Laurent Mayali  
*School of Law, UC Berkeley.*

This is very much a work still in progress. It is part of my ongoing work for the past 30 years on the development of legal knowledge and the medieval construction of a Western Legal tradition. This short text is the introduction to my seminar at the EPHE, in particular the part that I will co-teach this coming May, with my colleague Irene Rosier-Catach in Paris on *Sémantique et droit: questions de sens.*

In part one of this paper I briefly present the medieval legal world. Part two considers the role of interpretation in the conception of medieval jurisprudence.

"The understanding of words should be done according to the cases because things are not defined by words but words are defined by things". Hilarius of Poitiers’s statement figures prominently in the title on the “meaning of words” that concludes the official and authentic compilation of pontifical decretals, known as the Liber Extra that was promulgated by pope Gregory IX in 1234. The author of this compilation, Raymond of Peñafort, lifted this text from a previous compilation, the Compilatio Prima, that was composed by the late twelfth century canonist Bernard of Pavia. Bernard’s decision to provide students of canon law with a collection of pontifical letters attested to the growing significance of papal power as one of the main sources of law in Christian society. By the end of the XIIth century, the canonists had become well-acquainted with the papal *ius novum* and their teaching reflected its growing importance. Their doctrinal accomplishment cannot be dissociated from the historical fortune of pontifical power. The rise of this power was in turn greatly shaped by the doctrines and teachings of the canonists. At the same time, the Decretals were gaining a wider recognition as shown by the number of compilations quickly following the trend that was first made popular by Bernard’s works. The first compilations of Decretals had transformed the canonists’ perspectives and confirmed the popes’ authority as law giver according to a model borrowed from imperial Rome. Thus the normative structure of canon law was altered by
the development of papal law, which absorbed the Roman imperial model and redefined it within the political and legal prototype of pontifical sovereignty. By the end of the thirteenth century, when the authority of the Decretals was no longer an issue, this phenomenon was perhaps nowhere more apparent than in the title devoted to the juridical rules (De regulis iuris), which concluded Boniface VIII’s Liber Sextus (1298). Out of the eighty-eight rules that composed this title, forty-four came from a similar title that ended Justinian’s Digest while the remaining half comprised rules that encapsulated some essential canon law principles. Yet, the whole title was conceived, presented and interpreted as the ultimate cornerstone of the Church’s legal order. Hence Boniface’s claim that, like Justinian’s before him, his own chest was the new receptacle of existing laws. These legal references reinforced the central place of the papacy in the representation of the universal church but also justified, from a legalistic stance, the enforcement of canonical procedure and the development of the Church’s institutions.

The emergence of medieval jurisprudence was part of an intellectual movement that had already affected the other fields of learning among which theological inquiry enjoyed primacy of place. At the crossroads of theology and law, it provided a model for the development of a new science of canon law which aimed at blending harmoniously sacramental tradition with more practical legal principles. In doing so, as Walter Ullmann has pointed out, religious doctrine had transformed into legally sanctioned rules of conduct that governed the acts and the beliefs of each member of the Christian community. Law acquired an essential function in the life of the church. It contributed to a new definition of its purpose and transformed its institutions for the centuries to come. From the start, Gratian's message was clear and confident. "Mankind is ruled in two ways by natural law and by mores." For the twelfth-century canonist, long before Thomas Aquinas and the revival of Aristotelian philosophy, natural law was the expression of God's will. The world was ruled by divine law and human law.

Throughout the second half of the twelfth century, the canonists found in Gratian’s Decretum the doctrinal material of an emerging jurisprudence that renewed in time the foundations of Church law. In the foreword of his Summa to the Decretum,
the decretist Paucapalea observed that “his [Gratian] intention was to set the decrees in order and on the surface to reduce those which are dissonant to harmony. The method of proceeding is as follows. Setting out to compose this works he begins in the first part with the division of law and custom, and then adding in a detailed manner their species, he probes each and everyone. He continues with the purpose of making laws and their function, then treats the number and order of the councils which of their decrees ought to take precedence over others. Finally he comes to orders and to ecclesiastical offices, teaching to whom and through whom they ought to be conferred. Then he moves on to cases, of which he gives a large and varied number. With questions having been formulated about them, he alleges authorities on this side and that, in affirmation and negation, and always strives to reduce to harmony those things which seem at first glance to be opposed. In the end he treats fully the dedication of churches, the body and blood of the Lord, baptism, and also confirmation, and with these things he concludes his treatise.”

