

A Short History of Canon Law from Apostolic Times to 1917

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Canon law was born in communities that felt great ambivalence about the relationship of law and faith. Custom governed early Christian communities, not a body of written law. It was custom informed by oral traditions and sacred scripture. Christians did not arrange their lives according to a Christian law but according to the spiritual goals of the community and of individual Christians. St Paul wrote to Roman Christians who knew and lived under the law created by the Roman state and reminded them that faith in Christ replaces secular law with a quest for salvation (Romans 7:1-12 and 10:1-11). Law, he sharply reminded the Galatians, cannot make a man worthy to God; only faith can bring life to the just man. The inherent tension between the faith and conscience of the individual and the rigor of law has never been and never will be completely resolved in religious law.

Christian communities lived without a comprehensive body of written law for more than five centuries. Consequently, in the early Church, "canon law" as a system of norms that governed the Church or even a large number of Christian communities did not exist. This is not surprising. The Roman state regulated religious practice and quite naturally legislated for the Church after the Empire became Christian at the beginning of the fourth century. The attitudes of the Christian emperors can be seen clearly in their legislation. To take only the imperial statutes in Justinian's Codex as a guide, there are 41 imperial statutes dating between 313 and 399 that deal with ecclesiastical discipline and practice (Titles 2-13 of the Codex). The Roman emperors had exercised authority over Roman religious institutions, and it was only natural that Constantine would continue this assertion of imperial authority. Gradually the Church in the West did begin to conceive of itself as a corporate body that had the authority to produce rules to govern itself and exercise a separate judicial role in society. That "separation" of the church from the state would not begin in earnest until the second half of the eleventh century. Caesaropapism was the primary norm followed by all early medieval Christian rulers. In the East the Roman emperor who ruled over Greek Constantinople continued to legislate and regulate ecclesiastical institutions until its collapse in 1453 A.D. Byzantine canon law began to merge with civil law in the sixth century. The first legal collections contained only ecclesiastical norms (κανόνες; "canons") or secular norms (νόμοι; "laws"). In the late sixth and early seventh centuries Byzantine canonists combined these two sources: these collections were named "nomokanons" (νομοκάνονες), although the name did not become common until the eleventh century.

The Apostolic and Conciliar Age

In the first three centuries Christians drew their rules and norms from the Gospels and sacred scripture. Some communities produced "handbooks" that provided guidance for various aspects of Christian life. Only a few of these have survived. One of the earliest was the Didaché that established rules governing the liturgy, the sacraments, and lay practices like fasting. The Didaché was probably written in Greek for a Syrian community. The book purported to contain the teachings of the Twelve Apostles and dealt with matters of liturgy

and discipline. In the early third century (218 A.D.), Hippolytus, is generally thought to have composed the *Traditio apostolica*, another treatise in Greek, that detailed the rites and practices of the Roman Christian community. It contains instructions for the consecration of bishops, priests, and deacons and for administering baptism. Slightly later (ca. 230) an unknown author wrote *Didascalia apostolorum* for Christian communities in Syria. It was written in Syriac and was incorporated into later compilations, especially a work of the late fourth century, the *Apostolic Constitutions*.

These very early Christian texts share several characteristics. Their authority derived from their apostolic origins, not from ecclesiastical institutions. They drew upon scripture and practice for their norms. Their focus is Christian discipline, worship, and doctrine. They were intended to serve as a manual of guidance for the clergy and, to some extent, for the laity. These texts were not, however, a compilation of legal enactments. Although Christians had the model and example of Roman law, early Christian communities did not yet have institutional structures or a sense of corporate identity that would have encouraged them to produce legal norms governing themselves. [Return to Early Norms](#)

Canonical Norms in the New Testament

The most important window into the structures and customs of Christian communities are the so-called Pastoral Epistles, 1 Timothy and Titus. It is most likely that the Apostle Paul did not write them. Their unknown author used these letters as a vehicle to establish rules for early Christian communities, and when he wrote he claimed Paul's authority. At the beginning of Titus (1:5) the author reminded Titus that he had left him behind in Crete in order to correct those things that needed correcting. He was to appoint elders (presbyteri) and bishops (episcopi) in each city to govern the community. The elders should be married only once, their children should be Christians, and they should not live in luxury or moral turpitude. In Greek "episkopos" was an overseer or steward. Greek authors had used the word to describe males or females who functioned as guardians and supervisors in the Greek household. There is no evidence that women were ever "episkopoi" in the early Christian communities. The English word "steward" would probably best express its meaning. The author of Titus listed the qualifications of an "episkopos" as being humble, kind, abstemious, peaceful, prudent, and hospitable (Titus 1:7-8). This list of virtues was for the stewardship of small Christian communities that met in households and that received missionaries from other communities from time to time. The steward should also embrace and preach sound doctrine (sana doctrina) (Titus 1:9).

First Timothy gives more detail about the governance of early Christian communities. He calls the church, strikingly, the "house of God" (domus Dei) that is "the church of the living God" (ecclesia Dei vivi) (1 Tim 3:15). The implication of these metaphors is that the church is organized like a Greek or Roman household. The author of 1 Timothy states that he will instruct Christians how they should behave in the "ecclesia" (scias quomodo oporteat te in domo Dei conversari). As in Titus he rehearses the virtues that the steward. Anyone who would become steward (Si quis episcopatum desiderat . . . oportet ergo episcopum inreprehensibilem esse, 1 Tim 3:1-2) must have abilities to govern. "If a man has not

learned to manage his own household how will he govern God's church?" (1 Tim 3:5). The steward should not be a recent convert to Christianity, and he should have a good reputation. The author of 1 Timothy must have envisioned the governance of early Christian communities as being in the hands of a patriarchal male (Paterfamilias) whose obligations to his home must in some way be reflected in the early genesis of the pervasive Christian norm that clerics were married to their churches and should not move from place to place.

The "ecclesia" as a "domus" is also probably reflected in the status of "diakonous" in Paul's epistle to the Philippi (Phil 1:1) and in 1 Tim 3:1-13. At this early time the "diaconi" should be translated as "servers" and not "deacons." These servers were both male and female. From the description of their duties in 1 Timothy they functioned in very much the same universe as servers in Hellenistic households. As Raymond Collins puts it:

Hellenistic moralists, from the time of Aristotle, taught that some virtues were appropriate for men, others for women. . . . In such a Hellenistic society, it was important that the Pastor <i.e. author of 1 Timothy> have something to say about the qualities of women who would serve in God's household. So he stipulates that they should be serious, not slanderers, but temperate, and faithful in all things.

By the time, of course, that the Church emerges into the clear light of day in the fourth century, the role of women was confined to the home of the bishop or priest. The Councils of Ancyra (314) and Nicaea (325) (c. 19 and c.3) laid down rules governing women who lived in the homes of the clergy. These women were now defined by their relationship to the cleric. They were no longer privileged with titles that would have given them status in the church.

The author of 1 Timothy established norms for canonical procedure in cases when accusations were leveled against the clergy. These rules would remain a part of the canonical tradition for centuries. Christians could accuse elders (presbyteri) only when two or three witnesses could substantiate the charges (1 Tim 3:19). This passage is also an illustration of how Christians drew upon the Old Testament for procedural norms. Deut 19:15 had established that two or three witnesses were necessary for convicting a person of a crime. In addition 1 Tim 3:20 used public humiliation to chastise sinners: Wrong-doers should be publicly rebuked. Their public humiliation would serve as a deterrence to others.
Return to Early Norms

The New Testament epistles were a primary source for the earliest norms of canon law, but they were thoroughly inadequate as guides for Christian communities as they began to evolve into more complicated and integrated organizational structures throughout the Mediterranean world. If the Greco-Roman "domus" was a model for the organization of early Christian churches, Greco-Roman public assemblies most likely provided procedural and institutional models for early Christian assemblies. These ecclesiastical assemblies provided a forum for making doctrinal and disciplinary decisions, for garnering consent of the community, and for establishing norms for local communities. These assemblies

became a part of ecclesiastical governance very early. Although later church fathers, particularly John Chrysostom, did justify conciliar assemblies on the basis of Acts 15, modern scholars have concluded that the assembly described in Acts 15 at Jerusalem cannot be described as a “council” or “synod.” There is no evidence Christians of different communities gathered together to decide matters of discipline or doctrine until the late second century. Nonetheless they undoubtedly regularly resolved questions inside their local communities with congregational assemblies.

The emergence of ecclesiastical assemblies that established canonical norms took place almost simultaneously in the East and West. In the early third century Tertullian reported that councils (conclia) were held to decide questions and to represent the “whole Christian name” (repraesentatio totius nominis Christiani). The exact nature of these assemblies has been debated, but there can be no doubt that they promulgated norms and made decisions for Christian communities. There are references to assemblies in Asia Minor at Iconium, Synnada, Bostra, and other localities in the early third century. In the second half of the century these assemblies became more common. The Council of Carthage that can be dated between 220 and 230 was the first Western assembly about which we are well informed. Bishop Cyprian of Carthage provides information that the participants confronted issues surrounding the legal rules of baptism. He also mentions another council that condemned Privatus, the bishop of Lambaesis, for his crimes. Cyprian presided over a number of councils while bishop of Carthage and used councils as a means to govern the churches of North Africa. In 251 he summoned a council to establish rules for reconciling those Christians who had abandoned their faith because of persecution. During the next year he gathered 67 bishops to treat questions of reconciliation again and infant baptism. Cyprian wrote a letter to a certain Fidus in which he informed him of the actions that the council had taken. This is the oldest conciliar letter that has survived. Subsequently councils were held in Carthage almost every year during Cyprian’s reign as bishop (251-258).

Councils created tensions between the emerging office of the monarchical bishop and his freedom to govern his church. There was an evolving conviction in Christian communities that there were norms and procedures that should be followed in all the local churches. Nevertheless Cyprian believed that a bishop should have great freedom of action and forcefully stated that he was answerable only to God. When he quarreled with Pope Stephen over the question of the validity of schismatic and heretical baptisms, the inherent conflict between local episcopal control and general norms, whether established by a centralized authority or councils, raised an issue of ecclesiology and obedience that would bedevil the Church for centuries. Cyprian’s response to Pope Stephen in 256 after his council had rejected the validity of heretical baptisms reveals his ambivalence towards any conception of canonical rules or norms that would govern the entire Church:

We are not forcing anyone in this matter; we are laying down no law (legem). For every appointed leader has in his governance of the Church the freedom to exercise his own will and judgment, while having one day to render an account of his conduct to the Lord.

Cyprian recognized no system of canon law and, if he had been asked the question whether there should be a universal law for the Church (anachronistically), he would have probably opposed the idea that the Church should have an uniform system of law to which the clergy and laity would be subject. Return to Councils and Synods

By the fourth century bishops had established themselves as administrators of local churches. They also recognized their role in governing the affairs of nearby churches in councils as well as their responsibility to confront questions that touched upon the interests of the universal Church. In the East and the West councils became the main vehicles for promulgating norms that regulated the lives of clergy and the organization of the churches. It is during this period that the enactments that these assemblies produced became generally called “canons,” from the Greek word “κανών,” or “canon” in Latin. In Greek canon did not mean “law” but simply a “straight rod” or a “rule.” As we shall see, the primary focus of conciliar legislation in the fourth century was the structure of Church and clerical discipline. The earliest council for which we have a set of legislative decrees is one that was held ca. 306 in Elvira (Iliberri), a small town that once existed near Granada, Spain. This council produced canons that dealt with a wide range of matters, from clerical celibacy to apostasy. Although the 81 canons commonly attributed to the council may be the product of several Iberian councils from later in the century, it is clear that the focus of the canons was on the sexual mores of the clergy and laity. Elvira was the first Western council to dictate that priests should be celibate. Its canons, however, did not circulate widely.

With the ascension of Constantine the Great to the imperial throne in the early fourth century the Christian churches began to produce canons that were publicly promulgated and that were recognized as authoritative by all the Christian communities. Constantine also elevated the authority of bishops in Christian communities. Although it is not clear how broad his mandate was he issued a law that bishops could hear legal cases between Christians. Most scholars think that the episcopal court, the *audientia episcopalis*, originated because of this legislation. Constantine also used the church council to deal with doctrinal and disciplinary problems within the Church.

