

Stages of papal law

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Abstract: Papal law is known from the late 4th century (Siricius). There was demand for decretals and they were collected in private collections from the 5th century on. Charlemagne's *Admonitio generalis* made papal legislation even better known and the Pseudo-Isidorian collections brought genuine decretals also to the wide audience that these partly forged collections reached. The papal reforms from the 11th century on gave rise to a new burst of papal decretals, and collections of them, culminating in the *Liber Extra* of 1234. The Council of Trent opened a new phase. The 'Congregation of the Council', set up to apply Trent's non-dogmatic decrees, became a new source of papal law. Finally, in 1917, nearly a millennium and a half of papal law was codified by Cardinal Gasparri within two covers. Papal law was to a great extent 'demand-driven', which requires explanation. The theory proposed here is that Catholic Christianity was composed of a multitude of subsystems, not planned centrally and each with an evolving life of its own. Subsystems frequently interfered with the life of other subsystems, creating new entanglements. This constantly renewed complexity had the function (though not the purpose) of creating and recreating demand for papal law to sort out the entanglements between subsystems. For various reasons other religious systems have not generated the same demand: because the state plays a 'papal' role, or because the units are small, discrete and simple, or thanks to a clear simple blueprint, or because of conservatism combined with a tolerance of some inconsistency. It is difficult to find a religious system with the same complexity problems combined with a strong sense that the whole needed to remain united without internal contradictions.

Keywords: Siricius, Pseudo-Isidorean collections, Gratian, decretals, *Liber Extra*, Apostolic Penitentiary, Congregation of the Council, other early modern papal law, Gasparri, complexity, Trent.

FIRST PART: DESCRIPTIVE SURVEY

This paper aims to help explain the evolution of papal law over a millennium and a half,¹ but it will help if I first survey the main changes to be explained. The natural starting point is 385, the date of what is generally reckoned to be the first papal decretal, sent by Pope Siricius to Himerius of Tarragona.² Imitation of the style of Roman imperial rescripts mark it out from previous papal letters. The answers to the bishop's questions are meant to be widely applicable, for Siricius asks him to pass them on to others. This was seven years after the battle of Adrianople (378), which arguably started the chain reaction leading to the collapse of the Roman Empire in the West.

The difficult political and military situation is relevant to the origins of papal law. Church law for the whole empire was already a familiar concept thanks to the Council of Nicaea (325), which did a lot more than lay down dogma. Nicaea made laws, especially about the clergy and ritual, which set a pattern for papal law. Full Western participation in a general council like Nicaea depended on imperial infrastructure, which was becoming shaky in the West by the late 4th century. The desire for general church law remained, and the baton was passed to the papacy.

The 4th-century decretal of Siricius was followed by a burst of papal legislation from the early 5th century on.³ The pattern of the first decretal was repeated: bishops sent questions to the pope, who replied with the evident intention that the answers should apply outside the diocese in question. The process was demand-led. Popes could not make anyone ask for rulings and were in no position to enforce them. There is a lot of repetition in these 5th-century rulings, but we must remember that initially there were no canon law collections.

Early collections of canon law

It was not long before they appeared.⁴ The first in the West was probably put together by African bishops early in the 5th century. It would have consisted of conciliar decisions. Smaller collections were compiled in the first half of the 5th century and these included papal decretals too. Around about 500 CE three major collections of papal

¹Gaudemet (1994) is a rare attempt to survey the *longue durée* history of canon law. Some key arguments about the period up to 1200 developed here are anticipated in brilliant compressed pages by Duggan (2008: especially 201–11).

²Zechiel-Eckes (2013); Hornung (2011); Jaffé & Herbers *et al.* (2016: no. 605, 112).

³Jasper & Fuhrmann (2001: 7–87).

⁴Kéry (1999: 1–86), gives a brief introduction to and bibliography on the main collections, including those mentioned below.

(with conciliar) collections were compiled: the Frisingensis (so called because of its Freising provenance), the Quesnelliana (called after the early modern scholar who first edited it), and the Dionysiana, after Dionysius Exiguus, the monk to whom we also owe the current AD or CE dating. The Dionysiana had a great future ahead of it. The papal decretals were organised pope by pope, with thematic headings within sections for a given pope.

Thematic organisation of whole collections was the next stage. In these collections papal decretals and conciliar canons were grouped together under subject headings. The so called *Vetus Gallica*⁵ and the collection of Cresconius⁶ are the two best studied thematic collections of the early Middle Ages.

Chronological collections continued to be copied. An updated version of Dionysius Exiguus's collection was compiled before 774 and given to Charlemagne.⁷ Charlemagne himself incorporated papal decretal decisions in his widely diffused *General Admonition*.⁸ Without perhaps intending it, he was thus providing propaganda for the idea of papal law.

Pseudo-Isidore

Some decades later the idea of papal law was given a new impetus by the compilation (when and by whom are fiercely disputed) of the so-called false or Pseudo-Isidorian decretals. The investigation of the genesis of these collections has been an intensely active area of research recently and interpretation is still in flux.⁹ Here suffice it to say three things. Firstly, the 'false decretals' include a fairly comprehensive collection of the earliest genuine papal decretals. Secondly, genuine decretals evidently provided a model for forged decretals, even if the latter took the forgers' agenda further than the genuine one could (by emphasising the rights of bishops below the level of the archbishops, the so-called metropolitans who commanded other bishops, and also by stressing papal authority, because it out-trumped the authority of metropolitans). Thirdly, the Pseudo-Isidorian version of genuine early decretals was copied very widely indeed, thus further familiarising the educated clergy of the West with the idea of papal law.

⁵ Mordek (1975).

⁶ Zechiel-Eckes (1992).

⁷ Kéry (1999: 13–14).

⁸ Mordek *et al.* (2013).

⁹ Ubl & Ziemann (2015); Harder (2014); Patzold (2015).

Burchard of Worms

Pseudo-Isidore was a combination of (genuine and fake) papal decretals and conciliar canons, and in this respect it shared the structure of the Dionysiana and the other very early collections. It also grouped the decretals by successive pontificates. The other kind of structure, thematic, was adopted by a massively successful collection produced around 1000 AD by Burchard of Worms.¹⁰ This differed from Pseudo-Isidore in another respect: it contained a lot of material that came neither from councils nor from popes: passages from authoritative theologians like St Augustine, and content from the strange genre of 'Penitentials' that had originated in Ireland and spread over the Continent, to the disapproval of some.

