1   Introduction

'From letter to law' would be an alternative title for this book.[1] The texts are papal letters responding to problems and queries in the last decades of the Roman Empire in the West. They were subsequently transmitted, probably, by episcopal archives, then incorporated into canon law collections. The earliest three collections incorporating papal decisions are from *c.* 500. The empire was over, but the tradition of papal law was well under way. Those collections can certainly be called law, even if it is debatable whether the original letters can be so described, though they can certainly be called jurisprudence.

Thus papal jurisprudence has a long history[2] which shows no sign of ending, but it did have a beginning, in the decades around 400. Then as afterwards, it was primarily demand-driven. In this period the demand came mainly from bishops, sometimes far away (Rouen, Tarragona, Thessaloniki). How to explain the demand? The history of the papacy in late Antiquity tends to be written from a supply-side point of view: growth of ideology and efforts to expand authority, etc. But nobody forced these bishops to go the pope. To understand the demand, we need to focus on the content of the questions – primarily questions from bishops, in this formative period.

To uncover the content of the legal uncertainties that led bishops to write to popes in the decades around 400 CE is the first aim of this book. The ideological tradition already well established by then in the Roman Church does not explain these unsolicited requests from elsewhere for answers. Only an analysis of the types of problem brought to Rome can provide the building blocks of explanation.

The second aim is to establish the texts of these decretals as found in the three key early canon law collections. They are private compilations, not instigated by bishops of Rome so far as we know, so again they direct us to the problem of the demand for papal decisions. These three collections

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[1] The formula is Julia Walworth's.
[2] D. L. d'Avray, 'Stages of Papal Law', *Journal of the British Academy* 5 (2017), pp. 37–59.

are all from around 500 CE. Establishing their texts is the first step towards a reconstruction of the long-term reception of the first papal decretals. Key milestones in the reception of each section of text are identified after the translation and edition of the rulings transmitted by these *c.* 500 collections.

Different categories of reader will use this volume in different ways. It may be useful to undergraduate students of religious life in late Antiquity, but they will only need parts of the book. After the introduction, they could skip straight to the thematic chapters, reading the introductions and the English translations. Other non-specialists interested in early papal history could do the same. Chapter 3 'Texts and Manuscripts' is for the more specialized who want to assess the underpinnings of the editions or rather 'critical transcriptions' on which the translations are based. Most readers can safely by-pass this chapter, but it is the scholarly foundation of the rest and of the sister volume on 'Social Origins and Medieval Reception'. The 'texts and manuscripts' in question all belong to the canon law genre and may interest canon law historians investigating the genre's genesis. The early papal letters that became important in canon law cast light on many aspects of the Western Roman Empire's ecclesiastical structures, but the selection has been made with particular regard to the questions which will be investigated in the companion volume, still in preparation.

The laws edited, translated and introduced here come from the critical half-century of imperial military breakdown. Along with many historians[3] I would date the beginning of the end of the empire in the West to 378, before the 385 letter of Siricius to Himerius bishop of Tarragona, which is judged by most scholars to be the first surviving papal decretal: but before 400 nobody would have predicted the sack of Rome by the Visigoths in 410, under Innocent I (pope 402–417), let alone the collapse of the whole system in the West. The legislation of Innocent I gives hardly any hint of the political turmoil around him. It is calm and magisterial; and in fact, as imperial power was teetering, papal power grew stronger.

Apparently oblivious of the unfolding military crisis (apart from a letter about a wife captured and believed killed who returned to find her husband remarried), Innocent I's letters take us into a different set of social relations: the layers of clerical status, and rules about clerical marriage, liturgical policy, repentant heretics and their prospects, the penitential sub-system – systems that had evolved under the protective cover of the

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[3] Of those currently writing, most notably Peter Heather, above all in his *The Fall of the Roman Empire: A New History of Rome and the Barbarians* (Oxford, 2005).

great empire and continued to develop without that assistance. This book
aims to make the legislation understandable from the inside. Currently,
the untranslated Latin texts in pre-critical editions of uncertain quality
make it hard to penetrate through to the interesting content. The
companion second volume will attempt to explain the demand for this
legislation, adumbrating an interpretation that could work also for papal
legislation in subsequent centuries.

