

CANON LAW: MIEVEAL EUROPE'S LEGAL SYSTEM

THE ROMAN CATHOLIC CHURCH CREATED A COMPREHENSIVE LEGAL SYSTEM IN WESTERN EUROPE. CALLED "CANON LAW," THIS SYSTEM OF MIEVEAL RELIGIOUS LAW DEVELOPED MANY LEGAL PRINCIPLES AND PROCEDURES THAT WESTERN EUROPEAN NATIONS EVENTUALLY ADOPTED INTO THEIR OWN LEGAL SYSTEMS.

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A painting of Pope Leo X (center) meeting with England's King Henry VIII (left of the pope). Henry VIII broke from the Catholic Church in 1534, making the church's canon law no longer in force in England.

LAW

This edition of *Bill of Rights in Action* looks at issues related to law. The first article examines canon law, the system of church law in the Middle Ages that is one of the foundations of modern Western legal systems. The second article explores the life of Oliver Cromwell, who upended the English monarchy and attempted to install a new system of government. The last article looks at two influential pre-Civil War U.S. senators, John C. Calhoun and Daniel Webster, who had vastly different views on our national government.

World History: Canon Law: Medieval Europe's Legal System

World History: Oliver Cromwell: The Lord Protector

U.S. History: Calhoun and Webster: Two Visions of the Federal Union

Christian doctrine holds law in deep respect: "So the law is holy, and the commandment is holy and righteous and good." (Romans 7:12) Early Christians saw God as a law-maker and judge.

Christians living in the Roman Empire usually followed Roman laws, but not always. Christians believed an immoral law was not binding and may even require one to disobey it. They disobeyed the Roman law against practicing the Christian religion.

Conditions changed greatly when Constantine, the emperor of the eastern part of the Roman Empire, converted to Christianity. In A.D. 313, he proclaimed it legal to practice all religions. About 80 years later, another emperor made Christianity the official state religion.

As Christianity expanded, church leaders saw a need to settle disagreements on religious beliefs, worship practices, penalties for sins, and other matters. The leaders met at councils and began to make laws for the church.

Individuals collected these council laws, along with earlier ones developed by local Christian communities. These unofficial written collections of church laws became known as "canons," from a Greek word, meaning a rule or standard.

In 533, Justinian, one of Constantine's successors, ordered the first major compiling of Roman laws. Christian canonists (those who assembled the canons) added many legal concepts from Justinian's code of Roman law to their own collections of church laws.

By the seventh century, canon law included legal ideas from all over Christian Western Europe. ▶

For example, Germanic tribes contributed their emphasis on the importance of sacred oaths.

A few centuries later in 1054, Christianity split between the Eastern Orthodox Church and the Roman Catholic Church in Western Europe. The Catholic Church's canon law continued to expand, add new sources, and gain acceptance in the West.

The Revolution in Canon Law

About 1075, Pope Gregory VII proclaimed that the Roman Catholic Church was independent of the control of emperors, kings, or other secular (non-religious) authorities. He also asserted that the authority of the pope, as the representative of Christ on earth, was superior to any secular ruler. In addition, Pope Gregory declared that the pope in Rome was the sole and supreme head of the Catholic Church. For the first time, he decreed the power of the pope to "create new laws in accordance with the needs of the time." These papal (pope's) laws were in addition to those made by church councils.

Another source of canon law, which gained increasing importance in Pope Gregory's time, was the papal "decretal." This was a decision written by a pope in answer to a question on Catholic religious belief or an appeal from a church court.

In the mid-12th century, an Italian monk named Gratian completed the first systematic organization and analysis of Catholic canon law. Gratian's work is known as the *Decretum*, a Latin word that refers to the collection of canons. He intended not only to summarize canon law but to resolve apparent contradictions within it.

Gratian studied the summaries of canon law and documents from other church authorities that extended over a thousand years of Christian history. He also examined parts of Roman law.

Gratian's method of analyzing canon law was revolutionary. He

generally started a topic with a question. For example, "Do all accusations against an alleged criminal have to be in writing?" He then assembled what canon authorities said on both sides of the question. This created what he called a "disharmony," or contradiction.

Gratian looked to natural law to resolve the disharmony. This called for humans to use their God-given ability to reason to discover God's will. Using his reasoning, Gratian worked out resolutions to the disharmonies. In the case of the question above, he concluded that all the authorities actually supported written criminal accusations.

