Medieval Canon Law: Introduction

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Canon law refers to the body of rules and regulations governing the Christian Church and its members. Before the modern era, it had as much influence on the daily life of Europeans as secular law has on life in the modern world. It touched nearly every aspect of medieval society, dealing not only with what most people today would consider to be religious matters but also with many issues of a purely secular nature. Trying to understand medieval Europe without knowing medieval canon law is like trying to understand the Renaissance without ever having read the Bible or the Latin and Greek classics: impossible yet not uncommon. Because of the modern separation between Church and state as well as the rise of secularism, canon law plays only a limited role in most modern-day societies. It has had little influence on recent legal and social developments and is marginal to the way that most people lead their lives. Considered from a deeper and richer historical perspective, however, the influence of canon law has been enormous, long-lasting, and remarkably diverse (see Chapter 30).

The Christian New Testament contains many general ethical precepts, but provides relatively few practical rules or laws for regulating the institutional and cultic life of the Church. The Acts of the Apostles suggests that the early Christian community experienced little need for express laws since the Holy Spirit preserved it from conflict and dissension. The Acts of the Apostles describes the early Christian community in idyllic terms. After the descent of the Holy Spirit at the first Pentecost, Jesus' followers lived together in perfect harmony. They prayed and studied the Scriptures together, and they pooled their resources so that no one, not even widows and orphans, had to suffer from want. Modern historians, however, have often emphasized other factors to explain the relative lack of interest among early Christians in creating a specifically Christian body of law. The origins of Christianity as a Jewish sect, its apocalyptic worldview, and the great influence of prophets and other charismatic leaders prior to the expansion of the monarchical episcopate are

all supposed to have obviated the need for such legislation and rulemaking. Only when Christianity lost its Jewish character and when Christians no longer believed that the end of the world was nigh did they begin to take a serious interest in creating rules for how Christians should lead their lives and for how the Church should function. The result was a system of ecclesiastical law known as canon law. Minted already in the early, Greek-speaking Church, the term derives from the Greek word for rule, *κανών* (kanon).

The canon law of Late Antiquity was rooted in secular legislation, Church councils, and, to a lesser extent, papal decretal letters. Under the patronage of the emperor Constantine (c. 274–337) and his successors, the Church gained many privileges – economic, social, and legal. As the Church grew in size, wealth, and importance, however, so too did the number of disagreements among Christians. To resolve such doctrinal disputes and disciplinary issues, bishops held an increasing number of Church councils. Some councils, such as the ones celebrated at Sardica (343/4) and Carthage (394), were purely regional affairs. They were meetings of local bishops concerned with local problems. Other councils, in contrast, were summoned by the Christian Roman emperors from Constantine on and drew participants from across the entire empire. The most famous of these were the first four ecumenical councils: Nicaea I (325), Constantinople I (381), Ephesus (430), and Chalcedon (451).

The sources of canon law broadened during the early Middle Ages. Excerpts from the writings of the Church Fathers – whether letters, biblical commentaries, theological treatises, autobiography, or writings belonging to some other literary genre – came to acquire authority similar to that of conciliar canons and papal letters. The sanctity of the author, it was thought, granted special authority to his writings, even if he had never intended to legislate on a legal question. In addition, penitentials also became a source of canon law. Penitentials were works listing the punishments that should be meted out for a given sin or crime. They first emerged as a literary genre in the sixth century, around the same time that private penance began to be promoted. At first independent of the canonical tradition, penitentials and their tariffs came to be incorporated into many canonical collections as well as the penitential literature of the high and late Middle Ages.

Of arguably greater consequence for the history of canon law, however, were the many developments during both this period and the high Middle Ages in the structure of the Church. In Late Antiquity, Roman government had provided the framework for many aspects of the institutional Church.

After the dissolution of the western Roman Empire, however, the relationship between secular and ecclesiastical institutions was often reversed. The Church and ecclesiastical learning buttressed the new barbarian kingdoms, which preserved only scattered remnants of Roman administration and law. Bishops became important lords, advisers, and political figures. The popes, in particular, acquired many privileges and powers, which later became enshrined in the forged Donation of Constantine (mid-eighth century) and expanded upon in the Pseudo-Isidorian forgeries (mid-ninth century). At the same time, many monasteries – which had originated as groups devoted to poverty and asceticism – grew wealthy, usually through royal and noble patronage. Monasteries came to be major lords and landowners, as well as important educational centers.

