STUDIA IN HONOREM
EMINENTISSIMI CARDINALIS
ALPHONSI M. STICKLER

CURANTE

ROSALIO IOSEPHO CARD. CASTILLO LARA

LAS - ROMA
ELISABETH VODOLA

SOVEREIGNTY AND TABU
Evolution of the Sanction against Communication with Excommunicates
Part 2: Canonical Collections*

1. Introduction

Pope Gregory VII wrote in February 1081 telling the inhabitants of Tours and Angers that the excommunication under which the count of Anjou stood was extended to all his adherents and supporters, as those familiar with Sacred Scripture were aware.1 The New Testament does indeed contain many passages indicating that sinners were to be shunned, and that moreover the consequence of transgressing this rule was to become infected oneself.2 Perhaps the most famous passage is St Paul’s rebuke of the Corinthians for their misguided toleration of a man guilty of having incestuous relations with his father’s wife: ‘Have you never heard the saying «A little leaven leavens all the dough»? The old leaven of corruption is working among you. Purge it out...’.3 The question for the historian, however, is more technical: exactly when did this contagion come to be expressed in legal terms, and relations with excommunicates come to be punished by excommunication itself?4 This was not in

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2 For references see E. VODOLA, Excommunication in the Middle Ages (Berkeley and Los Angeles 1986) 4-7 and add É. AMANN, ‘Pénitence’, Dictionnaire de théologie catholique, 15 vols in 30 and 3 index vols (Paris 1923-1972) 12.1, cols 749-756.

3 1 Cor. 5.6-7, in S. SANDMEL, ed., The New English Bible (New York 1976).

4 For bibliography on this question see VODOLA, Excommunication 8 n. 41, and add J. GAUDEMÉT, L’Église dans l’empire romain (IVe-Ve siècles), Histoire du droit et des institutions de l’église en occident 3 (Paris 1958) 75.
the Bible, although as we shall see there was good reason for believing that the sanction had apostolic endorsement. In the early fourth century Alexander, patriarch of Alexandria (312-328) lamented that other bishops were admitting persons he had excommunicated to communion, against apostolic rule. Clearly the custom of voluntary avoidance of sinners that usually obtained in the close-knit communities of the early church was breaking down, and the need was felt for an actual sanction.

The first such sanction is in the (probably early) third-century Syrian *Didascalia*, a pastoral manual for bishops which may pass down apostolic traditions, though its claim to comprise teachings of the apostles established just after the council of Jerusalem (50 A.D.) is of course false. A passage in the *Didascalia* stated that anyone who prayed or otherwise mingled with someone excluded from the church should likewise be shut out: ‘Now whoever prays or communicates with one that is expelled from the Church, must rightly be reckoned with him.... For if one communicate and pray with him who is expelled from the Church, and obey not the bishop, he obeys not God; and he is defiled with him (that is expelled)’. To force sinners to undertake penitence was the aim of avoidance; anyone who socialised with an excommunicate ‘suffers not that man to repent. For if no one communicate with him, he will feel compunction and weep, and will ask and beseech to be received (again)....’

The order of widows, caretakers of the sick, was being addressed in the passage; the author rebukes them for neglecting their real charges in favor of sinners no longer attending church, because the latter made large donations. These sinners were obviously completely estranged from divine services, in contrast to the ‘excommunicates’ ritually excluded from the church for a period of solitude and fasting. The latter were indeed isolated, but not from fear of defilement. In its spirit of compassion for wrongdoers the *Didascalia* emphasised that repentant sinners need not be ostracised out of apprehension about pollution: one can only defile oneself.

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5 Quoted in the *Ecclesiasticae historiae* (1.3, PG 82.890-891) of Theodoret of Cyr (ca. 393-ante 466). Cf. G. BARDY, ‘Canons apostoliques’, *Dictionnaire de droit canonique*, 7 vols (Paris 1935-55) 2.1288-1295 at 1289, noting that since the *Apostolic Canons* (see below) were not known before the late fourth century this cannot be a reference to them as such.

6 For the date and place of composition see R.I. CONNOLLY, *Didascalia apostolorum. The Syriac Version Translated and Accompanied by the Verona Latin Fragments* (Oxford 1929, repr. 1969) xxvi, lxxxvii, and xci. All the sources described here except the *Didascalia* excerpt occur commonly in canonical collections.

7 CONNOLLY, *Didascalia* 15, p. 140.

8 Ibid. Cf. introd. xlii-xliv.

9 Ibid. 6, pp. 52-53.

10 Ibid. 6, pp. 42-44.
Only by abstracting the Didascalia’s passage from its context, then, could one obtain an absolute rule prescribing excommunication for all interactions with excommunicates. This was indeed to happen, but not for several centuries. In the interim, restricted versions of the sanction flourished. A canon of the ca. 330 council of Antioch outlined several marginal categories in the church community. Persons who came to hear Scripture but because of sin held themselves back from the Eucharist should be expelled from the church until they had confessed and, through penitence, received forgiveness.11 (Here, as in the Didascalia, excommunication is used to compel unwilling sinners to undertake penitence, though here they are partaking of some spiritual benefits while abstaining, as unworthy, from the Eucharist.) Others met privately in homes for prayer (it is unclear whether they too deemed themselves unworthy of communal worship or had religious or personal differences with the community); Christians must not pray with them.12 All must shun excommunicates, but the punishment of excommunication for failing to do so applied only to the clergy.