Papal reform collections

In the later 11th century a new kind of canon law compilation appears: the agenda-driven collections of the papal reform movement. This first attacked the purchase of episcopal office and marriage or concubinage by clerics from subdeacon up, then extended the reform agenda to combatting rituals which made religious office seem dependent on secular rulers.¹¹ Genuine and forged papal decretals were important in these collections, which can be regarded as weapons in a propaganda war.

Ivo of Chartres and the age of Gratian

Pro-papal but too comprehensive to be predominantly propagandist were the canon law compilations of Ivo of Chartres (c. 1100).¹² While incorporating the programme of the Gregorian Reform, they followed the same broad pattern as the pre-Reform Burchard of Worms: viz., thematic arrangement and a mixture of papal decretals, conciliar canons, extracts from authoritative theologians, and penitential material. The same may be said of Gratian's *Decretum*¹³ (mid-12th-century, 'published' in at least two 'editions'),¹⁴ which nonetheless marks a turning point, in that it is clearly designed as an academic teaching tool. An inspired innovation was a technique of analysis through quite complex narratives, from each of which not just one but a series of problematic cases were hung. The *Decretum*'s success was rapid. It attracted learned marginal glosses from early on. These are a written deposit corresponding to

¹⁰ An excellent guide is Hoffman & Pokorny (1991).

¹¹ See e.g. Cushing (1998); Gilchrist (1973).

¹² See e.g. Rolker (2010).

¹³ Friedberg (1922a).

¹⁴ Winroth (2000): which sparked lively controversy.

oral teaching at what would become universities. Clerics trained with the help of the *Decretum* had plenty of employment opportunities in the new network of professionally staffed ecclesiastical courts, which took over from the previous system of more informal judgements by individual bishops and synods of bishops. In this world Gratian's *Decretum* took on a quasi-official status.

Decretals after Gratian

Gratian's *Decretum* did not provide all the answers to the flood of legal problems that flowed towards the papal court. There are strong structural analogies with the early age of papal decretals, but the old decretals were designed for a very different society, a point to which I will return. Still, history repeated itself and bishops wrote to popes with questions. Moreover, concrete cases increasingly came to the papacy on appeal. When new points of law arose from these cases, popes were effectively making case law, as judges do under the common law system.

Papal case law and replies to bishops' questionnaires were collected by papal judges delegate. The judge delegate system was the papal way of coping with the massive demand for justice—and for justice handed down by the highest possible authority. The Roman Curia could not begin to cope with demand, but delegation of ad hoc papal authority to local men solved the problem. Collections of papal case law, compiled or acquired, must have helped them make decisions.

Thus collections of post-Gratian decretals were soon in circulation (a process analogous to the creation of the first Western canon law collections in the 5th century). They became more formal and comprehensive. Finally an official compilation, the *Liber Extra*, known to canon law historians as 'X', was promulgated by Pope Gregory IX, in 1234. This was followed by further papal compilations: the *Sext*, promulgated by Boniface VIII in 1298, then a couple of others.¹⁵ These solved technical legal problems and dealt with high-profile controversies, but on the whole they lack the human interest of the many cases involving individuals' problems that one finds in the *Liber Extra*. This is probably because a case law adequate for the medieval world had gradually fallen into place, so that most remaining problems were either recondite or ideological.¹⁶

Even before the *Liber Extra* the judge delegate system had been rationalised. How to select local judges who would be impartial had been a problem. It was largely solved by Innocent III, who devised a technical mechanism that would enable defendants to challenge judges they did not trust at the last stage before a letter of

¹⁵ Friedberg (1922b).

¹⁶ On the foregoing see Hartmann & Pennington (2008).

appointment went out from the papal court. This would have the effect of encouraging litigants to agree on judges before the request for judge delegates was copied at some cost by a papal *scriptor*: rather a brilliant system that enabled popes to be universal judges with minimal administrative expenses. Specialists in papal 'diplomatic' know that it could also be streamlined from the litigant's point of view. (Diplomatic is the subdiscipline of history that focuses on the genres, genesis, setting in life and legal force of documents.)

Contrasts with papal law in late Antiquity

It will be apparent that while the new age of papal law bears surprising similarities to the first age of papal law in late Antiquity, there are major differences. In the first age of papal law most problems were brought to the pope by bishops. This process is also characteristic of the 12th century (as noted above, Anne Duggan drew attention to the parallel¹⁷), but alongside it we have appeals from individuals and organisations. No doubt the dramas of the Gregorian Reform and the success of the First Crusade put the possibility of appeal to the pope before the minds of more people than in the 5th century. The high profile of the papacy on the European stage may also have affected the way in which bishops applied papal law.

How bishops applied papal law in late Antiquity and the early Middle Ages is hard to judge, but we may hazard a guess that they allowed themselves a degree of freedom. It has been argued that Byzantine canon law was just part of a set of 'tools for constructing and effecting justice'¹⁸. Even early papal canon law tended to be more precise, nearer to the formality of modern legal systems, but at point of application there was not much control over the bishops' decision making. The enhancement of papal prestige by the Reform and the successful crusade may have made bishops pay more attention to the letter of papal law when judging cases.

Furthermore, the administration of papal justice was increasingly controlled by academically trained canon lawyers, and this made a difference. The reference books they used, above all those of Ivo of Chartres and Gratian, aimed for internal consistency. A Byzantine bishop or even an early medieval Western bishop was free to act according to the principle of 'economy', which might allow general rules to be quietly overlooked in a tricky individual case. Clerics trained at Bologna would be less happy with inconsistency.

Clerics trained at Bologna and in similar centres had power. Increasingly, they ran local ecclesiastical courts. As episcopal administration expanded its scope and became

¹⁷See note 1.

¹⁸Wagschal (2015: 7).

more complex, delegation was essential. Legally trained clerics were natural people for a bishop to employ, for the same reason that employers today like graduates. Conversely, the academically trained could hope for benefices to support them while they worked in ecclesiastical legal administration. Law patronage was not abolished, but it was diminished, and new criteria for appointments had to be found. Academic achievement was one. Academic achievement in the study of law might indeed lie behind a bishop's own appointment. His training would not be forgotten when he applied papal law. But even a bishop with a different background would know that the legally trained clerics around him would expect him to operate within canon law.

