The Pope’s Other Jobs:
Judge and Lawgiver

An exhibition curated by Anders Winroth, Forst Family Professor of History, and Michael Widener, Rare Book Librarian, Lillian Goldman Law Library, Yale University.

On display September 8 – December 15, 2015 in the Rare Book Exhibition Gallery, Level L2, Lillian Goldman Law Library.

Yale Law School, 127 Wall Street, New Haven, Connecticut

Image source: Decretales Gregorii IX (Venice, 1514). Rare Book Collection, Lillian Goldman Law Library.
Early Christian communities promoted sisterly and brotherly love, trying to resolve disputes within the church without involving civil courts. Bishops increasingly took on the roles of arbiters and judges, and as the Roman Empire became Christianized they even acquired formal rights to judge civil matters. When imperial authority declined and disappeared in the Roman West, bishops took over aspects of local government, even organizing defenses against Vikings and other raiders when secular authorities were nowhere to be found.

As the bishop of the ancient capital Rome, the pope was always recognized as the foremost bishop. He became the highest judicial authority in the Church, especially after the reform movements of the eleventh and twelfth centuries centralized the Church in Rome. The pope’s legal decisions became precedents and popes continued to issue new laws at councils (meetings of bishops). When the law schools came back in the twelfth and thirteenth centuries, canon law (the law of the church) took center stage as a most sophisticated legal system, not only inspiring much secular law but also becoming recognized as the sole authority in several legal fields, such as the law of marriage, the law of just war, and the legal implications of oaths.

The convulsions associated with the Reformation of the sixteenth century and the growth of the modern state deprived the papacy of much of its judicial and legislative power. Popes continued to issue laws, but most of these were only valid inside the Church. Until the Italian unification in 1870, the pope continued to rule as a sovereign prince over a large slice of central Italy, the Papal States, which still survive as a faint echo in the miniature country of the Vatican City.

The books and manuscripts in this exhibition, from the Yale Law Library’s Rare Book Collection and the library of the Stephan Kuttner Institute of Medieval Canon Law, show how the papacy has shaped areas as diverse as human rights, international boundaries, due process, and marriage law. Hopefully they will also inspire you to exploit these collections for your teaching and research.

ANDERS WINROTH  
MICHAEL WIDENER
Medieval popes promulgated a handful of official law books by sending them to the great law schools of Europe. Pope John XXII (1316-34) in 1318 issued the Clementines, a collection of his predecessor Clement V’s legislation. The image at the beginning of the Law Library’s fourteenth-century copy depicts the pope handing the book to scholars, symbolizing the official promulgation of the text.

*Clementinae constitutiones, with the gloss of Giovanni d’Andrea. Manuscript, 14th century.*
The church continued to issue laws, at councils and in other contexts. Such legislation was of great interest and once the printing press had been invented, it was widely disseminated. The local church council that met in Florence in 1517 under the auspices of the future Pope Clement VII (1523-34) summarized much useful legislation which was printed, partially in red, in what was nicknamed The Red Letter Book.

Medieval and modern thinkers have devoted much effort to illuminating the relationship of the respective powers of state and church. At the end of the Middle Ages Johannes Hug published a controversial treatise that examined how the powers of popes, bishops, curates, and emperors related to each other. The book has been called the first textbook on German constitutional law. Hug’s work was controversial and he concluded it with a protestation that he had not written anything against the Christian faith or the Catholic Church, and if anyone found any offensive passages, he disavowed them.

Pope Alexander VI (the Borgia pope, 1492-1503) supported the conquest and colonization of the Americas through European imperial powers. His division of lands between Spain and Portugal in 1494 through the Treaty of Tordesillas still plays a role in international relations, with Argentina citing it as a foundation for its claim to the Falkland Islands/Las Malvinas. Alexander also gave Ferdinand and Isabel of Spain the right to collect the tithes in the territories they colonized in “the Indies,” as America was still called in a 1501 papal bull, here reproduced both in the original Latin and in Spanish translation.

**Antonio Joachín de Ribadeneyra Barrientos. Manual compendio de el regio patronato indiano. Madrid: Antonio Marin, 1755.**
Traditionally, the Church outlawed duels and tournaments. In 1567, Pope Pius V (1566-72) extended that prohibition to bull fights, producing the famous “bull bull,” here in a contemporary print. Some animal rights activists consider this bull a foundational document for their movement.

In addition to governing the universal Church, popes also ruled as sovereigns over the Papal States of central Italy. In that capacity, they issued laws and regulations similar to those proclaimed by secular rulers. Pope Clement VIII (1592-1605) issued detailed regulations for the city of Imola.

**Imola (Italy). Statuti decreti et ordini della citta d’Imola. Imola: Giacinto Massa, 1674.**
As sovereign of the Papal States, the pope was responsible for local law enforcement. Rome had its own police force. The table shows the monthly pay of the various ranks of *carabinieri* from the *Colonello* (colonel) to the *Piedi* (patrolling policemen) in the pope’s capital. The second work bound in the same volume provides moral instruction, reminding police officers that they are patrolling the sacred center of the Catholic world.

Popes are busy men and it was impossible for them to personally render judgment on every legal case that came to the Papal Curia. They delegated papal judicial powers to a group of assessors, who together formed the court known as the Roman Rota (“wheel”), since they met at a round table.

The decisions of the Roman Rota served as precedents that jurists were eager to study, so they were collected in books. The title page of this edition of two fundamental precedent collections, Decisiones Rote nove et antique (“The new and old decisions of the Rota”) illustrates two foundational events in human history: God’s creation of Eve from Adam’s rib and the Annunciation scene when the Archangel Gabriel tells Mary that she will give birth to Jesus, God himself supervising in the background.

