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Book Review. The Origins of Medieval Jurisprudence: Pavia and Bologna, 850-1150 by Charles M. Radding

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Not all of Gerberding's hypotheses are equally convincing. At times some of his logic appears circular, and he uses the argument *ex silentio* more than one would wish. But, in the Merovingian game, universal agreement will never occur. We welcome a new and talented player to the field.

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CHARLES M. RADDING. *The Origins of Medieval Jurisprudence: Pavia and Bologna, 850–1150*. New Haven: Yale University Press. 1988. Pp. xiii, 258. \$25.00.

For more than a century, immensely learned, abstruse debates have raged about the medieval rebirth of Roman law and the origins of the jurisprudence that flowered at Bologna in the eleventh century, ultimately producing two competing schools of interpretation. One approach suggests that the rebirth of legal culture was the result of political or social changes wholly external to the law itself. Scholars who employ this approach have variously identified events such as the political furor of the investiture controversy or the social and economic revival of the northern Italian city-states as the underlying cause of the renaissance of the law. The other school of thought has identified the crucial factor behind the re-birth of jurisprudence as a massive borrowing by Bolognese jurists from the enormous corpus of Roman legal science that Justinian's lawyers excerpted and collected in the Digest. According to scholars from this school, the *studium* at Bologna became the great European center of legal education in the second half of the Middle Ages because Irnerius and his successors rediscovered the Digest and began to apply the abstract reasoning that had been characteristic of classical Roman jurisprudence and was almost totally lacking in early medieval law.

Charles M. Radding challenges the conventional orthodoxies and proposes an alternative theory that focuses on the judges tied to the capital of the Lombard kingdom at Pavia. Radding suggests that it was these *iudices sacri palatii* who took the decisive first steps away from the unreflective application of codified rules that had been characteristic of early medieval adjudication and began instead to engage in the kind of persuasive discourse that produces reasoned opinions concerning the application of the law to specific factual situations. According to Radding's vision, the Pavese judges, like other judges in early medieval Europe, had no need for principled explanations of their judicial decisions, so long as they all emerged from the same locale and the same professional training at

Pavia. Only after the royal palace ceased to function as the exclusive hub of judicial training and practice, in the last quarter of the tenth century, did the judges begin to approach cases from significantly different perspectives of training and experience. Hence, after 1000, the dispersed, diverse judges who came together to decide cases at Pavia no longer shared common training and assumptions, so they had to explain their legal decisions by articulating reasons for what they did. Radding suggests that it was only at this moment, when the judges began to experience dissonance among themselves, that the abstract principles of Roman jurisprudence became useful, and Radding goes on to argue that the Lombard jurists did begin to adopt the methods and the vocabulary of the Digest. Hence, Pepo and Irnerius appear in Radding's account not as the inventors of a new jurisprudence based on Roman law but as the heirs of the Lombard jurists Guglielmo and Bonifoglio.

The ambitious and controversial argument developed in this book rests upon broad inferences drawn from slender evidence and vague theories of social psychology. Radding purports to explain the rebirth of jurisprudence in terms of people rather than books, but in fact he has discovered virtually nothing about the Lombard jurists, their lives, or the milieu in which they worked. Data about the people in this book consist of the names of the Pavese judges arranged by the dates of the pleadings that the judges witnessed. The theoretical support for Radding's central argument is never expressed, but it comes down to two highly debatable propositions: that primitive legal cultures produce no reasoned legal discourse because the perceptions and values of people in primitive societies are uniform and that the sudden appearance of dissonant perceptions and values is the sole cause underlying the emergence of rationalized explanations for legal outcomes. These assumptions reflect neither an accurate grasp of the complexities and tensions that underlie the apparent unanimity and uniformity of primitive societies nor a willingness to address the fact that in early medieval settings, such as the polyglot realms of Clovis and Charlemagne, clerical and lay judges came together from diverse backgrounds and nevertheless failed to find it necessary to engage in juristic analysis as a means of explaining their decisions. Finally, in arguing that people, not books, explain legal evolution, Radding permits rhetoric to overcome logic. He attacks Stephan Kuttner's assertion that "it is unthinkable that a science of law could have taken shape in the medieval west without the rediscovery of Justinian's Digest." Radding claims that Kuttner's approach "place[s] books and not people at the

center of cultural development" (p. 115). Yet Radding himself carefully chronicles the introduction of the Digest into eleventh-century legal literature and points to the familiarity of Lombard jurists with the Digest as an important measure of the rebirth of jurisprudence, because Lombard jurisprudence prior to the reintroduction of the Digest fell short of systematic legal science. Radding has ignored what legal historians have long understood: books are important, too. Moreover, the best textual historians, such as Kuttner, have always taken scrupulous account of the human dimensions of medieval jurists insofar as there is credible evidence of those dimensions to be found.