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Gratian was also interested in discussing how individuals should act when confronted with moral dilemmas in canon law. He gave the following example from the writings of a pope:

1. A man takes an oath before God to keep his friend's secrets.
2. Afterward, the friend reveals that he is planning to kill his lover's husband.
3. The man has two choices: Break his oath by warning the husband or become an accomplice to murder. Both are sins in canon law.

What should the man do? Gratian concluded that the man could not escape from committing a sin. Therefore, the man must choose "the lesser of two evils." This was an ancient principle of ethics that Gratian borrowed from the Greeks and Romans.

How was one to choose the lesser evil? Gratian cited a church council that said, "by the sharpness of pure reason." Gratian himself did not offer what he thought the lesser evil was in his example.

After Gratian completed the *Decretum* around 1150, it became the standard university textbook for Catholic canon law. His book had to be hand-copied since the printing press was not invented in Europe for another 300 years.

As the *Decretum* passed from one copyist to another, they added new canon law material over the years. The copyists also included commentators' views on Gratian's work. For example, nearly all the commentators disagreed that moral dilemmas existed with only a choice between two evils. In the dilemma discussed above, the commentators said the man should have tried to persuade his friend not to go through with the murder.

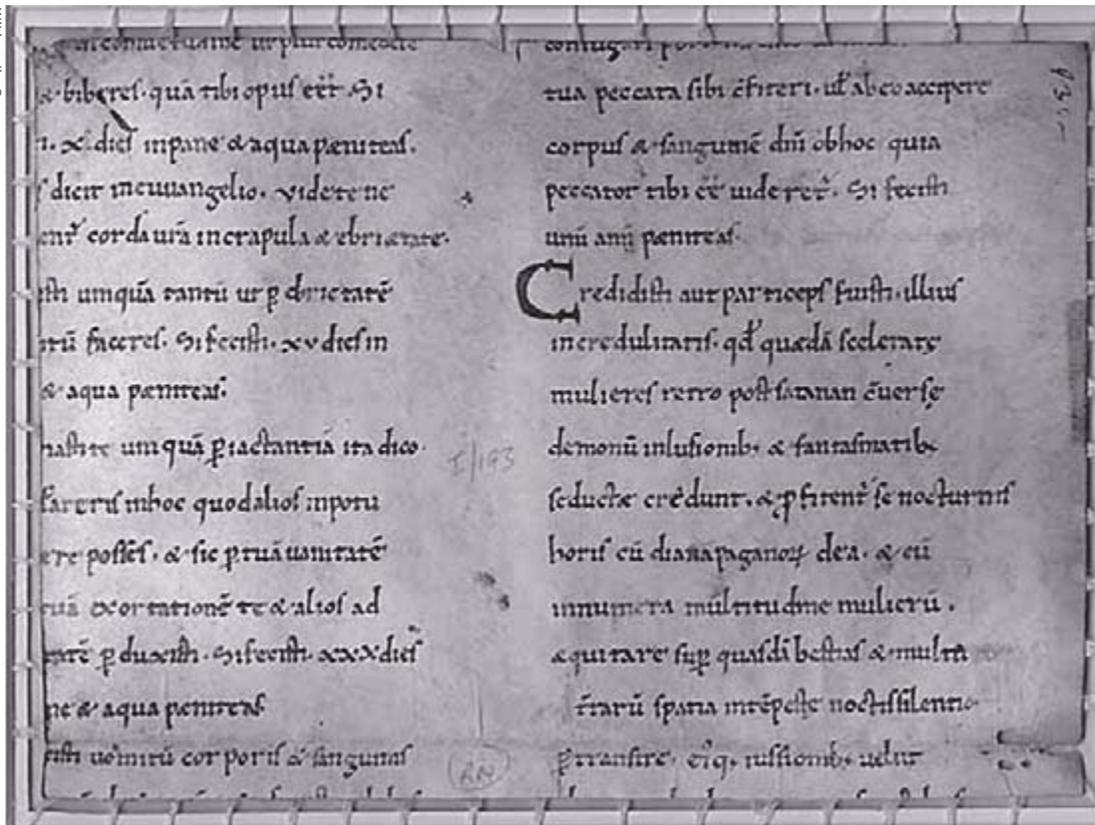
In 1234, the first collection of papal decretals was completed. That together with the expanded *Decretum* provided the basic canon law of the Catholic Church for the next 700 years.

Medieval Canon Law

By about 1250, the Catholic Church's rule of law extended through all of Western Europe. Its principles and legal procedures related to religious, civil, and criminal matters. Below is a sample of the canon law that functioned throughout Western Europe during the Middle Ages.

Pope and Church

The medieval canon law confirmed that the pope was the supreme authority of the Roman



A page from the *Decretum*, a compilation of canon law first published in the 12th century.

