

## Introduction

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The aim of this book is to link up the two ages of papal decretals, c. 400 and c. 1200, by looking at the causes and effects of the documents edited and translated in *Papal Jurisprudence c. 400: Sources of the Canon Law Tradition* (Cambridge, 2019) (henceforth *Pj.c. 400*).<sup>1</sup> First the causes: in late Antiquity, why were papal rulings requested in the first place? Then the effects: the continuation by later bishops of Rome, above all Leo I and Gelasius I, of the pattern set in the first fifty years of papal jurisprudence; the incorporation in canon law collections of those early rulings; and their subsequent reception up to the mid-thirteenth century. The book analyses the parallels and connections between the two decretal ages.

The first volume was designed to give a secure text-critical base to interpretation. Textual criticism matters.<sup>2</sup> The accompanying translations furthermore made the primary texts available even to (intellectually ambitious) undergraduates; given the difficulty of the language, which might flummox experienced medievalists and even classicists who haven't worked on late Latin, the translation also enables a fuller understanding of the original Latin. The present volume too contains translated and critically edited material. Extracts from Leo I and Gelasius I are translated with reference to a key manuscript (because the editions are old), and thirteenth-century glosses on early papal jurisprudence are both translated and edited in critical transcriptions from manuscripts.

<sup>1</sup> It is only just that the first footnote should be a list of errata (too many). Incipits 138, 156, 157, 184, 185, 281, 282, 283: for 'successorem' read 'decessorem'; 161 line 17 and 188 line 6: for 407 [CE] read 417; 30 line 14: for 'possible', read 'possible to'; 77 line 11 up: after 'lector' add 'or acolyte'; 80 line 17: for 'therefore' read ', from that point'; 92 line 19: for 'lord' read 'Lord'; 196 line 7: for 'baptized' read 're-baptized'; 200 line 13: for 'laying' read 'laying on'; 200 line 16: for 'priest' read 'bishop' [*sacerdotis*]; 204 line 11: for 'Peter' read 'Philip'; 254 note 354: 'praedicti' probably refers to Prosper and Hilary; 275 line 6: after 'apostolic' add 'see'.

<sup>2</sup> One example: the interesting ritual called *consignatio*, half exorcism, half penance, ceased to be understood in the course of transmission, as the word becomes *assignatio*. See *Pj.c. 400*, 63 note 52 and 64.

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The main task is interpretative, however, for the book attempts a kind of long-range history which is neither mainly about continuities ('growth of an idea') nor about disjunctions ('context' as methodological master-key), but about the expansion of meaning in the course of reception, and about a kind of social soil in which papal jurisprudence flourished in periods widely separated in time. Within the overall interpretation – twofold: origins and reception – the individual chapters also attempt to contribute to period-specific problems, such as the Pelagian controversy, the varieties of religious law in the Carolingian Renaissance, and the origins of the religious revolution of the eleventh century. Specialists may only be interested in parts of the landscape, but I hope some will be prepared to fly long-haul low to the ground, so that late Roman historians may appreciate the long-term outcomes of developments in their period, and medieval historians the relevance to their work of late Antiquity.

I propose the following theses:

- both the first (late Antique) and the second (twelfth–thirteenth century) decretal ages were demand-driven responses to social complexities and uncertainties;
- in both ages, canon law came to be separated out from religious thought about morals or the divinity – with Dionysius Exiguus, c. 500, and Bernard of Pavia, c. 1200, demarcating the boundaries of the legal system;
- the history of canon law collections, notably that of Dionysius, connects the two decretal ages: decretals from the first age were transmitted throughout the intermediate period;
- in the eleventh century, the mismatch between the contents of ancient papal law and actual social practice ultimately resulting from the ruralization of the clergy was a cause of the 'papal turn';
- the quantity of late Antique papal decretals in canon law collections contained tipped the balance in the twelfth century towards a papally dominated canon law, rather than one controlled by legal specialists alone, as in Islam;
- and, finally, the meaning of papal responses from the first decretal age (fourth and fifth century) was still expanding in the second decretal age (twelfth and thirteenth century), as is evident in glosses that discuss the two in conjunction.

