

"Appropriation, Obliteration, Adaptation?: Ecclesiastical responses to Secular Law in the Early Middle Ages"

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The question of the survival of Roman Law in western Europe in the earlier Middle Ages is, on the one hand, a hoary chestnut, and, on the other, still unanswered. Much previous work has focussed on the dearth of manuscripts of classical Roman Law and the absence of clear references to the Justinianic corpus before the twelfth century. In contrast, some leading scholars have found evidence of continuing knowledge and application of either specific provisions or *regulae iuris* from Roman law in reports of early medieval legal proceedings and in the texts of the “barbarian law codes”, which are now often seen as representations of Roman vulgar law. The impact of Christianisation in the former Roman provinces of the west on the use of Roman law has, however, received little consideration. There are manuscripts in which Roman law was, quite literally, overwritten with canon law. Does this signify a rejection of the Roman legal past, or, rather, that Roman law was so well entrenched that its manuscripts were, as it were, disposable? To what extent were the legislative acts of councils and papal judicial opinions from late antiquity and the early medieval period suffused with premises from Roman law, and in what areas was there significant readjustment to accommodate changing ideologies? This paper examines evidence for jurisprudential responses among bishops of the Carolingian period to the heritage of Roman law, and thus seeks to provide a deeper foundation for understanding both the legal environment of the early middle ages, and also the context in which Roman law was taught in the later medieval universities.

Canon law and the courts in early medieval Italy

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This paper examines the role of canon law—the law of the church—in legal practice in Northern Italy in the ninth century. It examines this issue from two perspectives. First, it briefly surveys canonical and provisions concerning law courts, especially provisions concerning which courts clerics should or should not make recourse to. Second, and at greater length, it examines references to canon law—either in the form of specific canonical provisions or in the form of general appeals to “the canons”—found in the surviving records of judicial hearings involving clerics. Despite the apparent clarity of canonical provisions forbidding clerics to make recourse secular courts, clerics in fact made extensive use of the public courts (or “*placita*”) in addition to more properly ecclesiastical judicial forums such as church synods. While citations of written law—secular or ecclesiastical—are relatively rare in the records of early medieval Italian court cases, those few references we do find either to specific canons or to “the canons” generally shed light on how clerics and judicial specialists conceived of the relationship between secular and ecclesiastical law and jurisdiction. Quite often, I will argue, references to canon law in court records seem intended to signal the “canonicity” of a judicial hearing, which might in other respects seem indistinguishable from a “secular” public court case, rather than to make a clear legal point germane to the case at hand. The paper will also consider those few citations of canon law that appear to be more substantive in nature. The paper gives special attention to the uses of canon law in cases that moved between different judicial forums, such as public courts and synodal hearings, where this signaling of “canonicity” appears to have been particularly important.

Roman law in the eleventh-century Catholic legal collections

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This paper builds upon Abigail Firey's paper on the uses of Roman law in Catholic law during the Carolingian period. It focuses on the eleventh century as a seminal period in which Catholic thinkers increasingly incorporated Roman law into their legal collections. During this period, Catholic thinkers 'rediscovered Roman law.' One question, however, has been the extent to which Roman law actually contributed to the development of jurisprudence in this period. Paul Fournier and Harold Berman have attributed the explosion of law in this period to Roman law. Yet recent scholars, including Anders Winroth and Martin Brett, have suggested that Roman law played a more minor role, and that the growth of law should be traced to other sources, such as a new 'ground-up' demand for law. Some may even suspect that the tendency to credit the Romans with positive developments in the Middle Ages is a trope left over from the early modern period. This paper works to understand the precise ways in which Roman law actually did shape legal thought in the eleventh century. I examine how three foundational Church compilers, Burchard of Worms (d. 1025) and Ivo of Chartres (d. 1115) and then the editors of the *Panormia* (c. 1100), drew upon secular law and incorporated it into their legal arguments about criminal law. Roman law in particular contributed some new ideas to Ivo's collection, the *Decretum*, which were absent in Burchard. Yet, in general, Roman law played a relatively minor role in Ivo's collection. The *Panormia* editors, who reorganized and edited down Ivo's collection to create a coherent argument, also incorporated Roman law into their discussions of criminal law. By studying how Burchard, Ivo and finally the *Panormia* editors drew upon Roman law, this paper works to understand better how Roman law actually was 'rediscovered' and re-appropriated into European legal thought.

