

MEDIEVAL PAPALISM

The Political Theories of the
Medieval Canonists

Walter Ullmann

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THE POLITICAL THEORIES
OF THE MEDIEVAL CANONISTS

by

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PREFACE

THE political concepts of the medieval canonists—a species of mankind that is virtually known only to librarians—are hidden in dust-covered and worm-eaten tomes which have been relegated to sanctuaries usually inaccessible to the average student of medieval history. With the breakdown of the medieval world the canonists and their doctrines were consigned to an oblivion that is at once unfathomable and undeserved. I believe that the reason for the extremely scanty attention paid nowadays to the canonists is that their ideas lie, as it were, in the shadowy no-man's-land between history and law. The historian is somewhat hesitant to overstep the boundaries fixed by tradition and custom. The lawyer, on his part, does not feel at ease when called upon to deal with politics and especially with the history of political thought. Each has a valid excuse for refraining from steeping himself in the wealth of material that confronts us in the works of the medieval canonists. The medieval “oceanus juris” extends far beyond the frontiers somewhat shyly set by contemporary legal thought. To anybody who has once wetted his feet on the shores of that vast and illimitable “oceanus juris” it must be clear that the floods, once allowed to break the dykes, are capable of infiltrating into spheres which were commonly thought to be beyond the pale of any canonistic influence. The field of political theory in particular is one that is the least immune from this influence. All history is a “seamless web” was one of Maitland's happy phrases, and the present is part of it as well as the past. No apter demonstration of the unity of history can be found than the records of political ideas. It may very well be that modern ears are but faintly responsive to canonistic phraseology, but once stripped of inessentials, this phraseology may be the medium for conveying a large part of our Western heritage.

A lawyer converted to history, Maitland's chief aim was to show the development of the Western mind. As a pathfinder he was the first amongst modern scholars to examine *ex professo* that no-man's-land which lies between history and law. It is not only in his investigations into the constitutional framework and

the institutional history of associations, but also—and perhaps to a still greater extent—in his researches into ecclesiastical history that Maitland, “with his genial penetration”,¹ showed the immense importance of that no-man’s-land. It is, to be sure, an unfortunate fact that the line of research so clearly marked out by the master, has not aroused that enthusiasm which it so richly deserved. I was therefore deeply sensible of the honour which the Managers of the Frederic William Maitland Memorial Fund bestowed upon me by inviting me to lecture on a subject connected with my researches. Indeed, I was fully conscious, not only of this great honour, but also of the very great responsibility which had thereby been placed upon me. For even the remotest connexion with Maitland’s name must produce feelings of awe in the heart of every mortal. Who would not be prouder and, at the same time, feel the burden of responsibility more heavily than he who fascinated by everything that the name of Maitland implies, as yet is able to see only dimly the bright light of his star that is at once motive, aim and reason for his researches? Therefore, when I chose “Medieval Papalism” as the title of these lectures, it was with the avowed intention of attempting a small opening in the dykes of that vast “oceanus medievalis juris” so that the perennial, constructive value of the human plan and purpose in medieval times might be viewed from an angle undeservedly neglected.

These lectures are here presented in a slightly expanded form. They are primarily intended to indicate a hitherto little-trodden tract of medieval political thinking. The quite overpowering mass of untouched material necessitated that these lectures should be introductory in character. It is one of those inexplicable phenomena of modern historiography that these untapped sources seem destined to remain of a mere antiquarian interest. The wealth of canonistic material that confronts us in cathedral and college libraries is one more proof of the richness of medieval intellectual life, and also of the great interest which English scholars, in times gone by, must have had in canonistic studies. Since within the history of political thought the canonists have not yet found the position that is due to them, this book may serve as a very modest and humble

¹Professor Knowles in his inaugural lecture *The Prospects of Medieval Studies*, p. 18.

contribution towards this end. The introductory character compelled me to select, firstly, only the very fundamental and basic aspects of canonistic political thought, and, secondly, those canonists who can be considered typical and representative of the schools. I have tried to give a survey of canonistic political thinking from the second half of the twelfth century down to the end of the fourteenth century. In view of the vast medieval literature, the material presented here is infinitesimal.