Holding these theses together is the overarching argument that it pays to study the first and second decretal ages within a common frame.

## 1 Transformations and Long-Term Explanations

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### **The Transformation of the Roman World: Gibbon**

Many historians are as comfortable on the borders between periods as within them.<sup>1</sup> The transformation of the Roman world into the ‘Middle Ages’ is a natural paradigm for this way of thinking about history, and also the setting of the documents at the centre of this book. Edward Gibbon’s *Decline and Fall of the Roman Empire* was a model if a hard act to follow. His close narrative of events still stands up to scrutiny, but he could also take a big-picture view of both sides of the watershed. Between the reigns of the Roman emperor Decius (d. 251) and the younger Theodosius (d. 450), he writes,

the seat of government had been transported from Rome to a new city on the banks of the Thracian Bosphorus; . . . The throne of the persecuting Decius was filled by a succession of Christian and orthodox princes, who had extirpated the fabulous gods of antiquity: and the public devotion of the age was impatient to exalt the saints and martyrs of the catholic church on the altars of Diana and Hercules. The union of the Roman empire was dissolved; its genius was humbled in the dust; and armies of unknown barbarians, issuing from the frozen regions of the North, had established their victorious reign over the fairest provinces of Europe and Africa.<sup>2</sup>

### **The Transformation of the Roman World: Peter Brown**

The character and causes of the transformation have been endlessly discussed since Gibbon, but in the later twentieth and early twenty-first centuries the *oeuvre* of Peter Brown set a new tone. His focus has been more on culture and religion than on politics or on the economy as normally understood, though he sees forms of thought as part of social

<sup>1</sup> A subsidiary purpose of this chapter is to give background on late Antiquity to readers more familiar with the Middle Ages (1000–1250), and vice versa.

<sup>2</sup> E. Gibbon, *Decline and Fall of the Roman Empire*, chapter xxxiii, 3 (London, 1993), 392.

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and economic change. Brown's views on social and economic change in the older sense stayed within the previous conventional range: without the pump of taxation for the army and the cities, 'the Roman-style economy collapsed . . . From A.D. 400 onwards, diversity, not unity, was the hallmark of an age without empire.'<sup>3</sup> The keyword 'diversity' was however the cue for his more distinctive picture of the Western Christendom which emerged from late Antiquity as being 'made up of interlocking modules . . . not like a great tent, upheld by a single tent-pole fixed in Rome or, more widely, in a still "Roman" Mediterranean'.<sup>4</sup> Brown also shifted attention towards a transformation of attitudes to death.

This marked the medieval period off from the Roman world. In a late work Brown turns to 'the relation between society and the religious imagination, as it played upon the theme of the afterlife'.<sup>5</sup> He traces the transformation from an afterlife enjoyed by an elite in the stars, 'the mystique of the ancient cosmos', to 'a Christian model of the universe dominated by the notion of sin, punishment and reward'.<sup>6</sup> These developments are uncoupled from the external history of the empire and its decline and fall: 'some of the most decisive changes in the Christian imagination cannot be linked in any direct way to the brisk pace of history as it is conventionally related in textbooks of the history of the fall of Rome and the beginning of the Middle Ages'.<sup>7</sup> 'No sense of growing insecurity in the Roman Empire of the late fourth and early fifth centuries can, of itself, explain the lucubrations of Augustine on the tenacity of sin. No shock of barbarian invasion can account for the emergence of a fear of hell and the demonic forces that lie in wait for the soul at the moment of death. These dark imaginings defy our attempts to link them to known political and social crises.'<sup>8</sup> Again, 'no brutal rupture between a Roman order and a new, "barbarian" age . . . can explain the differences between an Augustine and a Gregory of Tours'.<sup>9</sup> By the mid-seventh century we see through Brown's eyes a world where monasteries prayed for their founders' souls, and prayers for the dead and donations to help them were normal, where purgation between death and heaven was envisaged, and the relation of the living and the dead was a deep preoccupation, and a source of visions. That new world was the true end of the ancient

<sup>3</sup> P. Brown, *The Rise of Western Christendom: Triumph and Diversity, 200–1000 A.D.*, 2nd ed. (Malden, MA, 2003), 12–13.