Catholic Church for life. Among other powers, the pope operated the church, decided religious disputes, served as supreme judge, and excommunicated Christians refusing to accept church beliefs.

The pope did not control all matters. For example, kings usually chose the bishops of the church with the approval of the pope.

Much canon law concerned church rules and regulations, such as how to ordain priests. But it also covered other areas, and it was the only legal system that functioned everywhere in Western Europe. In the early Middle Ages, the royal law of different kings mainly applied to the land-owning nobility. Town, manor, feudal, and tribal law were fragmented and inconsistent.

Marriage and Family

Marriage and family fell within the jurisdiction of canon law. Canon law set the conditions for a valid marriage.

Canon law assumed the husband to be the head of household with the authority to reasonably discipline his wife. An illegitimate child born outside of marriage had fewer rights, but could gain full rights if the parents got married.

Divorce was never allowed because it would break the sacrament of marriage. A man and wife, however, were permitted to separate on certain grounds such as grave cruelty. Also, a marriage could be annulled. This meant that the marriage was never legal to begin with because of some fault such as lack of consent.

Economic Matters

Canon law pioneered the formation of corporations. During medieval times, corporations included towns, churches, monasteries, schools, hospitals, and similar associations. Canon law defined corporation terms, the duties of officers, and rights of the members. Later,

businesses adopted the legal structure of the canon law corporation.

Canon property law regulated the extensive holdings of the church. This included buildings, enterprises, and up to one-third of the land in Western Europe. Much of the land was donated by those wanting to aid the church or perhaps ease their way to heaven.

The canon law of property, however, went far beyond church possessions. For example, according to Gratian's "rule of restitution," someone's property taken from him by force, threat, or fraud had to be restored to him. But the victim had to go through the legal system and not take the law into his own hands.

Canon law said that oral and written contracts were binding. They were based on a promise or oath before God. Failure to fulfill a contract meant breaking one's word, which was an act of perjury and a sin. ▶

Even so, canon law held that not all contracts were valid. If the agreement between two persons was not reasonable and fair to one, no contract existed. Similarly, canon law condemned “shameful” profit as *turpe lucrum* (“filthy lucre”).

Canon law banned usury: any profit from the lending of money or the sale of goods on credit with interest. Usury was also a sin. As commerce expanded, however, exceptions appeared in canon law. For instance, a lender could charge a late fee if the borrower did not return the loaned money on time.

Sin and Crime

For much of church history, crimes and sins were considered one. After 1100, canon law recognized a division of court jurisdiction between church and secular authorities. Church courts would deal with sins such as usury. Royal and other secular courts would handle crimes like robbery.

Canon law, however, recognized a special category of “criminal sins.” These were intentional and morally sinful acts like adultery, witchcraft, usury, and destruction of church property. Those accused of such offenses were tried in church courts.

In addition, canon law claimed “benefit of clergy.” This meant that the clergy — monks, nuns, priests, bishops, and archbishops — could only be tried in church courts for secular crimes.

Court Procedures

Canon law courts used certain court procedures that resemble what we today call “due process of law.” These procedures included testimony under oath, representation by a lawyer, rules of evidence, and a written trial record.

Canon law allowed self-defense to excuse a violent act and adopted a rule against double jeopardy. It also did not allow a trial for an act that had not been prohibited when it was committed (just as the U.S. Constitution bans *ex post facto* laws).

THE CASE OF THE MURDEROUS MONK

Facts: Two robbers broke into a monastery, clubbed two monks unconscious, and began to steal their clothes. The monks recovered, overpowered the robbers, and tied them up. One monk left to notify his superior. The other monk guarded the robbers. When the robbers started to free themselves, the monk killed the robbers, fearing they would kill him.

Decision: This was an actual medieval canon law case. The murderous monk claimed self-defense. The case was appealed to Pope Alexander III who reigned 1159–1181. He decided that tying up the robbers and killing them were criminal sins.

Reasoning: Pope Alexander reasoned that both monks had violated their vow of meekness and the discipline of their order when they tied up the robbers. He said the monks should have tried to escape as soon as they regained their ability to do so. He further ruled that self-defense did not apply because of the “preceding guilt” of tying up the robbers.

Penance and Punishment

The church was more concerned about saving a sinner’s soul than punishment. Canon law called for penance from the sinner such as doing acts of charity or going on a pilgrimage to a holy site. Royal and other secular courts were concerned with law and order, so they handed out harsh physical punishments, including mutilation and the death penalty.