This new iuris scientia focused on the interpretation of a series of rules regulating Church’s institutions and the government of Christian society in accordance with divine will. The canonists aimed also at developing a legal order that merged the growth of pontifical power with the enforcement of ecclesiastical discipline and the continuous pastoral care of the soul. As Stephan Kuttner has shown these efforts reflected the jurists’ notion of a harmonious world guided by divine law. This movement gave birth to a legal culture that combined under a single normative order the religious beliefs and the secular practices of God’s people. For the canonists, the study of law was mostly an effective expedient toward a higher goal. Following in the papal footsteps, the Decretalists aimed at developing a canonical jurisprudence which would encompass both the spiritual and the temporal dimensions of the Church’s mission. As in Stephan of Tournai’s planned dinner, jurists and theologians alike were summoned to witness the dawn of a scientia canonica: “If you invite two guests to dinner, you will not serve the same fare to those who demand opposite things. With the one asking for what the other scorns, will you not vary the dishes, lest either you throw the dining room into confusion or offend the diners? A Latin embraces unleavened bread, a Greek Leavened. If they approach the altar together neither despises the sacrifice of the other. I invited
two men to a banquet, a theologian and a jurist, whose tastes diverge toward different desires, since this one is delighted by tart things, and that one longs for sweets. Which of these should we offer, which should we withhold? Do you refuse what either one requests? If I propose to discuss the laws which appear in the present work, one skilled in law will endure it with difficulty. He will wrinkle his nose, shake his head, thrust out his lip, and what he deems to be known to himself he believes to be unnecessary for others. If I shall have begun to narrate the sacred deeds of the Fathers of the Old and New Testaments, a theologian will consider these remarks as useless and will both charge our little work with prolixity and accuse it of ingratitude. Let them mutually come down a peg; let them join together in healthy agreement; let them pay the costs of something useful; let the theologian not reject the laws under the pretext of sacred history, nor should one skilled in law dismiss with the haughtiness of the laws what is included in sacred history…

According to Henri de Suza, this knowledge was nothing less than the scientia scientiarum. Writing in the middle of the thirteenth century, the famous canonist (d. 1271) who was later created cardinal-bishop of Ostia taught in his lectures that "Although theology is the angels’ knowledge, while Roman law is the animals’ one, Canon law is indeed the human knowledge." Thus to the three stages of living creatures, both in heaven and on earth, corresponded a trilogy of theological, Roman, and canonical knowledge as well as the three conditions of the soul—synderesis, sense, and reason—that corresponded to the three forms of life.

The foundations of the canonica scientia were also solidly anchored upon the religious sources compiled in the Decretum. Gratian’s efforts to reconcile contradicting authorities into a harmonious concord of canonical rules, had not been lost on his successors. They quickly opened new paths leading to a more comprehensive integration of these texts in the definition of a legal order. Numerous instances of this course of action are to be found in the legal literature of this time. Some of these instances illustrate the fine balance between legal aims and theological provisions while others attest to the importance of biblical examples in the development of canonical doctrine. As to the latter Richard Helmholz has shown how the canonists’ interest in interpreting biblical narratives led to the formation of new legal rules. Hence it was the
interpretation of the story of Suzanna and the elders in the Book of Daniel which provided an opportunity to revisit the procedural rule for the examination of witnesses. xxiv

And yet the matter was not quite so simple. Making sense of those stories was no innocent matter for the canonists. They drew upon the biblical models to further illustrate the intricacies of the legal rules in a language and a form of belief that was broadly understood by a larger part of Christian society. This is not to suggest that the Bible was interpreted as the initial source of the canons. In the canonists’ eyes it was indeed part of the normative tradition of the Church but it did not represent the footprint of its legal order. xxv Whether this distinction was clear to people in the Middle Ages may be differently interpreted but there was nevertheless a fundamental difference of form and substance between the canons and the religious narrative. Making sense of those biblical texts led inevitably to the formation of a legal interpretation which achieved a triple function. On the one hand, it reduced the biblical story to the reactivation of a rule enforceable within a distinct legal system. On the other hand, it clarified the latent ambiguities of the ancient narrative thus giving it a conclusive validity and a new truth in the emerging jurisprudential discourse. The transposition of the biblical text in the legal system had also to coincide with its translation in the language of legal reason. Finally, with a reverse effect, it also positioned the law and its interpretation at the center of the sacred space delimited by the people’s faith. It thus merged the believer into the legal subject and changed his sins into legal offenses. As a result, legal rules were not only to be observed as was expected in any legal system but they were first to be believed in.