The inquisition

Canon law was less effective in regulating the practice on the ground of the medieval inquisition, something that should be easier for us to understand after the failure of the robust American legal system to control imprisonment without trial and torture. The medieval papal inquisition¹⁹ (quite distinct from the Spanish Inquisition of later times) is a special case of papal delegation, in that inquisitors received delegated powers to investigate heresy. In this period there was no 'head office' or anything like that, and it has been argued that there was not really an institution at all in the Middle Ages, only a large number of discrete inquisitors and their staffs. The 'Black Legend' of the inquisition has a solid basis in fact. Awareness of the similar methods of secular government in parts of Europe at the time, as well as of the measures taken by modern liberal democracies panicked by terrorism, should relativise our indignation, but not our admiration for those religious dissidents who held on to sincere convictions.

The Rota

For cases closer to modern corporate law, a new high court evolved in the 14th century, the Rota. High-value property disputes between ecclesiastical bodies, say an episcopal see and a monastery, might come to the Rota. It does not appear to have dealt with marriage cases, as the modern Roman Rota does, and its records are short on human interest. Nonetheless, the interest of its procedures as a surprisingly efficient system of dispute resolution has been highlighted in a recent study by Kirsi Salonen.²⁰

¹⁹ See Biller *et al.* (2011) for texts illustrating the way the inquisition worked and an up-to-date bibliography; also, out of a vast bibliography, Arnold (2001).

²⁰ Salonen (2016).

The Apostolic Penitentiary and Counter-Reformation reforms

All this constituted what was called the 'external forum', alongside which grew up another kind of law, that of the 'internal forum': that is, the confessional. By the mid-13th century, if not before, a system of at least annual confession was in place. For some grave sins only the pope could grant absolution, and an institution grew up at the centre to deal with all the cases.²¹ Salaried papal 'penitentiaries' heard confessions and granted absolutions. The penitentiary could also change penances imposed at a lower level when the penitent felt that he or she could not cope.

The Apostolic Penitentiary also dealt with enormous numbers of cases that did not really belong to the 'internal forum' at all: namely, dispensations. A dispensation from the penitentiary, say to marry within the forbidden degrees of kinship, cost a lot less than via other routes, though costs seem to have spiralled towards the end of the medieval period.²² It may be noted en passant that it was a feature of papal government that there were often several possible ways to get a result from it: or, to put it another way, the division of competencies between different governmental organs was not always clear. These dispensation cases are at the opposite extreme to the Roman Rota's so far as human interest is concerned. A whole social history of the late Middle Ages was recently written by Arnold Esch from this evidence alone.²³

The 'external forum' competence of the Apostolic Penitentiary was in principle taken away from it in the course of the reform of papal government that followed the Reformation. Absolutions for grave sins were now at the centre of its activity, though dispensations for the internal forum, e.g. for a marriage which could not be made public for some reason or another, remained within its remit.²⁴ (After the Council of Trent a marriage was invalid if not conducted by the parish priest, and such marriages would in the nature of the case be public—usually. But not necessarily. There might be reasons to keep a marriage secret. In Manzoni's *I Promessi Sposi* a lascivious lord is determined to prevent a young woman on whom he has his eye from getting married, but the marriage could have gone ahead in secret if the priest had not been terrorised. If one adds to such a scenario the need for a routine dispensation for the marriage, then it could be obtained from the penitentiary through the confessor. This would be an 'internal forum' dispensation.)

It should be said that the penitentiary's (inadequately studied) early modern records reveal *prima facie* that it continued to carry out some external forum business,

²¹ From a rich recent literature: Salonen & Schmugge (2009); Schmugge *et al.* (1996). A study of the institution's whole medieval history, on the basis of formularies, is being prepared by Arnaud Fossier.

²² Müller (2004).

²³ Esch (2014).

²⁴ Müller (2014: 273–4).

mostly marriage dispensations, but much less than in the medieval period: what may have happened is that the penitentiary continued to do the substantive work on the less contentious ‘external forum’ marriage dispensations, and to get the fees, while the actual correspondence was conducted by the papal chancery.²⁵ The new-style penitentiary made no charge whatsoever for internal forum business.²⁶

The early modern registers of the penitentiary seem much less interesting than the medieval registers, so far as one can judge without detailed study. To compensate, other records of the early modern penitentiary offer new insights into the inner side of Counter-Reformation Catholicism. Research on these records has hardly begun.

The Congregations

The shake-up of papal government in the Counter-Reformation was seismographic. One of the outcomes was replacement of government by conclave—something like a cabinet of cardinals—with government by ‘congregations’, which were committees of cardinals with specific competencies. The same cardinals could of course belong to a number of congregations. The most famous of these is the Holy Office. By this time the inquisition truly was an institution, and its competence extended well beyond heresy narrowly defined. It dealt, for instance, with abuse of the confessional for sexual ends, and some devotional practices.

The decisions made by congregations should be classed as papal law. They can be found in the learned footnotes of the 1917 Codex,²⁷ which recorded them as precedents. Probably the most important of these congregations from the point of view of papal law was the Congregation of the Council.

The Congregation of the Council

Scholars have only quite recently become aware of the astonishing richness of the Congregation of the Council archive, which is within the Archivio Segreto Vaticano.²⁸ No shortage of human interest there. A woman self-denounces herself for heretical witchcraft. Absolution by a bishop is required but neither she nor the bishop can easily travel to the same place.²⁹ A pious laymen takes minor clerical orders though he has been married twice, which offended the symbolism of the clerical state for reasons

²⁵ De Luca (1683: Disc. XII: 5–6, p. 86).

²⁶ Plettenberg (1693: 187); MS Penitenzieria Apostolica Archive APA, Miscellanea Mangiono: 36.

²⁷ *Codex Iuris Canonici* (1917). Scholars should be warned that there is a version without the source apparatus.

²⁸ For a bibliography on the Congregation of the Council up to circa 2009 see d’Avray (2010: 195–6).