The first significant councils whose canons would become important in the canonical tradition were held in the East. In 314 A.D. bishops from cities that were under the influence of the church in Antioch gathered in the Galatian city of Ancyra. The council issued 25 canons that dealt with a variety of recent problems in the church. These canons dealt with the discipline of the clergy, the alienation of ecclesiastical property, chastity, sex with animals, adultery, murder, and magic. As can be seen from this list the bishops tried to resolve disparate problems of immediate concern to the Eastern churches. Later councils continued this practice. They never attempted to produce a comprehensive set of norms for Christian communities. Another council was held at Neocaesarea between 315 and 319 A.D, a Christian community to the East of Ancyra near the Black Sea. Like the canons of the Council of Ancyra they were not a systematic set of norms. The canons covered random subjects: priests cannot marry after ordination (c.1), penance for bigamy (c.3), pregnant women are not to be excluded from baptism (c.6), a minimum age for priests of 30 years (c.

11), restricting the number of deacons in one community to seven (c.15). These two early Eastern councils were never considered ecumenical, but their canons were accepted as normative and were placed in many canonical collections of the East and West. Constantine also convened a council in the West at the city of Arles in 314. It was a large council with 33 bishops present, together with many lower clergy. Arles was the first Western council that did not report that laymen had participated in its proceedings (Elivira was the last to mention lay participants in its reports). These two councils can be seen as mile markers on the road that led to the councils' becoming assemblies in which the will of clergy constituted the only legitimate source of canonical norms.

In 325 Constantine decided to hold an imperial council in the East to settle the doctrinal controversies raised by the Arian heresy, particularly the issue of the relationship of the Father and Son in the Trinity. A number of local episcopal synods were held in the East in preparation for the council. The emperor originally planned to hold the council in Ancyra but moved it to Nicaea. He opened the council in June, 325. Around 300 bishops attended. Only a few Western clergy were present.

The twenty canons of the council very quickly became universal norms in the Christian church. The council also drafted a definition of faith that became the fundamental statement of Christian belief, the Nicene Creed. The canons established a structure for the Church that paralleled the secular organization of the Roman Empire. Rules were established for the appointment of bishops. The primacy of the episcopal sees of Rome, Antioch, and Alexandria was established. The customary prerogatives of other episcopal sees were also maintained (c.6). The bishops and clergy were mandated to remain in the churches in which they were ordained (c.15 and 16). A metropolitan bishop was to head each province. He and the bishops of his province would hold synods twice a year to decide matters of ecclesiastical discipline (c.5). The synod would be the highest ecclesiastical court of the province.

Other canons of Nicaea established norms for ecclesiastical discipline. Eunuchs were excluded from the clergy (c.1). Rapid promotion of converts in the hierarchy was forbidden (c.2). Bishops, priests, and deacons were not permitted to live with women unless they were relatives (c.3). Clergy could not practice usury (c.17).

The early councils established a pattern of governance in the Church that lasted until the end of the ninth century. Local synods met regularly in the East and the West. They decided difficult and contentious problems in the church, and they promulgated canons that regulated the affairs of the provinces. Numerous local synods were supplemented by ecumenical councils that were held exclusively in the East until the Second Council of Nicaea in 787. Although rejected by the Greeks, the Latin Church has traditionally recognized the Fourth Council of Constantinople of 869-870 as ecumenical. It was convened by Pope Nicolas I in Constantinople, but its decrees were never included in any Eastern canonical collections (it was not recognized as an ecumenical council in the West until the eleventh century). In the eleventh century the papacy asserted its exclusive right

to convene an ecumenical councils. The sites of all subsequent ecumenical councils were in the West. The age of councils whose canons united the Latin and Greek churches had past.

The First Collections of Canon Law within a United Christendom

Until the fourth century the Old and New Testaments, Apostolic traditions, real and apocryphal, custom, and synodal canons constituted the four main sources of ecclesiastical norms. During the course of the fourth century two other sources of authoritative norms emerged in the Christian Church: the writings of the fathers of the church and the letters of the bishops of Rome. In the Eastern church the “Canons of the Fathers” were recognized as norms sometime between 381 and 451. They consisted of letters or other writings directed to specific persons by the Eastern Fathers. The most important were letters of Eastern bishops. Among the twelve bishops and patriarchs named in the canon as having authoritative force were Athanasius († 373) and Cyril († 444), archbishops of Alexandria; Basil the Great († 379), Archbishop of Caesarea in Cappadocia; Gregory († 394), Bishop of Nyssa. Within the Greek canonical tradition, the letters of these bishops remained of fundamental importance. Consequently the episcopal letters took their place among the synodal canons in Eastern canonical collections.

In the Latin West a parallel development during the fourth and fifth centuries gave papal decretal letters (that were often rescripts, that is responses to questions) an equal place with conciliar canons. These decretal letters were responses to requests that asked for answers from the pope to problems of ecclesiastical doctrine, discipline, and governance. The form of the requests was based on similar letters sent to the Roman emperors on specific questions of law. In fourth century bishops in the Western church began to turn to Rome for answers to questions about discipline and doctrine. Pope Siricius’ (384-399) letter to Bishop Himerius of Tarragona is the earliest example we have of a letter of a pope responding to a series of questions. Himerius had sent a letter to Siricius’s predecessor, Pope Damasus (366-384). He had posed questions about the validity of baptisms performed by heretics, the rules for bestowing baptism, the treatment of Christians who lapse into paganism, and the punishment of monks and nuns who have fornicated. Damasus had not yet answered Himerius’ letter by the time of his death, but Siricius responded soon after he became pope. Clerical celibacy and continence were issues in the Iberian church, and Siricius devoted a long passage to the problem of married priests and deacons who had children with their wives after their ordination. The pope mandated that those priests who would live continently henceforward could keep their ecclesiastical offices but that those who did not were stripped of all their authority and offices.

There are several elements of the letter that will remain characteristic of papal decretals for centuries. Siricius noted that the letter was read aloud before him and other clergy (in *conventu fratrum sollicitius legeremus*) and implied that he discussed the problems posed by Himerius openly with his clergy. Papal consultation with his curia would become a standard practice in the papal curia. By the twelfth century, popes began to render decisions regularly with the phrase, “with the advice of our brothers <the cardinals> we ought to ordain” (*de consilio fratrum nostrorum debemus statuere* — Pope Alexander III

[1159-1181]) or, as Pope Innocent III (1198-1216) established the formula for future papal decretals, “with the advice of our brothers we are led to respond” (de consilio fratrum nostrorum taliter in hujusmodi duximus respondendum). The validity and authority of a papal decretal were based on the prestige and primacy of the bishop of Rome and the support of the Roman Christian community. In Siricius’ time the community was represented by the “conventus fratrum”; by the time of Innocent III the community was represented by the college of cardinals.

At the end of the decretal Pope Siricius asked Himerius to forward the decretal letter to all his fellow bishops on the Iberian peninsula. Even at this early date, the pope conceived of his letter as establishing authoritative norms for regions far outside Rome. Almost immediately collections of papal letters began to circulate in the Western church, and papal decretal letters took their place among conciliar canons as sources of norms for the Christian Church.

The fifth century was marked by the gradual acceptance of the Eastern conciliar canons in Rome. Latin translations were made of the canons of the Greek councils, and they began to circulate widely as authoritative texts. By the pontificate of Pope Gelasius I (492-496) the sources of canonical norms in the West were widely scattered in different languages and codices. For the first time, an attempt was made to compile a collection of canonical texts. A Greek, Dionysius Exiguus, arrived in Rome at the end of the century. He was fluent in Latin and Greek. His first task was to give the texts of the Greek councils fresh and accurate translations. He compiled three collections of conciliar canons that included 165 canons from councils dating from Nicaea and Constantinople I (381 A.D.) and arranged the text chronologically. In the last collection, commissioned by Pope Hormisdas (514-523), Dionysius placed Greek and Latin versions of the texts in the book so that readers could compare them. He also compiled a collection of papal decretals that began with the decretal letter of Pope Siricius and ended with Pope Anastasius II (496-498) in chronological order. Finally he combined these two works in a *Corpus canonum* that scholars have given the name *Collectio Dionysiana*. It was not an official collection of canonical norms — private collections would remain the only vehicles for preserving and disseminating canonical texts until the thirteenth century — but it circulated widely. A remarkable number of manuscripts (34) of the collection still exist in European libraries. Later canonists supplemented the *Collectio Dionysiana*. Even more importantly Pope Hadrian I (772-795) sent an augmented copy of the *Collectio Dionysiana* to Charles the Great that is known as the *Collectio Dionysiana-Hadriana* (Köln, Dombibliothek 115-116). Although other collections of canonical texts were also used in the Carolingian period, the *Dionysiana-Hadriana* enjoyed enormous popularity in Northern Europe from the ninth to the eleventh century. One hundred manuscripts of the work have been found to date. The work of Dionysius Exiguus established the canons of the fourth-century Eastern Greek councils and papal decretals as the foundation of Western Latin canon law.

An Italian cleric named Cresconius composed a canonical collection in the sixth or seventh century — the date is not certain. In contrast to Dionysius' chronological organization Cresconius produced one of the first collections arranged systematically, according to topics. He began and ended with the sacrament of ordination, but in between he covered marriage, clerical discipline, and other subjects. In order that his collection would be more easily used, he provided an index to the collection that listed the topics and the sources. The ecumenical councils and papal decretals were his primary sources. He also added a number of African councils to his collection. Cresconius called his collection a "Concord of Conciliar Canons" (*Concordia canonum conciliorum*) (Köln, Dombibliothek 120). He brought concord to his collection by arranging and indexing them. Five centuries later another canonist, Gratian of Bologna, would attempt to bring concord to canon law systematically. In Cresconius' time the law was too young and the sources were too limited to require him to reconcile conflicting opinions and texts. There were not yet significant conflicts with which he must struggle.

Canonical collections were made in various parts of Western Christendom. The Iberian peninsula and the Roman province of Gaul were especially important. During the sixth and seventh centuries Iberian bishops held numerous church councils. These canons were collected and added to the received texts of the Eastern councils. The most important collection of this extensive and frequent legislative activity was the *Collectio Hispana*. It was compiled by an anonymous canonist (although some attribute the work to St Isidore of Seville) in the first half of the seventh century. It circulated almost exclusively within the Iberian church and remained important until the twelfth century, surviving in many manuscript copies. The *Collectio Hispana* influenced canonical collections in the Carolingian realm.

In Gaul the bishops of Arles and others in the Southern Gaul also held many church councils. The canons of these councils were collected and augmented by other councils and decretals. The most important of the Gallican collections was the *Collectio Vetus Gallica*. It was compiled in the early seventh century, probably in the vicinity of Lyon. A bishop of Lyon, Etherius of Lyon, might have been the author (his authorship is not certain). The collection was topically arranged and circulated far less widely than the *Dionysiana* or the Cresconius' *Concordia canonum conciliorum*, but was copied and used in lands North of the Alps. Etherius' chief concerns were the holding of synods, clerical discipline, the rights of metropolitan bishops, and the protection of ecclesiastical property. An Iberian cleric, Archbishop Martin of Braga, compiled a collection of canons in the second half of the sixth century. He relied on the canons of Eastern councils and divided his collection into two subject areas: canons that dealt with the clergy and those that covered the laity.

Perhaps the most unusual pre-Carolingian collection was compiled in Ireland ca. 700 A.D. Historians have named it the *Collectio Hibernensis* (Köln, Dombibliothek 210). Undoubtedly Irish missionaries carried it with them to the continent during the eighth and ninth centuries, and it was copied extensively. More than eighty complete or excerpts of the work are still extant. Many of these date to the eighth and ninth centuries, and many show clear signs of their insular origins in the handwriting of the text. The author strove for a

comprehensive catalogue of canonical norms, arranged topically, but he sacrificed accuracy and exactness in the process. Very often his texts were severely abbreviated and altered versions of the original. False attributions of sources were common. The short version of the collection contained references to almost 1600 texts with almost 646 taken from the patristic fathers. Because Greek was a language that was cultivated in Ireland at this time, it is not surprising that the compiler included Eastern fathers as well as Western Fathers. This collection functioned as a collection of canonical norms and as a guide to priests. In an extensive section on theft, for example, not only did the compiler discuss the various types of theft but also the punishments that priests should inflict on penitents for different types of theft. These parts of the collection were later incorporated into penitential handbooks designed to give guidance to priests in the confessional. Another unusual characteristic of the collection was the inclusion of canons from very local Irish synods. Up to this time, collections commonly contained the great ecumenical councils, other early Eastern councils, the African councils, and other Iberian and Frankish councils. Obscure local councils were not included. However, from the ninth to the eleventh centuries, local synods were more and more frequently included in canonical collections. Canonical norms were taken from a wider and wider range of sources.