From the mid-eleventh to the early thirteenth centuries, the so-called Gregorian Reform completely transformed the papacy and its relationship to the rest of the Church. Popes expanded their administrative, judicial, and legal powers through the internationalization of the college of cardinals, the use of cardinals and others as legates, the creation of a system of judicial delegation, and the expansion of ecclesiastical courts. They also issued an increasing number of decretals (letters in response to legal questions) on an ever wider variety of subjects. Although addressed to specific individuals, decretal letters came to be regarded as universally applicable sources of law, eventually supplanting conciliar canons and the writings of the Church Fathers in importance. The books of the Corpus iuris canonici, which were compiled from the twelfth to the fourteenth centuries, illustrate this trend. Whereas the work which became the first book, Gratian's *Concordia discordantium canonum* or *Decretum* (two recensions between 1139 and 1150), contains a fairly equal amount of conciliar canons, papal decretals, and patristic texts, the later books consist almost entirely of papal decretals and papal enactments at councils (see Chapters 5, 6, and 8).

Fueled at least in part by these developments, a revival of jurisprudence occurred around this same time, first in north-central Italy (particularly Bologna) and later on in other parts of Europe. Although the years between the fall of the western Roman Empire and the mid-eleventh century were not devoid of sophisticated legal minds (for instance, Bishop Hincmar of Rheims, who died in 882, and Bishop Burchard of Worms, who died in 1025), it was only in the late eleventh and early twelfth century that large-scale and intensive legal scholarship became common again. Canon law became one of the four higher disciplines in which one could earn a university degree (the other three being Roman

law, theology, and medicine). Thanks to the expansion of papal jurisdiction and law as well as of secular government, the demand for educated experts in canon law was great. Canon law became an extremely lucrative field and one of the surest paths to ecclesiastical preferment and this-worldly success (see Chapter 14).

In becoming an academic subject, canon law underwent a fundamental change in character, as did theology, philosophy, and other disciplines cultivated in medieval European universities. The teaching methods in use during the Middle Ages made these disciplines "scholastic," meaning that they became extremely detailed, exact, and focused on disputation. Their writings increased dramatically in length, and their vocabulary became increasingly technical and difficult to understand. For canon law, a lot of the precision and the technical terminology derived from the sophisticated Roman law of the emperor Justinian (d. 565), which was usually taught at the same universities. Learned jurists melded the two legal systems into one, the so-called *ius commune*, or European common law, which continued to be the law of the land in many European countries until the great codifications of the nineteenth and twentieth centuries.

By the end of the Middle Ages, canon law touched upon nearly every aspect of medieval life and was – directly and through the *ius commune* – applied everywhere in Latin Christendom. It regulated the administration of the sacraments; it governed the acquisition and sale of ecclesiastical property; it elaborated rules concerning economic, military, and sexual behavior; it famously regulated marriage; it granted special privileges to the clergy and religious; it punished blasphemy, heresy, magic, and superstition; it set forth guidelines on the use of oaths; and it developed new legal procedures. In the hands of concerned ecclesiastics, canon law was a tool for improving pastoral care and implementing spiritual reform. But religious leaders and canonists also employed canon law for more political and/or worldly ends, such as increasing ecclesiastical revenue, expanding papal temporal power, and justifying existing social inequalities. As the main law to which they were supposedly subject, canon law played an important role in the everyday lives of churchmen. Nevertheless, laypersons as well encountered canon law on a regular basis, above all when they got married and in the ecclesiastical rite of confession and penance, but also in connection with their domestic and sexual life. Canon law was only one of many legal systems in the Middle Ages, to which local law might or might not conform. Yet, particularly in the high and late Middle Ages, local judges, lawyers, and legislators often interpreted local norms in light of canon and Roman law concepts and ideas (see Chapter 15).

The ubiquity of canon law in medieval society makes it an important source for the social, economic, political, intellectual, and religious history of this period. Without canonical collections and decretal collections, we would know far less about the activities of bishops and popes, as well as emperors, kings, and nobles. These sources are responsible for preserving the majority of conciliar canons which have survived, as well as many papal letters prior to the pontificate of Pope Innocent III (1198–1216), when the more or less unbroken series of surviving original papal registers begin. The contents of these canons and letters often shed light not only on how leading ecclesiastics believed Christians should behave, but also on contemporary political debates and social problems. Other canonistic sources, such as decretist and decretalist commentaries, allow us to track changes in contemporary attitudes to sexuality, torture, usury, war, and a whole host of other social and economic issues. Court records, inquisition records, and records from the papal penitentiary, on the other hand, offer important insights into how people actually behaved and the extent to which they followed the norms of canon law (see Chapters 10–29).