²⁹ Archivio Segreto Vaticano Congr. Concil. (Sess.) 58 fo. 405^r.

that cannot be quickly summarised. That one was passed by the Cardinals of the Congregation right up to the pope.³⁰ Now a group of scholars is working on this archive, led by a young Italian based at the Max Planck Institut für Rechtsgeschichte in Frankfurt, Dr Benedetta Albani.

This congregation was making law. The decisions were not supposed to be published, though that changed in the 18th century. Throughout its history, however, records of its decisions were kept for internal reference, so that consistent answers could be returned to similar questions. The records that survive record all the reasoning behind the decisions. Though the Congregation of the Council stood to the side of the 'normal' canon law system, the experts it consulted had classical canon law at their fingertips (theology too) and their expert opinions for or against a decision were backed up by long lists of authorities.

Other early modern papal law

The Congregation of the Council is now being intensively studied, though it is a development of the last few years. The penitentiary archive has been the focus of much research since it was opened in 1983. Other papal records for the early modern period have been available since the 19th century yet are still hardly studied. To a medievalist, the uncertainty surrounding the systems of the early modern papacy is astounding. I know of no study explaining which organ of government generated which series of documents, nor what those series of documents contained. They contain among other things a lot of papal law in action. The judge delegate system continued in this period in a slightly different form.

The Codex

The foregoing summarises the situation more or less up to 1917, when the Catholic Church emulated secular states in producing a 'Code'.³¹ Leaving aside Antiquity, where Justinian's code was the model, Prussia had got in first in the later 18th century, followed by the Code Napoleon, then at some distance by the *Bürgerliches Gesetzbuch* for Germany, and similar codes for other countries. The papal code was largely the work of a Cardinal Gasparri, who made a remarkable attempt explicitly to base it on earlier papal law.³² As noted above, the footnotes of the *Codex Iuris Canonici* contain materials for the whole history set out sketchily above.

³⁰ Archivio Segreto Vaticano *Congr. Concilio 58 (Sess.), displaced fo. 288^r–301^v.*

³¹ *Codex Iuris Canonici* (1917) (Rome).

³² Gasparri & Seredi (1923–39).

SECOND PART: INTERPRETATION

The foregoing has been almost exclusively descriptive, though it was necessary in that it would be hard to find the narrative in a connected form elsewhere. The remainder of this paper will be more argumentative and interpretative. Nothing I have said so far explains how papal law has exercised so much influence or lasted so long. That does need explanation. More particularly, we need to explain why an authority that lacked the sinews of a state was able to orchestrate a centralised system of law.

Contrast with Islamic law

Contrast with the history of Islamic law sharpens the question. Early Islamic law had a distinctly papal character. The caliph was a source of authoritative law, though he was obviously subordinate to the Koran just as the pope was to the Bible. Interpreting the law when no unambiguous answer was forthcoming from Koran or Bible was precisely where a central authority came in. This aspect of the early caliphate was brilliantly brought out in the *God's Caliph* by the late Patricia Crone and Martin Hinds.³³ This quasi-papal role was more or less air-brushed out of Islamic history by later legal developments. From the 9th century of the Common Era onwards control of law was taken over by the learned men, trained at Madrasas. Of course, they did not always agree. Four major schools of Sunni law emerged,³⁴ not to mention Shi-ite jurisprudence.³⁵ While there was a lot of hostility between Shi-ite and Sunni Islam, the different Sunni schools of law coexisted more or less peacefully, like different schools of academic thought. Within each school, a consensus of lawyers settled major questions, and when new questions arose they could be dealt with on a case-by-case basis, without binding case law.

Could this have happened to canon law?

Could this have happened to canon law in the West? The question is not so absurd as it might seem. Think of the most successful textbook of all, Gratian's *Decretum*. Here papal decretals and even conciliar decisions rub shoulders with texts whose authority status is much more like that of Islamic muftis. The same may be said of Ivo of Chartres and Burchard of Worms before Gratian. But the papal element was by that time if not predominant, at least prominent—for reasons to be explained—in a way

³³ Crone & Hinds (2003).

³⁴ Melchert (1997); Hallaq (2005).

³⁵ Halm (2004).

that pronouncements by caliphs never were in lawbooks. Crone and Hinds had to excavate the caliph's role as religious lawgiver from under layers of later law. The very prominence of papal decretals is precisely what requires explanation.

Comparative complexity

Part of the explanation is comparative complexity.³⁶ The clerical and ritual systems of late Roman Christianity were complex and evolving. As ritual systems like baptism and penance evolved, decisions about the direction they should take had to be faced. Furthermore, incompatibilities between different systems created a desire for a sort of help-desk. The modern world of fast-developing softwares is not a bad metaphor. Even within the same university, software changes in one part of the overall information system can create incompatibilities with other parts. My suggestion is that the ritual and clerical systems of Islam were simpler than those of 4th and 5th-century Christianity.

Perhaps an overall comparison between the two religions in terms of relative complexity is impossible. Islam has all the complexity of states, because in principle there is no separation of Islam and the state. The rituals around the Kaaba stone at Mecca, and the rules of ritual washing, also involve symbolic complexity. Leaving those aside, though, there are some sharp contrasts. Islam has no priesthood—only men learned in the law capable of preaching and leading congregations. In this respect Islam resembles much Evangelical Protestantism, in which (baptism aside) the ritual tends to be less complex than in Catholic or Orthodox Christianity, and ministers are not thought to possess special ritual powers. They need to have studied theology and to be able to preach and lead, but any special 'charismatic' gifts are regarded as resulting from their personal relation with God, not from their ordination.

In Latin Christianity, furthermore, complexity was not of a static sort. Not only were there many imperfectly coordinated subsystems: these subsystems were often in a state of flux, so that new incompatibilities with other subsystems easily arose.