The analysis and exegesis of legal texts reached a new dimension while theological inquiries extended the predicament of salvation to the broader conception of the medieval political order and the common good of human society. To be sure, Roman law and theology never disappeared from the canonists’ textbooks. They were simply absorbed, interpreted, and replicated within a different political and intellectual framework where they eventually achieved a fresh significance. In the following centuries, this rather unique combination became one of the distinctive elements of the Western legal tradition. xxvi
The reference to a legal tradition in medieval Christian society raises the question of its origin. Over the past century, this question has been earnestly debated. Among the numerous suggestions, H. Berman's recent presentation of a papal revolution as the origin of the Western legal tradition should draw our attention. In this work, the author places emphasis upon the revolutionary character of Gregorian reform, which established the independence of the papacy from imperial power and redefined the identity of the Church and its clergy in a period of crisis of faith. According to H. Berman, this ecclesiastical reform launches the first of six revolutions that have shaped Western legal tradition; each revolution "established a new system of law" and "introduced fundamental, rapid, violent and lasting changes". This engaging interpretation raises, however, a series of questions which cannot be discussed within the limited scope of this paper. Suffice it to say, for our purpose, that the provisions and ecclesiastical rules put forward by pope Gregory VII could hardly be regarded as revolutionary. Including the well-known Dictatus Papae which were never intended as a program of papal government and the legal relevance of which was to be stressed later, the texts exploited by the Reformators were for the most part borrowed from the sources which had for centuries comprised the Church's legal tradition. At the same time, conciliar legislation was addressing with renewed energy but with little originality the prevailing problems of the moment. Its canons often reiterated the traditional provisions which had already been enacted against these recurring issues. Furthermore, the canon law's hierarchy of legal sources was not significantly modified. The ius antiquum sanctioned the primacy of the traditional auctoritates. Only later in Gratian's work is it possible to observe the gradual recognition of the pope's authority as a source of the ius novum. It would eventually be confirmed a century later with the promulgation of the Liber Extra by Gregory IX. This is not to say, however, that the importance of the Gregorian Reform should be undervalued. As P. Fournier wrote some time ago, this movement inaugurated a fundamental transformation in legal thought. But this change resided less in the nature of the law itself than in its interpretation. In one form or another, the corpus of rules which composed canon law was still the same. Yet the difference came from the change of attitude toward the legal sources which were now being considered from a novel critical standpoint. This intellectual movement that was undoubtedly
prompted by historical circumstance did not challenge the legal order. Indeed it may be that it attempted instead to preserve it by restoring the *Ecclesiae primitivae forma* in a time of spiritual and temporal uncertainty.\textsuperscript{xxxvi} In doing so, the Reformators limited their claims to a pastoral conception of the Church that was still remote from what would become the modern archetype of the secular state as expression of the rule of law.\textsuperscript{xxxvii} Such a task would be gradually performed, as we will see later, by the canonists of the following centuries with the help of the precepts discovered in Justinian's compilations. Thus the influence of Gregorian Reform was felt over a period spanning several centuries during which the goals of the Reform movement were eventually translated into durable legal institutions. In the XIth century, the papal initiatives were not the expression of a radical program aimed at a rupture with the legal tradition of the Church. In reality, one could argue that the Reform movement did not introduce revolutionary changes but rather inspired the subsequent rise of political doctrines that relied heavily upon a new interpretation of existing legal sources.

What has been said so far points to the difficulty of applying the law-revolution paradigm to the historical description of social and political events in medieval society. Indeed, this concept appears to be of little help to the historian of the Middle Ages and may instead entice a historical reconstruction influenced by an anachronistic perception of medieval legal institutions as the product of a sovereign state.

In addition the concept of revolution may also provide the jurist with an inviting hypothesis. With regard to legal theory, the emphasis placed on the revolutionary character of the law serves a methodological purpose involving both public and private laws. Thus, by identifying particular periods of rupture in the development of legal institutions, this theory contrasts the diachrony of the legal tradition with the synchrony of the political changes. The attention given to the sudden occurrence of legal change at a definite time suggests, therefore, a different representation of the development of a given legal system.\textsuperscript{xxxviii} The idea of rupture is opposed to the principle of a historical continuity which has prevailed in Western Europe for several centuries after the first glossators revived the forgotten Roman law. The development of the Western legal tradition is thus no longer characterized as a continuous progress of legal reason. According to the model of revolutionary dynamics, law is no longer, as Ihering wrote, a timeless struggle for the
assertion of everyone's rights but becomes a historically determined phenomenon which acquires a new reality through the actuality of the event.xxxix

Finally, the task of identifying a medieval revolution is further complicated by the difficulty of defining precisely the distinctive elements of a conjectural medieval legal systemxl that combined a variety of laws including urban statutes, customary norms, canonical rules, Roman law, feudal institutions and royal legislation. Taken separately, each of them might have represented a unique legal order but, from the XIIth century on, none was truly exclusive of the others. Their combination varied according to space, time and substantive legal issues. For instance, the renewal of jurisprudence in Northern Italy and Southern France contributed with varying success to the diffusion of some of the rules collected in the compilations of Justinian. But this process of romanization was not uniformly achieved across Western Europe. The Roman influence on the development of public local and national institutions and judicial procedure were apparent while its effects on private law were less so. Nevertheless, the conventional distinction between customs and Roman law that was for a long time considered almost absolute, does not accurately reflect the intricate connections existing between these rules of different origin.xli On one hand, Roman rules did not completely replace existing local laws. On the other hand, the customs were not always impervious to Roman principles.xlii Outside the academic circles and the royal and ecclesiastical courts, customary law was thriving. The passage from usages and customs to customary law revealed the growth of a legal sensibility that could probably not have been reached without the assistance of the Romano-canonical model.xlii But besides this intellectual influence, a few concrete Roman rules retained their original character even as they found their way into customs. At the same time, the spectacular growth of canon law following the monumental compilation of its sources by Gratian in his Concordia discordantium canonum otherwise known as the Decreta, gave the Church a legal authority and an influence which extended well beyond the religious sphere.. Hence the diversity of the normative sources, their multiple and mutual influences, and the great variety of legal solutions which were developed to meet the changing needs of individuals, private families, social groups as well as public authority evidenced an heterogeneity that the general principles of the ius commune could hardly harmonize into a single legal system. In fact, during this period,
the references to the principles of a *ius commune* formed by the *legum doctores* from their pulpit should not induce us to believe in the existence of a uniform system of positive law enforced across medieval Europe. It seems instead that the *ius commune* was more often the exception rather than the rule at a time when a system of central courts was still in its infancy in the rising national states. Similarly the meaning of these references reflected a different reality from place to place. Under these conditions, the factors of legal change were as diverse as the circumstances that required them.