Also in Syria, a half century later (ca. 380), were compiled the Apostolic Constitutions.13 Though directly based on the Didascalia they omit the relevant passage described above.14 But a mandate resembling the Didascalia’s, and doubtless derived from it, is found in one of the Apostolic Canons, short regulations appended to the Constitutions and based on them and on Greek councils (including Antioch); the canons were probably by the same author as the Constitutions.15 The canon states: 'If someone prays with an excommunicate,
even at home, let him also be excluded’. Like the Didascalia, then, and unlike the council of Antioch, the apostolic canon’s sanction applies to laymen as well as clerics. But by punishing only prayer with excommunicates, not other forms of converse, the apostolic canon is milder than the Didascalia. A canon of the ca. 397-400 council of Toledo, probably based on the ca. 330 council of Antioch, required people who had dealings with those refraining from the Eucharist to likewise abstain, but only if they had been warned beforehand. 17

These three canons thus limit the sanction in different ways: by restricting the category of those affected (Antioch), or of the punishable activity (apostolic canon), or by penalising only distinctly disobedient conduct. Finally, towards the end of the fifth century, the retreat from rigor ended with a canon that, drawn from the Didascalia passage, stated its precept without any hindrance of contextual ambiguity. This was a canon in the Statuta ecclesiae antiqua (ca. 476-485), probably compiled by Gennadius of Marseille: ‘Whoever associates or prays with an excommunicate shall be excommunicated, whether he is a cleric or a layman’. 18 But sometime early in the same (fifth) century the Apostolic Canons, with their more attenuated sanction, were translated into Latin, albeit in a version that, surviving in only one manuscript, was probably not very influential. 19

The Acacian schism (484-519) brought the first major church crisis that focused on the issue of contacts with excommunicates. 20 The council of Chalcedon (451) had ended Alexandrian domination of the Eastern imperial church, a goal for which Rome and Constantinople had worked together. 21 But events in the East soon made it clear that the Egyptian Monophysites would have to be offered some dogmatic appeasement, a policy the papacy wholly

16 Apostolic canon 10, in Metzger, Constitutions III 276.
21 Schwartz, Sammlungen 171-172; Attiya, History 57-58.
opposed.²² Acacius, patriarch of Constantinople (472-489) wrote a doctrinal concordat, published by the emperor Zeno as his Henotikon (482).²³ At the same time the Monophysite patriarch of Alexandria (477-490), Peter Mongos, whom Acacius himself had earlier, with Roman approval, deposed, was reinstated in his see.²⁴ After repeated admonitions Pope Felix in a Roman synod in 484 therefore excommunicated and deposed Acacius on the grounds of his link to the heretical and excommunicated Mongos: 'Have part, therefore, with those whom you freely support, and... know that you are removed from priestly office and Catholic communion, and segregated from the number of the faithful...'.²⁵

Intransigence on both sides perpetuated the resulting schism long after Acacius's death, and the letters of Pope Gelasius (492-496), circulating in canonical collections such as the Roman Collectio Quesnelliana (ca. 495), were its most famous documents.²⁶ Gelasius repeatedly emphasised that all communicatores and accomplices of excommunicates were automatically excommunicated, even if no specific sentence was enacted against them; the emperor Anastasius, for example, was reminded that 'by your laws accomplices in crimes and receivers of thieves are punished equally with the criminals'.²⁷ Communicatores must therefore be ostracised as completely as excommunicates themselves. No passage precisely stated that contacts with communicatores resulted in excommunication — though this was clear enough in the actual facts of the schism — but in one famous letter Gelasius warned: 'No one should allege that he has not associated with a heretic just because he has avoided the more obvious one. For what good is it to shun him and yet to consort with people linked to him?'.²⁸ Gelasius also stressed that anyone who participated in a heresy that had already been condemned was ipso facto excommunicated, even without a new synodal condemnation of the heresy or a sen-

²² SCHWARTZ, Sammlungen 172-197 passim; ATIYA, History 58-71.
²³ SCHWARTZ, Sammlungen 197-198; ATIYA, History 72.
²⁴ SCHWARTZ, Sammlungen 197, 199-200, 204-206.
²⁶ On Gelasius's involvement in the schism see SCHWARTZ, Sammlungen 219-226. For Acacian material in the Collectio Quesnelliana relevant to excommunication see esp. c. 43 (PL 56.607-612); cc. 45-48 (cols 612-633); c. 49.5 (cols 637-638); and cc. 50-51 (cols 640-664). On the collection see H. MORDEK, Kirchenrecht und Reform im Frankenreich: Die Collectio Vetus Gallica... Studien und Edition, Beiträge zur Geschichte und Quellenkunde des Mittelalters 1 (Berlin and New York 1975) 238-239.
²⁷ Coll. Quesn. 49.5, PL 56.637. See also esp. 47.10, col. 628; 49.4-6, cols 637-639; 50.3, cols 643-644; 51.3-6, cols 650-658.
²⁸ Coll. Quesn, 51.11, PL 56.663, text: 'non communicasse vel communicare videatur haeretic'.

tence expressly condemning him. These pronouncements reinforced the ‘direct’ (to use the anthropological term) character of excommunication’s contagion, its transmission without intervention by an external agent.