The function of complexity

At this point, perhaps rashly, a general explanation for the genesis and long survival of papal law is proposed: that the function of evolving complexity was enhancement of papal legal authority. This draws on a very old-fashioned kind of social theory:

³⁶The debt of my ideas about complexity to Niklas Luhmann will be evident. Out of his vast oeuvre, see especially Luhmann (1987) and Luhmann (2009).

classical functionalism.³⁷ Functionalism in a nutshell is the idea that features of a practice or a whole society can ensure its durability even if that is not the conscious purpose. The practice reinforces a given social order which in turn supports the practice. Examples: vaccination creates reverence for the state, which is enabled to go on taxing and vaccinating; racialism ensures that workers do not unite against bosses, so that economic systems do not change. (The latter example shows that functionalism can take a Marxist form.) Other examples are Peter Brown's interpretation of late Antique holymen as social mediators,³⁸ Karl Leyser's functionalist interpretations of Ottonian sacral kingship,³⁹ and Jack Goody's explanation of the medieval Church's consanguinity rules as functioning to increase ecclesiastical property holdings.⁴⁰ Without subscribing to all of these theories, it seems to me that functionalism still has a lot going for it.

So my thesis is: the function of complexity was papal law. It would be absurd to say that it is the *aim* of complexity to bolster papal power, but that has been the effect, and there is a causal loop by which the papacy's role in resolving incompatibilities enables the subsystems to continue their own autopoiesis and thus create new incompatibilities that the papacy has to sort out, like an information systems help-desk dealing with problems created by software innovation that is initially incompatible with existing systems.

This line of explanation also works in a rather obvious way for states, and also for religious systems incorporated in states, as most religious systems in history have in fact been: think of Ancient Near-Eastern monarchies, the Greek polis, and the pagan Roman Empire; also of Classical China, Hindu kingdoms, Islamic states, Byzantium, and early modern Protestant states in Germany and Scandinavia. In such systems, the king or prince or city government plays the papal role of resolving problems arising from complexity.

Other types of religion

In many religious systems such problems do not arise or not to the same degree. We noted above that Islam and Evangelical Protestantism have less complexity to deal with so far as the clergy and ritual are concerned. Furthermore, a congregational model has proved successful. It is a very simple type of religious social system: a congregation/synagogue/mosque, with a pastor/rabbi/imam; a set of people who advise

³⁷ For a summary of two powerful presentations of functionalism, by Mary Douglas and Gerry Cohen, see d'Avray (2010: 95).

³⁸ Brown (1971).

³⁹ Leyser (1989: e.g. 85–6, 102).

⁴⁰ Goody (1983).

him and make a lot of decisions; and some well-integrated groups such as the choir, prayer groups, and caritative groups. This solves many of the problems of complexity. Congregational units of this kind are relatively uncomplicated per se, and the life of the few and simple subsystems is not far from the control of the pastor and the movers and shakers of the local community. If the community is divided on doctrine or ritual, it can split into two communities of a similar sort. The community can join a federation of similar communities for collective purposes (supporting institutions to train the clergy, pension funds), but if it does not like the way that federation is going, it can split off and join a different one. Yet another model is represented by Methodism: there was from the start a coherent plan, incorporating well-integrated subsystems. John Wesley's plan was so well conceived that it has continued to work.

Papal christianity differs at least in degree from all of the above in that it consisted of a multitude of heterogeneous subsystems which the papacy never planned, and which had volatile lives of their own, so that the 'environments' of subsystems were constantly changing as other subsystems evolved. Here it differs in degree from Greek and Russian Orthodox Christianity, even though these are also highly complex and ritualised. A strong tendency to conservatism in doctrine and ritual, and the desire to preserve what has been in place since the 8th century or so, mitigate the problems that arise as subsystems evolve and interfere with each other. The principle of 'economy' means that there is not too much anxiety over whether a decision in one complex case is compatible with decisions in other cases. In late Antiquity, Eastern Christianity was still very fluid, but, in the East the emperor could play the quasi-papal role. In the West a multiplicity of Christian subsystems were evolving and changing each other's environment, even while the wider society around them was in flux, as the empire fell apart.

The complex clerical structure of late Antique Christianity

The Christianity of late Antiquity had a highly complex clerical structure, one laid out in the first surviving decretal and many others over the ensuing century. There were many stages on the path to becoming a priest, marked out by taboos: physical disability was a bar, so was marriage to a widow or two marriages by the candidate; the move to the higher stages, deacon, subdeacon or priest, was marked by taking on celibacy, though within marriage and in the nature of the case usually after children. This highly structured clerical elite was, from the 4th century on, confronted by a quite different elite, that of the monks, and the relationship between these two elites was problematic ever afterwards. Do bishops control monastic property? Can they keep a *cathedra* in a monastic church? What happens when monks become priests? How much independence of a bishop can a monastery enjoy in its internal life? Then,

as time goes by: how do the governmental systems of international orders like the Franciscans relate to the hierarchy of bishops? Later still, when orders are founded on a diocesan level: what happens when they spill over into other dioceses? In the Latin American missions, Jesuit missionaries get permission to grant marriage dispensations to native American converts, when indigenous customs make the forbidden degrees rules too onerous. But what if the native American lives in a region long converted, and how 'Indian' do you have to be by descent to be eligible for a dispensation? As one problem is solved, another arises.

The ritual structure of late Antique Christianity

Then there was the ritual structure: baptism, penance, the eucharist, exorcism. These rituals interacted in complex ways. There is a complex symbolic system behind the social development of marriage in the Middle Ages, and also behind the strange rules barring twice-married men from becoming clerics. Similarly with baptism. Now, in each case, the life of the subsystem leads to open questions demanding a response. Can marriages of the unbaptised be resolved? If a man was married when pagan, then widowed, then baptised, then remarried, then became a cleric, is he barred by the 'bigamia' rules from becoming a bishop? Can an unconsummated but valid marriage be dissolved by divorce, given its symbolic imperfection?

Ritual, heresy, doctrine

Complex problems arose from the interaction of ritual systems with the system for reintegrating heretics in the church. Is a baptism conducted by Novatians or Calvinists valid? Defining heresy is itself a problem, in a way rather different from in Islam. In Islam we find a plethora of sects, but the differences between them are seldom doctrinal. In the case of the Shia-Sunni split, it is originally a difference about the whether the caliph has to be from the Prophet's family or just the best man for the job. Other differences are not so much doctrinal as like differences between Jews, viz., how and how far the sacred law must be observed to the letter. In the Christianity of late Antiquity good minds were exercised by questions about how one could have different persons in one God, or two natures in one person, and how free will and predestination could be intellectually reconciled. Individual Islamic thinkers would evolve intellectual systems of tremendous sophistication, but there is a lot less obligatory dogma than in late Antique Christianity. Doctrine was only a small part of papal law which was mostly concerned with the clergy and ritual, but still doctrinal complexities did intersect with the systems of papal law, in that some papal decretals regulating doctrine-related problems were included in canon law collections.

