lord and master of these four doctors and very many others. His students came to him when was dying and asked him: ‘Sir, whom do you want to make our teacher after your death?’ He replied to them in the two verses that follow:

‘Bulgarus os aureum, Martinus copia legum  
Mens legum Ugo, Jacobus id quod ego.’

“Bulgarus golden mouth, Martinus abundance of laws  
Ugo the spirit of the laws, Jacobus the same as me.”

We need not believe that anything like this happened. It is a reworking of a story told by Aulus Gellius about the death of Aristotle. It is followed by the equally apocryphal story of the emperor Frederick Barbarossa and the jurists Bulgarus and Martinus that ends in a triple pun about the

loss of a horse. What we probably should believe is that at Lodi, where the Morenas operated, a hundred miles from Bologna, a generation after his death, Irnerius was regarded both as a great teacher and as the teacher of the ‘four doctors’.

h. A decade or two later (probably between 1170 and his death in 1186) Robert of Torigni, abbot of Mont Saint Michel in Normandy and well-known chronicler made an interpolation in the chronicle of Sigebert of Gembloux († 1112) that reads under the year 1032:

Lanfranc of Pavia and Garnerius his companion [*socius*], there having been found at Bologna Roman laws that Justinian the emperor of the Romans had abridged and emended in the year 530, these, I say, having been found, they set to the task of reading them and expounding them to others. But Garnerius persevered in this. Lanfranc, however, taught many among the French liberal arts and divine letters. At length he came to Bec and became a monk there, as can be found in what follows.

If we take the year as being 1032 and the Garnerius being referred to as our Irnerius, this cannot be right. Lanfranc left Pavia in 1030s, which has to be before our Irnerius was born, and Lanfranc never again taught law. It has been argued, however, that we need not take *socius* chronologically and that there are connections between Irnerius and Lanfranc that we should take seriously.

i. At approximately the same time (before 1189), the English theologian and prolific author Radulfus Niger, writing in Paris, says:

When, therefore, the beginning of civil law was reborn by Master Pepo, like the rising dawn, and afterwards, Master Warnerius propagating the discipline of the law, it (probably the civil law) was brought to the Roman curia in a religious posture, and was spread out in many parts of the world, the laws began to be at once both honored and sought after . . . .

That is not, of course, the comparative assessment of Pepo and Irnerius that Odofredus gives, but Niger does recognize that Irnerius ‘propagated’ (?taught) civil law.

j. The most interesting notice of Irnerius by a non-lawyer is, unfortunately, the latest. Writing probably in the late 1220s, Burchard of Biberach, provost of Ursperg, says:

In these times [he is speaking of the first decades of the twelfth century], Master Gratian compiled the canons and decrees, which were dispersed in various books, into one work, and adding to them authorities of the holy fathers as was fitting, he adorned his work rationally with judgment . In the same times, Sir Irnerius renewed, at the request of the countess Matilda, the books of the laws that were long neglected and no one studied them, and accoding as they had been at one time compiled by the emperor Justinian of divine memory, adorned them with a few words placed here and there.

Burchard then goes on to describe quite accurately the four parts of what a later age will call the *Corpus Iuris Civilis*. It certainly looks as if he had seen manuscripts of Gratian and early manuscripts of the Roman *libri legales*. His description of Gratian’s contribution looks like a description of the *dicta Gratiani*, whereas his description of Irnerius’ contribution to the *libri legales* would fit well with manuscripts that had Irnerius’ interlinear or marginal glosses. That Burchard accurately described manuscripts that existed in his time does not, of course, mean that he got the chronology right. It is, however, interesting, and perhaps significant, that he regards Gratian and Irnerius as contemporaries.

k. A collection of patristic texts, principally those of St. Augustine, known as the *Liber divinarum sententiarum*, is attributed two of the three surviving manuscripts to a Garnerius. In one of the manuscripts the scribe has interlined above the name ‘legis peritissimus’ (‘most expert in the law’). An analysis of the contents on the manuscript under the titles about the sacraments suggests that the patristic extracts were chosen to support the position of Lanfranc in his famous debate with Berengar of Tours about transubstantiation (the real presence of Christ in the Eucharist).

l. Views on Irnerius’ intellectual context vary widely. Ennio Cortese’s practicing lawyer who started to read the *libri legales* in order to help notaries, advocates, and judges do their mundane jobs, sits somewhat uneasily with Orazio Condorelli’s intellectual sparkplug of the election of Gregory VIII, even more uneasily with Andrea Padovani’s genius who participated in the debate between Lanfranc and Berengar of Tours about transubstantiation, and even with Giovanna Nicolaj’s hunter for manuscripts of what became the *Corpus Iuris Civilis*. Perhaps it is Irnerius, the early 12th-century humanist, the teacher of arts, who ties them all together.