I am anxious to express my sincerest thanks to the Managers of the Frederic William Maitland Memorial Fund for the grant they have so generously advanced to meet the necessary expenses of collecting the material. In particular I would like to thank Professor H. A. Hollond, of Trinity College, Professor M. D. Knowles, of Peterhouse, and Professor Helen Cam, formerly of Girton College, for the very kind interest they have taken in my work.

To a number of librarians I am very much indebted for the readiness with which they met my requests. In the first place I am desirous of expressing my sincere thanks to Mr. H. M. Adams, the Librarian of Trinity College, for his patience, tolerance and constant friendly help. My special thanks are due to the Librarian of Durham Cathedral Library, Professor S. L. Greenslade, and the Cathedral Chapter, for the loan of some very valuable MSS.; also to Professor C. Jenkins and Dr. Irene Churchill for the loan of MSS. from the Library of Lambeth Palace. I must furthermore thank Professor G. Le Bras, of the University of Paris, and Mlle Margaret Boulet, of the Bibliothèque Nationale, for procuring photostats of a MS.; to Mlle Boulet I am also indebted for much helpful information. My thanks are also due to Sir Ivor Atkins, the Librarian of Worcester Cathedral Library; Canon W. H. Kynaston, the Librarian of Lincoln Cathedral Library; Chancellor F. Harrison, the Librarian of York Minster Library, for giving me access to their libraries. To the Librarian of Pembroke College, Mr. H. J. Habbakuk, the University Library in Cambridge, the Keeper of MSS. of the University Library of Edinburgh, the officials of the British Museum, the Keeper of MSS. of the National Bibliothek, Vienna, the Librarians of the Badische Landes Bibliothek, Karlsruhe, of the

Laurenziana, Florence, and of the Cistercian Monastery, Zwettl, I offer my thanks for their allowing me to procure photostatic copies of a number of MSS. and tracts.

I am grateful to Professor John Le Patourel and Professor C. R. Cheney for their valuable suggestions. The numerous references to his works in the footnotes make my debt to Professor Stephan Kuttner sufficiently evident.

This preface would be incomplete, were I not to express my affectionate thanks to my wife for the infinite care with which she has assisted me to get the TS. into shape.

W. U.

June, 1948

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ABBREVIATIONS

<i>Com.</i>	= <i>Commentaria.</i>
<i>Comp. I, II, III, IV</i>	= <i>Compilatio Prima, Secunda</i> , etc.
D 4, D 8	=Manuscript in Durham Cathedral Library (D 4: C III 4; D 8: C III 8).
<i>Gl. ord.</i>	= <i>Glossa Ordinaria.</i>
LB	=Manuscript in the Library of Lambeth Palace.
LC	=Manuscript in Lincoln Cathedral Library.
P	=Manuscript in the Library of Pembroke College, Cambridge.
<i>SB</i>	= <i>Sitzungsberichte.</i>
<i>Spec.</i>	= <i>Speculum Judiciale</i> , Guilelmus Durantis, ed. Basle, 1574.
<i>Tractatus</i>	= <i>Tractatus Illustrium Jurisconsultorum</i> , ed. Venice 1584-86.
T	=Manuscript in the Library of Trinity College, Cambridge.
W	=Manuscript (Folio) in Worcester Cathedral Library.
<i>Zeitschrift, kanon. Abt.</i>	= <i>Zeitschrift der Savigny Stiftung für Rechtsgeschichte, Kanonistische Abteilung.</i>

PRINTED EDITIONS FREQUENTLY CITED:

- Alvarus Pelagius, *De Planctu Ecclesiae*, Venice, 1560.
 Antonius de Butrio, *Commentaria in V Libros Decretalium*, Venice, 1578.
 Archdeacon (Guido de Baysio), *Rosarium seu in Decretorum Volumen Commentaria*, Venice, 1577.
 Archdeacon (Guido de Baysio), *Apparatus in Sextum*, Venice, 1503.
 Bartholomaeus Brixiensis, *Glossa Ordinaria in Decretum*, Venice, 1499.

Bartolus, *Commentaria in Codicem et Digestum Vetus*, Lyons, 1523.

Bernardus Parmensis, *Glossa Ordinaria in Decretales*, Venice, 1514.

Cynus, *Commentaria in Codicem et Digestum Vetus*, Francfort, 1578.

Glossa Ordinaria Decretum, 1471.

Glossa Ordinaria (Bernardus Parmensis), *Decretales*, Venice, 1514.