<sup>4</sup> *Ibid.*, 16.

<sup>5</sup> P. Brown, *The Ransom of the Soul: Afterlife and Wealth in Early Western Christianity* (Cambridge, MA, 2015), xii.

<sup>6</sup> *Ibid.*, 205–6. <sup>7</sup> *Ibid.*, xiv. <sup>8</sup> *Ibid.*, xiv–xv. <sup>9</sup> *Ibid.*, xv.

world.<sup>10</sup> Attitudes to death are not so central in earlier works by Peter Brown, but forms of religious thought and practice in a broad cultural context have tended to dominate all his *oeuvre*.

So sharp a turn away from conventional analyses of the end of empire inevitably elicited reactions. Two implicit reactions to a Brownian concentration on culture and religion represent two different kinds of interpretation: explanatory political narratives underpinned by a model of what one might call ‘empire theory’, and archaeology-based social and economic history. These two approaches (of course there are others) are compatible with each other and with Peter Brown’s, even complementary, but they are pictures from different angles in different colours.

### Military Assassination

Peter Heather’s analytical narratives reasserted the ‘brisk pace of history’, and put the ‘shock of barbarian invasion’ back in the centre of the story, explaining its force by the influence on barbarian social, economic, and military culture of their neighbour, the Roman Empire. He suggests that there is

an inbuilt tendency for the kind of dominance exercised by empires to generate an inverse reaction whereby the dominated, in the end, are able to throw off their chains. The Roman Empire had sown the seeds of its own destruction . . . not because of internal weaknesses that had evolved over the centuries, nor because of new ones evolved, but as a consequence of its relationship with the Germanic world . . . The west Roman state fell not because of the weight of its own ‘stupendous fabric’, but because its Germanic neighbours had responded to its power in ways that the Romans could never have foreseen . . . [B]y virtue of its unbounded aggression, Roman imperialism was ultimately responsible for its own destruction.<sup>11</sup>

How this happened is explained not only by this general model but also by a chronological narrative calculated to bring out the sequence of causation in detail.

### Standard of Living

The effect of the empire’s destruction on standards of living is the focus of Brian Ward-Perkins’ *The Fall of Rome and the End of Civilisation* (New York, 2005), which looks like a conscious attempt to bring Brown’s ‘Late Antiquity’ down to earth – even in a literal sense by using

<sup>10</sup> *Ibid.*, 211 and *passim*.

<sup>11</sup> P. Heather, *The Fall of the Roman Empire: A New History* (London, 2005), 459.

archaeological evidence to show the scale of the material catastrophe. Again: ‘the fifth century witnessed a profound military and political crisis, caused by the violent seizure of power and much wealth by the barbarian invaders . . . [T]he post-Roman centuries saw a dramatic decline in economic sophistication and prosperity, with an impact on the whole of society, from agricultural production to high culture, and from peasants to kings.’<sup>12</sup>

### Christianity as a Social and Economic Fact

Drawing together in a convincing short synthesis the interpretations of Ward-Perkins, Heather, Brown and others, Ian Wood has proposed that the fundamental change was Christianity as an economic, social, and demographic as well as a religious phenomenon.<sup>13</sup> Note that his argument, if correct, dispenses the historian from any need to put ‘windows into people’s souls’ by speculating about the sincerity of conversion to Christianity in an age when it was evolving from a sect which most members chose to a Church into which they were born.<sup>14</sup> The demographics of the clergy and the transfer of property are the facts on the ground, whatever was going on in people’s minds.

For all their differences in emphasis and approach, all these historians are focussing on transformation: what made the early Middle Ages different from the Roman World or, in the historiographical wake of Peter Brown, from late Antiquity?

Different historians give different answers, not necessarily incompatible. For Peter Brown, the Christianity of the early Middle Ages was different above all because it was a whole series of ‘micro-Christendoms’, each with its own characteristics. He has attempted ‘to delineate the very different forms which Christianity took in the regions in which it gained a foothold’.<sup>15</sup> The social and economic contrasts between regions come out clearly from the systematic comparisons in Chris Wickham’s massive synthesis on the early Middle Ages.<sup>16</sup> Famously, Henri Pirenne found the key to the character of the early Middle Ages in the breakdown of trade, towns, taxation, and lay education after the seventh century, as a consequence of Islamic

<sup>12</sup> *Ibid.*, 183.