The selection is from texts of Siricius to Celestine I – from the first
half-century – which found their way into the earliest surviving canon
law compilations; and which had a long-term future in the sense of
a quantitatively significant afterlife in the West. This last, quantitative,
criterion gives priority to decretals included in the compilation by
Dionysius Exiguus (henceforth the *Dionysiana*),[4] or the anonymous
collection called the *Quesnelliana* (after the scholar who first studied
it), since both had a significant manuscript diffusion. Furthermore,
the diffusion of these decretals would be taken to a new level by their
inclusion in the ninth-century Pseudo-Isidorian decretal collections –
which carried many genuine decretals, along with forged ones, to
libraries all over Europe.

The third early compilation, the *Frisingensis Prima*, survives in only one
manuscript. It transmits many of the texts edited and translated here, and
the *apparatus criticus* of the texts edited below will tell scholars a lot about
its (low) quality, but no texts are edited from the *Frisingensis* alone. This is
because the decretals it contains which are not in the other two early
collections do not seem to have had much of a manuscript diffusion.

Chapter 2 'The State of Research: Caspar and After' is brief (a much
more thorough survey, too ungainly for inclusion in this book, has been
published separately).[5] It takes as its starting point the account of papal
jurisprudence in an old history of the early medieval papacy which has lost

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[4] Technically, the '*Dionysiana secunda*', because the first compilation by Dionysius did not
include decretals, only conciliar decrees; a possible third *Dionysiana* survives only as
a preface. All this is discussed below in chapter 3 'Texts and Manuscripts'.

[5] For the fuller survey see D. L. d'Avray, 'Half a Century of Research on the First Papal
Decretals', *Bulletin of Medieval Canon Law* n.s. 35 (2018), pp. 331–374. In addition to
works discussed relatively fully in the present chapter, this 'state of research' article surveys
the following: J. Gaudemet, *Les sources du droit de l'église en Occident du IIe au VIIe siècle*
(Paris, 1985); L. Kéry, *Canonical Collections of the Early Middle Ages (c. 400–1140):
A Bibliographical Guide to the Manuscripts and Literature* (Washington, DC, 1999);
P. Jaffé (ed.), *Regesta Pontificum Romanorum*, 3rd edn, vol. I, ed. N. Herbers, M. Schütz,
et al. (Göttingen, 2016); Y.-M. Duval, *La décrétale Ad Gallos episcopos. Son texte et son
auteur, texte critique, traduction française et commentaire* (Supplements to Vigiliae
Christianae 73; Leiden, 2005); C. Hornung, *Directa ad decessorem: Ein kirchenhistorisch-
philologischer Kommentar zur ersten Dekretale des Siricius von Rom* (Jahrbuch für Antike und
Christentum, Ergänzungsband Kleine Reihe 8; Münster, 2011); G. D. Dunn (ed.), *The
Bishop of Rome in Late Antiquity* (Farnham, 2015); A. Ferreiro, 'Pope Siricius and

hardly any of its value, and rapidly indicates the main lines of subsequent research, and an explanation of the need for a complementary but different approach.

Chapter 3 'Texts and Manuscripts' begins with discussion of previous work on the textual transmission of the first papal laws, followed by my own assessment of the data about the transmission of the early decretals and their incorporation into the *Quesnelliana* and *Dionysiana*. Then I explain the 'critical transcriptions' system adopted for editing texts: in a nutshell, a key manuscript will be selected as a base, it will be compared with the old Migne *Patrologia Latina* text, and other key manuscripts will be consulted to establish a text with a critical basis. I always consult the two manuscripts of the first version of the *Dionysiana* containing decretals, a good manuscript of the *Quesnelliana*, and the sole manuscript of the *Frisingensis Prima*, when they contain the text in question.

The primary criterion in establishing the text will be to show the version that was spread through the earliest big and influential canon law collections, but I also try to reconstruct the authorial text in the *apparatus criticus*. The most important canon law collection was the *Dionysiana* and the key manuscript of the *Dionysiana* seems to be Vatican City, Biblioteca Apostolica Vaticana (BAV) Vat. Lat. 5845, so a full description is provided – this is also of interest for the reception of the collection, because of the texts with which the latter travels in the manuscript. Briefer descriptions of other manuscripts used will be given.

The editions and translations themselves, divided into chapters according to theme, will take the form of a paragraph of English, followed by the corresponding paragraph of Latin (preceded by specific references to the folios of the manuscript and to the columns of the *Patrologia Latina* texts used). This will make the accuracy of the editions easier to check than is usually the case in scholarly editions.