A poignant remnant of the state to which the Acacian schism brought our question comes in the Liber pontificalis, the compilation of papal lives begun probably in the pontificate of Pope Hormisdas (514-523). Pope Anastasius II (496-498), Gelasius’s successor, had initiated the first rapprochement with the East, and being willing to discuss even dogmatic differences (the sticking point with his predecessors) contacted the metropolitan of Thessalonica to provide a Greek-speaking secretary. The metropolitan had ‘been in communion’ with the excommunicated Monophysites, but had freed himself from it to deal with Anastasius, doubtless anticipating a reconciliation of East and West that would make such matters redundant. Photinus, the Greek-speaking deacon appointed for the pope’s negotiations, came to Rome and dealt with Anastasius in the absence of any advisory clergy. Going on to Constantinople he told the Greek representatives astonishing things about his secret dealings with Anastasius. Or so the story went; for hostility to Anastasius’s openness to Constantinople was displaced to the incident of his contacts with Photinus, presumptively excommunicated because of his links with ‘Acacius’, that is, with the Monophysite-favoring Constantinople regime. And so the Roman clergy instituted their own form of excommunication of the pope, as the Liber pontificalis tells: ‘At the same time many clerics and priests withdrew from his society, because he had associated, without consulting the priests or bishops or clerics of the whole Catholic church, with the Thessalonican deacon, called Photinus, who was in communion with Acacius, and because he secretly wanted to bring back Acacius and was unable’.

Nothing could be clearer, then, by word and example, than that excommunication penalising all converse with excommunicates was a legacy of the late fifth century. And yet early in the sixth century Dionysius Exiguus, retranslating the Apostolic Canons, gave the restricted version of the sanction fresh life in his canonical collection; a rubric, ‘That one should not pray with

32 SCHWARTZ, Sammlungen 226-229.
excommunicates', emphasises its limited scope.34 Still, inclusion in this immensely influential collection enabled the apostolic canon to spread far and wide the notion that the apostles concerned themselves with this issue. It is true that Dionysius in his preface acknowledged doubts about the *Apostolic Canons*’ authenticity. But he countered that papal constitutions made use of them.35 On the other hand, in about the same (early sixth century) period, though probably after Dionysius composed his collection, the *Decretum Gelasianum*, an index of canonical literature pseudonymously attributed to the great pope, by excluding the *Apostolic Canons* gave very serious grounds for doubt.36 Nonetheless, the *Apostolic Canons* gained widespread currency in canonical collections in the next centuries.37 A notable exception was the sixth-century *Collectio Hispana*, which explained that the canons, written by heretics, had never been approved by the Fathers and were discounted as apocrypha, however much they might contain some useful things.38

Pseudo-Isidore (ca. 847-852) undertook to remedy both this rejection and the problem of the canons’ restriction of the sanction to prayer.39 For be-

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34 TURNER, *Monumenta*, I 3 (rubric) and 12-13 (text): 'Quod cum excommunicatis non sit orandum. Si quis cum excommunicatis saltem in domo simul orauerit, iste communione priuetur'. The translation in Dionysius's first recension of the collection omits the sometimes troublesome 'saltem' (see below at n. 42): 'Si quis <cum> excommunicato aliquo in domo simul orauerit, iste communione privetur' (A. STREWE, *Die canonessammlung des Dionysius Exiguus in der ersten Redaktion* [Berlin and Leipzig 1931] 5). The collection is dated soon after 500 in H. MORDEK, 'Dionysius Exiguus', *Lexikon des Mittelalters* 3.1088-1092 at 1089. VODOLA, *Excommunication* 8 n. 41 on 9 and 18 n. 84 wrongly takes the rubric for the text itself, and says the sanction clause was omitted.

35 PL 67.141-142; cf. BARDY, 'Canons' 1290-1291. Seeing Dionysius's inclusion of the *Apostolic Canons* as part of his effort to bring East and West together, by offering to the West a text honored in the East, Bardy (1291) suggested that Dionysius may have been deceiving himself in believing that papal letters referred to the canons. But see below for a letter that would, if genuine, prove an ironic exception.