The papacy, bishops, and complexity

The church of Rome had a deep-rooted sense that its bishop inherited the authority of St Peter. This belief was by no means generally shared, but it made popes ready to lay down the law when asked to resolve difficulties. Bishops must in fact have been the principle consumers of papal law. Only they had the power to enforce it, and, directly, only on their clergy. The clergy of a diocese depended on the bishop for legitimacy, so had to accept his authority, and bishops wanted rules to help them govern and administer their clergy. This papal law also affected the laity insofar as marriage was included within its scope. Even here it would not have been enforceable. It would, however, have been enforceable on the married clergy.

A question of quantity

The complexities that bishops had to deal with involved so much recourse to the papacy that decretals were too large an element in Church law to be ignored. Direct comparison with early caliphal law is hard because the latter has survived so patchily, but one may make an educated guess that caliphs were not so often called upon to resolve incompatibilities between subsystems, so that God's caliphs made fewer rulings than Peter's successors.

Bishops continued to need canon law collections to guide their direction of the clerical communities around them, to judge by the large number of surviving canon law manuscripts. Charlemagne's adoption of a papally updated version of the Dionysiana ensured wider diffusion. Above all, the enormous quantitative success of the Pseudo-Isidorian collections ensured that papal decretals could not be ignored as part of canon law. This quantitative prominence made a difference as it prevented papal law from being overgrown by the other kinds of texts that Burchard, Ivo and Gratian included in their compilations. Decretals from late Antiquity were still readily available in the 11th and 12th centuries.

Old law in a new society

Big changes in the system's environment help explain its later evolution. Evidently, society had changed radically around these durable decretals. This includes clerical society. A parish system of single parish priests serving village churches was gradually taking the place of larger communities of clerics around the bishop or a big baptismal church. In these isolated parishes, celibacy within marriage was not a practical proposition, if only because there were no other wives to disapprove if one of their number got pregnant. Furthermore, the laity were involved in church appointments at all levels.

Parish churches were usually founded and funded by landowners who did not relinquish control of them. The late Antique system of election of bishops by the ‘clergy and people’ hardly made sense after the decline of the ancient city. Bishops and abbots had acquired huge properties and the local government authority that went with them in this period. It was natural, in the absence of any other clear rules, that rulers would take over the task of appointing them, a handy governmental technique given that bishops unlike secular nobles were not succeeded by legitimate sons who might not be easy to control. The tension between law readily available in old papal decretals and the actual state of affairs may have been one of the causes of the Gregorian Reform. The gap between theory and practice would make men who took religious law seriously want change. To restore the old law would hardly do, however, in that it was made for a different society.

New papal law for a new environment

Thus it was natural that a new burst of decretal making should follow. The practice was there in old collections for everyone to see. The deviation of society from the law found in them was equally evident. But circumstances had changed so much that custom-built decretals, combined with papally led councils, were required to create a law that actually worked. Lay control of parishes was not abolished, but modified to save the symbolic superiority of the bishop. A new law was needed for the new kind of celibacy—living altogether without a wife, not simply stopping sex before promotion to deacon. To make the rule work, sons of priests were banned from becoming priests. But this soon came to seem too harsh. So a dispensation law developed, allowing exceptions for worthy candidates.

A recurrent pattern: creating collections

Different though the new canon law was, the recurrence of a pattern from late Antiquity needs to be noted. The complexity of the religious system, or systems, created demand for decretals, which were eventually numerous enough to constitute a complexity problem themselves. In late Antiquity, decretal collections were created by people like Dionysius Exiguus and Cresconius to bring some order to the mass of decretals. Exactly the same thing happened in the decades around 1200. A mass of individual decretals was unmanageable by the judges and courts who used them as case law, so private collections were compiled to bring order to the chaos: a sequence of them, until finally the papacy issued an official one, the *Liber Extra*. This collection and the subsequent papal updates were a system for dealing with the complexities

arising from the decretal system, itself an attempt to deal with the complexities of the many systems in the Latin Church. By the end of John XXII's reign, 1334, the objective of creating a relatively orderly and coherent legal system had been achieved: the Rota could deal with the remaining and increasingly recondite problems that continued to arise.

The pattern is repeated after Trent

The mass of legislation passed by the Council of Trent disrupted that relative stability.⁴¹ It now stood alongside the existing corpus of canon law. This presented a complexity problem of a whole new order. How to integrate the Tridentine legislation with the existing corpus of canon law? The *Liber Extra* and subsequent updates all followed the same structure. Tridentine legislation did not map easily onto that structure. How to force the new wine into old bottles? A legal genius like Raymond of Peñaforte, who had compiled the *Liber Extra* promulgated in 1234, or Gasparri, who would compile the Codex of 1917, might have attempted it, but in the later 16th century the papacy had other priorities. Even had there been such a genius and if a new corpus had been created, what a field day for the professional lawyers in public courts!

We have seen that another answer was found: the Congregation of the Council. It dealt with questions arising from the legislation of Trent, and, increasingly, with non-dogmatic questions generally. It was not at odds with the classical canon law, however, for decisions by the congregation tended to be based on exhaustive reflection on the traditional canon law, together with theology and of course with Trent. Canon law experts shaped the council's decisions. We do not know much about the staff of the congregation before the 19th century, but we may guess that young legal eagles did the work. Certainly canon law experts gave impressively learned advice for internal consumption by the congregation. Advice from canon lawyers ensured consistency with the classical corpus, while internal records ensured consistency with early decisions of the council. In its way, it was an efficient system, though not transparent in its original workings.

In the 18th century it became more transparent in that its decisions were published on a regular basis. Of course that had advantages, but it must also have aggravated the problem of the religious legal system's complexity. Who could keep intellectual control in the public domain of the stream of decisions? In the 19th century there were attempts: multivolume alphabetical thematic collections by Pallottini⁴² and Zamboni,⁴³

⁴¹ Richter & Schulte (1853).

⁴² Pallottini (1868–93).