Radding provides the best survey of Lombard jurisprudence available in English. His book is well-written, and he makes an argument that is bound to generate some interesting controversy. Yet ultimately most historians will continue to be persuaded by precisely the kind of careful, text-based scholarship that Radding eschews.

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THOMAS F. X. NOBLE and JOHN J. CONTRENI, editors. *Religion, Culture, and Society in the Early Middle Ages: Studies in Honor of Richard E. Sullivan*. (Studies in Medieval Culture, number 23.) Kalamazoo: Medieval Institute Publications of Western Michigan University. Pp. 256. Cloth \$32.95, paper \$15.95.

The reader will find little to quarrel with in this volume dedicated to Richard E. Sullivan. The editors have provided essays on intellectual, political, and social history by fourteen well-known historians. The collection opens with Archibald R. Lewis's article, which explains how Constantinople became the capital of the Roman empire. The active center of the Roman world moved from the Mediterranean to Constantinople, the Moselle Valley, and the Po-Adriatic region. Inhabitants of these areas could not very well communicate with each other, and new worlds were created around them by the Byzantines, the Carolingians, and the Venetians.

Next William M. Daly proves in a few pages, against prevailing views, that Sidonius Apollinaris became an intellectual Christian with his conversion. Then Donald Hochstetler demonstrates that the independence and the functions of St. Jean at Arles, the monastic community for women set up by Caesarius of Arles in the early sixth century, were dependent on its physical separation from "the outside world" (p. 27). Outsiders were excluded from this house of religion; only clerics necessary for the celebration of the mass were to

enter. Rule of absolute stability, which meant that the cloister retained the members, applied in the monastery. Only the abbess could eat by herself if she was ill, if the monastery lacked food, or if some business prevented her from eating with the sisters. There was trouble with the permanent alienation of ecclesiastical properties to the monastery; two popes allowed Caesarius only temporary transfer of ownership.

Political in tone is Jeremy du Quesnay Adams's essay. In wonderfully rhetorical language, he tests the degrees of similarity between Visigothic assemblies and medieval parliaments and concludes that, in particular, the Eighth Council possessed all of the characteristics of the Visigothic institutions (p. 653). Only the control of the fisc was very vague, and this may be attributed to high standards of ecclesiastical comportment or to careful control by the king over the councils. In parliaments of the fourteenth and fifteenth centuries, money matters became the main business, but English parliaments of the twelfth and thirteenth centuries and the Spanish Cortes dealt with claims similar to those of the Visigothic councils.

A worthwhile effort is Walter Goffart's undertaking to bring order into the manuscript tradition of Gregory of Tours. Goffart argues against the view and its variations that Gregory wrote two versions of his famous text, the unabridged *Histories* and a shorter *History of the Franks*; only the *Histories*, Goffart contends, were written by Gregory. Subsequent versions, the B and also the C manuscripts, were written by later editors. Goffart also argues that the Latinity of the *Histories* needs to be reworked; it reveals a more classical author than the Merovingian style of version B has let us suppose.

Kathleen Mitchell attempts to reconcile the hagiographic materials by Gregory of Tours with the interventions of St. Martin of Tours as a social healer of illnesses in the Christian body politic. She shows that Gregory followed in St. Martin's footsteps. Both protected the kingdom "by raising fears of retaliation in the guilty" (p. 79), not forgoing ambition, violation, and thefts by them.

Two essays concern an iconoclastic debate. Thomas F. X. Noble treats the major contributions of St. John Damascene in changing the image controversy to one of the theory of salvation, making Christ both the divine logos and man, a metaphysical person. Damascene's name is hardly mentioned in the subsequent councils because he attacked the imperial interference in dogma. David F. Sefton considers the papal pronouncements regarding the investiture strife, which have been dismissed by other historians as insignificant or political. After citing several other statements, he refers to Pope Hadrian's letter to the Council of