sides including the *Apostolic Canons* themselves, Pseudo-Isidore offered two forged decretals wrongly claiming that the apostolic canon punished all links to excommunicates. One was attributed to Pope Calixtus (ca. 217-222/3), who was famous for his clemency towards sinners. After listing the by now quite standardised ways in which excommunicates were to be shunned (‘... nor should one associate with them in prayer or food and drink or kiss, nor greet them...’), it stated that the apostles had prescribed excommunication for transgressors: ‘Because anyone knowingly communicating with excommunicates in these or other forbidden things according to apostolic law incurs the same excommunication himself’. A second letter, said to be by Pope Fabian (236-250), besides similarly misrepresenting the apostolic canon also introduced a mitigating element in the sanction by penalising only contacts made in deliberate defiance of the rules: ‘... since the apostles decreed thus, saying «One should not associate with excommunicates, and if someone, violating the rules, knowingly sings psalms at home or speaks or prays with an excommunicate, let him also be deprived of communion»’. The first phrase may be a paraphrase of Dionysius’s rubric for the apostolic canon (‘That one should not pray with excommunicates’), substituting all communication for the canon’s prayer. The remainder, besides interpolating ‘avertendo regulas scien-
ter’, substitutes (though not in all versions) ‘psallat’ for the rather obscure ‘saltem’ (‘saltem in domo’), and adds speech to prayer as specifically banned activities.

Left quite behind, then, have been the notions that the sanction should apply only to restricted categories of persons or activities. On the other hand, the pseudo-Fabian letter may reflect a feeling that the sanction is too strong to be arbitrarily applied to merely apparent transgressions. Like the canon of the ca. 397-400 council of Toledo, though less precisely, it requires some test of intention. A few decades later, at a papal council of John VIII in Ravenna in 877, this tendency was more definitely marked, in a canon that applied the sanction only to contacts with an excommunicate so supportive that they dissuaded him from seeking absolution. Even more important, it substituted

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40 Hinschius, *Decretales* 138.
41 Ibid. 159.
42 Ibid. See n. 34.
43 Council of Ravenna 877, c. 9, *Mansi* 17.338. This passage is part of a longer canon, variously excerpted in the canonical collections.
exclusion from the Eucharist during a period of penitence for the traditional sanction of full excommunication. The canon is based on the apostolic canon, but besides its other additions and interpolations it expands the apostolic canon to include all forms of contact rather than just prayer: "Whoever knowingly associates with an excommunicate... and... prays with him, even if only at home, and gives him means of defense so that he is disinclined to seek absolution, should know that he is deprived of the communion of the Lord's body and blood until he has received penitence from the excommunicator". An important effect of this reduction in the sanction is that a communicator, since he was now not fully excommunicated, would not be contagious: no penalty would afflict in turn people who had converse with him.

Although the 877 council of Ravenna is the first known appearance of this canon, it occurs in several canonical collections — the first being Burchard of Worms’s (1008-1012) — as a decretal of Gelasius.44 (Hence it will hereafter be called the Ravenna-Gelasius fragment.) In view of Gelasius’s supposed rejection of the Apostolic Canons’ authenticity in the Decretum Gelasianum it is strange that a canon incorporating one of them should have been attributed to him.45 All the stranger that it should be this canon, when one considers his well-known insistence that an excommunicate’s communicatores were bound equally with him, a doctrine confirmed very forcefully shortly after Gelasius’s pontificate in the Liber Pontificalis, as we have seen. On the other hand, it can be added that the canon seems no more at home with John VIII, whose register in the years surrounding this council shows several examples of full excommunication as the punishment for those who had familiarity with excommunicates.46

44 This version is edited in A. THIEL, Epistolae romanorum pontificum 1 (Braunsberg 1867-1868, repr. Hildesheim and New York 1974) [no more vols published]) 502-503, and is accepted by Thiel (67) as genuine. VODOLA, Excommunication 18 n. 84 probably wrongly portrays the Ravenna canon and the Gelasian fragment as separate entities.

45 But see the ‘Dicta’ attributed to Gelasius in a ninth-century Lucca Ms, stating that removal from the church for a grave crime must not be taken as exclusion from all conventus and preaching but only as reduction to the status of penitent (PL 59.140-142). Other examples of similar discrepancies: Pope Fabian in Pseudo-Isidore (above) is made to endorse full excommunication as the sanction for contacts, but Burchard attributes to him a canon prescribing only penitence (below); John VIII in the council of Ravenna endorses the lesser penalty, but in a twelfth-century forged letter attributed to Gregory VII he prescribes full excommunication (see part 3). Cf. R. KÖTTE, Die Bussbücher Halitgars von Cambrai und des Hrabanus Maurus, Beiträge zur Geschichte und Quellenkunde des Mittelalters 8 (Berlin and New York 1980) 219-220 for a similar example, involving Gregory I.