⁴³ Zamboni (1812–16).

were produced and made available for consultation alongside the enormous corpus of classical canon law.

But once again, a system for managing the complexity of multiple religious subsystems had itself become enormously complicated. Once again, the solution adopted was an orderly compilation. It was more ambitious than any previous Catholic compilation in that it endeavoured to synthesise the classical canon law with the decisions of the Congregation of the Council and the decrees of other congregations. This time, though, secular states provided a model: the *Code Civile des Français* of 1804, the *Bürgerliches Gesetzbuch* which became law in Germany in 1900. The 1917 Codex follows in this tradition.

CONCLUSION

F. W. Maitland said that ‘the medieval Church was a state’,⁴⁴ and that holds good for the post-medieval church, in that the legal aspects of a state have recognisable counterparts in papal government after the Middle Ages too. A key difference, though, is that state power can draw on physical force. Popes did have armies as rulers of the papal states, but they were third or fourth rate in geopolitical terms. Popes also tried to direct crusades, but for funding and forces they relied on the consent of people over whom they had no material power. There were some ‘spiritual’ means of enforcement: the power of excommunication and interdict. In the heyday of papal monarchy these spiritual sanctions counted for a lot. Though, equally, they were often ignored. They would have been altogether ineffective had a lot of people not been prepared to treat them with respect: if not those against whom the sanctions were aimed, then those around them who could exert social pressure. Yet these sanctions are hardly comparable with the threat of imprisonment and death at the disposal of political rulers in the period covered—and in all periods. Furthermore, even those physical threats are not perhaps enough to explain why people obeyed and obey state governments. Fear of consequences is only one reason for obeying a pope or a state government. There is also a demand for what government can give. For states and the papacy share this: both preside over a multitude of systems that they did not plan or create. Both state power and papal power have met a demand from below—for dispute resolution, obviously, but also, less obviously, for the management of complexity. In the case of papal law, that demand is best explained by features of the religious system it regulated: namely the fact that it was more complicated than most religious systems not run by ‘real’ state governments, because of the large number of uncoordinated

⁴⁴Maitland (1898: 100).

subsystems it incorporated. Walter Ullmann devoted much intellectual energy to showing that popes had a plan of world government from late Antiquity and progressively realised it until it provoked a reaction in the 13th century.⁴⁵ A subsequent generation has tended to reject such a top-down model, without providing a satisfactory substitute. I would propose that the papacy as a system was 'passively ambitious': seldom taking the initiative, usually happy enough to respond to demand. What neither Ullmann nor his critics have sufficiently explained is why there was so much demand for papal law. That is the problem on which I have focused and my answer in a nutshell is: because of the special complexities of Latin Christianity—a strong thesis that should give rise to plenty of healthy dissent.

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REFERENCES

Manuscripts

Archivio Segreto Vaticano, Vatican City: *Congr. Concilio 58 (Sess.)*.
Penitenzieria Apostolica, Rome: APA, Miscellanea Mangiono.

Printed sources

- Arnold, J. (2001) *Inquisition and Power: Catharism and the Confessing Subject in Medieval Languedoc* (Philadelphia, PA, University of Pennsylvania Press). <https://doi.org/10.9783/9780812201161>
- Billier, P., Bruschi, C. & Sneddon, S. (2011) *Inquisitors and Heretics in Thirteenth-century Languedoc. Edition and Translation of Toulouse Inquisition Depositions 1273–1282* (Leiden, Brill).
- Brown, P. (1971), 'The Rise of the Holy Man', *The Journal of Roman Studies*, 61: 80–10.
<https://doi.org/10.2307/300008>
- Codex Iuris Canonici* (1917) (Rome).
- Crone, P. & Hinds, M. (2003) *God's Caliph. Religious Authority in the First Centuries of Islam* (Cambridge, Cambridge University Press).
- Cushing, K. G. (1998) *Papacy and Law in the Gregorian Revolution. The Canonistic Work of Anselm of Lucca* (Oxford, Clarendon Press). <https://doi.org/10.1093/acprof:oso/9780198207245.001.0001>
- d'Avray, D. L. (2010) *Rationalities in History. A Weberian Essay in Comparison* (Cambridge, Cambridge University Press). <https://doi.org/10.1017/CBO9780511762758>
- De Luca, J. B. (1683) *Relatio Curae Romanae* (Cologne, Arnoldus Metternich).

⁴⁵ Ullman (1970).

