

Introduction

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This volume comprises the contributions to a conference held at Zurich University in July 2014 on canon law history in the period between 1050 and 1150 and the fundamental changes in legal culture in this time. Well-known effects of this transformation are the rise of centralized papal government, the emergence of the university, the development of a new legal hermeneutics and, with the *Decretum Gratiani* around 1140, the compilation of a law-book that was to remain in use for centuries. What has been called the ‘Renaissance of the twelfth century’ (Haskins),¹ the ‘theory of papal monarchy’,² the ‘papal revolution in law’ (Berman),³ ‘scholastic humanism’ (Southern)⁴ or the emergence of a ‘persecuting society’ (Moore)⁵ is all based, at least in part, on these dramatic shifts in legal culture. Unsurprisingly, the studies quoted above rely on the handbook literature produced by canon law historians. What is perhaps surprising, however, is that there is no up-to-date manual of canon law history. Faut de mieux, both specialists and non-specialists still depend on the famous *Histoire des collections canoniques en Occident depuis les Fausses Décrétales jusqu’au Décret de Gratien* by Paul Fournier and Gabriel Le Bras published in 1931–32.⁶ A core element of their narrative was the assertion

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- 1 Charles Homer Haskins, *The Renaissance of the Twelfth Century* (Cambridge, Mass., 1927).
 - 2 John A. Watt, “The Theory of Papal Monarchy in the Thirteenth Century: The Contribution of the Canonists,” *Traditio* 20 (1964), 179–317; Walter Ullmann, *The Growth of Papal Government in the Middle Ages*, 3rd ed. (London, 1970), esp. ch. 9; Kenneth Pennington, *Pope and Bishops: The Papal Monarchy in the Twelfth and Thirteenth Centuries*, (Philadelphia, Penn., 1984); Colin Morris, *The Papal Monarchy: The Western Church from 1050 to 1250*, Oxford History of the Christian Church (Oxford, 1989).
 - 3 Harold Joseph Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, Mass. and London, 1983); a broad range of contributions addressing Berman’s narrative is found in *Rechtsgeschichte—Legal History* 21 (2013), which are introduced with an editorial by Thomas Duve, “Law and Revolution—Revisited,” *ibid.*, pp. 156–59, available at <http://dx.doi.org/10.12946/rg21/156–159>.
 - 4 Richard W. Southern, *Scholastic Humanism and the Unification of Europe*, 1: *The Foundations* (Oxford, 1995), 2 (with notes and additions by Lesley Smith and Benedicta Ward): *The Heroic Age* (Oxford, 2001).
 - 5 Robert Ian Moore, *The Formation of a Persecuting Society: Power and Deviance in Western Europe, 950–1250* (Oxford, 1987).
 - 6 Paul Fournier, with the collaboration of Gabriel Le Bras, *Histoire des collections canoniques en Occident depuis les Fausses Décrétales jusqu’au Décret de Gratien*, 2 vols (Paris, 1931–32). A reprint has been published by Scientia (Aalen) in 1972.

that the popes from Leo IX to Paschal II, with Gregory VII as a central figure, followed a long-term strategy of centralized, papal reform, and that canon law played a central role for this strategy. According to Fournier and Le Bras, both the compilation of new collections and the new legal hermeneutics were inspired by the papacy, and specifically meant to foster (papal) reform.

This model is repeated, for example, by more recent textbooks of legal history.⁷ Or, to take a well-known example from a different field of scholarship, Harold Berman's concept of a 'papal revolution in law' very directly adopts Fournier's model, and helped to establish it well beyond the specialized field of canon law history.⁸

Various specialized studies (including those by the contributors to the proposed volume) have corrected various elements of the *Histoire*, and a growing consensus has been reached concerning its core narrative being based on assumptions no longer shared by modern scholarship. The participants of the conference took this as a starting point, and, going beyond criticism of the *Histoire*, have developed both individually and collectively alternative models to describe the dramatic changes in legal culture.

To provide the modern reader with a starting point of the model so widely discussed and criticized more than a century after it was developed, the first contribution in this volume is devoted to the genesis and the achievements of Fournier's model as found in the *Histoire* (Rolker). Several contributions (Austin, Wei) discuss traditional perspectives on rule making and legal knowledge during the period in question, and put them in a broader historiographical context like, e. g., the predominance of modernization narratives in 20th century historiography. Other essays (Cushing, Summerlin) focus on processes of rule-making and the transmission of legal norms. Here, it will be demonstrated that the pre-Gratian tradition remained very influential also after the creation of Gratian's *Decretum*, while the traditional narrative of the rise of *ius novum*, created by 12th century papacy, has to be revised. On the one hand, the early twelfth century indeed saw important changes in legal method, as Dusil makes clear. Another contribution, however, puts the position of the papacy within the church 1050–1150 in a new perspective: Ott's studies show how local conflicts influenced the ecclesiastical practice more than the much-debated struggle between emperor and pope. Such a focus on

7 E.g. Péter Erdő, *Geschichte der Wissenschaft vom kanonischen Recht. Eine Einführung*, ed. Ludger Müller, Kirchenrechtliche Bibliothek 4 (Münster, 2006), pp. 40–41.

8 See Berman, *Law and Revolution* (see above, n. 3), p. 202: "The systematization of the law of the church in the late eleventh and the twelfth century was closely related to the Papal Revolution in all its aspects."

the plurality within the church hierarchy provides an important alternative to the dated model of a centralized 'Gregorian' church. At the same time, this argument corresponds to the importance of plurality in late 11th ecclesiastical legal culture, which is of paramount importance in the doctrine of Bernold of Konstanz on the hierarchy of legal sources (Genka).

In conclusion, the following points might be highlighted: (1) The concept elaborated by Fournier and Le Bras follows a narrative of progress. (2) Their model is inconsistent with modern scholarship in church history and general medieval history. Rather than assuming top-down, centralized papal 'reform', scholarship agrees that regional ecclesiastical politics followed autonomous logics and was more or less independent from papal influences. The evolution of legal knowledge in the church—as represented in methodological concepts and collections of normative texts—reveals a conceptual width, which cannot be explained sufficiently by papal control. Instead, there were several ecclesiological approaches and different layers of textual traditions of ecclesiastical rules, which remained important in the whole period under discussion. A concept of differentiation might be helpful as analytical approach for further investigation of these phenomena. (3) The findings in the contributions give weight to the idea to focus on the diversity of legal texts and legal knowledge. Taken together, they will help to establish concepts of legal pluralism as the basis for future research.