46 Registrum Iohannis VIII. papae, ed. E. CASPAR et al., MGII Epp. 7, no. 17, pp. 14-15 (Dec. 876); no. 142, p. 122 (Sept. 878); no. 238, p. 210 (Oct. 879); no. 289, p. 253 (Oct. 881). Exclusion from the Eucharist was imposed on one occasion as the penalty for communication,
The same reluctance to penalise communication with full excommunication as in the 877 Ravenna council can be felt even more markedly, seemingly even more deliberately, in the synod of Hohenaltheim of 916.\textsuperscript{47} In c. 6 the council fathers acknowledged that sacred authority excommunicated those who associated with excommunicates, paraphrasing, in the editors' opinion, the canon of the \textit{Statuta ecclesiae antiqua}.\textsuperscript{48} They confessed having sinned in this regard, and promised emendation. The following canon, discussing, according to its rubric, '... those who believed it permissible to deal with excommunicates in defending ecclesiastical property', preached that a priest's charge was custody of souls, not of money.\textsuperscript{49} Next (c. 8) the bishops declared their intention to withdraw to a monastery to do penance for their illicit contacts with excommunicates, to set a good example \textit{ad populum}. The latter, c. 9 states, having imitated their pastors in sin must now imitate them in the reform of penitence; no one may communicate or pray in church with an excommunicate.\textsuperscript{50} But in c. 27, finally, the fathers more specifically enacted their penalty for consort with excommunicates: it was not excommunication itself, but forty days of penance on bread, salt, and water.\textsuperscript{51} Even for those linked to excommunicates in homicide or another serious crime, the sanction was not excommunication but 'penitence according to the canons'. Thus although the fathers met their papally imposed mandate of repentance and reform they were evidently unwilling to uphold the traditional sanction as transmitted in one of their own canons.

2. Burchard of Worms (1008-1012)

Burchard's \textit{Decretum}, the most influential canonical collection of the eleventh century, included many of the canons described here as well as others on our topic.\textsuperscript{52} We should begin, though, with the \textit{Corrector}, the penitential

\begin{itemize}
\item \textsuperscript{47} On the synod see H. FUHRMANN, 'Die Synode von Hohenaltheim (916) quellenkundlich betrachtet', \textit{Deutsches Archiv} 43 (1987) 440-468.
\item \textsuperscript{48} Synod of Hohenaltheim 916, c. 6, \textit{MGH Conc. VI.1}, p. 22, and \textit{ibid.} n. 42. In BURCHARD 11.69, PL 140.872.
\item \textsuperscript{49} \textit{Ibid.}, c. 7, p. 22: 'De bis, qui putabant pro defendendis ecclesiasticis rebus licere excommunicatis communicare'. In BURCHARD 11.70, PL 140.872.
\item \textsuperscript{50} \textit{Ibid.} c. 8 (pp. 22-23) and 9 (p. 23). In BURCHARD 11.71-72, PL 140.872-873.
\item \textsuperscript{51} \textit{Ibid.} c. 27, p. 33. In BURCHARD 11.40, PL 140.867.
\item \textsuperscript{52} M. KERNER, 'Burchard I', part 2, 'Kirchenrechtliche Sammlung...', \textit{Lexikon des Mittelalters} 2.947-951 at 948-949, and FUHRMANN, \textit{Einfluss II} 450-462. Of the three reform
which forms the nineteenth book of the *Decretum*. One of the interrogations for priests interviewing penitents prescribes for converse with excommunicates the usual sanction of full excommunication, to be redeemed by the very considerable penance of eight years' fasting.\(^53\) It seems unlikely, however, that Burchard intended eight years of the full exclusion of excommunication; rather, the threat of excommunication should coerce to penitence. For in taking up c. 27 of the 916 council of Hohenaltheim, which imposed only forty days of penance, Burchard added: ‘And if he does not wish to undertake penance, let him be excommunicated’.\(^54\) (This, of course, forms a sharp contrast with the Corrector’s eight years, but numerical consistency was not a desideratum in the penitentials.)\(^55\) Excommunication and the penance required to abolish it, therefore, seem to be virtually interchangeable alternatives.\(^56\)

Burchard of course also adopted a number of the canons decreeing, in the traditional way, excommunication for all converse with excommunicates. These included the canon of the *Statuta ecclesiae antiqua* (and its apparent paraphrase at the 916 council of Hohenaltheim) and the pseudo-Isidorian letter ascribed to Pope Calixtus.\(^57\) (The pseudonymous letter attributed to Pope Fabian in Pseudo-Isidore was not present, perhaps because the Hohenaltheim period collections to be discussed below Burchard’s *Decretum* was not used by the *Collection in 74 Titles* (J. Gilchrist, ed., *Diversorum patrum sententiae siue Collectio in LXXIV titulos digesta*, Monumenta Iuris Canonicorum B: 1 (Città del Vaticano 1973). It was, however, used in the Swabian Appendix of that collection; see J. Autenrieth, ‘Bernold von Konstanz und die erweiterte 74-Titelsammlung’, *Deutsches Archiv* 14 (1958) 375-394 at 378. On the use of Burchard by Anselm of Lucca see P. Fournier and G. Le Bras, *Histoire des collections canoniques en occident*, 2 vols (Paris 1931-1932) II 29. Deusdedit took very little from Burchard; see *ibid.* 46, and cf. Fuhrmann, *Einfluss* II 528.

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\(^{33}\) Burch., *Deer.* 19.5, rubr. ‘De excom.’, PL 140.969.

\(^{34}\) BURCHARD 11.40, PL 140.867, attributed to Pope Fabian. In VODOLA, *Excommunication* 17 and *ibid.* n. 80 this is wrongly cited as an unidentified pseudonymous canon of Pope Fabian. On it see also Fuhrmann, ‘Hohenaltheim’ 462 n. 43.