Greek Canonical Collections

About fifty years after the Greek Dionysius worked in Rome, a priest from Antioch, John Scholastikos, gathered canonical texts into a new collection. John drew upon an earlier, now lost, collection, the *Collectio LX titulorum*. His principal sources were the established tradition of Greek conciliar canons from the early councils of Nicaea, Ancyra, Gangra to the later councils of Constantinople I and Chalcedon. This part of the collection was very similar to Dionysius'. John added texts, however, to his collection that were not yet accepted as canonical in the West, the writings of an Eastern Church Father, St. Basil the Great. John divided two letters of St Basil that were written in 374-375 into 68 chapters and arranged them systematically according to subject matter. He also included texts from secular law and continued to blur the distinction in Constantinople between the jurisdiction of secular and ecclesiastical rulers over the church. When Justinian had compiled his great codification (530-535) he had included legislation governing church government and clerical discipline at the beginning of his Codex. Further, after promulgating his *Corpus iuris civilis* he produced extensive legislation that dealt with ecclesiastical matters in his *Novellae*. John Scholastikos "canonized" this material by including 87 excerpts from Justinian's *Novellae* in his collection. All of this material John placed under fifty titles that began with the honor due to the patriarch (title one) and ended with a title that dealt with the canon of prayers and the date of Easter (title fifty). John Scholastikos' *Synagoge of 50 Titles* occupies a position in the Eastern church similar to that of Dionysius Exiguus' collection in the West. It is the oldest and first important collection of canon law in the East. It was a private collection, but all later Greek canonical collections were based on it or used it as a source. Dionysius introduced papal letters as a source of canonical norms equal to conciliar canons; John established the writings of the church fathers (primarily the Eastern Church Fathers) as an authoritative sources in canonical collections. Later the Third Council of Constantinople (in Trullo) of 681 decreed that the writings of Eastern Church Fathers had juridical authority equal to conciliar

canons. Since John Scholastikos was the patriarch of Constantinople his office gave his collection prestige and authority in the Greek church. Three hundred years later St. Methodios translated John's *Synagoge* into Slavonic. It then became the text upon which the Slavonic and Russian churches based their legal systems.

In the West compilers also began to include patristic writings into canonical collections during the sixth century. During the ninth century, Western collections began to include fragments of Roman law, but these texts mainly dealt with procedural law. Consequently by ca. 900 A.D. all the sources for Eastern and Western canon law were the same to a greater or lesser extent — with the significant exception that papal letters were not recognized as authoritative in the East. The contentious issue of papal primacy clearly can be detected in the canonists' choices of sources in the Latin and Greek canonical collections of the early Middle Ages.

The Latin and Frankish Churches in the Ninth Century

In the very early years of his reign Charles the Great (771-814) asked Pope Hadrian I to send a collection of canons to him in 774. Hadrian sent a much augmented *Collectio Dionysiana* that scholars have given the title, *Collectio Dionysiana-Hadriana* ([Köln, Dombibliothek 115-116](#)). We cannot know exactly what Charles expected to receive from the pope or what his purpose was. He clearly wanted a compilation that had papal approval. We can surmise that he wished to establish clear norms for the church based on Roman authority and precedents as he tried to fashion a Frankish church for his kingdom over the next forty years. Charles considered himself to be a reformer in the ecclesiastical and the secular realm. His reign was marked by extensive reworking, copying, and compilation of earlier canonical collections. He also issued "chapters" called [capitularies](#). This legislation established norms for the secular and ecclesiastical worlds. The result, however, was far from a system of canon law or a code of canon law. The sources of canonical norms were still scattered and various. Both ecclesiastical and secular authorities promulgated norms for their churches.

Although Charles the Great and his son, Louis the Pious (814-840) were deeply involved in ecclesiastical matters, both legal and doctrinal, they had no concept of canonical norms being established by any central authority. As we have seen, the compilers of canonical collections had a very broad view of the authoritative sources of the norms that regulated Christian society. They did not look to the pope, councils, synods, or kings for regular rulings on ecclesiastical matters. Churchmen used earlier collections as quarries for canonical norms. They expanded them and altered them without any notion that some authority within the church or the secular world should approve or legitimate their work.

The work of these clerics took an extraordinary turn in the ninth century. In the second half of the century the political stability of the Carolingian realm was breaking down. As Horst Fuhrmann has put it, it was "a world awash with legal uncertainty." The church was struggling with its place in society, and the canonical norms created in the late antique Mediterranean world were not adequate for a Northern European world that was

fragmented, tribal, and local, disintegrating within and attacked from without. Carolingian governing structures and legal institutions were failing, and the invasions of the Scandinavians, Magyars, and Moslems were putting pressure on all the borders of Christendom. Within this context a group of clerics in Northwestern France put together a number of canonical collections containing large amounts of forged materials. Historians have called these collections and their related texts the Pseudo-Isidorian Forgeries. They have been called Pseudo-Isidorian because the most important collection of forgeries, a canonical collection of councils and papal decretals arranged chronologically in a format similar to the *Collectio Dionysiana-Hadriana*, was often provided with a preface attributed to a certain "Isidorus Mercator." It was assumed that the writer was St. Isidore of Seville († 636), the famous theologian from the Iberian peninsula. Although this collection of decretals contained many forged papal letters, they were later universally accepted as genuine in the canonical tradition.

Forged documents were not unusual in the early Middle Ages. A complex of forged texts was produced in the early sixth century as a result of the schism between Pope Symmachus and Laurentius in Rome. These "Symmachian Forgeries" were based on putative papal documents (especially the "Constitutum Sylvestri") that purported to demonstrate that the pope could be judged by no human authority. Although forgers did work in the late antique period, forgery was not as widespread as it became in the eighth and ninth centuries. The forgers of Pseudo-Isidorian materials worked in the area around Reims in the Frankish realm. Although scholars have put forward a number of conjectures about whom the forger(s) might be, there has not been any consensus. The purpose of the forgers was to protect the rights of clerics, clerical property, and bishops from lay control and judicial authority. It had become common after the death of Charles the Great that bishops were deposed from their sees and that secular judges were rendering sentences upon clerics in their courts. The forgers were particularly concerned to protect suffragan bishops from the jurisdiction of metropolitans. The deposition of bishops became much more difficult under the rules of procedure found in the forgeries. Bishops could not be accused by laymen of any crime, and they could not be brought before a secular court. The forgers used papal power as a shield to protect the rights of bishops. A bishop could appeal to the pope at any point in a judicial proceeding. Councils and synods could no longer hear complaints against bishops. These cases were considered "causae maiores." This is the origin of the papal prerogative that only the pope could judge cases of great importance in the Church. The canonists steadily expanded the list of "causae maiores" over the next centuries.

There were four major collections produced by the forgers in the ninth century: The Pseudo-Isidorian Decretals, The Capitulary Collection of Benedictus Levita, the *Capitula Angilramni*, and the so-called *Collectio Hispana Gallica Augustodunensis*. The Carolingians used short statements of norms, called "capitula," to promulgate legislative and administrative orders in their realms. These capitularies contained norms for the church and for the secular realm. The forgers took their materials from secular collections of laws as well as canonical collections to accomplish their goals. The Pseudo-Isidorian Decretals (Köln, Dombibliothek 113) and the Capitulary Collection of Benedictus Levita drew on similar sources. The compilers of both had similar views on ecclesiastical governance. The Capitulary Collection of Benedictus Levita was finished ca. 847 and was used by the authors

of the Pseudo-Isidorian Decretals, which was finished ca. 852. Of the four major collections, only the Pseudo-Isidorian Decretals had influence on the development of canon law. Its influence is paradoxical. On the one hand manuscript copies of the Decretals were found all over Europe. There is evidence that they were known in Rome by 863-864. Many Italian libraries contained copies of the work. Copies of the collection were found in all the major centers of Christendom, except England, where Pseudo-Isidore arrived only after the Norman Conquest in 1066. On the other hand, the influence of Pseudo-Isidore on other canonical collections was very small until the eleventh century. Although popes began to quote Pseudo-Isidorian decretals from the time of Pope Nicholas I (858-867) the false decretals did not find a secure place in canonical collections until the eleventh century. They would remain an uncontested part of canon law until the sixteenth century.

We now understand that medieval men had a very different conception of falsification than we do today. They falsified charters that preserved customary, unwritten rights they were sure they possessed. They created legends about the origins of families and principalities. These granted legitimacy to political systems. They produced relics to honor a Christian heroic past. The Pseudo-Isidorian forgers created documents to justify the structures and norms of a Frankish church. The paradox remains that the forgers lasting contribution to canon law was the justification of papal power, authority and monarchical government. As the long list of forged papal decretals entered canonical collections, their presence provided convincing evidence that popes from earliest times confidently governed the church and issued authoritative rulings in a wide variety of cases. The first decretals in the collection were attributed to Popes Clement I (c.91-101 A.D.) and Anacletus (c.79-c.91); the list continued to Pope Melchiades (310-314). In all there were sixty decretals from thirty popes. For later canonists, the existence of these letters was a powerful and convincing argument that the bishop of Rome had been the primate of the church since Apostolic times.

The Greek Church in the Ninth Century

The ninth century also marked an important stage in the development of Eastern canon law. In Constantinople canon law began to merge with civil law in the sixth century. The first legal collections contained only ecclesiastical norms (κανόνες; “canons”) or secular norms (νόμοι; “laws”). In the late sixth and early seventh centuries Byzantine canonists combined these two sources: these collections were named “nomokanons” (νομοκάνονες), although the name did not become common until the eleventh century.

The most important Byzantine nomokanons are the *Nomokanon of 50 Titles* and the *Nomokanon of 14 Titles*. For these new collections, the canonists used John Scholastikos’ *Synagoge of 50 Titles (Nomokanon of 50 Titles)* and another collection, the *Syntagma of Canons in 14 Titles (Nomokanon of 14 Titles)*, as their main source of ecclesiastical norms. They also added imperial laws taken from Justinian’s codification. The *Nomokanon of 50 Titles* was put together by an anonymous compiler in Antioch during the reign of Justin II (565-578) or of Maurice (582-602).

The first version of the *Nomokanon of 14 Titles* was compiled ca. 612-629 and was formed by combining the *Syntagma of Canons of 14 Titles* with the legislation of Justinian that touched upon the Church. The work was probably produced in Constantinople, but the compiler is unknown. Because Patriarch Photios wrote a prologue to a new recension of the collection ca. 882-883, historians had long assumed that Photios compiled it.

The expanded collection with the endorsement of Photios became the most important collection of canon law in the Greek Church. It shaped the content and the structure of canon law in the orthodox church. Conciliar canons, the writings of the Church Fathers, and imperial legislation constituted the authoritative sources of canon law in the Greek church. The *Nomokanon of 14 Titles* was revised in the eleventh century by Theodore Bestes, and Theodore Balsamon added a prologue and commentary to the collection in the twelfth century.

The *Nomokanon* is divided into titles and chapters. The titles contain canons and imperial laws. It was the most complete summary of regulations for the Byzantine church. The Greek canonists wrote commentaries on it. The conciliar canons in the first part are basic texts of Greek Orthodox ecclesiastical law up to the present time. The *Nomokanon of 14 Titles* was translated into Slavic during the patriarchate of Photios and became an important source of law in that tradition.

The contrast between the Eastern and Western churches is highlighted by their respective legal systems. In the East imperial legislation, conciliar canons, and the Eastern Church Fathers formed the foundations of the legal system. In the West papal decretals, some authentic, some forged, supplemented by ecumenical and local councils, governed ecclesiastical norms. The two churches were moving in different directions. Their two laws were becoming more and more isolated from each other.

The Eleventh Century and the Reform of the Latin Church

After the Carolingian period, the next great wave of canonistic activity began at the beginning of the eleventh century with the *Decretum* of Bishop Burchard of Worms (between 1008 and 1012) and ended with the Italian and French collections that were influenced by principles of church reform that swirled through ecclesiastical and secular circles during the eleventh century. The spirit of reform meant that churchmen searched the traditions of the Latin church for texts that justified their views. These texts provided the *auctoritates* necessary for the resolution of differing views on such major issues as simony, clerical concubinage, and lay interference in the Church. As they struggled to justify their vision of the Church, the reformers realized that the Church needed a body of law that would be recognized throughout Christendom. They also realized that there should be a central authority that had the power to modify and to change law when needed. Ultimately they recognized that the papacy should be the center of that reform

The canonical collections compiled between 1000-1100 are rich evidence of these developments. Certain areas in Central and Northern Italy, Southern and Central France, Normandy, the Rhineland and England emerged as important centers of canonistic activity but no one region, including Rome, dominated the production of texts. The eleventh-century collections remained private and lacked any official approval by the pope or by anyone else. Canonical collections were used because they provided guidelines and norms, not because they had been sanctioned by some authority.