**Glossators** (B=Bolognese; M=‘Gossiani’):

- a. Irnerius (d. c. 1130, perhaps a bit later)
- b. Martinus Gosia (d. c. 1160), Bulgarus de Bulgarinis (d. c. 1166), [H]Ugo de Porta Ravennate (d. 1166 X 1171), Jacobus de Porta Ravennate (d. 1178) – the four doctors – advised Frederick I at the Diet of Roncaglia in 1158
  - c1. Rogerius (d. c. 1170) (M), Johannes Bassianus (d. c. 1190) (B), Placentinus (d. 1192) (M), Vacarius (d. c. 1198)
  - c2. Pillius Medicinensis (d. c. 1210) (B), Azo (d. 1220) (B)
  - d. Hugolinus (d. c. 1235), Roffredus (d. c. 1243), Accursius (d. 1263), Odofredus (d. 1265), all students of Joh. Bas. and/or Azo

1. The teaching of law began with a text, in this case the *Corpus Iuris Civilis*, and the principal function of a lecture was just what the word implies etymologically, reading the text. There was nothing new about reading a text and about glossing a text. What does seem to be new was that in addition to what we might call the simple gloss, the marginal or interlinear annotation that explains a word or passage, the legal glossators of the 12th century focused on parallel passages. Where else in the book is this topic treated and is the treatment similar to or different from the treatment given here? Finding parallel and contradictory passages leads to attempting to resolve the contradictions. And the methods of resolution that they used have been used from that day to this. They are the heart of what we call legal method, “thinking like a lawyer.”
2. Even this may not have been totally new with the earliest glossators of the Roman legal texts. Some of the same methods may already have been being used with the Bible. Ivo of Chartres, a French canonist of the late 11th and very early 12th century, has an extraordinary preface to his canonic collection called *Panormia* that lays out a method for resolving contradictions among the canons in abstract form. But in the glossators of Roman law, we see the program carried out with an extensive body of legal material. In the next lectures, we’ll look at some examples of what they did.

### **Why did Bologna happen?**

How would you evaluate the following propositions as “explanations” of the extraordinary revival of legal studies in the twelfth century? You may take the “facts,” some of which are controversial, as true.

1. *The conflict between regnum and sacerdotium.* As we have seen, just because the investiture controversy was settled at the beginning of the 12th century that doesn't mean that the tensions that underlay it disappeared nor does it mean that reformist zeal ceased. The 12th century, after all, was the century of the conflict between Becket and Henry II of England, Alexander III and Frederick Barbarossa.

2. *Economics.* The twelfth century saw an extraordinary revival of economic activity. Numbers are hard to come by, but some economic historians estimate that the percentage growth of gross domestic product in western Europe in the twelfth century was greater than in the sixteenth century, perhaps even than in the nineteenth century (the other two leading candidates for the centuries of greatest economic growth before the twentieth).

3. *The revival of culture.* In France, there is an extraordinary flowering of sculpture and architecture in the great Romanesque churches of central France and the very beginnings of Gothic in the north. There is a notable revival of secular literature. In the south of France the Troubadour poets develop a love lyric the likes of which had not been seen in the West certainly since the Romans and perhaps never before. It is the century of Abelard and Heloise, of Henry II of England and Eleanor of Aquitaine, of a transnational Latin culture. It is perhaps the last century in which a man named John could be born in Salisbury in England, write the first original treatise of political thought since the Romans in a Latin as good as Cicero's, and end his life as bishop of Chartres.

4. *Contact with the East.* The first Crusade was conducted between 1196 and 1199. Whatever its true motivations, it resulted in a Latin Kingdom in Palestine that lasted, at least in part, for almost two hundred years and brought renewed contact between the Christian West and the Christian, Muslim, and Jewish East. Importation of ideas of Roman law, particularly from Byzantium, may have stimulated interest in such law in the West.

5. *The revival of other kinds of disciplines.* The twelfth is a century of the study of the Bible and of what today we would call theology and philosophy in the monastic and cathedral schools, particularly in France. Abelard (d. 1148) is a major figure in this tradition, but his work probably comes too late to have influenced the beginnings of university study of Roman and canon law. The glossators of the Bible, however, certainly are early enough. The twelfth was also the century that saw by its end the development of a new discipline for which they still did not have a name but which we call moral theology.

5. *Increase in judicial activity, particularly in Italy.* We know that in the eleventh century and probably before there was a law school at Pavia where Lombard law (a Romanic-Germanic mix) was studied. A recent book (by Charles Radding) has pointed out that the Pavese jurists served as judges, and Radding tries to argue that they were beginning what we might call legal method. There probably isn't enough material that certainly antedates the revival at Bologna to make that statement with any confidence, though practical concerns at a lower level than the high politics of the reform movement are almost certainly important in the development of the method and of Bologna. All of the first Bolognese civilians are known to have acted as judges. An even more recent book (by Anders Winroth) argues that Irnerius was largely mythical and that the real study of Roman law doesn't get going at Bologna until the 1130s, by which time Gratian had already

composed the first draft of his *Concordance of Discordant Canons*. I have doubts about the extreme version of this thesis (though Winroth is not alone to have propounded it). I am, however, not a specialist in this period.

7. *The growth of canonic institutions*. That the growth happened is clear enough from what we have said above. We'll hear more about it. The problem is is this the chicken or the egg?

8. *Violence*. Despite all of these developments, which frequently go under the name of the "twelfth-century Renaissance" the twelfth century, particularly its first half was a very violent time. Castellans all over Europe beat up the peasants and spent a great deal of time fighting each other. The second half of the twelfth century, it has recently been argued (Thomas Bisson), sees the emergence of more centralized authority, itself pretty violent, but powerful enough to tame the castellans, at least in many areas. The more centralized authority (it wasn't always kings) used accounting and then law (indeed the two were inextricably intertwined) to exercise their power when they were not doing it with force of arms.