\(^{36}\) This is buttressed by c. 8 of the council of Tribur of 895, which imposes forty days of penance upon anyone transgressing an episcopal ban (MGH Capit. II 218). Burchard placed the canon (*Deer.* 11.73, PL 140.873) after the canons of the 916 council of Hohenaltheim on contacts with excommunicates (*Deer.* 11.69-72, PL 140.873), which suggests that this was the specific transgression he envisaged, the episcopal ban here meaning excommunication. Cf. Fuhrmann, ‘Hohenaltheim’ 462 n. 43 on 463, noting that this Tribur canon seems linked to Hohenaltheim. See also part 3.

\(^{57}\) BURCH. 11.44 (PL 140.868) for the *Statuta* canon, attributed, as was usual, to a council of Carthage; 11.69 (PL 140.872) for its paraphrase at Hohenaltheim; 11.38 (PL 140.867) for the pseudonymous letter of Calixtus. Cf. also 11.5 (PL 140.859) and 11.32 (PL 140.866).
canon enacting penitence rather than excommunication was in Burchard attributed to ‘Pope Fabian’.) The Ravenna-Gelasius fragment (the canon of the 877 council of Ravenna calling for exclusion from the Eucharist during a period of penitence) was, as we have seen, attributed by Burchard to Pope Gelasius; Burchard added the sentence: ‘and let him do penance according to the canons’.

3. The Collection in 74 Titles

One of the most important collections of the Reform period, the extremely influential *Collection in 74 Titles* was composed in Italy; although it may have existed as early as 1067 its first known use was in 1076. Only one canon in the original collection treats our question, the pseudonymous letter of Fabian from Pseudo-Isidore, which was the collection’s main source. One can only speculate why the author chose the slightly milder letter of pseudo-Fabian rather than pseudo-Calixtus; both, we remember, wrongly had the apostolic canon countering all dealings with excommunicates with excommunication. Despite the topicality of our subject, especially, of course, if the collection was compiled in the 1070s, it is not so surprising that it elicited only one canon, since besides Pseudo-Isidore no collection used by *74 Titles* had relevant material.

When the two papal legates went to Germany to negotiate a settlement in Canossa’s aftermath, in February 1077, they brought a copy of *74 Titles*. In Germany the lack of canons on our theme was made good through the addition of an appendix of fifteen canons, called the Swabian Appendix, dealing entirely with excommunication. Bernold of Constance is regarded as the probable author, and to him also is ascribed a new recension, the Swabian recension, of the collection itself. Burchard, the *Collectio Quesnelliana*, and the *Collectio Dionysio-Hadriana* were the Appendix’s main sources. From Burchard’s very considerable variety of sources on our theme the Appendix took only Pseudo-

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58 Burch. 11.48, PL 140.868.
60 Gilchrist, *Sententie* 309, p. 176.
61 Gilchrist, *Sententie* xxvii-xxviii. See part 1 on the legation.
64 Autenrieth, ‘Bernold’ 391.
Isidore’s pseudonymous letter of Calixtus, and the Ravenna-Gelasian fragment, attributed, of course, to Gelasius.65 Quesnelliana material on the Acacian schism, largely Gelasian, forms the bulk of the Appendix.66 One could easily believe that the Appendix was assembled, as, for example, Bernold’s 1076 De damnatione scismaticorum, to justify Gregory’s 1076 excommunications against charges, entertained even by some Gregorians, that they were unjust because had not been followed requisite legal procedures.67 For, as we recall, the burden of the Acacian schism material was that excommunication was incurred automatically through interaction with excommunicates, even in the absence of a specific sentence of condemnation. It is true that the lengthiness of the excerpts tends to obscure this theme. Most of the rubrics defend the justice of Acacius’s excommunication. Only three refer exactly to our question, those of the pseudonymous letter of Calixtus, of the Ravenna-Gelasian fragment, and of the famous Gelasian passage mandating avoidance of communicatores: ‘No one should allege that he has not associated with a heretic just because he has avoided the more obvious one. For what good is it to shun him and yet to consort with people linked to him’?68

This last interests us particularly. Supplied with the rubric: ‘On avoiding communicatores of heretics’, it did not, we remember, actually excommunicate people who had relations with communicatores; it imposed no sanction. Nonetheless with its rubric it is perhaps sufficiently pointed that we might see it as a tacit protest to Quoniam multos’s concession that contacts with communicatores should not be punished by excommunication.69 Of course we do not know exactly when the Appendix was written. If it was written by Bernold: we know that he in his Chronicle showed some knowledge of the Lent 1078 synod. His summary of Quoniam multos made no reference to this concession, but

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66 C. 320 p. 182; c. 326 p. 185; c. 327 pp. 185-195.
67 For Bernold’s De damnatione scismaticorum see MGH LL II 26-58. It is, indeed, mainly on the coincidence of the use of a rare source in that tract and in the Swabian Appendix that Autenrieth bases the case for Bernold as author of the Swabian Appendix; see ‘Bernold’ 388-390.
he elsewhere, in his polemical tracts, quite strongly opposed it. If he is the author of the Swabian Appendix, therefore, it is not surprising that he did not include Quoniam multos (if he already knew it) and did have a canon that implicitly at least partly contradicted it. What does seem to call for explanation, however, is that in view of his (as will be seen) lively concern about this question Bernold would be content with so few directly relevant canons, among them the comparatively mild Ravenna-Gelasius fragment.