- Duggan, A. (2008), 'De consultationibus: The Role of Episcopal Consultation in the Shaping of Canon Law in the Twelfth Century', in B. C. Brasington & K. G. Cushing *Bishops, Texts and the Use of Canon Law around 1100. Essays in Honour of Martin Brett* (Aldershot, Ashgate), 191–214.
- Esch, A. (2014) *Die Lebenswelt des europäischen Spätmittelalters. Kleine Schicksale selbst erzählt in Schreiben an den Papst* (Munich, C. H. Beck).
- Friedberg, A. (1922a) *Corpus Iuris Canonici, I, Decretum Magistri Gratiani* (Leipzig, Tauchnitz).
- Friedberg, A. (1922b) *Corpus Iuris Canonici, II, Decretalium Collectiones* (Leipzig, Tauchnitz).
- Gasparri, P. & Seredi, J. (1923–39) *Codicis iuris canonici fontes* (Vatican City).
- Gaudemet, J. (1994) *Église et cité: histoire du droit canonique* (Paris, Éditions du Cerf).
- Gilchrist, J. T. (1973) *Diversorum patrum sententie sive Collectio in LXXIV titulos digesta Monumenta Iuris Canonici Series B: Corpus Collectionum, I* (Vatican City, Biblioteca Apostolica Vaticana).
- Goody, J., (1983) *The Development of the Family and Marriage in Europe* (Cambridge, Cambridge University Press). <https://doi.org/10.1017/CBO9780511607752>
- Hallaq, W. B. (2005) *The Origins and Evolution of Islamic Law* (Cambridge, Cambridge University Press).
- Halm, H. (2004) *Shi'ism*, 2nd edn (Edinburgh, Edinburgh University Press).
- Harder, C. (2014) *Pseudoisidor und das Papsttum. Function und Bedeutung des apostolischen Stuhls in den pseudoisidorischen Fälschungen* (Cologne, Böhlau Verlag).
- Hartmann, W. & Pennington, K. (2008) *The History of Medieval Canon Law in the Classical Period, 1140–1234. From Gratian to the Decretals of Pope Gregory IX* (Washington, DC, The Catholic University of America Press).
- Hoffmann, H. & Pokorny, K. (1991), *Das Dekret des Bischofs Burchard von Worms. Textstufen – Frühe Verbreitung – Vorlagen* Monumenta Germaniae Historica Hilfsmittel 12 (Munich).
- Hornung, C. (2011) *Directa ad decessorem. Ein kirchenhistorisch-philologischer Kommentar zur ersten Dekretale des Siricius von Rom* Jahrbuch für Antike und Christentum, Ergänzungsband Kleine Reihe, 8 (Münster, Aschendorff Verlag).
- Jaffé, P. & Herbers, N., et al., (2016) *Regesta Pontificum Romanorum ab condita ecclesia ad annum post Christum natum MCXCVIII*, 3rd edn, I (a S. Petro usque ad A. DCIV) (Göttingen, Vandenhoeck & Ruprecht).
- Jasper, D. & Fuhrmann, H. (2001) *Papal Letters in the Early Middle Ages* (Washington, DC, The Catholic University of America Press).
- Kéry, L. (1999) *Canonical Collections of the Early Middle Ages (ca. 400–1140). A Bibliographical Guide to the Manuscripts and Literature* (Washington, DC, The Catholic University of America Press).
- Leyser, K., (1989) *Rule and Conflict in an Early Medieval Society. Ottonian Saxony* (Oxford, Basil Blackwell).
- Luhmann, N. (1987) *Soziale Systeme* (Frankfurt am Main, Suhrkamp).
- Luhmann, N. (2009), 'Soziologie als Theorie sozialer Systeme', in *Soziologische Aufklärung, 1 Aufsätze zur Theorie sozialer Systeme* (Wiesbaden, VS Verlag für Sozialwissenschaften), 143–72.
- Maitland, F. W. (1898) *Roman Canon Law in the Church of England* (London, Methuen).
- Melchert, C. (1997) *The Formation of the Sunni Schools of Law, 9th–10th Centuries C.E.* (Leiden, Brill).
- Mordek, H. (1975), *Kirchenrecht und Reform im Frankenreich. Die Collectio Vetus Gallica, die älteste systematische Kanonensammlung des fränkischen Gallien. Studien und Edition* 2 vols., Beiträge zur Geschichte und Quellenkunde des Mittelalters, I (Berlin, Walter de Gruyter). <https://doi.org/10.1515/9783110831900>
- Mordek, H., Zechiel-Eckes, K. & Glatthaar, M. (2013) *Die Admonitio generalis Karls des Großen* Monumenta Germaniae Historica Fontes Iuris Germanici Antiqui in usum scholarum separatim editi xvi (Wiesbaden, Harrassowitz Verlag).
- Müller, W. (2004), 'The Price of Papal Pardon—New Fifteenth-century Evidence', in A. Meyer, C. Rendtel & M. Wittmer-Butsch (eds) *Päpste, Pilger, Pönitentiarie. Festschrift für Ludwig Schmutge zum 65. Geburtstag* (Tübingen, Max Niemeyer Verlag), 457–81.

- Pallottini, S. (1868–93) *Collectio omnium conclusionum et resolutionum quae in causis propositis apud Sacram Congregationem Cardinalium S. Concilii Tridentini interpretum prodierunt ab eius institutione anno MDLXIV ad MCCCCLX* 17 vols. (Rome: Typis S. Congregationis de propaganda fide 1868–1884).
- Patzold, S. (2015) *Gefälschtes Recht aus dem Frühmittelalter. Untersuchungen zur Herstellung und Überlieferung der pseudoisidorischen Dekretalen* (Heidelberg, Universitätsverlag Winter).
- Plettenberg, H. (1693) *Notitia Congregationum et Tribunalium Curiae Romanae* (Hildesheim).
- Richter, A. & Schulte, F. (1853) *Canones et Decreta Concilii Tridentini* (Leipzig, Tauchnitz).
- Rolker, C. (2010) *Canon Law and the Letters of Ivo of Chartres* (Cambridge, Cambridge University Press). <https://doi.org/10.1017/CBO9780511674709>
- Salonen, K. (2016) *Papal Justice in the Late Middle Ages. The Sacra Romana Rota* (London, Routledge).
- Salonen, K. & Schmugge, L., (2009) *A Sip from the 'Well of Grace'. Medieval Texts from the Apostolic Penitentiary* (Washington, DC, The Catholic University of America Press).
- Schmugge, L., Hersperger, P. & Wiggerhauser, B. (1996) *Die Supplikenregister der päpstlichen Pönitentiare aus der Zeit Pius' II. (1458–1464)* (Tübingen, Max Niemeyer Verlag).
- Ubl, K. & Ziemann, D. (eds) (2015) *Fälschung als Mittel der Politik. Pseudoisidor im Licht der neuen Forschung. Gedenkschrift für Klaus Zechiel-Eckes* (Wiesbaden, Harrarowitz Verlag).
- Ullmann, W. (1970) *The Growth of Papal Government in the Middle Ages. A Study in the Ideological Relation of Clerical to Lay Power* (London, Methuen).
- Wagschal, D. (2015) *Law and Legality in the Greek East. The Byzantine Canonical Tradition* (Oxford, Oxford University Press), 381–3.
- Winroth, A. (2000) *The Making of Gratian's Decretum* (Cambridge, Cambridge University Press). <https://doi.org/10.1017/CBO9780511496639>
- Zamboni, J. F. (1812–16) *Collectio declarationum Sacrae Congregationis Cardinalium Sacri Concilii Tridentini interpretum*, 8 vols (Vienna).
- Zechiel-Eckes, K. (1992) *Die Concordia canonum des Cresconius. Studien und Edition*, 2 vols., Freiburger Beiträge zur mittelalterlichen Geschichte, 5 (Frankfurt am Main, Peter Lang).
- Zechiel-Eckes, K. (2013) *Die erste Dekretale. Der Brief Papst Siricius' an Bischof Himerius von Tarragona vom Jahr 385 (JK 255)* MGH Studien und Texte, 55 (Hannover).

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