The church never imposed the death penalty. It handed over convicted heretics, those who rejected Catholic teachings, to secular authorities for execution. The ultimate church punishment under canon law was excommunication. This

denied the sinner the sacraments and condemned the person to eternal suffering in hell.

Church and State in Conflict

Medieval canon law held that church authority was greater than that of the secular state; the pope was superior to a king. As kings increasingly asserted their powers and laws, however, conflicts arose between church and state.

In 1164, King Henry II of England declared that any clergy member accused of a felony, such as robbery or murder, would first be tried in a church court. If convicted, the felon must be handed over to a royal court for sentencing under the king’s law.

King Henry’s declaration violated canon law in two ways. First, under “benefit of clergy,” any clergyman accused of secular crime had to be tried and sentenced only in a church court. Second, if the church court imposed one sentence and the king’s court ordered another, this would violate the canon law rule against double jeopardy.

King Henry and his hand-picked Archbishop of Canterbury, Thomas Becket, argued for several years over which court had jurisdiction in sentencing those clergy convicted of felonies. Also at stake was King Henry’s claim that he, not the pope, was the supreme head of the church in England.

One day, out of frustration with Archbishop Becket, King Henry shouted, “Will no one rid me of this pestilential [poisonous] priest?” Henry’s guards overheard him and on their own murdered Becket inside the Canterbury Cathedral. Henry was shocked and remorseful. In 1172, he withdrew his declarations and submitted to the authority of the pope.

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In the 1500s, the Protestant Reformation brought an end to the Catholic canon law monopoly in Western Europe. In England, King Henry VIII broke from the church

after the pope refused to annul his marriage so he could marry another. In 1534, King Henry declared the supremacy of king over the pope in England. Other European nations followed suit. Although Catholic canon law no longer controlled Western Europe, nations adopted many of its legal principles and procedures.

Medieval canon law helped preserve Roman and other ancient law sources and also developed a comprehensive modern legal system. In many ways, Catholic canon law became one of the foundations for secular law systems in the West today.

For Discussion and Writing

1. How did Pope Gregory VII and Gratian bring about a revolution in medieval canon law?
2. How would you have decided “The Case of the Murderous Monk”?
3. In what ways did the medieval canon law serve as a foundation for modern secular law systems in the West today?

ACTIVITY

Medieval Moral Dilemmas

In this activity, students meet in small groups to discuss and decide how to resolve one of the following cases based on actual canon law moral dilemmas. The object is to resolve the dilemma without the person who faces it committing a sin. Or, if the group concludes this is impossible, to choose between “the lesser of two evils.”

- A. The Poor Parents Dilemma.** A man from a very poor family takes a sacred vow to leave the worldly life and enter a monastery.
- If the man fulfills his vow, he leaves his poor and ailing parents behind who depend on him. He sins by violating the Fifth Commandment: “Honor your father and your mother.”
 - If the man fails to fulfill his vow and return to his parents, he sins by breaking his vow, an act of perjury.
- B. The Madman’s Sword Dilemma.** A man leaves his sword for safekeeping with another man who swears an oath before God to return it when the owner asks for it. Afterward, the owner of the sword becomes insane. He returns to get his sword, angrily threatening to kill someone he does not name.
- If the safe keeper refuses to return the sword, he sins by breaking his sacred oath, becoming a perjurer and thief.
 - If the safe keeper hands over the sword, he sins by enabling the madman to murder another.
- C. The Usurer’s Money Dilemma.** A usurer deposits money with a friend who swears an oath before God to return it upon request.
- If the friend returns the money, he sins by enabling the “spiritual death” of the usurer who will suffer forever in hell.
 - If the friend does not return the money, he sins by violating his sacred oath and keeping what is not his.
- D. The Latrine of the Devil Dilemma.** A woman confesses to her priest that she lives a life of sin, but does not repent (ask for forgiveness). Instead, she asks the priest to offer her the Eucharist (Communion) in church before the others of the village.
- If the priest denies the Eucharist to the woman during the church service, he sins by betraying the privacy of her confession and allowing the villagers to assume she is a sinful person.
 - If the priest offers the Eucharist to an unrepentant sinner, he “throws the body of Christ into the latrine of the devil,” a sinful act of desecration.
- E. The Hiding Fugitive Dilemma.** A man demands to know from a third party where an enemy is hiding. The third party is actually hiding the enemy in his own house.
- If the third party reveals the hiding enemy, he sins by committing an act of betrayal.
 - If the third party says he does not know where the enemy is hiding, he sins by lying.

(Teachers: Suggested answers on page 13.)



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