The key stages in the reception of each passage can also be indicated at this point. There are far too many canon law collections[6] for a comprehensive list to be sensible. A list of 'Selected Canon Law

Himerius of Tarragona (385): Provincial Papal Intervention in the Fourth Century', in Dunn, *Bishop of Rome*, pp. 73–85; D. Moreau, '*Non impar conciliorum extat auctoritas*. L'origine de l'introduction des lettres pontificales dans le droit canonique', in J. Desmulliez, C. Hoët-van Cauwenberghe and J.-C. Jolivet (eds.), *L'Étude des correspondances dans le monde Romain de l'antiquité classique à l'antiquité tardive: permanences et mutations* (Lille, 2010), pp. 487–506; W. Ullmann, *Gelasius I. (492–496)* (Päpste und Papsttum 18; Stuttgart, 1981); and papers by Geoffrey Dunn, fundamental but too numerous to list here. For convenience, the publications surveyed in this review article are included in the present volume's bibliography.

[6] L. Kéry, *Canonical Collections*.

Collections' before 1140 includes well over 150 collections.[7] I try to trace the reception, if there is one, in the following key collections:

i.   Cresconius, *Concordantia canonum*,[8] which originates probably in the second half of the sixth century, and was widely copied in Carolingian times, notably in areas where Anglo-Saxon missionaries worked.

ii. The *Vetus Gallica*,[9] compiled around 600 but updated in the first half of the eighth century probably at the monastery of Corbie to include much more papal material.

iii. The *Hispana*, compiled in Spain, after 694 in the definitive version which most of the manuscripts transmit.[10] There is no modern critical edition of the part that concerns us, but the edition in Migne, *PL* 84 is usable.[11]

iv. Pseudo-Isidore, on which there is an immense literature.[12] It should be noted that my references are to the edition (by Merlin) in Migne, *PL* 130, rather than to the supposedly critical edition by Hinschius, in which problems have been identified.[13]

v.   The influential *Decretum* of Burchard of Worms, dating from 1000 – the most important canon law collection of the period just before the Gregorian Reform.[14] Note that I give the references to Burchard in a form that can lead the researcher on to Burchard's own sources,

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[7] L. Fowler-Magerl, *Clavis Canonum: Selected Canon Law Collections before 1140* (Hannover, 2005): list of sigla pp. 259–263.

[8] K. Zechiel-Eckes, *Die Concordia canonum des Cresconius: Studien und Edition*, 2 vols. (Freiburger Beiträge zur mittelalterlichen Geschichte 5; Frankfurt am Main, 1992).

[9] H. Mordek, *Kirchenrecht und Reform im Frankenreich: Die Collectio vetus Gallica, die älteste systematische Kanonessammlung des Fränkischen Gallien. Studien und Edition*, 2 vols. (Berlin, 1975).

[10] Kéry, *Canonical Collections,* p. 61. See too Fowler-Magerl, *Clavis Canonum*, pp. 39–42. Still relevant is F. Maassen, *Geschichte der Quellen und der Literatur des canonischen Rechts im Abendlande bis zum Ausgange des Mittelalters*, vol. I (Graz, 1870), pp. 667–716.

[11] For convenience, references are to the column numbers in this volume.

[12] E.g. K. Ubl and D. Ziemann, eds., *Fälschung als Mittel der Politik: Pseudoisidor im Licht der neuen Forschung. Gedenkschrift für Klaus Zechiel-Eckes* (Wiesbaden, 2015); S. Patzold, *Gefälschtes Recht aus dem Frühmittelalter: Untersuchungen zur Herstellung und Überlieferung der pseudoisidorischen Dekretalen* (Heidelberg, 2015).

[13] 'Obwohl der ganz und gar unkritische Merlin eine junge Handschrift publizierte, wird seine Edition der Überlieferung gerechter als das Zwittergebilde von Hinschius, das nichtinformierte Benutzer immer wieder zu Mißversändnissen verleitet.' H. Fuhrmann, *Einfluß und Verbreitung der pseudoisidorischen Fälschungen*, 3 vols. (Monumenta Germaniae Historica [= MGH] Schriften, XXIV, 1–3; Stuttgart, 1972–1974), vol. I, p. 174. A provisional online edition is available on the website of the *Monumenta Germaniae Historica*, but the experience of the last couple of decades has taught that online resources can easily disappear. A critical edition is being prepared by Eric Knibbs.