This process of legal change transformed in various degrees the social and political scene of Western Europe. The new pattern of legislation that was emerging combined ancient privileges with new rights and mixed local usages with imported institutions. It thus created a unique body of laws where obsolete rules were preserved next to some more recent provisions that were not consistently enforced or followed in the daily life. In this perspective, the medieval legal changes had little in common with the radical purposes of later movements such as the French revolution when, according to Portalis' critical opinion, "All abuses are attacked, all institutions questioned....At each instant, changes are born upon changes, circumstances upon circumstances. Institutions succeed each other rapidly; no one can take hold of any of them; and the revolutionary spirit insinuates itself everywhere."xlv In many instances, successful legal implants resulted from the combination of different factors. Besides a political power which had the means to enforce its policy, they required the presence of learned jurists who could provide the legal models and adjust them to the particular needs of the society. By the end of the XIIth century, the development of a legal profession was affecting the composition of the social elite and the political balance of local powers in many communities.xlvi Medieval towns witnessed the ascension of these *legum doctores* or *iuris periti*, judges, lawyers and notaries, who enjoyed a monopoly in the exercise of the legal profession.xlvi Families, professional organizations, local lords, secular as well as ecclesiastical, were often relying on legal experts for advice and assistance in their numerous quarrels over feudal rights, privileges or business or family matters. In the vast majority of these cases, arguments were borrowed from the Roman law or from the local customs with more or less discernment. Thus changes could occur in the preparation of a private contract by a notaryxlvii as well as in the drafting of the local customs by a judge, a
public officer or some lawyer appointed for this task. In both cases, however, the new legislation rarely sanctioned a rupture with the past that was still presented and considered as the legitimate foundation of the current legal order. But changes, whenever and however they occurred, were usually intentional even in the absence of obvious political support. They did not remain unnoticed in a time when most of the rules and historical events were fixed in the collective memory and relayed orally despite the increased use of writing. The strong reverence for the past made it almost impossible for the medieval man to forget it. The authority of the custom resulted from the timelessness of its rules and its enforcement required the consent of all the members of the community. The new provisions did not challenge the preeminence of this legal order since their acceptance was often determined by their ability to pass for ancient usages. The mere mention of the *antiqua consuetudo civitatis* served a variety of purposes and allowed for the insertion of foreign institutions into the legal heritage of the city. It has been persuasively argued that the motivations of any revolutionnary initiative were not imperatively warranted by the need for novelty but could instead reflect the desire to resist such a change. In a period of deep transformations of the economical and social structures, the medieval laws assumed a double function both as factor of innovation and agent of conservatism. The vast majority of medieval customs was concerned with the preservation of a cultural legacy in addition to the origination of new legal techniques, in particular in the area of civil and criminal procedure. In the area of private law, the conflicting interests of the family and of the individual prescribed a conservative attitude which favored the interests of the group. Large parts of private law remained largely impervious to outside influence. In the legal practice, the adoption of Roman rules in some areas was the most obvious exception. It did not, however, radically challenge the existing social habitus but rather accommodated and underscored its main inclinations by providing the legal instruments required for this purpose.

Perhaps the most spectacular result of this legal evolution was the multiplication of local and regional customs. Ancient communities, newly created boroughs, provincial territories and seigniorial domains were increasingly distinguished by the sets of legal provisions enforced within their geographical boundaries. To the inhabitants these laws undoubtedly strengthened the distinctness of their communities and defined a model of
private and public conduct. This regulation of social relationship within the boundaries of the community received particular consideration in the urban customs, where allusions to peace and harmony were often put forward. However, these allusions are perplexing. On one hand, they might indeed be the expression of a compromise between different local powers dictated by some political realism. On the other hand, they reflected an idealized conception of the law as an instrument of peace and social harmony. Here the influence of both Roman law and the teachings of the Church become obvious. Justinian's constitution *Imperatoriam majestatem,* which introduced the Institutes to the law students, asserted the importance of law in times of peace. Its meaning did not remain unnoticed. Among the numerous commentaries, a *Summa Institutionum,* written in England around 1200, explained this passage in the following terms: "One might say to Justinian that it would suit His Imperial Highness better to furnish His Majesty with arms than with laws. His reply is that there is a time of war and a time of peace; in time of war the need is for arms, in time of peace for the support of laws." Moreover, since the Gregorian Reform, the Church authorities had relentlessly promoted the model of a *pax christiana* in the opinion of the feudal lords.