The Pursuit of Peace and Security in the Iberian Peninsula (10th - 11th Centuries)

A Contribution to the Interaction between Religious Law and Secular Law in the European Early Middle Ages

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Abstract

The notions of ‘peace’ and ‘security’ were not unknown in Europe in the Middle Ages. Despite the violence and permanent struggles caused by feudal disputes and rivalries, or perhaps because of them, the longing for peace was particularly strong. Peace was not just some vague ideal, but a concrete goal to attain. Not surprisingly, it has been recognized that a considerable part of European medieval law revolved around the notion of peace.

This paper explores how peace and security may be guaranteed in a historical context (10th and 11th centuries) in which not only the state did not exist but neither did any public power that was strong enough to face or counter the constant threats posed by the nobility. Although the longing for peace in that context may seem like a childish wish or just an illusion divorced from reality, the paper analyzes how peace assemblies contributed greatly to the attainment of the peace that people longed for.

The paper focuses on the positive impact of the Catalan assemblies of peace and truce of God in the Early Middle Ages. These assemblies, originally of exclusive ecclesiastical nature, contributed to the promotion the peace and security in a historical context characterized by a state of permanent violence.

The constitutions of peace and truce, approved in these assemblies strove to defend the weakest members of society (such as orphans, widows, clergy) and to protect commerce and traders (*Peace of God*), as well as to restrict the times in which battles could be fought (*Truce of God*). As such, they provided a punitive system which changed over time, becoming much more sophisticated and complex.

In the 9th and 10th centuries, a period in which the absence of a secular public authority was particularly evident, the Church used to punish the violation on the peace and truce constitutions with excommunication, “unless he [the infringer] makes satisfaction” or “until they [the infringers] have made satisfaction”. In other words, the reparation of the damage through the payment of a fine was the main penalty. The threat of excommunication (minor and major) was used to encourage the infringer to compensate the damage caused in violating the aforementioned constitutions.

In the 11th century, along with fines and other minor penalties, the Catalan sources show the use of excommunication without reference to the compensation of the damage caused by the infringer of the peace assemblies’ constitutions. More importantly, these sources demonstrate the connection between excommunication and exclusion from the peace and truce of God: while exclusion from peace and truce could be imposed without applying excommunication, the latter was never imposed without applying the former.

The paper emphasizes that this tendency became clearer and more frequent in the 12th century, as both the secular penalty (the exclusion from peace and truce) and the ecclesiastical one (excommunication) were used to punish those who violated the peace

assemblies' constitutions. In particular, the secular penalty followed as a consequence of the imposition of the ecclesiastical one.

In the 13th century, a period in which the secular authority possessed enough power to promote the peace and security that were the original reasons for the emergence of the ecclesiastical assemblies of peace and truce, violence ceased to be the driving force and the main aim of this (secular and ecclesiastical) institution. The persecution of heresy became particularly predominant. Both secular powers and the Church fought against feudal violence and heresy, since both of these threatened the foundations upon which social peace should be based: justice and truth. In this regard, the links between the punishments of excommunication and the exclusion from peace and truce on the one hand, and excommunication and infamy on the other, reveal the kind of peace to whose pursuit both the Church and secular powers contributed: a peace based on justice and truth. This explains why the Church fought against both feudal violence and heresy, since both threatened the foundations upon which the social peace should be based: justice and truth.

A means to protect the faithful against heretics was the imposition of punishment which left them legally unprotected (exclusion from the peace and truce) and undermined their honour and prestige among their Christian fellows (infamy). Since the punishment of infamy was becoming more important in the secular criminal law thanks to the reception of the *ius commune*, the Church used it as a way to encourage those excommunicated for heresy to repent and convert within a year, otherwise they were declared 'infamous'.

That the enterprise of fighting against heresy was shared by both secular and ecclesiastical authorities is clearly shown by the fact that, as seen, the Catalan Princes introduced, at the request of ecclesiastical authorities, provisions regulating the crime of heresy (1210). In addition to this, in the 13th century, secular authorities started to grant juridical-secular effects to some canon law penalties, by prohibiting, for example, any excommunicated person from holding any secular public office.

Summing up, this paper shows how the Church and secular authorities used punishments – secular (exclusion from peace and truce), ecclesiastical (excommunication), or those in force in both legal orders (infamy) – to protect the Christian community from physical violence and theological heterodoxy. As a result of this process, the imposition of one punishment came to imply the concomitant application of another, such that in some cases the secular legal effects of a punishment were introduced in the ecclesiastical order, and in others the legal effects of some canon-law punishments were adopted by the secular power and became relevant in the secular legal order.