Even Satan deserved his day in court, and generations of law students were amused and informed by a late-medieval narrative of what happened on that day. Observing the forms of canon law, Satan sued Christ, demanding the return of humankind, which he felt had been unjustly taken from him.

**Modus legendi abbreviaturas in utroque jure** [with] **Processus Sathane infernalis contra genus humanum.** Cologne: Cornelius de Zyrickzee, 1505.
When Pope Alexander III (1159-81) in the 1170s defined marriage as the freely given consent of bride and groom, he revolutionized European marriage custom. At least in law, the wishes of parents and feudal lords no longer mattered, and ceremonies, banns, and bride price lost legal relevance. Alexander’s innovation continues to inform most modern marriage law. Pope Gregory IX’s great law book, the *Liber extra* from 1234, collected papal law from the previous century, including Alexander’s ground-breaking decre- tals. Copies usually contain in the margins a full commentary authored by the teachers of the Bologna law school. Woodcuts decorate some editions, and this large example signals the begin- ning of the section on marriage law.

*Decretales Domini pape Gregorij noni acurata diligentia novissime quam pluribus cum exemplaribus emendate.* Venice: Luca-Antonio Giunta, 1514.
In addition to defining marriage, church law also determined who were prohibited from marrying. Close and not-so-close relatives, including fourth cousins, belonged to the forbidden degrees, which are often pedagogically explained in fictive genealogical trees, known as trees of consanguinity.

**Giovanni d'Andrea. Lecture super arboribus consanguinitatis et affinitatis. Vienna: Hieronymus Vietor & Johann Singriener, 1513.**
The *Corpus Juris Canonici* (Corpus of Canon Law) was a set of huge books which cost a lot of money to acquire and many years to master. Most simple clerics made do with outlines, abstracts, and versified mnemonics. Choppy hexameters here summarize which sinners (including those who married close relatives) cannot be forgiven by local officials but must seek forgiveness directly from the pope. The prose commentary provides further detail.

Under the law accepted everywhere in western Europe, only the pope could allow marriage between the widow of one man and his brother. King Henry VIII of England married the widow of his dead brother Arthur, Catherine of Aragon, after receiving papal permission. But when Catherine failed to produce the male heir Henry VIII desired, he famously divorced her. He claimed that the pope had acted unlawfully when he allowed their marriage. Pamphlets like this one claimed that European law schools had agreed with the king’s interpretation of the law.

The determinations of the moste famous and mooste excellent universities of Italy and Fraunce, that it is so unlefull for a man to marie his brothers wyfe, that the Pope hath no power to dispence therwith. London: Thomas Berthelet, 1531. Translated by Thomas Cranmer.
The Pope’s exclusive right to dissolve or annul the marriages of Catholics remains a well known and much debated feature of his continued power as a judge, especially given modern secularized society with its easy access to divorce. John T. Noonan, now a senior judge in the Ninth Circuit Court of Appeals, has treated some of these controversies. The photograph opening his book portrays the audience at a lecture given by Cardinal Pietro Gasparri, the main architect of the 1917 Code of Canon Law, which governed Catholic marriages until the 1983 Code. Two future popes are in the audience, Pius XII (A) and John XXIII (B), as well as Stephan Kuttner (C), an eminent expert on medieval canon law, to whom Judge Noonan gave this copy in 1972.

A jurisprudence of natural rights, or as we would say human rights, was first outlined by the great jurist Gratian, who in the 1130s became the first academic teacher of canon law. In his innovative book *The Concord of Discordant Canons*, more conveniently known as the *Decretum*, he explained what he considered natural rights, common to all human beings irrespective of their religion and ethnicity. Gratian defined as natural the right to educate children and to acquire the fruits of the earth and its waters. The Venetian publisher Luca-Antonio Giunta illustrated Gratian’s arguments with eloquent woodcuts.

Medieval jurists expanded on Gratian’s definition of natural rights, and they were particularly interested in its influence on procedural law. In the early fourteenth century the law teacher and cardinal Johannes Monachus commented at length on a law issued by Pope Boniface VIII, in the process becoming the first jurist ever to state the central principle that a suspect is presumed innocent unless proven guilty, or as he expressed it in Latin: *quilibet presumitur innocens nisi probetur nocens*. It is typical that medieval juristic commentary fills most of the page in extremely small print, while the text of the law itself occupies only a few lines in the center. The quotation is found on lines 4-5 from the top of the right-hand column on page 164.

*Extravagantes tum viginti Ioannis Vicesimoseundi, tum communes cum glossis et epitomis assuetis, & recognitae, & emendatae. Lyon: Hugues de la Porte & Antoine Vincent, 1558.*
The Fifth Amendment to the U.S. Constitution protects persons from bearing witness against themselves. The intellectual lineage of this idea is found among jurists debating canon law and due process in late medieval European law schools.

*IV*

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

*V*

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The pope considered himself the feudal overlord of the secular states of medieval Europe. In a thorny political situation, King John of England accepted this arrangement, agreeing to pay a yearly tax to the papacy. When John approved the Magna Carta in 1215, the pope judged it invalid, since the English barons had forced the king into this agreement in violation of canon law, which in any case should have been submitted to the pope’s judgment. The Great Charter continued, however, to be accepted in England, often reproduced in manuscript and print.

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Lawrence DiCostanzo

Shana Jackson
Lillian Goldman Law Library, Yale Law School

Emma Molina Widener

Janice Zocher
Medieval Studies Program, Yale University