In fact, the novelty is to be found less in the originality of the legal provisions than in the form in which they were being presented. This symbolic significance was certainly not lost on the people, who often referred to their customs as liberties. The liberties of a town did not sanction the independence of the community from weak seigniorial or royal control but rather characterized its particular status as shown by the generous use of this term to describe provisions such as immunities, exemptions and privileges. The creation of new solidarities centered around these privileges cemented in turn the cohesion of the community. This attitude was unmistakable evidence of the emergence of a legal reason that would later contribute to the development of the modern idea of the state as the expression of the rule of law.

Perhaps, then, in the absence of a unique political event accountable for a radical and sudden change of a presumed medieval legal system, one may conclude that the most important phenomenon for the medieval legal tradition was what P. Legendre has accurately described as the revolution of the interpreter. Let us return to Bernard of Pavia and his treatment of Hilarius’s remark. Bernard’s decision to include a title on the
signification of words at the end of his compilation reflected the growing importance of interpretation in the development of legal knowledge. As Bernard observed, such a title was the title of all titles (titulus titulorum). It was the cornerstone of a legal system which sprang out of the exegesis of a variety of texts that had accumulated over a period of more than a thousand years. Since Gratian and his concord of discordant canons, the ordering of texts in a harmonious construction represented also the ordering of Christian society around a central power. Gratian’s achievement was viewed as a work of true authorship in a process that transformed the former compilator into a respected author who renewed the meaning of the old legal works and their often contradicting rules. What distinguished the mere compilator from the genuine author was the author’s ability to interpret the conflicting texts and disagreeing opinions. In doing so the interpreter was providing a definite judgment that elicited the substantial meaning and redefined the text within his own work. In the foreword to his Summa, Stephan of Tournai outlined Gratian’s unique status: “I should properly say that Gratian is the composer (compositor) of this work, not the creator (actor) of the laws, for he brought together in this volume – that is, he arranged in order – rulings enacted by the holy fathers. He was not their creator (actor) or framer, unless someone wishes to say that he is thus the author since he offered on his own in his dicta many things for clarifying and explicating the opinions of the holy Fathers.” The function of the canonist as author of a legal work was well understood among later commentators to the Decretum. Writing a few decades after Stephan, the author of the Summa “Antiquitate and tempore” gave praise to Gratian’s achievements insisting as he observed: “He, however, treats the canons, by establishing a threefold teaching: moral, judicial, and sacramental The moral is that by which he teaches mores, for example, about the distribution of alms, about penance, about confession, and things of this sort. The judicial shows how judgments should begin, proceed, and conclude. Finally, the sacramental concerns baptism, marriage, and the like.”

Bernard’s work was the first collection of Decretals that enjoyed broad recognition in the bolonese studium. Its composition in five titles became the model for all subsequent collections: “ibidem: ”Modi significandi sunt sex, scil. duo vocum et quatuor rerum. Vox enim significat duobus modis, naturaliter et ad placitum; naturaliter
ut latratus canum et gemitus infirmorum, nam latratus iram, gemitus dolorem significat; ad placitum, ut hoc: nomen Bernardus significat Bernardi personam. Res vero significat quatuor modis, scil. per institutionem, per similitudinem, per usum, per naturam; per institutionem, ut hoc: littera a significat hoc elementum a, similiter sonus tubae significat preparationem ad bellum; per similitudinem, ut arca Noë significat ecclesiam, David Christum, Job poenitentem; per usum, ut circulus significat vinum venale, ramus in capite equi significat ipsum venalem, focium in cornu bovis ipsum cornupetam indicat, nutus intrinsecam voluntatem, ut Dig. de legat. Nutu; per naturam, ut urina intensa distemperantiam caloris, subitus rubor faciei verecundiam significat."

“There are six ways to signify, two by sounds and four by things. On one hand, The sound signifies in two ways, naturally and conventionally; naturally such as the barking of the dog and the of the wounded, barking means angriness while means pain; conventionally such as the name Bernardus points to the person of Bernard. Things, on the other hand signify in four different ways, by arrangement, similitude, usage and nature; arrangement such as the letter a means this element a, same wise the sound of trumpets is a sign of the preparation for war; by similitude such as Noah’s arch indicates church, David indicates Christ, Job a penitent; by usage such as the circle indicates the wine for sale; the fenugreek on the cow’s horn warns of the danger of goring; the head movement indicates the internal will such as in the Digest, title De legatis, lex Nutu; by nature, such as a concentrated urine indicates a wrong balance of aqueous humors; and the sudden blush on the face indicates shame.”

Bernard added that each one of these modes of interpreting signs corresponded to distinct kinds of knowledge. The first mode related to the philosopher’s knowledge. The second was the province of the grammarian. The third was common to all mankind. The theologians enjoyed the fourth. Usual meaning was common to all people. The medical doctors shared the sixth and last one. Thus Bernard’s demonstration followed an ancient hermeneutic tradition that gave to things a precise meaning. To know how to solve their riddles, to interpret their messages but also to reveal their implicit truths were the tasks that were constitutive of knowledge. The ambiguity of the words required, on the other hand, taking into consideration the intention of the author. This intention could be presumed from a variety of clues since words should be considered only for what they
were only in the most extreme circumstances when all other indications were not available. But Bernard recognized that unavoidable human limitations prevented a perfect knowledge. Therefore this method of interpretation was fundamental to the search for the true meaning of words. Up to this point, Bernard’s claims were far from being original. The examples quoted in his brief account were indeed lifted from the works of philosophers and grammarians who had already addressed this issue. But for the canonists, the stakes were somewhat different because the interpretation of legal rules eventually defined and governed human actions.