[14] See H. Hoffman and R. Pokorny, *Das Dekret des Bishofs Burchard von Worms: Textstufen – Frühe Verbreitung – Vorlagen* (MGH Hilfsmittel 12; Munich, 1991). I use the edition in *PL* 140.

thanks to the identifications made in Hoffmann and Pokorny, *Das Dekret*. For the text I have used *PL* 140 for convenience: there is no modern critical edition, and the extreme rarity of the critically introduced early modern edition[15] makes it less useful in practice than the almost universally available and serviceable Migne, *Patrologia Latina* edition.

vi. The well-edited Reform-period *Collection in 74 Titles*.[16]

vii. Gratian's Decretum, the most influential compilation of all.

Those who want a fuller list of canon law collections influenced by the texts studied here can find it with the first entry in the '**Reception'** section under each discrete text, which takes the form of 'canon incipit for *Clavis Canonum Search*' followed by the opening lines of a canon. With this incipit the researcher can turn to the *Clavis Canonum* database compiled by Linda Fowler-Magerl and available over the internet at the time of writing through the Monumenta Germaniae Historica database, at www .mgh.de/ext/clavis/. To make this work, the incipit has to be both preceded and followed by four asterisks, e.g. ★★★★De penitentibus★★★★.[17] A further step is currently necessary! The database does not at present break the code of the sigla standing for the many canon law collections which the *Clavis* searches. One may hover the cursor over a siglum and get the reference, it is true, but the database alone makes it hard to see if a given collection has the canon. For that list the patient user must turn to Fowler-Magerl's *Clavis Canonum: Selected Canon Law Collections before 1140* (Hannover, 2005).

The thematic arrangement of the texts should help historians make sense of them, and bring out salient themes. The selection of themes in this volume is obviously not exhaustive. Historians can try to tell the truth and nothing but the truth, but can never tell the whole truth. Other scholars would find other things in these decretals. Nonetheless, the following themes can be distinguished as important for any characterization of the content:

Rituals and liturgy. Most of the rituals that would much later be defined as 'sacraments' make an appearance in the earliest papal legislation, along with one or two rituals that never made it into the final 'sacrament' category, notably a curious combination of penance and

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[15] *Burchard von Worms, Decretorum libri XX: Ergänzter Neudruck der Editio princeps Köln 1548*, ed. G. Fransen and T. Kölzer (Aalen, 1992).

[16] *Diversorum patrum sententie siue Collectio in LXXIV titulos digesta*, ed. J. T. Gilchrist (Monumenta Iuris Canonici series B. Corpus Collectionum I; Vatican City, 1973).

[17] Kenneth Pennington taught me this trick, one of my many debts to him, since without the asterisks the database is currently useless; with luck this unfortunate feature of an invaluable tool will have been removed by the time the book appears.

quasi-exorcism. The papal decretals show Christian ritual in a formative phase of development. Liturgy too is both recognizable in broad lines – the structure of the year and the week according to the life of Christ, penance, and celebration – but not yet in the form with which medievalists are familiar. Liturgy and rituals are saturated with a symbolic mentality.

Status hierarchy. Symbolism goes with highly developed status hierarchy, as a model famously developed by the anthropologist Mary Douglas might lead one to expect. The word 'hierarchy' needs clarification, as it can mean both status hierarchy and a hierarchy of command. The managerial hierarchy of a modern company is instrumental, not embedded in a system of meaning and values. Late Antique hierarchies of command were on the other hand integrated in the value system, but even so this hierarchy of power should be distinguished from status hierarchy, though the two were intertwined, just as the hierarchy of authority in universities is intertwined with a status hierarchy of Lecturers, Readers and Professors, and the UK Civil Service hierarchy with a hierarchy of 'honours'. Some societies have more hierarchy of the status sort than others: in the English legal system, the Inns of Court more than a City Solicitors firm for instance. A high level of status hierarchy tends to go with a lot of ritual, and its absence with less ritual. Evangelical Baptist churches have both less status hierarchy and less ritual than the Catholic or Orthodox churches. The Church of late Antiquity was on the high end of the hierarchy scale. There was a multiplicity of gradations of status within the clergy, as well as a sharp differentiation between clergy and laity.

Hierarchy of authority. Command hierarchy is as much in evidence as status hierarchy in this first age of papal decretals, though the two structures do not map tidily on to each other. By the end of the fourth century a complex chain of command with many levels had developed in the Christian Church. The bishop in his city played a pivotal role, but below bishops were large communities of clerics, sometimes running their own churches, and between an ordinary bishop and the bishop of Rome there might be two layers in the hierarchy of authority. This hierarchy of power regulated elections to bishoprics. It went with an increasingly precise geographical division of the Christian world into dioceses. Could a cleric move from one diocese to another? This was the kind of practical problem that arose.