Some collections circulated widely. The manuscripts of the major collections like Bishop Burchard of Worm's *Decretum* (ca. 1008-1023), *The Collection in 74 Titles* (ca. 1050-1075), Bishop Ivo of Chartres' *Panormia* (ca. 1091-1096), are scattered all over Europe. They demonstrate a wide reception that gave them canonical legitimacy. Other collections like Bishop Anselm II of Lucca's *Collectio canonum* and Lanfranc of Bec, Archbishop of Canterbury's canonical Collection (generally referred to as the *Collectio Lanfranci*) had a more limited circulation, in Italy and the British Isles respectively. As their titles indicate, the major canonists of the age were bishops. Pastoral care and canon law merged during the eleventh century.

These eleventh-century collections share a number of common traits. They are all systematic collections, arranged topically. The chronologically arranged collection was no longer attractive or useful to churchmen. The reformers recognized that to achieve their goals meant that they needed compilations of law that provided texts for their positions and that emphasized the role of the pope in the governance of the church. Although historians have debated whether certain collections reflect a papal or an episcopal agenda for church government or whether some collections were vehicles for and products of the reform movement, these questions are difficult to answer. The canonists collected a wide variety of texts from older collections. Most of the collections dealt with many aspects of ecclesiastical life. Some of them were obviously concerned with certain issues: papal authority, monastic discipline, clerical marriage, simony, and others. Most collections, however, reflect their authors' search for general norms to govern ecclesiastical institutions and to enforce clerical discipline. To describe a collection as having a single purpose is probably off the mark.

Two collections may be used to illustrate the importance and the characteristics of eleventh-century collections. *The Collection in Seventy-four Titles*, whose medieval title was "Diversorum patrum sententie," was produced between ca. 1066 to 1074 by an anonymous compiler. Anselm of Lucca's *Collectio canonum* was composed a little later, ca. 1081-1086, during the tempestuous, reform pontificate of Pope Gregory VII (1073-1085). His collection has sometimes been used as an exemplar of a "reform collection" of the "Gregorian Revolution."

Scholars have debated the purpose of the *Collection in Seventy-Four Titles*. Some scholars have described it as a "Gregorian" collection, a product of the first years of Gregory VII's pontificate. They believe that the collection was designed to enhance the papal primacy. Indeed the collection begins with the title, *De primatu Romane ecclesie*, and contains 20

papal decretals of which 8 (chapters 2-9) are forgeries taken from Pseudo-Isidore's Collection that extolled papal authority. Other scholars have concluded that since *Seventy-four Titles* relied on Pseudo-Isidorian Decretals and since ca. 90 chapters from Pseudo-Isidore concern the prosecution of the clergy, the focus of the collection is clerical rights in the courts. Accordingly, they view the purpose of *Seventy-four Titles* as extending the accusatorial norms of Pseudo-Isidore that were limited to bishops to all clerics. Both positions highlight important elements that are found in the canons of *Seventy-four Titles*. The collection begins with a title devoted to papal authority. Before the eleventh century no collection focused on papal power so precisely and prominently. The collection also contains canons that protect the procedural rights of all clerics (Titles 5, 7, 9, 10, 11, 14). Typical of eleventh-century collections, it deals with unworthy and simoniacal clerics (Titles 15-21). The author of *Seventy-four Titles* clearly wanted to establish strong papal authority, the independence of the church, and guidelines for a reformed clergy.

Although the compilers of eleventh-century collections gathered their materials from a wide variety of sources, they did not privilege contemporary papal letters. *Seventy-four Titles*, for example, does not include one letter from a contemporary pope. For reasons that we do not fully understand, eleventh-century canonists established the textual foundations of papal authority and the universality of papal jurisdiction but did not draw upon the decretals of contemporary popes.

Anselm of Lucca began his collection with a title on the authority of the Roman church. Anselm, more than the compiler of the *Seventy-four Titles*, explicitly focused on papal power. The first title, "De potestate et primatu apostolicae sedis," is the only title of the first book of the collection (twelve books in all) and contains a remarkable 89 chapters. As with *Seventy-four Titles*, Anselm borrowed liberally from the forged decretals that he found in Pseudo-Isidore. Pseudo-Isidore flourished in the collections of the period. Of the 1149 chapters in Anselm's collection some 260 came from Pseudo-Isidore. Anselm of Lucca's collection, more than any other, introduced Pseudo-Isidore to canon law.

Anselm's collection assembled a rich collection of texts that supported reform of the clergy and of the church. Book four dealt with ecclesiastical privileges, Book five with tithes, monks and monasteries, and ecclesiastical property, and Book seven with the clerical orders and discipline. The final two books (11 and 12) treated excommunication and the doctrine of "just punishment." Although scholars might debate the purpose of *Seventy-four Titles*, Anselm indisputably wished to advance the goals of Pope Gregory VII and the other reformers. Yet if we look at Anselm's canonical sources, we find a startling statistic: only ten of his canons are taken from eleventh-century sources. Of these ten canons Anselm took five from Gregory VII's legislation. But here too we have a puzzle: one was a decretal letter and the others were conciliar canons from Roman councils over which Gregory had presided. We could conclude that Anselm preferred the collective judgments of the pope in council to the decretal letters of the papal curia. If we look at later canonical collections of the late eleventh and early twelfth centuries, we find the same pattern. The canonists gathered few texts from contemporary popes or councils.

The eleventh-century canonists emphasized papal judicial and legislative primacy as it had never before in the canonical tradition. They created a new petrine ecclesiology. Yet, by and large, their canonical collections reflect a fiction that began with the Pseudo-Isidorian decretals: the canonists could conclude that the “*ius antiquum*” of the Church provided more than enough evidence that popes had achieved judicial and doctrinal primacy in the first three centuries of the Christian era. The men of the age fervently believed that “old law was good law.” The compilers of the canonical collections endorsed this maxim. They did not have to turn to the contemporary papal legislation to establish the new ecclesiastical order. A small number of papal decretals did find their way into the canon law collections of the eleventh century, and they justified key elements of the reformers’ program: Gregory VII’s justification of his deposition of Henry IV and his legislation in the Roman council of 1080 that condemned the investiture of clerics by laymen. But these two examples were the exception. The tacit conclusion that could be drawn from a careful study of the sources of the eleventh-century canonical collections was that the papacy did not make new law except out of necessity or utility. The final paradox is that the canonical collections of the reform period prepared the way for a revolution in the sources of canon law that took place in the twelfth and thirteenth centuries. As we will see, by the middle of the thirteenth century, papal decretals will push aside the rich and variegated sources of the first millennium of canon law and take their place as the primary source, if not the exclusive, of canonical norms.

The Twelfth and Thirteenth Centuries: Gratian and Bologna

Before the twelfth century, canon law existed as a body of norms embedded in the sources. The collections of canon law included conciliar canons, papal decretals, the writings of the church fathers, and to a more limited extent, Roman and secular law. These collections did not contain any jurisprudence because they existed in a world without jurists. There were no jurists to interpret the texts, to place a text into the context of other norms of canon law, and to point out conflicts in the texts written at various times.

Jurists arrived in the early twelfth century. They began working and teaching in the city of Bologna in North-central Italy. The first on the scene were the teachers of Roman law, Pepo and Irnerius, and they were succeeded by a cadre of teachers who raised the city to unprecedented intellectual heights. Emperor Frederick Barbarossa visited Bologna in 1155 and promulgated the *Authentica Habita*, with which the emperor took the masters and students at Bologna under imperial protection. He ordered that his decree be placed in Justinian’s Codex, a collection of Roman imperial constitutions. The emperor recognized the teachers and students of a flourishing law school. He also understood the importance of the school for his realm. The *Authentica Habita*, more than any other single piece of evidence, calls into question recent suggestions that the teaching of Roman law at Bologna began only in the 1130’s. It is difficult to imagine that the emperor would have been concerned to protect a *Studio* still in its infancy and to issue important legislation for it. Or, conversely, that in twenty years the *studio* would have reached maturity.

For the development of canon law Gratian of Bologna was the most significant canonist of the twelfth century. Until recently the only secure fact that we knew about Gratian was that he compiled a collection of canons entitled the *Concordia discordantium canonum*, later called the Decretum. Very quickly it became the most important canonical collection of the twelfth century and later became the foundation stone of the entire canonical tradition. It was not replaced as a handbook of canon law until the *Codex iuris canonici* of 1917 was promulgated.

Since the work of Anders Winroth in 1996 we have learned much more about Gratian. Winroth discovered four manuscripts of Gratian's collection that predated the vulgate text of the Decretum. Since then another manuscript of this early recension has been discovered in the monastic library of St. Gall, Switzerland. Although all five manuscripts must be studied in detail before we fully understand their significance, some conclusions can already be made. The first recension of Gratian's work was much shorter than the last recension. The differences between the recensions mean that Gratian must have been teaching at Bologna for a significant amount of time before he produced his first recension and that there was a significant period of time between the first and second recensions. Some evidence points to Gratian's having begun his teaching in the early twelfth century; other evidence points to the 1130's, or perhaps the 1140's. In any case, Gratian's second recension of his work was finished in the late 1130's or early 1140's and immediately replaced all earlier collections of canon law.

Gratian became the "Father of Canon Law" because his collection was encyclopedic and because he provided a superb tool for teaching. His Decretum was a comprehensive survey of the entire tradition of canon law. Gratian drew upon the canonical sources that had become standard in the canonical tradition and assembled a rich array of canons, about 4000 in all. His sources were four major eleventh and early twelfth-century canonical collections that circulated in Italy. Anselm of Lucca's *Collectio canonum* and Ivo of Chartres's *Panormia* were two of these four collections. He included genuine and forged papal decretals, local and ecumenical conciliar canons, a rich collection of writings of the writings of the church fathers — more than any other earlier canonical collection, 1200 chapters in all — Roman and law, and many citations taken from the Old and New Testament.

Gratian introduced jurisprudence into canonical thought. His first innovation was to insert his voice into his collection to mingle with those of the Fathers of Nicaea, St. Augustine, and the popes of the first millennium. He did this with *dicta* in which he discussed the texts in his collection. He pointed to conflicts within the texts and proposed solutions. His *dicta* made the Decretum ideal for teaching, and the Decretum became the basic text of canon law used in the law schools of Europe for the next five centuries.

In addition to the novelty of his *dicta*, Gratian created a collection of canon law that was organized differently than any earlier collection. At the core of his collection he constructed 36 cases (*causae*). In each case he formulated a problem with a series of questions. He then would answer each question by providing the texts of canons that pertained to it. When the

text of the canon did not answer the question without interpretation or when two canons seemed in conflict, Gratian provided a solution in his *dicta*. Gratian's hypothetical cases were effective teaching tools that were ideally suited to the classroom.

Perhaps the most important parts of his work for the beginnings of European jurisprudence were the first twenty distinctions of the 101 distinctions (*distinctiones*) of the first section. In these twenty distinctiones he treated the nature of law in all its complexity. Justinian's codification of Roman law that was being taught in Bologna at the time Gratian was working on his *Decretum* defined the different types of law but did not create a hierarchy of laws and did not discuss the relationship between the different types of law. Gratian did that in his first twenty distinctions. These twenty distinctions stimulated later canonists to reflect upon law and its sources. Gratian began his *Decretum* with the sentence: "The human race is ruled by two things, namely, natural law and usages" (*Humanus genus duobus regitur naturali videlicet iure et moribus*). The canonists grappled with the concept of natural law and with its place in jurisprudence for centuries. Their struggle resulted in an extraordinary rich jurisprudence on natural law and reflections on its relationship to canon and secular law. A very distinguished historian has written: Gratian's *Decretum* was "essentially a theological and political document, preparing the way — and intended to prepare the way — for the practical asserting of the supreme authority of the papacy as lawgiver of Christendom." This sentence might describe the purpose of Anselm of Lucca (and other canonists of the reform period) but not Gratian's plan for his work. If Gratian's goal for the *Decretum* were to be limited to one idea (a dubious idea) it would be that he wanted to describe the relationship of law to all human beings. Gratian's purpose is clearly revealed in the first distinctions in which he analyzed the different types of law, just as Anselm of Lucca's purpose is revealed at the beginning of his collection.

After he discussed law in the first twenty distinctions, Gratian then turned to issues of ecclesiastical government and discipline. For example distinctions 31-36 treat the morals of the clergy; 60-63 ecclesiastical elections; 64 and 65 episcopal ordination; 77 and 78 the age of ordination; 95 and 96 secular and ecclesiastical authority. In the *causae* Gratian discussed the problem of simony (*causa* 1); in *causae* 2-7 he treated procedural matters; 16-20 monks; 23 war; 27 to 36 marriage. One important part of the *Decretum* was added later. At the end of the book the long tract on sacraments (*de consecratione*) was added later. Gratian's teaching and his *Decretum* established canon law as a partner to Roman law first in Bologna and then all over Europe. He prepared the way for canonical jurisprudence.