Writing a few years later, Ricardus Anglicus included Bernard’s definition of *significare* in one of his well-known distinctions that were included in his own commentary to the *Compilatio Prima*, written under the pontificate of Celestin III between 1191 and 1198. Richard reproduced also Bernard’s comments on the different types of signification while insisting on the importance of the meaning over a too literal understanding of the words. (“Plus sensum quam verba attendendum,” MS Halle Ye. 80 fol. 77 ra-rb and Bamberg Can. 20, fol. 54 va). But Richard added one more argument on behalf of the necessity of a correct interpretation. It consisted simply of a reference to an opinion of Augustine about lying that Gratian had inserted in his Decretum (C.22 q. 2 c. 4: “It is not lying when one said something false when he thought it was true”). Replaced in connection with this text, Hilarius’ comments assumed a new meaning. The reference to Augustine’s comment placed the issue of interpretation within the relationship between intent and truth thus introducing an argumentation based both on a dialectic of good and evil and of lie and truth that governed, as shown by Pierre Legendre (Amour du censeur, p.99 ss) the construction of the canon law system. The interpretation and the explanation of the legal texts were the foundations of the exegetic method that established the knowledge of the medieval doctors. The interpretation of the text was defined as the search for the true meaning of the words. It was also a process of transfer of the truth found in the auctoritates (Holy scriptures, counciliar canons, papal decretals, writings of the Father of the Church) to the commentary itself. The status and legitimacy of the medieval jurist resulted essentially from this interpretative function. As interpreters of the law, they uttered the true words. The insertion of Hilarius’ text in the canon law
corpus was part of the jurist’s efforts to define the scope of his function. It also placed the interpretation of signs at the heart of the conception of legal knowledge.

A few years after Richard’s comments, another English canonist, Alan, established a correlation between the thing (res) and the thought (intellectus). In doing so, Alan called attention to the prevalence of the thought over the word just as the spirit prevailed over the body. To decide on the prevalence of the mind required the respect of the nature of the thing, as a codified signifier, while at the same time the words could receive different meanings even the ones which were initially external. This prevalence was no longer disputed when Tancredus wrote his glossa ordinaria to the Compilatio Prima between 120 and 1215. Thus within a few decades, the canonists were able to develop envision a doctrine of sense as a cornerstone of the social and legal order while instituting a system of interpretation that validated the authority of speech in its rapport to a form of truth. As a result truth was no longer embedded in the text but resulted from the interpretation.

Johannes Teutonicus, the author of the glossa ordinaria to the Decretum, summed up the consequence of such a doctrine when he observed that “One must consider more the spirit or the opinion than the fact or the truth.” In John’s views, the opinion that was opposed to the truth was not to be confused with the common view of the people. He referred once more to Augustine’s comment on lying and perjury in order to outline the contrast between such an opinion and what he called the verum intellectum, representing in his mind a true sense of the words that did not depend on the speaker’s intention since he could not always know whether he spoke the truth or not. In his quest for this true sense, the canonist looked beyond the speech and the speaker in order to find in a mens loquentis that was objectified by a signifying process leading to an other form of truth which could sometimes escape the awareness of the speaking subject. This observation lead to two consequences. First, truth no longer resided in the signified but in a newly redefined signifier. Second, the dissociation of speech and thought resulted in the partition of the subject who was dispossessed of his words and recast as a legal subject endowed with a different meaning. Depending upon diverse circumstances, this subject could be lawmaker, judge, spouse, witness, parent, accused or criminal. He could contract a sale or a loan, dictate his last will, and mandate or
represent someone else. But these legal categories were part of the same order and operated according to similar principles. This sort of transfiguration was not surprising to the medieval jurist who observed with Accursius, the author of the glossa ordinaria to the compilations of Roman Law that “everything rests within the body of the law”.lxxi

By the time that Raymond of Penafort began his work on Gregory IX’s projected collection, canonical jurisprudence was firmly established. The exegesis of Hilarius’ text was part of the school’s teaching. This doctrinal tradition supported the rise of the pontifical power that was both the source and the interpretation of Church law. The Liber Extra was both a founding text and a commentary. The papacy could use Hilarius’ text in order to keep control of its own law. In the bull rex Pacificus promulgating the collection, Gregory IX forbade the use of other collections. The canonists concluded that the use of a collection that was not authorized by the pope amounted to committing the crime of forgery. The update of the pontifical rules that was achieved by Raymond under Gregory’s guidance provided a legal interpretation of a multi secular tradition that became part of the present legislation. In 1243, following Gregory IX’s death and the short pontificate of Celestin IV, Sinibaldus Fieschi, a former bolonese professor and well regarded jurist, was elected as pope Innocent IV. He had studied law with the famous civilists Azo and Accursius and followed the lectures of the canonists Johannes teutonicus and Jacobus d’Albenga. Once elected pope, Innocent decided to write a commentary on the Liber X, drawing upon his many years of former teaching. Written between 1246 and 1251, this major work was largely diffused in the schools and its influence was felt through several generations of canonists. Innocent did not give much attention to Hilarius’ text since he agreed with the opinion of his predecessors. He reaffirmed nevertheless the equivalence between res and intellectus. A similar comment is found in the glossa ordinaria to the Liber Extra where Bernardus de Parma underscored once more the danger of the misleading words and the necessity to strictly adhere to the intention where laid the roots of reason.