Nevertheless, many medievalists hesitate to exploit canon law sources. Their reluctance is lamentable, though entirely understandable given the lack of introductory texts on the subject. For those who have not received formal training in this area, canon law sources may be experienced as technical, daunting (because of their size and complexity), and intimidating. Many medieval canonical collections and other works are unedited or exist in problematic, non-critical editions. For a reliable text of such sources, scholars are forced to have recourse to medieval manuscripts or early modern printed texts. Although studies of the manuscript tradition, sources, and literary interrelationship of many medieval canonistic works exist, they are generally highly technical and scattered throughout a large number of journals and books in English, Latin, French, German, Italian, Spanish, and other languages. Simply finding this secondary literature can be a herculean task; trying to understand it is often even more difficult.

The attribution, dating, and chronology of canonical collections can also be problematic. Many canonical collections are anonymous or pseudonymous. Who, for instance, really compiled the Pseudo-Isidorian collections and forged so many of the papal decretals found therein? Who was responsible for the *Collection in 74 Titles*? Even when the compiler's name is known, details concerning his life may be scarce or entirely lacking. We know precious little, for example, about who the early canonistic compiler Cresconius was and what he did. And when biographical details are not lacking, there may still be

confusion over the compiler's relationship to the various versions or recensions of his collection. Which recension or recensions of his *Collectio canonum*, for instance, did Anselm II of Lucca (d. 1086) compile? Similarly, was Gratian (d. after 1143) actually responsible for all the versions of his *Decretum* or was it finished by others after he had died or given up teaching?

Canonistic sources from the high and late Middle Ages pose many of these same difficulties, while also presenting new challenges. The paucity of reliable editions or even working texts can make accessing this material difficult, and uncertainty over the attribution, dating, and relative chronology can make its interpretation very challenging. The greatest hurdle for many non-specialists, however, tends to be the complexity and jargon of the canon law of this period, which contribute to an image of medieval canon law as a forbidding subject only cultivated by learned specialists. The lack of suitable introductions to the field available in print further perpetuates this caricature.

The *Cambridge History of Medieval Canon Law* seeks to eliminate such obstacles to the wider use and appreciation of medieval canon law. It has two main aims: first, to introduce advanced students and professional historians to the basic history, sources, and doctrines of canon law so that they can appreciate how canon law relates to their own interests and include canon law in their scholarly repertoire; and second, to point out the many new directions and areas of research which recent discoveries in the field have opened up. To this end, we have assembled a truly international team of authors, whose expertise – now available in readable English translation – will guide beginner and expert user alike in approaching the complexities of medieval canon law. The various chapters situate the history of medieval canon law within the larger contours of ancient and medieval history and examine their interrelationship; they summarize and clarify the current state of research on the sources of canon law, explaining what we have learned about their recensions, authorship, dating, and chronology; and they introduce the major tools and resources used in the study of canon law, whether its practice, sources, history, jurisprudence, or doctrine.

The volume consists of three main sections. *Part I* provides an overview of the history of canon law from the time of the early Church to the end of the Middle Ages, in the western and eastern churches. Its aim is to explain the general development of canon law and its relationship to contemporary ecclesiastical, political, and social history, and to do so from a fresh perspective, by incorporating some of the most recent and unexpected findings in the field of canon law. *Part II* discusses the principal sources of canon law and how canon law was disseminated. Its aim is to synthesize and make available

in English the results of the most recent research, as well as to introduce readers to the main reference works and finding aids needed to work with canonistic sources.

Part III examines important aspects of canon law and how they affected society. It seeks to provide an accessible introduction to the main doctrines of medieval canon law and consider the extent to which they were put into practice and/or affected the way in which medieval men and women actually lived their lives. This part is further subdivided in a manner that imitates the way medieval canon lawyers understood their subject. Collections of canon law from the end of the twelfth century through the end of the Middle Ages were typically subdivided into five main sections, the contents of which medieval students learned by memorizing a brief phrase: *iudex*, *iudicium*, *clerus*, *conubium*, *crimen*. Part III addresses these same topics, with the exception of the law of judges (*iudex*). Chapter 17 addresses legal procedure and judgments (*iudicium*). Chapters 18 through 23 address law pertaining to the clergy (*clerus*), broadly conceived, including the law of the sacraments. Chapters 24 and 25 address marriage (*conubium*) and family law. Chapters 26 through 29 deal with sins and crimes (*crimen*).

We have been fortunate in being able to secure excellent authors for all the chapters. The contributors come from both sides of the Atlantic and comprise a truly diverse, international, and multilingual group. We have aimed for a mix of outstanding representatives of a new and exciting generation of canon law scholarship with well-established senior scholars. Our hope is that readers – both expert and novice – will experience the *History* as at the same time fresh, informed, and authoritative.