Theodore Balsamon: The Greek Gratian

Theodore Balsamon was the most important canonist in Constantinople during the twelfth century. He was born in the early decades of the century and died sometime after 1195. Unlike Gratian, who probably never held an important ecclesiastical office, Theodore Balsamon joined the ranks of the clergy quite early and was a high-ranking member of the ruling elite in Constantinople. He was ordained a deacon of Hagia Sophia, the most important church in Constantinople. Afterwards he assumed the positions of *nomophylax* and *chartophylax* as well as that of *protos* of the church. A *nomophylax* meant "guardian of

the law” and was a prestigious post at the imperial court. He was the president of the school of law and was given senatorial rank. In the 1170's the Emperor Manuel I and the Patriarch of Constantinople, Michael commissioned him to revise the *Nomokanon in XIV Titles*. Balsamon carried out this task and also wrote a commentary on the *Nomokanon*. The work has given him a reputation and a position in Greek Orthodox canon law similar to Gratian in Western canon law. But there the similarity ends. The emperor commissioned Balsamon to revise canon law. Gratian worked well outside the circles of secular and ecclesiastical power. Balsamon revised an earlier work that had become the authoritative book of canon law in the East; Gratian fashioned a collection of canon law that was different from any prior collection. Balsamon continued the Byzantine tradition of melding secular law with canon law. He compared all the imperial law in the *Nomokanon* with those in the *Basilika* (τὰ Βασιλικά), a collection of imperial laws from the late ninth or early tenth century. Those secular laws in the *Nomokanon* that were not in the *Basilika* were considered abrogated. For the ecclesiastical canons in the collection, Balsamon explained their place in the canonical tradition when he discussed them in his commentary. He noted any that had been abrogated or derogated by subsequent legislation. As we have seen, Gratian used Roman law but took almost all his texts from earlier canonical collections. It was Roman law that had been “canonized.”

There had been a practical reason that the emperor and patriarch asked Balsamon to work on the *Nomokanon*. The metropolitan of Amaseia had not filled the vacant see of Amisos. Patriarch Michael appointed a new bishop and argued that he had the authority to make the appointment because of a novella of Justinian. The metropolitan appealed to the emperor, who declared the patriarchal decision invalid. Manuel noted that the novella was not in the *Basilika* and therefore was not valid law. Because of this case, Balsamon was ordered to study other the imperial legislation in the *Nomokanon of Fourteen Titles*.

Balsamon continued to work on his commentary on the *Nomokanon* for a long time, possibly until he died. He took later imperial and ecclesiastical legislation into account. The last novella that he mentioned was issued by Isaac II after April 1193.

A comparison of Gratian's and Balsamon's ecclesiology is revealing. Gratian described a church that was centered in Rome and that had jurisdictional independence from secular rulers. Although he did not emphasize papal authority to the same degree that the eleventh-century canonical collections had, he included all the fundamental papal decretals from Pseudo-Isidore as well as genuine papal decretals that established papal jurisdictional primacy. In contrast Balsamon's church was not independent. The emperor had the authority to establish, derogate, and abrogate canonical norms. Balsamon insisted that the emperor should exercise this power with caution and only in exceptional cases. He did not, however, grant the emperor authority in dogmatic questions.

Balsamon's significance was central in the Byzantine canonical tradition. During both the late Byzantine as well as post-Byzantine periods, canonists cited and used excerpts from his commentary. He also influenced Slavic canonical literature. His works were translated or were transmitted by canonists like Matthew Blastares who was influenced by him.

Canon Law in the West After Gratian: The Age of the Decretists

Although it was not a highly polished text, Gratian's *Decretum* quickly became the standard textbook of medieval canon law in the Italian and transmontane schools. Its flaws were minor. Gratian left repetitions and seams in his text that betrayed its long period of gestation. The revisions of his work sometimes introduced confusion and ambiguity, but the canonists were only rarely dismayed by his conclusions, comments or organization.

In the formative age of canon law, that age following Gratian when the study of canon law became a discipline in the schools in Italy, Southern France, and Spain, the jurists began to fashion the first tools to construct a legal system that met the needs of twelfth-century society. Gratian's *Decretum* surveyed the entire terrain of canon law but was only an introduction to the law of the past. Although it provided a starting point for providing solutions, it did not answer many contemporary problems directly. The three most pressing areas in which the jurists used the new jurisprudence to transform or to define institutions were procedure, marriage law, and the structure of ecclesiastical government. In the first half century after Gratian, the jurists concentrated on these problems, and their teachings and writings vividly reflect these concerns.

The disciples and successors of Gratian at Bologna and elsewhere continued his work of bringing order to the new discipline of canon law in two ways. Almost immediately they began to write *summae* and glosses on the *Decretum*, and within several decades, the work of the jurists evolved into standard apparatus, which, along with the *Decretum*, formed the foundation of the teaching of canon law. At the same time, they experimented. They modified Gratian's text and, to a lesser degree, reorganized it. Scholars call these jurists decretists because Gratian's *Decretum* was the center of their universe.

The textual changes that the decretists made took three forms. They added additional chapters of canon law and excerpts of Roman law to the *Decretum*. They called these new texts "palea." To make Gratian's book more accessible to a wider audience, they composed abbreviations of the entire book, and, rarely, reorganized Gratian's material so completely that the result was a new work. For the most part, this work was done by anonymous jurists.

The earliest changes may have been the addition of chapters to Gratian. They were inserted into the text itself or added to the margins. Although the canonists of the twelfth century called them *paleae*, they did not know from whence the term came. Huguccio conjectured that the word meant 'chaff' added to the good grain; other authors thought that the term was derived from the name of Paucapalea, one of the first commentators on the *Decretum*. He, they surmised, had been responsible for the *paleae* added to Gratian's text.

The canonists also produced many abbreviations of Gratian's text, some of them having been produced shortly after Gratian finished his work. In France, for example, the first sign that Gratian had been received was an abbreviation of the text, *Quoniam egestas*, written ca. 1150. The importance of such abbreviations was not limited to those who had no or little legal training. There are seven manuscripts of *Quoniam egestas*, and four of them are

glossed. The glosses are evidence that professional jurists also used abbreviations in their work. The abbreviators sometimes shortened the texts rather mechanically, but did, at times, added their own *dicta* that supplemented or replaced Gratian's. These abbreviations were, for the most part, composed in the twelfth century, and the genre almost disappears by the beginning of the thirteenth. Some of the abbreviations were the work of local jurists and were probably meant to serve the needs of local bishops.

In spite of its slightly cumbersome organization and large compass, Gratian's Decretum became the centerpiece of canonical jurisprudence and Bologna became the most important center for the study of that law in the second half of the twelfth century. The city was perfectly suited to foster the new discipline. Roman law was already a flourishing discipline there. No matter what Gratian's attitude or knowledge of Roman law was, by the end of the twelfth century no canonist could practice his trade without a thorough mastery of Justinian's codification. At a very early stage, the emperors and popes recognized the importance of Bologna and the new disciplines. We have seen that Frederick Barbarossa issued an imperial privilege to the students of Bologna in 1155. Pope Alexander III took the precaution of announcing his election to the bishop, canons, doctors and masters of Bologna in 1159. Later Pope Lucius III granted the students of Bologna papal protection against rapacious landlords in 1176-1177. The school of law at Bologna was vigorously engaged in teaching and training jurists, and the empire and the papacy slowly began to understand the significance of jurists' work for the governance of their institutions. The papal and imperial privileges are convincing evidence that they and their courts grasped the importance of these new institutions.

Many reasons compelled the papacy to take notice of the law school at Bologna. The Church had become much more juridical during the course of the twelfth century. St. Bernard's famous lament in his letter to Pope Eugenius III (1153) that the papal palace is filled with those who speak of the law of Justinian confirms what we can also detect in papal decretal letters. The new jurisprudence influenced the *arengae* and the doctrine of decretals. Canonists undoubtedly drafted these letters in the curia. The rush to bring legal disputes to Rome became headlong in the second half of the twelfth century. Litigants pressed the capacity of the curia to handle their numbers. Popes delegated many cases to judges-delegate, but the curia was still overburdened.

Procedure presented problems in need of authoritative solutions. As ecclesiastical courts began to render judgments on the basis of written and oral evidence, judges, litigants, and jurists began to worry about correct judicial procedure. The first notice we have that the papal curia asked for guidance from the law school at Bologna was ca. 1140 when Aimeric, the papal chancellor, asked Bulgarus to compose a short treatise on procedure. Bulgarus's tract has been preserved in several versions and had a rather wide circulation. By the 1170's the papal chancery was organized and staffed by canonists. A canonist, Albert of Morra, later Pope Gregory VIII, was appointed chancellor by Pope Alexander III. The Church became a church of law. The legal system extended from the papal curia to local courts. Lawyers began to play a visible role in the administration of justice. From the twelfth century on, distinguished jurists were often rewarded with high ecclesiastical

offices. Of the twelfth-century canonists, Omnebonus (Verona), Sicardus (Cremona), Stephen (Tournai), Johannes Faventinus (Faenza), Huguccio (Ferrara), and Bernardus Papiensis (Faenza, then Pavia) became bishops. This pattern was not unique to Italy. Canonists were also rewarded with episcopal appointments in the Iberian peninsula, France and England during this period.

St. Bernard was not the only churchman who had misgivings about these developments within the church. Local bishops resented the growing centralization of the church and objected to their loss of prerogatives to the papacy. Litigants were quick to seize the advantages that distant courts and far-away judges presented. They used the appeal as an instrument of delay or even fraud. In the late twelfth century, popes Clement III and Celestine III countered these widespread abuses by attempting to restrict appeals to Rome. But by this time, the system was too entrenched. Papal justice may have been imperfect, but its success was due to litigants who voted for it with their feet. The heavier the burden on the papal curia, the quicker the curia expanded to meet the need. Pope Innocent III remarked that there was always an abundance of lawyers in Rome, and his statement reflects the practical side of Bologna's relationship to the papacy. The papal curia provided the forum; Bologna sent her jurists.

Although papal decretal letters surpass the *Decretum* as the basic texts for the study and practice of canon law by the beginning of the thirteenth century, Gratian's *Concordia* reigned without significant rivals from ca. 1140 to 1190. The jurists at Bologna and elsewhere produced commentaries on the *Decretum*, and the jurists made it the central text of their teaching. The earliest works on the *Decretum* fall into two types: apparatus and summae. The canonistic summae often synthesized and paid attention to detail at the same time. To a certain extent, one may distinguish these two literary types by examining the way in which a work was transmitted. Apparatus were most often, but not always, written in the margins of the manuscripts of the law books, while summae were most frequently written separately from the book on which they commented. Twelfth-century *Decretum* manuscripts contain an infinite variety of marginal glosses that are an admixture of coalescing *apparatus* and individual glosses. In many respects, these glosses to the *Decretum* can be considered the most important accomplishment of the Bolognese jurists in the twelfth and early thirteenth centuries.

Bologna became the center of the world of canonical jurisprudence in the second half of the twelfth century, but canon law was taught at many transmontane centers — primarily at Paris, but also at Tours, Reims, Oxford, and other smaller cities --- neither the documentary nor the literary sources provide enough information with which we may write the history of a particular school. We can distinguish between cismontane and transmontane works, but we can rarely attribute an anonymous summae produced north of the Alps to a particular center with any certainty. At Bologna, however, we are much firmer ground. We know the names of jurists who taught there and can catalogue their works. But even at Bologna, we have very little biographical information with which to flesh out their careers. In contrast to the anecdotes that circulated about the Roman law jurists, the canonists do

not seem to have participated in public forums which would have given rise to anecdotal tales, true or false.

Paucapalea was one of Gratian's first successors at Bologna and taught in his shadow. Unreliable testimony of some jurists credited him with introducing the distinctions in the first and third parts of the *Decretum* and with adding the paleae to Gratian's text. Almost nothing is known of his relationship to Gratian or of his public career. The only certainty is that he wrote the oldest commentary on Gratian's *Decretum*, probably sometime between 1144 and 1150. Paucapalea's *Summa* is an impressive work. One would not expect the first commentary on Gratian to dazzle with great sophistication.