Goffredus de Trano was created cardinal by Innocent IV. Before that, he had spent many years lecturing on the Decretals before deciding to bring together his lectures in one book, a Summa Decretalium, for the benefit of student and members of the papal curia. In his opinion, the imperfect relationship between words and things led to more
radical consequences because it was the interpretation of the speech that eventually reinvested the speaking subject with the true meaning of his words. For Goffredus, to talk was not to signify and to signify was more that to tell something: “If speech does not exist without the action of the mind, the person who talks against the mind does not tell anything. He does not tell what he thinks because his voice does not tell anything nor does it mean anything because it means what he does not think. Therefore he tells nothing.” Perhaps, Goffredus meant to give new meaning to the expression “to talk drivel”. But he clarified his intention when he observed that “the word is God’s son because the will of the Father is expressed by the son of God just like the will of man is expressed by his words.”

This doctrine remained unchanged during the final centuries of the Middle Ages. For instance, in the last extensive commentary to the Decretals, Nicolas de Tudeschis dutifully reiterated his predecessors’ opinion. He reminded his lectors that listening to words and considering their meaning was not sufficient. One had instead to consider the causa dicendi and the intention. Lecturing on the same issue, Philippus Decius stated once more that the “words are ruled by the mind and reason of the person who arrange them. The spirit and the reason of the law are the soul of the law, therefore one should pay more attention to the mind than to the words which are just like the body”. It was not much different from what Gregory IX had claimed in the presentation of his collection in order to make sense of the mass of decretals issued by his predecessors. In Philip’s statement, however, the reference to anima (soul) instead of animus (spirit) emphasized the essential place of the intention in the normative authority of the legal rule. It was in this anima, sought after and identified generations of doctors who followed in Gratian’s footsteps, that the legal text regained permanence and stability, far away from contradictions, duplication and incoherence. As cardinal Hostiensis had long ago noted, the “words of things are everlasting while the words of men are varying.” It was the task of the new jurisprudence and its doctors to reconcile these two extremes into a legal language where the order of things imparted some sense on the words of men.
i Liber X. 5.40.6: "Intelligentia dictorum [verborum] ex causis est assumenda dicendi, quia non sermoni res, sed rei est sermo subjectus


vi Bernard of Parma, *Glossa ordinaria ad Librum Sextum*, VI.5.18; see also, one century later, Petrus de Ancharano, In *commentaria*

vii VI.// voir aussi Cortese


Hostiensis, Summa Aurea, Lyon 1556, fol. 3rb.” Est igitur hec nostra scientia non pure theologica sive civilis sed utrique participans nomen proprium fortita canonica vocatur...et hec nostra lex sive scientia vere potest scientiarum scientia nuncupari”; see also Innocent IV, Commentaria, op. cit.: “quod in hoc volumine multi casus et articuli utiles et necessarii tam in consilliis animerum et poenitentiali foro quam in regendis et disponendis ecclesiis et rebus ecclesiasticis et pretatis”; Juan de Torquemada, In Gratiani decretorum primam doctissimi commentarii, Venise 1578, fol. 4b n. 1.

g. Le Bras, Théologie et droit romain dans l’oeuvre d’Henri de Suse, Études historiques à la mémoire de Noël Didier, Grenoble 1960, 197 et ss.

J. Gaudemet, ‘La doctrine des sources du droit dans le Décret de Gratien.' Revue de droit canonique 1 (1951) 1-31, now in La formation du droit canonique médiéval. Londres, 1980, VIII.


H. Berman, Law and revolution, op. cit., p. 19.


C. Munier, L’autorité de l'Eglise dans le système des sources du droit médiéval, in La norma en el derecho canonico, Pamplona 1979, pp. 113-134.


xxxvii On this matter P. Fournier's remarks still provides an accurate account of Gregory VII's attitude: "Autant et plus que ses adversaires, le pape tient à s'appuyer sur les précédents; pour leur enlever l'argument traditionnel, il s'attache à établir qu'il ne fait que remettre en vigueur les lois antiques de l'Eglise.", Un tournant de l'histoire du droit, op. cit., p. 385 (141).


xlii A. Rigaudière, Princeps legibus solutus est (Dig. 1,3,31) et Quod principi placuit legis habet vigorem (Dig. 1,41, et Inst. 1,2,6) à travers trois coutumiers du XIIIè siècle, in Hommages à Gérard Boulvert, Nice 1987, pp. 427-451.