<sup>13</sup> I. Wood, *The Transformation of the Roman West* (Leeds, 2018), 119–20.

<sup>14</sup> See the nuanced account in A. Louth, ‘*Fiunt, non nascuntur Christiani: Conversion, Community and Christian Identity in Late Antiquity*’, in C. Harrison, C. Humfress, and I. Sandwell, *Being Christian in Late Antiquity: a Festschrift for Gillian Clark* (Oxford, 2014), 109–19.

<sup>15</sup> Brown, *Rise of Western Christendom*, 488.

<sup>16</sup> C. J. Wickham, *Framing the Early Middle Ages: Europe and the Mediterranean, 400–800* (Oxford, 2005).

conquests.<sup>17</sup> Julia Smith draws up a convincing shortlist of characteristic features of what we call the early Middle Ages:

generally low population levels despite spasmodic growth; distinct but overlapping local economies combining low-output peasant agriculture and variable levels of urban activity with lavish conspicuous consumption by the elite; strongly gendered hierarchies of domination that commonly conflated the familial and official; the heavy presence of the past as a source of authenticity, legitimization, and meaning; polities incapable of harnessing sufficient economic, political, and cultural resources to overcome their innate tendency to collapse under the weight of their own success . . .

She adds Christianity as a transmitter of much more of Roman culture than its own creed and the ‘critical diagnostic: a cluster of dominant ideologies in which Rome held a central inspirational place but no ascendant political role as it once had had in Antiquity and would again, differently conceived, under papal guidance’.<sup>18</sup> So Smith too sees similarities between periods on either side of what we call the ‘early Middle Ages’.

If we shift our sights to near the other end of the period covered by this study we find exactly the same historiographical tendency to focus on transformation as in the historiography of late Antiquity. This time the transformation is placed approximately in the eleventh century.<sup>19</sup> As with the historiography of late Antiquity, there is a wide range of approaches.

### The ‘Making of the Middle Ages’

The nearest medieval counterpart to Peter Brown’s approach is Richard Southern’s; indeed, in the Oxford in which Peter Brown was trained, initially feeling himself to be a medievalist, Southern was the most famous

<sup>17</sup> H. Pirenne, *Mahomet et Charlemagne* (Paris, 1937). Pirenne would probably be flattered to know that his thesis is still thought worth attacking in a premier journal: B. Effros, ‘The Enduring Attraction of the Pirenne Thesis’, *Speculum* 92 (2017), 184–208. Effros thinks he is colonialist and orientalist. Her own interpretation is that – it is complicated, the ‘transformation of the Roman world was far more variable and complex than Pirenne envisioned’ (188).

<sup>18</sup> J. M. Smith, *Europe after Rome: a New Cultural History 500–1000* (Oxford, 2005), 296.

<sup>19</sup> Important exceptions are C. West, *Reframing the Feudal Revolution: Political and Social Transformation between Marne and Moselle, c. 800–c. 1100* (Cambridge, 2013), which sees formalized twelfth-century structures as developing out of Carolingian reforms, and, on religious ‘reform’, S. Hamilton, *Church and People in the Medieval West* (Edinburgh, 2013), 105: ‘there is little new about the ideals taken up by the eleventh-century reformers . . . [T]he project had begun with the Carolingians, and their text and laws provided the foundation for the reforming aspirations of their tenth-, eleventh- and twelfth-century successors.’ The present study looks at even – much – earlier ‘texts and laws’, the relevance of which she is aware of (*ibid.*, 64).

medieval historian, and probably exercised an influence if only by osmosis, since Brown studied as a young student the central medieval period which Southern conveyed to captivated readers in his celebrated *Making of the Middle Ages*; it was published in 1953, the year when Brown started his undergraduate degree.<sup>20</sup> In a later book Southern gave a succinct summary of the transformation he saw in the decades following c. 1050:

The social and religious order . . . showed little sign of breaking up in the year 1050. Whether we look at western Europe's general economic condition, its religious ideals, its forms of government, or its ritual processes, there is little to suggest that a great change was at hand. And yet within the next sixty or seventy years the outlook had changed in almost every respect. The secular ruler had been demoted from his position of quasi-sacerdotal splendour, the pope had assumed a new power of intervention and direction in both spiritual and secular affairs, the Benedictine Rule had lost its monopoly in the religious life, an entirely new impulse had been given to law and theology, and several important steps had been taken towards understanding and even controlling the physical world . . . That all this should have happened in so short a time is the most remarkable fact in medieval history . . . At present we understand very little of the causes of rapid change on this scale, but it is possible that the most important factor was a great acceleration in economic development in the late eleventh and early twelfth centuries.<sup>21</sup>

### Economy and Religion

The acceleration in economic development is part of the standard narrative of medieval history. Long ago, Henri Pirenne found seeds of what would become a capitalist economy in the enterprise of men like Godric of Finchale (before he gave it all up and became a hermit).<sup>22</sup> A generation after Pirenne the formula of a 'Commercial Revolution' was coined by Robert Lopez.<sup>23</sup> There were disagreements, notably about the importance in the process of population growth,<sup>24</sup> but few doubted the scale of the economic change.

<sup>20</sup> P. Brown, 'SO Debate: The World of Late Antiquity Revisited', *Symbolae Osloenses: Norwegian Journal of Greek and Latin Studies* 72 (1997), 5–30, at 10.

<sup>21</sup> R. Southern, *Western Society and the Church in the Middle Ages* (London, 1970), 34.

<sup>22</sup> See for example H. Pirenne, 'The Stages in the Social History of Capitalism', *American Historical Review* 19 (1914), 494–515; 503–4 for Godric of Finchale.

<sup>23</sup> R. S. Lopez, *The Commercial Revolution of the Middle Ages, 950–1350* (Englewood Cliffs, 1971).

<sup>24</sup> G. Ohlin, 'No Safety in Numbers: Some Pitfalls in Historical Statistics', in H. Rosovsky (ed.), *Industrialisation in Two Systems: Essays in Honor of Alexander Gershenkron* (New York, 1966), 68–90, at 81–4 showed the flimsy evidential basis of the folk theory that population growth drove the expansion of the European economy. The folk theory remains intuitively plausible, given urbanization etc.



Economic development and religious transformation were linked in a highly original way in Alexander Murray's *Reason and Society in the Middle Ages* (Oxford, 1978). One of Murray's key arguments turned on the speeding up of social mobility. To simplify his interpretation: the rise of a money economy led to an increase in the use of cash to purchase church offices – the sin of simony – from powerful secular rulers. That eventually provoked a reaction which opened an opportunity – for men with an education in the burgeoning 'schools' of higher education. Criteria for promotion were needed, and academic achievement was an obvious asset, especially if it went with recommendations from highly regarded 'masters' of theology, specialists in 'scholastic' learning. This in turn encouraged the development of the schools into what we call universities. Thus economic transformation, Church reform and an intellectual revolution, the birth of scholasticism and canon law, were all linked together.

A darker image of transformation in the eleventh and twelfth centuries was presented a generation later by R. I. Moore, who interpreted it as a seizure of power by educated clerics, whose arsenal included stigmatization and persecution of minorities.<sup>25</sup> This is not the place to debate Moore's controversial thesis, but it is worth pointing out the convergence from a completely different starting point towards a common thesis: that the medieval West was transformed in the century around 1100. It is also notable that both Murray and Moore integrate religious history closely and causally into social and economic history.

### The Year 1000

Moore's interpretation partly overlaps with one proposed by historians (Georges Duby, Guy Bois) less concerned with religious change. Here the argument is that it was around the year 1000 that ancient slavery finally disappeared, to be replaced, perhaps after a short golden age of freedom, by peasant subjection in the form of legal obligations to lords, who ran the territory around their castles, up to the boundaries of the next lord's lands.<sup>26</sup> Primogeniture and younger sons are important in this interpretation too, but the latter are envisaged as knights without land, seeking an heiress to give them a household or a lord to employ them.<sup>27</sup> These retinues of 'young men' (as unmarried knights of any age were called)

<sup>25</sup> R. I. Moore, *The First European Revolution c. 970–1215* (Oxford, 2000).