4. Anselm of Lucca (post 1083)

Cardinal A.M. Stickler has described Anselm of Lucca as 'l'anima della riforma in tutta l'Italia settentrionale, e dopo la morte di Gregorio VII (25 maggio 1085), in tutta la Chiesa'. His collection was the most influential and widespread of the Gregorian reform. Though it was the first of our three Gregorian collections that definitely postdated the Lent synod of 1078, it contained, as we have seen, neither Quoniam multos nor Nos, sanctorum. Indeed, two rubrics seem specifically to oppose Quoniam's concession that contacts with communicatores should not result in excommunication. One argues: 'That an excommunicate and his communicator should be equally repressed and punished', quoting a Gelasian warning that participants (communicatores) in evil must be shunned. Secondly, slightly less definitely, a rubric proclaims:

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70 For the description of Quoniam see BERNOld OF ConSTANCE, Chronicon, MGII SS V 385-467, ao. 1078, p. 435; cf. part 1. For Bernold's opposition to Quoniam in his tracts see part 3.
73 See part 1.
74 Book 12, on excommunication, is not included in the edition by F. THANER, Anselm II. Collectio canonum (Innsbruck 1906-1915, repr. Aalen 1965), which ends with book 11. I have used Vatican Ms Vat. lat. 1363, which contains recension A, the form closest to the original; see P. LANDAU, 'Erweiterte Fassungen der Kanonessammlung des Anselm von Lucca aus dem 12. Jahrhundert', in P. GOLINELLI, ed., Sant'Anselmo, Mantova e la lotta per le investiture. Atti del convegno internazionale di studi (...1986) (Bologna 1987) 323-338 at 326 and 338. The rubrics for the entire collection, however, were printed by A. MAI et al., Spicilegium romanum 10 vols (Rome 1831-1844, repr. Aalen 1974) VI 316-393, repr. PL 149.485-568, and are given here from Mai.
75 12.20 (Mai 21), Mai p. 389: 'Quod excommunicatus et communicator eius aequo refultari et puniri debent', Vat. lat. 1363 fol. 210v. The passage is found in THIEL, Epistolae 354-55 line 2. The Swabian Appendix (GILCHRIST, ed., Sententiae 327.3, p. 187) has an abridged form, but
'That one is equally guilty for familiarity with a heretic or with someone joined to him'; here Anselm quoted the famous Gelasian letter on the futility of ostracising heretics if their communicatores are not also shunned, which, as we have just seen, was in the Swabian Appendix of the Collection in 74 Titles as well.76

Anselm also adopted one of the traditional canons proclaiming excommunication as the punishment for involvement with excommunicates not in the Swabian Appendix, namely the canon of the Statuta ecclesiae antiqua, the two pseudoisidorian letters, and the Ravenna-Gelasius fragment.77

5. Deusdedit (ca. 1087)

We come, finally, to the difficult collection of Cardinal Deusdedit. Although it apparently had very little circulation or influence, Deusdedit's collection is regarded as the most profoundly Romanist of the Gregorian collections.78 We might therefore hope to discover from it what materials on our topic an author so minded would choose to present. Unfortunately it is almost impossible to discern whether Deusdedit had an opinion on our subject, because the collection's organization is so inadequate that it obscures rather than enhances the content.79 No rubrics are given the chapters themselves, and the topical rubric list that precedes the collection, with references to appropriate chapters, is very deficient: none of the several rubrics that appear most pertinent to our theme do in fact cite the most relevant chapters (that is, those that will be discussed here).80

without the rubric there is nothing to imply that the text should apply to communicatores of excommunicates rather than simply to those who participate in any evil act.