Glossa Ordinaria (Johannes Andreae), *Sextus*, Lyons, 1523.

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Goffredus de Trano, *Summa in Titulos Decretalium*, Venice, 1586.

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Johannes Andreae, *Novella in V Libros Decretalium*, Venice, 1581.

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Johannes Andreae, *Glossa in Clementinas*, Paris, 1503.

Panormitanus, *Commentaria in Decretales*, Lyons, 1512.

Petrus de Ancharano, *Lectura super Sexto Decretalium*, Lyons, 1543.

Zabarella, *Super Decretales*, Cologne, 1602.

In Clementinas Commentaria, Cologne, 1602.

CHAPTER I

CANONISTS AND CANONISTIC SCHOLARSHIP

“THE ideal of the golden age of the canonists,” said the late A. L. Smith in his Ford lectures, “was to make a working reality of the kingdom of God upon earth; to express the laws of that kingdom in a coherent, all-embracing code, to enforce that code upon the still half-heathen kingdoms of this world. An ideal truly, and predestined to fail, but a noble ideal”.¹ This passage succinctly and concisely sums up the literary efforts of several generations of canonists and other jurists who took up their pens for the promotion of papalist aims. This of course is a generalization, but it is certainly true that the history of the Middle Ages, ever since Hildebrand ascended to the headship of the Western Church and re-orientated its policy by his characteristic strong-mindedness, exhibits the traits of two irreconcilable ideologies, commonly epitomized in “empire versus papacy”. Whether imperialist or papalist—the two terms are not always identical with civilian and canonist—the external policy of emperor and pope was but the concrete manifestation of an ideological contest that was fought out behind the curtain of world-shaking events. What we see in the actions of the Innocents, Gregories, Bonifaces and other notable ecclesiastical rulers, was but the execution of a policy, insistently, sometimes persuasively, not seldom extravagantly, propounded by the teachers and interpreters of the canon law. Perhaps in no other age of the history of mankind did the law play such a paramount role as in the centuries after Gregory VII. For the whole struggle between emperor and pope centred in the law.

It is perhaps symptomatic of the present state of historiography that this basis of the contest, indeed its *conditio sine qua non*, is a topic upon which far too little energy is spent. To take only a very recent example, the Carlyles in their great six-volumed work devoted only a negligible space to the canonistic teachings. Indeed, contemporary presentations of medieval

¹ *Church and State in the Middle Ages*, p. 51.

political thought are apt to be very misleading. The works of medieval philosophers, theologians and publicists are given disproportionate prominence, and apart from some stereotyped, casual references to Innocent IV and Hostiensis, we hear nothing of those who—unlike the philosophers—really created a political theory and made politics. For what the theologians and their colleagues said, was but a residuum of canonistic theory: canonistic political thought had long been formulated and had clearly taken on a definite pattern, when the publicists, philosophers and theologians entered the arena of political controversy. But whilst modern theology and philosophy in some respects shows a certain kinship to its medieval predecessor, the canonists left no heirs.

The understanding and adequate comprehension of the centuries-long contest presupposes the knowledge of the ideas which were formulated somewhat inconspicuously in the legal laboratories of the canonists, and which exhibited themselves so conspicuously in official papal policy. It may be stated with confidence that no political action can be fully understood without prior understanding of the law which itself merely crystallizes the true state of mind of its authors. Popes as statesmen had to reckon with a given set of circumstances and hence had to adjust themselves to concrete reality: whilst the canonists merrily, and sometimes irresponsibly, put forward their claims unhampered by considerations of expediency, practical wisdom or diplomacy, working in the serene atmosphere of an august theory. Hence we frequently observe a gulf between the theoretical claim of the canonists and the practical execution of papal policy. To be sure, whenever papal policy lagged behind the theoretical design of the canonists, it was not from opposition to canonistic doctrine, but from considerations of practical politics. In fact, the secret of the—at least temporary—success of the medieval papacy lay in the ingenious adaptation and accommodation of canonistic theory to the temper of the time.¹

The popes who set their seal to the history of the Middle

¹ See the very pertinent remarks of Fritz Kern, *Gottesgnadentum und Widerstandsrecht*, p. 233, note 429: "Das Eigentümliche der Priestermacht ist eben eine der Zeitlage sich anpassende Verknüpfung unverjährbarer Ansprüche und Theorien mit dem politisch Erreichbaren. Auf der Kunst dieser Verknüpfung beruht der Erfolg der päpstlichen Interventionsansprüche von Gregor VII bis auf Bonifaz VIII."