<sup>26</sup> G. Duby, ed., *L'an mil* (Paris, 1967); G. Bois, *La mutation de l'an mil: Lormand, village mâconais, de l'Antiquité au féodalisme* (Paris, 1989).

<sup>27</sup> A principal critic of the 'year 1000' thesis has been D. Barthélemy: see e.g. *La mutation de l'an mil, a-t-elle eu lieu?: servage et chevalerie dans la France des X<sup>e</sup> et XI<sup>e</sup> siècles* (Paris, 1997).

ravaged the lands of the neighbouring lords. The ‘peace of God’ movement was a reaction against the violence.<sup>28</sup>

The year 1000 is the watershed for some social and economic historians; for religious history, c. 1100 would be the watershed according to John van Engen. The contrasts he delineates are different from the ‘year 1000’ theories just discussed, but his view shares with theirs a conviction that a threshold was crossed between the early and the central Middle Ages.<sup>29</sup> His broad and humane essay covers many ‘before and after’ contrasts, of which one may single out the following. The Christianity before c. 1100 was dominated by bishops, whereas afterwards they tended to get squeezed out by the papacy above them and the parish clergy below them in the hierarchy,<sup>30</sup> the focus on ‘conversion’ in the early Middle Ages gave way to an ideal of ‘reform’ from c. 1100; and the Eucharist replaced baptism as the primary sacrament in the later period.<sup>31</sup>

Van Engen’s task was to make bold claims, and naturally they provoke some dissent.<sup>32</sup> He and the other historians of historical transformations perform a service, however, in combatting the overspecialization which is a bane of the historical profession. The schema of a general rupture, if presented as a simplification open to correction, is one of the best ways of rescuing history from myopic specificity; but it is, however, not the only way, and at best it brings only two adjacent periods within a common frame.

<sup>28</sup> This too has been attacked by Barthélemy, ‘La paix de dieu dans son contexte (989–1041)’, *Cahiers de civilisation médiévale* 40 (1997), 3–35, especially 9–10, 15, 16, 17–25, 35.

<sup>29</sup> J. van Engen, ‘Conclusion: Christendom, c. 1100’, in F. X. Noble and J. Smith, eds., *The Cambridge History of Christianity*, iii, *Early Medieval Christianities, c. 600–c. 1100* (Cambridge, 2008), 625–43.

<sup>30</sup> *Ibid.*, 630; ‘after the year 1100 bishops ceased to play the shaping role in Latin Christendom they had regularly exercised in early medieval Christian societies. This book has evoked a world largely without papacy or parish’ (631). Whether bishops were sidelined is highly debatable: note the argument by I. Forrest, *Trustworthy Men: How Inequality and Faith Made the Medieval Church* (Princeton, 2018) that bishops exercised a tightening control, especially over parish priests, by working with local peasant elites.

<sup>31</sup> Van Engen, ‘Conclusion’, 633.

<sup>32</sup> One example is his belief in the conservatism of early medieval religious attitudes: ‘Even the Carolingian reforms, crucial as they were for European history, advanced in a spirit of “correction”, going back to basics and setting things straight (which, like all such moves, if successful, turn innovative)’ (*ibid.*, 634); but contrast W. Hartmann, *Kirche und Kirchenrecht um 900: die Bedeutung der spätkarolingischen Zeit für Tradition und Innovation im kirchlichen Recht*. Monumenta Germaniae Historica, Schriften 58 (Hanover, 2008), 6: ‘Jedenfalls widerspricht schon die Tatsache, das es überhaupt Neuerungen gab and dass die Zeitgenossen dies auch durchaus wahrgenommen haben, der verbreiteten Auffassung vom Rechtsverständnis des (früheren) Mittelalters, wonach man immer bestrebt gewesen sei, das gute alte Recht wiederherzustellen’ – even here, though, the divergence is mainly about emphasis.