The two most important teachers of the 1150's in Bologna were Rolandus and Rufinus. The earliest notice of a Magister Rolandus in Bologna is dated 1154. Rolandus wrote many recensions of his *Summa* on the *Decretum*. The earliest was finished ca. 1150; the others in the next decade. Rolandus composed his *Sententiae* after the third recension of his *Summa* (ca. 1155). Rolandus focused on the law of marriage in his work. It was a topic of intense interest and importance for the jurists in the second half of the twelfth century.

Although Rolandus has attracted more attention from modern historians because they had erroneously identified him with Pope Alexander III, Rufinus was the major figure at Bologna in the 1150's. We know almost nothing about him, but finished his *Summa* on the *Decretum* sometime around 1164. At the end of Rufinus's *Summa*, an anonymous scribe dubbed him "the first elegant commentator or interpreter of that golden book, the *Decretum*." Modern historians have concurred. His personality was forceful, education broad, and opinions mordant. The length and the detail of his *Summa* surpassed all his predecessors. Almost immediately it became the most influential commentary on Gratian in Bologna.

After Rufinus, a number of canonists wrote important commentaries on the *Decretum*. Stephen of Tournai (ca. 1166-1170) developed several ideas in the prologue to his *Summa* that reflect developments in the evolution of canonistic jurisprudence since Gratian. He introduced his *Summa* with an invitation to a jurist and a theologian to share a meal, one that both could partake. And, he continued, just as they had two different approaches to law, the world was governed by dualities: there are two people in God's world, clerics and laymen, two *principatus*, the *sacerdotium* and *regnum*, and two orders of jurisdiction, divine law and human law. The reformers of the eleventh century had fought for Stephen's vision. Now it was a commonplace.

Sometime after 1171, Johannes Faventinus wrote a *Summa* that borrowed much from Rufinus and Stephen of Tournai. Although large portions of the work are derivative and were copied word for word from the sources, it enjoyed great popularity as is evident by the wide dispersal of the surviving manuscripts. One of the last canonists whom we may place in the first generation after Gratian was Simon of Bisignano. By his time the character of canonistic commentaries was changing. The outpouring of papal decretals and the systematic application of Roman law to canonical jurisprudence was well underway.

Simon's works reflected both trends, and he cited papal decretals and Roman law fairly frequently. His practice foreshadowed the future.

Huguccio was, after Gratian, the most important canonist of the twelfth century. He wrote the most extensive, most widely quoted, and most influential commentary on Gratian's *Decretum* in the history of canon law. He worked at the end of the twelfth century (ca. 1190), taught at Bologna, and later, like so many canonists, became the bishop of Ferrara. His commentary on Gratian was detailed, lucid, and comprehensive. Later jurists cited his ideas, incorporated his opinions into their works, and reacted to his positions. After Huguccio — with a few later exceptions (e.g. Johannes Teutonicus' Ordinary Gloss to the *Decretum* [ca. 1215]) — commentaries on the *Decretum* ceased.

The Age of the Papal Decretal

The main reason for Huguccio's commentary marking the end of an age was the transformation of canon law from a discipline based on the explication of Gratian's *Decretum* to a legal system based on papal decretals. Bernard of Pavia, also known as Bernardus Balbi, inaugurated the age of the decretalists, those jurists who concentrated on papal decretals in their teaching and writing. He had glossed Gratian's *Decretum* during the 1170's, beginning his career at Bologna in the age of the Decretists. Like his teacher, Huguccio, Bernard followed a "cursus honorum" that became a common pattern for jurists in the thirteenth century. He studied and taught at Bologna, became provost of Pavia in 1187, bishop of Faenza in 1191, where he succeeded Johannes Faventinus to the episcopal seat, and then, in 1198 he became bishop of Pavia. As a canonist Bernard's importance was that he gave form and organizational principles to the study and teaching of papal decretals that remained standard in the schools for the rest of the Middle Ages. He compiled a collection of decretals and other texts that Gratian had excluded and called it a *Breviarium extravagantium*. Every later collection of papal decretals adopted Bernard's organizational pattern. After the compilation of *Compilationes secunda* and *tertia* after ca. 1210, Bernard's *Breviarium* was cited as *Compilatio prima* by the canonists.

Bernard's *Breviarium* was a breakthrough for canonistic scholarship. Papal decretals had begun to occupy an evermore important position in canon law since the 1160's, but the canonists had not yet devised a way to deal with them. Small, unsystematic collections were first compiled and often attached as appendices to Gratian's *Decretum*. Gradually larger collections were made, but since they were usually not arranged systematically, they were difficult to use, consult, and impossible to teach.

Bernard compiled his *Breviarium* between 1189 and 1190, while he was provost of Pavia. The new collection took the school at Bologna by storm. Although, like Gratian's *Decretum*, it was a private collection, the canonists immediately used it in their classes and wrote glosses on it. Bernard's *Breviarium* served as an introduction and as a blueprint for a new system of canon law.

In his prologue to the collection, Bernard wrote that “he had compiled ‘decretales extravagantes’ from both new law and old law and organized them under titles.” Bernard was modest. He revolutionized the study of the “ius novum.” Earlier collections had been arranged according to titles, but none as systematically as Bernard's. Roman law once again provided the canonists with a model. If we compare the titles of Bernard's collection in books one and two with Roman law collections, we can see the clear influence of the structure of Justinian's codification. The following list of titles from books one and two illustrates Bernardus adoption of Justinian's titles and organization from the Digest and the Codex:

- Bernard 1.26 De pactis Dig. 2.14
- 1.27 De transactionibus Dig. 2.15
- 1.28 De postulando Dig. 3.1
- 1.29 De procuratoribus Dig. 3.3
- 1.30 De sindico Dig. 3.4-5
- 1.31 De hiis que vi metusve causa Dig. 4.2
- 1.32 De in integrum restitutione Dig. 4.1
- 1.33 De alienatione iudicii mutandi causa facti 4.7
- 1.34 De arbitris Dig. 4.8
- 2.1 De iudiciis Dig. 5.1
- 2.5 De ordine cognitionum Cod. 3.8, Cod. 7.19
- 2.6 De plus petitionibus Cod. 3.10
- 2.7 De feriis Cod. 3.12
- 2.12 De probationibus Dig. 22.3, Cod. 4.19
- 2.13 De testibus Dig. 22.5, Cod. 4.20
- 2.15 De fide instrumentorum Dig. 22.4, Cod. 4.21

With the structure of his collection Bernard underlined the interdependence of Roman and canon law in the late twelfth century and reminded students of canon law that Roman law was essential for their studies.

Bernard did not imitate Digest by dividing his collection into a large number of books. He divided his compilation into five books, each with a general subject. Later canonists used the mnemonic verse “Iudex, Iudicium, clerus, connubia, crimen (Judge, Court, Clergy, Marriage, and Crime)” to remember the contents of each book. Bernard's division into five books was used by almost every later collection.

Bernard collected more than recent papal legislation. When he wrote that he had compiled a collection of “extrauagantes” he meant all materials that circulated independently of Gratian. He included many canons from ancient councils and synods, a large number of letters of Pope Gregory I, and many letters of pre-Gratian popes. The bulk of his collection, however, consisted of the decretals of Pope Alexander III (1159-1181). Alexander's legislation had exercised an enormous influence on canon law, and the canonists had recognized his importance. Bernard included three texts of Pope Gregory VIII (1187) and

three of Pope Clement III (1187-1191). These decretals, together with the fact that Bernard called himself the provost of Pavia — he held that post until 1191 when he became bishop of Faenza — establish the dates between which Bernard must have put the finishing touches on his collection.

The jurists immediately began to teach Bernard's *Breviarium* at Bologna and produced a number of commentaries on it. In Northern Europe they also tinkered with his text by adding decretals to it. Their innovations were not new. Canonists had added material to established collections for centuries. The Pseudo-Isidorian Decretals, Burchard of Worms and Ivo of Chartres's *Panormia*, The Collection in 74 Titles, and Gratian's *Decretum* had all undergone minor changes in their texts introduced by anonymous jurists. These collections were “collectiones vivantes,” and their texts reflected their use. In Bologna by the end of the twelfth century, perhaps because the jurists' commentaries on the collections froze them in the form in which they were received, this practice of cheerfully altering canonical texts diminished but did not completely disappear. In Northern Europe, the practice continued until well into the thirteenth century.

In 1209-1210 Pope Innocent III (1198-1216) authenticated Petrus Beneventanus's collection of his own decretals. This action marked the first time that a pope had endorsed a private canonical collection. The canonists quickly adopted the text in the schools and called it *Compilatio tertia*. The papal imprimatur helped to assure its success. A short time later, Johannes Galensis (John of Wales) compiled *Compilatio secunda*, and, although unaided by papal approval, his collection became a “received text” in the law schools. Their success was probably due as much to their timing as to their editorial skills. The schools and the courts needed certainty. Papal decretals were now providing that certainty.

The school of Bologna reached a high point in its history from ca. 1210 to 1225. It almost swept away all competitors. The canonists of the North almost ceased writing commentaries, and the indications of their activities are scant. They no longer wrote on Gratian; they did not comment on the new compilations of papal decretals. The Bolognese canonists glossed the two new compilations of papal decretals, as well as Bernard's *Breviarium*. Their world was self-contained and their horizons were limited. They referred to their own works and the works of others who taught at Bologna.

A new group of canonists who had been students during the first decade of the thirteenth century reached intellectual maturity and after 1212 produced a remarkable body of work. They witnessed a significant transformation of canon law. In their student days most had studied Roman law intensively and almost all sat at the feet of the greatest Romanist of the time, Azo. The “romanization” of canon law had been underway for almost fifty years, but they applied Justinian's doctrines more completely and comprehensively than earlier generations. They continued to gloss and teach Gratian's *Decretum* and papal decretal legislation in the *Compilationes antiquae*, as the first, second, and third compilations were called. The great and the not so great threw themselves into writing apparatus on these collections: The great were Laurentius Hispanus, Vincentius Hispanus, Johannes Teutonicus, Tancred of Lombardy, and Raymond de Pennafort; the not so great were

Albertus, Johannes Galensis, Damasus Ungarus, Jacobus de Albenga, and Zoën. Many lesser figures are also known from very fragmentary sources and scattered glosses in the margins of manuscripts: Johannes Garsias Hispanus, Martinus Zamorensis, Phillip of Aquileja, Marcoaldu, Petrus Hispanus Portugalensis, and Ambrosius.

Petrus Beneventanus's *Compilatio tertia* sparked intense interest among the canonists, and all the major figures in Bologna wrote apparatus on it. Johannes Galensis had composed individual glosses on *Compilationes secunda* (his own collection) but did not write an entire apparatus. We know his glosses to the *Secunda* primarily from their inclusion into the Ordinary Gloss of Tancred. He was one of the earliest canonists, however, to gloss *Compilatio tertia*, and his apparatus on the *Tertia* is preserved in two manuscripts.

Laurentius Hispanus wrote one of the first apparatus on *Compilatio tertia*, and his work is characterized by subtlety, wit, and insight. A small example of this can be seen from the opening gloss of his apparatus to *Compilatio tertia*. Quoting Paul's letter to the Romans (12:5), Pope Innocent III had written in the arenga of the decretal that we are one body with Christ and each person shares the limbs of another — a platitude. Laurentius noted dryly: "I cannot perceive how one man may be the limb of another." Laurentius had a gift of placing old problems in new settings --- or of seeing a paradox in the proverbial. Perhaps prodded by the outpouring of judicial decisions and decretal legislation from Rome, he broke sharply with the traditional definitions of legislative power that the jurists held when he described the prince's authority to change law. In a gloss to Innocent III's decretal *Quanto personam* Laurentius adopted a truly revolutionary idea: the prince may make iniquitous law, for the prince's will is held to be reason. Germanic and earlier learned conceptions of law confused the content of law — that law must be just and reasonable — with the source of the law, the will of the prince. Before Laurentius, the jurists had accepted the idea that a law could not be valid unless it embodied reason. By separating the prince's will from reason, Laurentius located the source of legislative authority in the will of the prince and laid the intellectual groundwork for a new conception of authority in which the prince or the state might exercise power unreasonably, but legally. He can be said to have begun the voluntarist tradition in political thought.

Johannes Teutonicus wrote commentaries on the Decretum and on *Compilatio tertia*. A short time after the end of the Fourth Lateran Council (1215), he compiled a new collection of Innocent's decretals into which he incorporated the Fourth Lateran conciliar canons. Surprisingly Innocent refused to authenticate the collection, but, undaunted, Johannes provided his collection with an apparatus. Slowly, in spite of the pope's disapproval, *Compilatio quarta* was accepted by the schools. This was a significant sign that canon law was not yet under the control of Rome. This would change during the course of the thirteenth century.