Celibacy. Celibacy is another strong theme in the earliest papal legislation and it is connected with both kinds of hierarchy. The connection with

8   Introduction

status hierarchy is strongest as celibacy marked off the deacons, priests, and
bishops from lower levels of clerical status, but the 'celibacy line' is also
linked to command hierarchy, as deacons, the first level of hierarchy of
which celibacy was required, were key figures in the government of episco-
pal churches, notably at Rome, where they were more powerful than
priests. It should be explained that the clerical celibacy of late Antiquity is
a different sort from that of the eleventh-century Gregorian Reform. In
the second half of the fourth century the Roman Church began to enforce
the rule that clerics should give up sex if they wanted to be promoted to
deacon, though they would not separate from their wives (below which
there were a series of levels where clerics could be sexually active with their
wives). This celibacy rule may have arisen to help the ordinary clergy keep
up with monastic asceticism, but its rationale and function was to mark out
the separateness of those who came closest to the Eucharist.

'Bigamy' – the ban on twice-married men or husbands of widows
becoming clerics – was another way of marking out the clergy from
ordinary people. For the latter, remarriage after the death of a spouse
was unproblematic, but it was an absolute bar to a clerical career. The
underlying rationale takes one deep into the realm of symbolism
(explored in my *Medieval Marriage: Symbolism and Society* (Oxford,
2005), chapter 3).

Marriage. While the 'bigamy' rules applied only to the clergy, and
remarriage by lay men or women after a spouse's death was
unproblematic, the indissolubility rule applied to all. The earliest papal
legislation was already trying to enforce the system (perhaps unique in the
history of literate societies) that ruled out both divorce and polygamy. For
the married clergy one can imagine that this was successful in that they
were under the bishop's control. What effect it had on the laity is impos-
sible to estimate but the legacy of these decretals would be a key fact in
medieval history. Exclusion from communion after proven adultery came
within the purview of the clergy.

Monks and the secular clergy. As suggested above, the celibacy
within marriage of the secular clergy may have been a response to the
celibacy of monks (rather as Hindu Brahmans adopted vegetarianism as
a response to 'renouncers' who made them look soft), because monks
were becoming prominent in Western Christianity in the fourth century.
Originally lay, without clerical orders, their relation to the ordinary clergy,
while not hostile, was complicated and problematic from the start. What
happened when clerics became monks or vice versa, for instance? Dealing
with the interactions of these two elites would be a central role of the

papacy ever afterwards. In the early papal legislation we see the start of
this mediating role.

Heretics: returning to the fold. Practical problem-solving of this sort
is more prominent in early papal legislation than in theology (predestina-
tion apart), but whether to baptize returned heretics, and whether to let
them exercise priestly functions, were practical problems par excellence,
calling on the subtlety and flexibility of, especially, Innocent I.

Heretics: free will, predestination, and Pelagianism. Tensions
arising from the establishment of monasteries in Gaul by John Cassian
get associated in a long decretal of Celestine I with Cassian's mild but firm
critique of Augustine of Hippo's views on grace and free will. These topics
are the only core theological subjects discussed at length in the *Dionysiana*
and *Quesnelliana* collections: the latter has three fascinating letters of
Innocent I to African bishops, apparently endorsing their hard-line
views on grace and (corrupted) nature, but in fact significantly silent on
key points, stopping short of some hard-line Augustinian positions.

Penance. Penance was a possibility for returning heretics and for other
sinners too. As is well known, the penitential system was quite different
from what developed subsequently, key features being that the penance was
public, marking reinsertion into the community, and that it could be done
only once, though anyone could be forgiven at the point of death. Again,
practical problems arose: could the clergy do penance? Could one return
after penance to professions with a high risk of sin, given the unrepeatability
of the ritual? Such practical problems are reflected in the early decretals.

An awareness in the early fifth century that religious law can change or
be suspended in particular situations is a motif that cuts across the
thematic division. Some sacred laws are treated as divine and immutable.
Continuity was certainly emphasized in early canon law, but it was not
regarded as absolutely inalterable.[18] Implicit in this is the idea of an
authority which decides when the law might be modified.

To summarize: these were the topics on the minds of the men, above all
bishops, who wrote to the pope for answers: ritual, hierarchy, celibacy,
marriage, heresy, and penance. Popes seldom took the initiative: most
decretals are responses. Why answers were wanted is another question.
The first step to answering it is to get more granular images of the issues
they were asked to address.

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[18] See especially exceptions to the rule about when baptism should take place, and chapter
13 'Penance', **J³.675,** XXII.