76 12.21 (Mai 22), Mai p. 389: 'Quod par culpae est communicare haeretico, vel eique communicatores est illi', Vat. lat. 1363 fol. 210r. In the Swabian Appendix this is 327.12, p. 194.
77 For the Statuta see c. 17, Vat. lat. 1363 fol. 210r; for the pseudoisidorian letters of pseudo-Fabian and pseudo-Calixtus see cc. 18 and 19, fol. 210v; for the Ravenna-Gelasius fragment see c. 28, fol. 211r-v.
79 See FUHRMANN, Einfluss II 524-527 on 'die unvollkommene Systematik'.
80 The most relevant rubric is 'De participantibus cum excommunicatis' (p. 27); its references are merely to 4.158 (pp. 471-472), a letter of Nicholas I threatening to excommunicate King Lothair 'with all his fautors and communicatores'; 1.2 (p. 31), the Nicene canon stating that those excommunicated in one community must not be received in another; and 2.10 (pp. 196-197), from the council of Sardica, stating that even appellant excommunicates must be avoided.
In fact, only one canon in Deusdedit's collection universally proclaims excommunication as the sanction for all contacts with excommunicates: Pseudo-Isidore's letter of Pseudo-Calixtus.\textsuperscript{81} Others restrict the sanction to clerics, like the canon of the ca. 330 council of Antioch, or the prohibited activities to prayer, like the apostolic canon.\textsuperscript{82} A great deal of material on the Acacian schism, made even less accessible than in earlier collections by the complete absence of rubrics, also points up more generally the dangers of contacts with excommunicates,\textsuperscript{83} and Deusdedit took enough interest in these texts to interpolate in one canon an explanatory phrase on Acacius's transgression, his association with Peter Mongos.\textsuperscript{84} The Ravenna-Gelasius fragment was not included, though Deusdedit took other excerpts from both its potential sources, the 877 council of Ravenna and the pseudonymous Gelasian letter of which our canon forms a part.\textsuperscript{85} In sum, Deusdedit's collection certainly passes on much of the traditional material, but we are not led to believe that this theme was a special concern. Indeed because of editorial oversight one canon, isolated from its necessary context, actually implies that a bishop shunning a subject whom he excommunicated should himself be avoided by his colleagues; one needs to know from the canon that precedes it in the 419 council of Carthage, not present in Deusdedit, that the bishop excommunicated without proof, on the basis of a confession made only to him.\textsuperscript{86}

If it is difficult to evaluate Deusdedit's exact thoughts on the sanction for

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\textsuperscript{81} WOLF VON GLANVELL, ed., \textit{Deusdedit} 4.390, p. 585.

\textsuperscript{82} \textit{Ibid.} 4.386, p. 584, for the council of Antioch, and 4.383, p. 583, for the apostolic canon. Likewise 4.395, pp. 586-587, a passage of St Augustine stating that clerics receiving those excommunicated in another church will be excommunicated (\textit{Burchii, Decr.} 11.43, PL 140.867-868, in MUNIER, \textit{Concilia Africæ} 103 and 135-136; cf. \textit{ibid.} 15). Cf. also 4.94, pp. 440-442, a letter attributed to a Pope Paschal but in fact by Guido of Arezzo (\textit{ed. cit.} xv-xvi) stating that people attending masses or prayers led by excommunicates are excommunicated.

\textsuperscript{83} E.g. WOLF VON GLANVELL, ed., \textit{Deusdedit} 1.138, pp. 93-94; 4.391, second section, p. 585.


\textsuperscript{85} See WOLF VON GLANVELL, ed., \textit{Deusdedit} 4.394, p. 586, for a canon of the Ravenna council, and 4.391, p. 585, section 1, for the portions he included of the pseudo-Gelasius letter.

\textsuperscript{86} WOLF VON GLANVELL, ed., \textit{Deusdedit} 4.389, p. 584; see MUNIER, \textit{Concilia Africæ} 232 for the two canons.
contacts with excommunicates, it is of course even harder to evaluate his thoughts on penalising contacts with communicatores. That he included Nos, sanctorum87 creates a strong presumption, since the two so often circulated together, that he knew Quoniam multos. Hence one might be tempted to conclude that he deliberately omitted it because it cancelled communicatores’ contagion. But unlike Anselm he offered no rubrics that seem to protest Quoniam’s measures. Pope Anastasius IIs biography from the Liber pontificalis is present, with its implication that association with communicatores did indeed lead to excommunication.88 But Deusdedit did not take up the famous Gelasian passage, present in the Collection in 74 Titles and in Anselm of Lucca, warning that it was useless to ostracise heretics if one did not also shun their communicatores, although he excerpted another part of the same letter.89

6. Conclusion

Excommunication as the sanction against communication with excommunicates seems to have developed gradually, avoidance of excommunicates having been voluntary in the earliest centuries of the church. Though the sanction’s first appearance was in the third-century Didascalia, it took hold only in the late fifth century, with the Statuta ecclesiae antiqua. Meanwhile, and afterwards, restricted versions of the sanction persisted, punishing only certain activities or classes. From the ninth century there seems to have been a trend to replace the penalty of excommunication with penitence and exclusion from the Eucharist, using excommunication only as coercion. Nonetheless, Gregory VII in Quoniam multos (1078) retained full excommunication, while exempting certain contacts, such as the necessary communication of a dependent with an excommunicated lord and association with communicatores. Tacit opposition to the latter seems evident in the Swabian Appendix of the Collection in 74 Titles and in Anselm of Lucca’s canonical collection.

From the late fourth century apostolic authority was invoked to buttress the sanction, at first, in the Apostolic Canons, only against prayer with excommunicates, but widened in Pseudo-Isidore’s paraphrase of the apostolic canon to any interaction. Despite this discrepancy, and the somewhat dubious status of the Canons, this authorisation was widely accepted: Burchard, Anselm, and Deusdedit all included the apostolic canon in their collections. But Bernold of

87 See part 1 on Nos, sanctorum in Deusdedit.
89 See WOLF VON GLANVELL, ed., Deusdedit 4.51, p. 424, for the excerpt from this letter.
Constance (if he is the author) did not adopt it in the Swabian Appendix of the Collection in 74 Titles, for reasons that may be illuminated by an investigation of his polemical tracts.