After 1217 the Studio in Bologna was dominated by one figure, Tancred of Lombardy, often referred to as Tancred of Bologna. He studied at Bologna, heard the lectures of Azo on Roman law, and sat at the feet of "his master" Laurentius in canon law. He became a canon and then, in 1226, archdeacon of the cathedral chapter of Bologna. Pope Honorius III

selected him to compile a collection of his decretals sometime before 1226. By this time Tancred's stature was so great, and his rivals so few, that it is difficult to imagine whom Honorius might have chosen other than the archdeacon. Honorius chose Tancred and by doing so he also set a precedent. Canonical collections would no longer be the products of initiatives of private jurists; with only a few exceptions popes began to order collections of their decretals. With *Compilatio quinta* the papacy took control of its law. For the next century decretal collections were "official" compilations, ordered by the papacy, and sent to the law schools. The age of the "private" decretal collection had passed.

The last major figure in the period before 1234 was the Catalan Dominican, Raymond of Pennafort. He studied at Bologna and then taught law between 1218 and 1221. After his return to Barcelona, he entered the Dominican order in 1222. Pope Gregory IX summoned him to Rome in 1230 and asked him to compile a new codification that would replace all earlier collections of decretals with one volume. We do not know if he worked alone or with other jurists in the curia. In his bull, *Rex pacificus*, with which Gregory promulgated the new collection in 1234, he called Raymond's work a *Compilatio*, but the canonists quickly adopted the name *Decretales Gregorii noni*. Along with Gratian's *Decretum*, it became the most important collection of papal decretals in the schools and in the courts of Europe. It was also known as the *Liber extra* (The book outside Gratian's *Decretum*).

Papal Decretals and Codification from 1298 to 1582

If he had seen the canon law curriculum at the Law School at Bologna ca. 1300, Gratian would have been pleased and surprised. He would have been pleased that his book still occupied a central place in the study of canon law. Every student of law studied the *Decretum*. He would have been surprised that Dante Alighieri placed him in Paradiso. Not many poets have bestowed honors on jurists. He would not have anticipated the complete triumph of the papal decretal. Gratian understood canon law as being based on many different kinds of authoritative texts. By the end of the thirteenth century, however, the canonists were transfixed by the papal decretal.

Since the early thirteenth century when Pope Honorius III commissioned Tancred of Bologna to compile a collection of his decretals, popes had followed his lead. Pope Boniface VIII (1294-1303) — who was not a jurist admired by Dante — established a committee of canonists to compile a collection of his own decretals, Pope Innocent IV's decretals, conciliar canons from Lyon I and II, and other papal decretals that had circulated in other private thirteenth-century collections. This collection of canon law was called the *Liber Sextus*. Although it was divided into five books and organized like every collection since Bernardus Parmensis' *Breviarium*, it derived its name from being the sixth book added to the five books of Gregory IX's *Decretals*. Boniface promulgated the new collection on 3 March, 1298 and sent it to all the major schools of canon law. Just as Gregory IX wanted his collection to be a comprehensive and exclusive collection of canonical norms from Gratian to 1234, Boniface's collection was to be the sole witness of papal decretal legislation from 1234 to 1298. The canonists continued to cite decretals that had not been included in the collections but only rarely. The papacy had put its firm stamp on canon law.

During the fourteenth century, two more papal collections appeared. Pope Clement V (1305-1314) ordered a collection of his decretals be compiled that also included the canons of the Council of Vienne (1311-1312). He died before the collection could be properly promulgated. His successor, Pope John XXII (1316-1334), a distinguished jurist, had the collection revised and issued the new collection on 25 October, 1317. In the canonical literature this collection was named the *Constitutiones Clementinae*.

The *Clementinae* was the last official collection promulgated by the medieval papacy. There were two more private collections that were accepted by the schools: the *Extravagantes Johannis XXII* and the *Extravagantes communes*. The *Extravagantes Johannis XXII* contained twenty decretals issued by Pope John XXII during his pontificate. The *Extravagantes communes* evolved later. It contained seventy canons from an array of late medieval popes. The schools accepted these collections, and the canonists wrote extensive commentaries on them.

These facts raise a question about Western canon law that are very difficult to answer. Why did the popes stop promulgating decretal collections after 1317? It seemed as if the papacy had taken control of its legal system between 1226 and 1317. It promulgated its law officially, following the model established long before by the Emperor Justinian. During this period one might conclude that the popes perceived their legal role and their authority within the Church much as modern governments do when they exercise control of their legal systems within their territorial states. Like modern governments the popes promulgated, shaped, authenticated, and controlled their legal systems. This model ends after 1317. There were no papal collections of canon law until Pope Benedict XIV (1740-1758) issued a volume of his decretals and Pope Pius X (1903-1914) published five volumes of his acts in the early twentieth century. No historian has yet offered an answer to this question.

Although a definitive answer cannot be given, several observations can be made. First the question reflects our conception of how legal systems should be structured and not theirs. No medieval or early modern jurist considered any institution (state) to be the sole producer and repository of law. Second, a new type of collection of papal judicial decisions arose in the fourteenth century, the *Decisiones Romanae Rotae*. It reported the cases of the papal Court of Audience that was known as the Rota. This court began to carry the main case load of the papal curia at the end of the thirteenth century. Scholars have attributed the collection to one of two Englishmen, Thomas Falstaff and William Bateman. Falstaff was an auditor for the Rota in the middle of the fourteenth century. He also worked in the papal court at Avignon. In either case it may not be by chance that an English jurist conceived of collecting the cases of a single court. The English Year Books that contained the reports of the English Royal courts provided a model for the work.

During the thirteenth and fourteenth centuries popes participated less and less in the daily work of the papal court. Whereas early papal decretals contained decisions in which the pope sometimes, if not always, heard the cases, by the fourteenth century papal letters were no longer the primary vehicles for reporting the judicial activity of the papal curia. It

was during this time that the judicial office of the curia became known as the Roman Rota. Papal auditors (*auditores*) commonly heard the cases that were appealed to Rome. When Pope John XXII (1314-1334) promulgated the decretal *Ratio iuris* (1332) in which he granted auditors ordinary power to hear cases, the pope confirmed a practice that had been in place for more than a century. During the fourteenth century the “Decisiones” or “Conclusiones” of the Rota were gathered together and manuscripts of them circulated widely. These decisions of the Rota became another source of authority within canon law. By the fifteenth century the *Sanctae Romanae Rotae Decisiones* were published each year. This practice continues until the present day. A consequence of this institutional development was that collections of papal decretals became far less relevant for canon law.

The decretal collections of the thirteenth and early fourteenth century remained the cornerstones of canonical jurisprudence. They were the *libri legales* (law books) that were used in the classrooms and the courtrooms of Europe. In the second half of the sixteenth century, the papacy decided to revise these standard texts of canon law. In 1566 Pope Pius V convened a committee to examine the complicated textual basis of the *libri legales*, especially Gratian’s *Decretum*. They were called the *Correctores Romani*. The committee was guided in part by one of the most brilliant scholars of the age, the Spaniard, Antonio Augustin. Pope Gregory XIII promulgated a new *Corpus iuris canonici* in 1580. It was printed for the first time in Rome during 1582. Pope Gregory’s revised and authenticated version of the standard texts of canon law remained in force until the *Codex iuris canonici* was promulgated in 1917.

There were other unsuccessful and semi-successful attempts to compile collections of decretals that would have supplemented and updated the standard collections. The concept of adding a “*Liber septimus*” to the *libri legales* took different forms and experienced the vicissitudes of papal interest. Pierre Matthieu produced a *Liber septimus* (Frankfurt am Main 1590) that he considered to be a continuation of the *Corpus iuris canonici*. The book never received official recognition and was placed on the *Index librorum prohibitorum* in 1623. With the encouragement of Pope Paul IV (1555-1559), Giovanni Paolo Lancelotti had already conceived of a collection of decretals to augment the *libri legales canonici*. He published his *Institutiones* in 1563. It never received a papal endorsement. Pope Paul V (1605-1621) did permit Lancelotti’s work to be published as an appendix to some editions of the *Corpus iuris canonici* (Lyon: 1606, 1616, 1661; Venice: 1630 [without the *Corpus*]). A manuscript in Toledo contains a “*Codex Gregorianus*” compiled by Celso Pasi. It contained decretals and texts that reached as far back to the Church fathers and to the decretals of Boniface VIII, but mainly contained the decrees of the Council of Trent and the fifteenth- and sixteenth-century popes. The *Liber septimus* that came closest to finding an official place in canon law was begun during the pontificate of Pope Gregory XIII. Work was begun under Gregory and continued under his successors. A *Liber septimus* was printed at Rome in 1592-1593 and in 1598 with only a few exemplars. In spite of its origins in the papal court, no pope, however, gave it official approval.

Late Medieval and Early Modern Western Jurists

The canonists who interpreted the *Corpus iuris canonici* in the later Middle Ages created an enormous body of literature. From the middle of the thirteenth century, the canonists began to write massive commentaries on the standard decretal collections. Two jurists are particularly important in the thirteenth century: Pope Innocent IV and Hostiensis.

Pope Innocent IV wrote a detailed and sophisticated commentary on the Decretals of Gregory IX ca. 1245. Every jurist from his immediate contemporaries to Hugo Grotius in the seventeenth century cited his commentary. He probably began writing it long before he became pope and continued revising it up to the time of his death. He also wrote a commentary on the constitutions of the First Council of Lyon and on the additional decretals that were added to the constitutions in 1246 and 1253. The work was widely distributed in manuscripts and printed in a number of editions between 1477 and 1570.

Innocent emphasized papal authority and power in his commentary. His great predecessor, Pope Innocent III, had established the foundations of papal authority within the church and over secular affairs. Innocent IV expanded and refined Innocent III's legislation in significant ways. He claimed that the pope could choose between two imperial candidates, could depose the emperor (a power he exercised at the First Council of Lyon), and could exercise imperial jurisdiction when the imperial throne was vacant. Although he granted non-Christian princes the right to hold legitimate political power, he tempered that right by asserting that they must permit Christian missionaries to preach in their realms. In his commentary on the bull of deposition that he had promulgated at the First Council of Lyon (*Ad apostolicae dignitatis apicem*, Liber sextus 2.14.2), Innocent made remarkable claims for papal authority. The pope did not need the council to validate the deposition of the emperor, because only the pope, not the council, has fullness of power. Innocent asserted that Christ had the power and authority to depose or condemn emperors by natural right (*ius naturale*). He concluded that the pope had the same authority since he held the office of the vicar of Christ. It would be absurd, he argued, if after the death of St. Peter human beings were left without the governance of one person ("regimen unius personae"). Few popes in the Middle Ages made a more powerful argument for the legitimacy and justness of papal monarchy. Few popes, if any, were more learned in canon law.

Hostiensis (Henricus de Segusio) (ca. 1200-1271) was a contemporary of Innocent IV. These two jurists dominated the second half of the thirteenth century. Hostiensis wrote a massive commentary on the Decretals of Gregory IX and on the Decretals of Innocent IV. He also wrote a *Summa* on the Decretals of Gregory IX. He worked on his commentary over his entire life and finished its final redaction just before his death. His work circulated widely and became a touchstone for all later canonists.

Although the canonists continued to write commentaries on the *libri legales* during the fourteenth and fifteenth centuries, another literary genre emerged and became important: *consilia*. The jurists wrote *consilia* to advise litigants and judges in court cases. We have *consilia* that date back to the late twelfth and early thirteenth centuries, but they become

genre of great significance in the first half of the fourteenth century. The purpose of the consilia was practical: to advise litigants and judges on specific legal issues raised by a particular case. Consilia quickly became a major source of canonical thinking and jurisprudence. The fourteenth and fifteen centuries have been called the "Age of Consilia." The jurists wrote thousands of consilia, and some jurists earned considerable fees by writing them. Baldus de Ubaldis (†1400) wrote several thousand consilia and reputedly earned a substantial portion of his income from them.

The typical canonist in the fifteenth and sixteenth centuries wrote commentaries on the *libri legales*, consilia, and specialized tracts on various topics. Their careers were seldom limited to the teaching and practice of law. From the early thirteenth century many canonists were elevated to bishoprics. Hostiensis was a bishop in several sees and later became a cardinal. By the fifteenth century canonists taught, practiced, and held high ecclesiastical offices. Johannes Andreae († 1348) was the most prominent jurist of the mid-fourteenth century. He taught at Bologna and also played a significant role in the secular affairs of the Bolognese city state. He wrote an extraordinary large and varied body of writings: commentaries on the *libri legales*, consilia, specialized tracts on marriage, ecclesiastical elections, benefices, excommunication, and other topics. His influence on later canonists was pervasive.