xlix See, for instance, the import of the Lombard rule of exclusion of the daughters who had received a dowry in the customs of Arles or Avignon (1164-1170), L. Mayali, Droit savant et coutumes. L'exclusion des filles dotées (XIIè-XVè siècles), Frankfurt-am-Main 1987, pp. 15-33.


liii J. Hilaire, La vie du droit, Paris 1994, in particular pp. 21-82.
liv Inst. Poom: "Imperatoriam majestatem non solum armis decoratam, sed etiam legibus oportet esse armatam, ut utrumque tempus et bellorum et pacis recte possit gubernari."
lxv "Res: id est intellectus" Paris BN lat. 3932, fol. 69rb; Munich SB. Lat 3879, fol. 96vb; Karlsruhe, Aug. XL. Fol. 81va.
lix Ibidem, subjectus: "Ut ad ipsum trahitur sensus est intellectus loquentis non debet retorqueri ad eius uerba sed uerba ad intellectum quantum sicut animus prefertur corpori ita sententia uerbis ut di. xxxviii sedulo (Decret, Dist. 38 c. 12) et est hinc simile xii q. v humane.(C. 12 q. 5 c.)
lii S. Kuttner- E. Rathbone, Anglo-Normans canonists of the Twelfth Century, Traditio 7 (1951) 279 et ss.
lixii C. 22 q. 2 c. 4, "Non est mentiri dicere falsum quod putat verum".
lixiii "Res: id est intellectus" Paris BN lat. 3932, fol. 69rb; Munich SB. Lat 3879, fol. 96vb; Karlsruhe, Aug. XL. Fol. 81va.
lixiv C. 22 q. 2 c. 4, "Non est mentiri dicere falsum quod putat verum".
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lixvii Ibidem, Alanus Anglicus: "arg. Quod verba ad extraneum sensum sunt trahenda ubi res aliter salva esse non potest."
lixviii Jean le teutonique, Glossa ordinaria in Decretum, Lyon 1512, C. 22 q. 2 c. 4, ad animum: "plus considerari animum vel opinionem quam factum vel veritatem ut extra. de bigamis. Nuper, iii, q.vii § tria, i. q.i, Siquis a simoniacis, xxxviii, dist. Sedulo."
lixix C.22 q.2 c. 4, .."Non consideratis itaque rebus ipsis, de quibus aliquid dicitur, sed sola intentione dicentis, melior est qui nesciens falsum dicit, quoniam id verum putat, quam qui mentiendi animum sciens gerit, nesciens verum esse quod dicit."
lix Most of these categories are described in details in numerous treaties of legal procedure (ordines iudiciarii), L. Fowler-Magerl, Ordo iudiciorum vel ordo iudiciarius. Repertorien zur Frühzeit der gelehrten Rechte. Ius commune Sonderhefte, 19, Francfort/Main 1984, 1-31.
Accurse, Glossa ordinaria in Digestum vetus, D. 1,1,10, notitia: "Nam omnia in corpore iuris inveniuntur".


Bernardus Botone Parmensis, Glossa ordinaria in quinque libros decretalium, X. 5,40,6, subiectus: "id est, intentioni seu intellectui sermo servire debet quia non in foliis sed in radice rationis et in sensu consistit Evangelium...verba enim instituta sunt ut per ea quis in alterius notitiam cogitationes suas proferat (Decret C. 22 q. 2 c. 4) quia sicut animus praefertur corpori, ita sententia verbis.."


Goffredus, ibidem, De verborum significatione, fol. 247: "Enim quemadmodum verbum procedat ex animo ream linguam non facit nisi rea mens ut probantur hec xxii q.ii, is autem (C. 22 q. 2 c. 4) et cap. Homines, in fine (C. 22 q.2 c. 3). Unde versus. non nisi mente rea sit mea lingua rea. unde qui contra mentem loquitur nihil dicit quia non dicit quod cogitat quia vox illud non signat nec dicit quod vox signat quia illud non intendit. igitur nihil dicit."

ibidem, "Verbum autem dicitur filius dei quia et sicut per verbum exprimitur voluntas hominis sic per filium dei voluntas patris.."

Nicolas de Tudeschis, le Panormitain (fin XVème), Lectura super quinto libro decretalium, Lyon 1522, fol.256 va."Casus literalis: Cum aliquis audit aliqua verba considerare debet causam dicendi et non ipsam significationem verborum tantum: quia verba deserviunt intentioni et non intentio verbis: verba enim inventa sunt ut per ea intentionem suum quis exprimat."

Philippe Decius, Super decretalibus, Lyon 1564, X. 2,28,51, fol. 316vb: "Primo not. quod verba regulantur secundum mentem et rationem disponentis...Mens enim et ratio legis, anima legis dicitur ideo mens potius attenditur, quam verba que sunt tanquam corpus."

Henrici cardinalis Hostiensis, Summa Aurea, Lyon 1556, fol. 446vb, Qualiter verba dubia interpretantur: "Rerum enim vocabula immutabilia sunt, hominum autem mutabilia..".