In the fifteenth century Panormitanus (Niccolò Tedeschi) (1386-1445) was the most influential and important canonist. He wrote a commentary on the Decretals of Gregory IX that was one of the most frequently printed texts by a medieval jurist in the fifteenth and sixteenth centuries. After teaching in Siena, Bologna, and Florence, he participated in the Council of Basel as a representative of the pope. Later Pope Eugenius IV appointed him the archbishop of Palermo. He represented the Sicilian king's interests at the Council of Basel, where he supported the council's prerogatives when they were threatened by papal authority.

By the seventeenth century the importance of canon law (and the *Ius commune*) had waned. The Protestant Reformation tore the fabric of Christian unity asunder, and most Protestant churches rejected the authority of canon law. It was tainted with papal prerogatives. One of the last great canonists was Emanuel Gonzalez Tellez († 1649). He taught canon law at Salamanca, Spain. His major work was a long, detailed commentary on the Decretals of Gregory IX. Tellez' commentary on the Decretals was one of the last large-scale canonistic commentaries to enjoy European wide distribution. Tellez lived in the last century that canon law and the *Ius commune* would dominate European law and legal education. The age of national legal systems was dawning.

Late Medieval Greek Canon Law

In the last two centuries of Byzantine canon law we do not have a continuation of the quality of jurisprudence that took place in the twelfth and thirteenth centuries. Nothing in Byzantine canon law can match the sophistication of the Latin jurists of the late medieval and early modern period. The most important canonist of the late medieval Byzantium was

Matthew Blastares (ca. 1280-ca. 1350). He compiled the *Syntagma kata stoicheion*, or *Alphabetical Syntagma*. He lived for most his life in the monastery of Kyr Isaac in Thessalonike. His most important work, the *Syntagma*, is an alphabetically arranged encyclopedia of ecclesiastical law. He produced it ca.1335 and incorporated the *Nomokanon of Fourteen Titles* and the commentary of Theodore Balsamon as well as other earlier canonists into his work. For secular law, which still played an important role in Byzantine canon law, he used the *Basilika* and other collections of civil law. The *Syntagma* circulated widely in Byzantium, the Slavic countries, and Romania. It was translated into Serbian, Bulgarian, and Russian and became one of the fundamental sources of canon law in those regions.

Some late medieval Byzantine ecclesiastical court records have been preserved, and these records give us some indication about the level of jurisprudence. Two thirteenth-century Byzantine judges, John Apokaukos and Demetrios Chomatianos (or Chomatenos) have left records of the cases that they decided. We also have some decisions from the patriarchal court in Constantinople. These records contain information about cases dating from 1315 to 1402. Through these sources we have some evidence that canon law in the Byzantine Empire operated on a high level and that the jurists who heard cases had extensive libraries.

Although the work of Matthew Blastares and the court records represent a significant amount of material, it pales in comparison to the sources that we have for Western canon law. Consequently, meaningful comparisons of Latin and Greek law in the last days of the Byzantine empire are difficult, if not impossible, to make.

Canon Law in the Protestant Churches

Martin Luther and the other Protestant reformers rejected the body of canon law that had been established by the Latin Church. Luther burned books of canon law as early as 1520. He saw the canonical *libri legales* symbols of papal power. Most other continental reformers also rejected the authority of canonical jurisprudence. England was the exception. King Henry VIII proclaimed that he, not the pope, was the source of all canon law henceforward. Further, the validity of the *Corpus iuris canonici* did not rest upon papal authority but on its acceptance by the English people over many centuries. Consequently, the Anglican Church preserved the entire body of medieval canon law and converted it into a national legal system. A consequence of this change was that episcopal authority within the Church of England was greatly diminished. English bishops after 1534 could not exercise any legislative authority within the church. Canon law in England began to resemble the law of the Greek Orthodox tradition. The king and parliament became the sole source of canon law. Sir Edward Coke summed up the relationship of the king and canon law in the sixteenth century by stating "the king by the mouth of his judges in his courts of justice, doth judge and determine the same by the temporal laws of England, so in causes ecclesiastical and spiritual." Even today English bishops cannot legislate. In 1919 Parliament established a Church Assembly that included bishops, clerics, and laymen. This

body can submit proposals to Parliament, but only Parliament can transform these proposals into law.

Although the continental reformed churches rejected the *Corpus iuris canonici*, they needed rules to guide their new churches. In Germany after the Peace of Augsburg in 1555 each prince of the German states was considered a “*summus episcopus*.” His authority was similar to the diocesan bishop. Lay authorities promulgated necessary rules in a wide range of ecclesiastical matters. Later private jurists brought order to this pastiche of norms in much the same way that Gratian brought harmony to medieval canon law. In Germany, for example, Benedikt Carpzov published a complete statement of Lutheran law in *De iurisprudencia ecclesiastica seu consistorialis* (1645). A little later, another distinguished jurist, Justus Henning Böhmer wrote *Ius ecclesiasticum Protestantium usum modernum iuris canonici juxta seriem decretalium ostendens* (1714-1717). Both these jurists knew the texts, sources, and jurisprudence of medieval canon law very well and silently incorporated much of this earlier jurisprudence into their work.

Other Protestant churches established ecclesiastical law in various ways. In Scandinavia the kings became the ultimate source of ecclesiastical norms, but private jurists were also important for organizing law. In Sweden, for example, the first Archbishop of Upsala, Laurentius Petri, wrote a book on *Kyrkoordning* (Church Order) in 1571 that laid down the norms of church government and detailed the relationship of the church to the Swedish king. The Synod of Uppsala accepted his book in 1572. Later the king of Sweden confirmed Petri’s *Kyrkoordning*.

The Swiss reformed church under Huldrych Zwingli, Heinrich Bullinger, John Calvin established ecclesiastical regulations that were influential in other Protestant countries. Zwingli encouraged the city council of Zurich to create an “Order of the Matrimonial Tribunal” in 1525. The court judged all matrimonial matters and, later, all cases of morality. In 1532 Bullinger issued a set of regulations that governed preachers and synods. John Calvin had written a tract on ecclesiastical discipline entitled *Articles concernant l’organisation de l’Église* and convinced the city council of Geneva to adopt it in 1537. Although these norms were never accepted in Geneva, Calvin did successfully establish his *Ordannances ecclésiastiques* in 1541. These Swiss statements of ecclesiastical law were models for Protestant law in France and the Low Countries.

Influence of Canon Law on Western Jurisprudence

In the later Middle Ages canon law remained an independent legal system in Latin Christendom. Canonists were in great demand. Church courts could not function without them. Even secular rulers used canonists in their courts. Consequently, canon law was part of the curriculum in every European law school. The canonists did not, however, just study canon law. They also studied ancient Roman law in the form in which it was rediscovered in Bologna during the late eleventh and early twelfth centuries. The medieval jurists’ adaptation of Justinian’s *Corpus iuris civilis* became an essential part of canonical jurisprudence. The jurisprudence created by the canonists and civilians (professors of

Roman law) who commented on the standard canonical and Roman legal texts (*libri legales*) was called the *Ius commune*. It became the universal law of Europe from the early twelfth to the seventeenth century. During the reign of the *Ius commune*, teachers in the law schools throughout Europe not only used the same *libri legales* in their classrooms; they also used the same language of instruction: Latin. This *lingua franca* guaranteed that the focus of the law was universal and not particular.

The institutional structure of the law schools had profound effects on law. Unlike today, the schools and the jurists who taught in them were not isolated geographically, linguistically, and jurisdictionally from each other. Although the law schools in Southern Europe were much more important and played a much larger role than the Northern schools during the twelfth and thirteenth centuries, the *libri legales* created a homogeneous curriculum that formed the foundation of every jurist's training. The jurists of the North read and taught the jurists of the South. The jurists of the South, especially those from the Iberian peninsula, Southern and Central France, and Italy produced an astounding amount of literature in several different genres. The result of this work was the development of a common European jurisprudence that emerged during the thirteenth century.

This jurisprudence transcended local law, the *Ius proprium*. From the late twelfth century on, the jurists of the *Ius commune* developed a jurisprudence in which they attempted to isolate norms that had general application. Brian Tierney has recently demonstrated that these jurists explored rights of individuals systematically and developed a new language in which rights of human beings were discussed from many different perspectives. In their commentaries and their teaching they created jurisprudential norms that protected those rights. As these jurisprudential norms were received in the classrooms, courts, and commentaries, they became more than legal maxims or legal rules: they became statements of equity and justice that ruled the world of thought and the world of the courts.

The origin of the right to due process of law is a splendid example. At the beginning of the thirteenth century, a defendant did not have the absolute right of due process. A judge or the prince could condemn a person without a trial. During the thirteenth century the jurists began to explore and debate the rights of defendants. By the end of the century they had reached a consensus that a defendant's right to a trial was grounded in natural law and, consequently, was inviolable. The most sophisticated and complete summing up of juristic thinking about the rights of defendants in the late thirteenth and early fourteenth centuries can be found in the work of a French canonist, Johannes Monachus who died in 1313. While glossing a decretal of Pope Boniface VIII (*Rem non novam*) he commented extensively on defendants' rights. He began by asking the question: could the pope, on the basis of this decretal, proceed against a person if he had not cited him? Johannes concluded that the pope was only above positive law, not natural law. Since a summons had been established by natural law, the pope could not omit it. He argued that no judge, even the pope, could come to a just decision unless the defendant was present in court. When a crime is notorious, the judge may proceed in a summary fashion in some parts of the process, but the summons and judgment must be observed. He argued that a summons to court (*citatio*) and a judgment (*sententia*) were integral parts of the judicial process because the story in

the Bible about God's judgment of Adam and Eve (Genesis 3.12) proved that both were necessary. God had been bound to summon Adam; human judges must do the same. Then he formulated an expression of a defendant's right to a trial and to due process with the following words: a person is presumed innocent until proven guilty (*item quilbet presumitur innocens nisi probetur nocens*).

After Johannes, other canonists played with the idea of defendants' rights. They coined a proverb that God must even give the devil his day in court. Johannes' commentary on *Rem non novam* eventually became the Ordinary Gloss of a late medieval collection of canon law known as the *Extravagantes communes*. This collection and its gloss circulated in hundreds of manuscripts and scores of printed editions until the seventeenth century. Since his gloss was read by the jurists of the *Ius commune* until the eighteenth century, it was a primary vehicle for transmitting the principle of due process to later generations of jurists.

In the jurisprudence of the *Ius commune*, the maxim, "Innocent until proven guilty" summarized a bundle of rights that every human being should have, no matter what the person's status, religion, or citizenship. The maxim protected defendants from being coerced to give testimony and to incriminate themselves. It granted them the absolute right to be summoned, to have their case heard in an open court, to have legal counsel, to have their sentence pronounced publicly, and to present evidence in their defense.

The right to bear arms is another illustration of the canonists' creative jurisprudence. At the end of the eleventh century the church had moved broadly to forbid clerics from carrying arms. A canon from the Council of Poitiers in 1079 banning clergy from bearing arms became part of the normative law of the church by the late twelfth century. But, from the beginning, the absolute interdiction of clerical arms was tempered by the canonists' notions of rights. They immediately interpreted the canon as excepting a cleric's right to self-defense. Between the thirteenth and the seventeenth centuries, the jurists distinguished between offensive and defensive weapons, dangerous and safe places, and a cleric's and a layman's right to defend himself. Emanuel Gonzalez Tellez wrote that natural reason permits people to defend themselves from danger. This right, he stated, has been established from nature. Consequently Tellez expanded the right to bear arms considerably. He argued that clerics can defend themselves, and they can also take up arms to defend their homeland.

The canonists crafted sophisticated theories of government in the high Middle Ages. They created a juridical structure for the Church that regulated the relationships between the pope and bishops, bishops and cathedral chapters, and abbots and their monks. In order to describe the structure of the church, the canonists established rules governing corporations (*universitates*). They discussed the relationship of the head of the corporate body to its members, laid down rules for the election of the pope, bishops, and abbots. Perhaps one of the most lasting contributions of the canonists to constitutional thought was their doctrine of consent. They argued that consent of the members of a corporate body should be the cornerstone of all just governance. The canonists expressed this idea with the legal maxim "*quod omnes tangit ab omnibus approbari debet*" (what touches all

must be approved by all). This norm has survived into the modern world as a fundamental principle of democratic government. It is paradoxical that a legal system that battled to separate itself from the secular state during the Middle Ages (unlike Byzantine canon law) in the end had a profound influence on all modern secular European legal systems.

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