Ages were all canonists of great repute; and the very few who were not, were surrounded by a circle of canonists whose advice was as decisive as the sentence of the pope himself. Thus, decrees of the popes were no mere orders to regulate the conduct of the clergy and so forth: they were far more, for they bore the imprint of the sanctity of the law. Alexander III acquired great fame as a canonist when he was known as Magister Rolandus; shortly after him Magister Albertus, also of the Bolognese school, ascended to the papal throne as Gregory VIII.¹ The great glossator, Huguccio, was the influential teacher of Innocent III, who himself proved an outstanding canonist and worthy pupil of his great master. And we should note in parenthesis here that this pope first promulgated his own collection of decretals (the *Compilatio Tertia*) not as law, as it would have befitted a supreme legislator, but as so-called directives to the canonists at Bologna. "I send them to you," said Innocent III addressing the professors in Bologna, "that you may be able to apply them when need arises, in court and in the lecture hall."² We witness a very similar procedure on the part of his successor Honorius III, when he issued the *Compilatio Quinta* in 1226³ to Master Tancred at Bologna and to other professors⁴ urging them to use these decretals "tam in judiciis quam in scholis".⁵ No words need be wasted about the canonistic

¹ On him see Professor S. Kuttner, *Repertorium der Kanonistik*, pp. 7, 10, 18, 47, and J. F. v. Schulte, "Die Glosse zum Dekret Gratians" in *Denkschriften der kaiserl. Akademie d. Wissenschaften* (phil. hist. Classe), vol. xxi, ii. pp. 37, 51.

² Potthast, *Regesta Pontificum Romanorum*, No. 4157. The wording of Innocent's bull transmitting this first official collection of decretals is strangely reminiscent of the wording used by Justinian in promulgating his *Codex*, see the constitution "Cordi nobis", § 2. H. Kantorowicz deduces from this not unintended similarity that thereby Innocent III desired to appear a papal Justinian, see "Das Principium Decretalium des Johannes de Deo" in *Zeitschrift, kanon. Abt.*, vol. xii, p. 429. It is noteworthy that the canonistic background of both Alexander III and Innocent III is quite neglected in the great work of J. Haller, *Das Papsttum, Idee und Wirklichkeit*, vol. iii, pp. 138 ff., 280 ff.

³ Potthast, No. 7684. Kuttner, op. cit., p. 382, fixed the date of the promulgation as 2 May 1226.

⁴ F. Savigny, *Geschichte des Römischen Rechts im Mittelalter*, vol. v., p. 118, note f, and A. Friedberg, *Quinque Compilationes Antiquae*, p. XXXV.

⁵ See Potthast, No. 7684. The edition of the Vienna MS. 2077 by J. A. Riegger was not accessible to me. Gregory IX, Boniface VIII and Clement V followed these examples: they addressed their collections to the masters and students of Bologna.

scholarship of Gregory IX—the promulgator of the *Decretales*,¹ and who, as a former judge of appeal in the Roman curia, will be remembered for favouring the monks of Canterbury against their archbishops.² Throughout the Middle Ages Innocent IV as Sinibaldus Fliscus boasted of a renown equalled only by that of Bartolus of Sassoferrato. Whatever view one may take of Boniface VIII's policy, it is futile to cast doubt upon his qualities as a canonist, qualities manifesting themselves in his collection of the *Liber Sextus*. All these popes belonged to the thirteenth century—indeed a remarkable century that could pride itself upon this galaxy of rulers, themselves acknowledged authorities of the law. The fourteenth century marred though it was by the Avignonese adventure of the popes, also presents us with personalities who ranked high in the science of canon law. We need only refer to Clement V as the initiator of the collection of decretals known as *Clementinae*, and John XXII whose own collection, though no part of the *Corpus Juris Canonici*, unmistakably betrays the sure touch of the lawyer. Gregory XI, as he himself was proud of declaring publicly, had been a devoted pupil of the “lumen juris”, that is, Baldus de Ubaldis. Aeneas Sylvius, better known perhaps as Pius II, left an indelible imprint upon political science which to him, as to so many of his predecessors, was but a branch of canonistic scholarship.

Next to these illustrious personages who, for good or evil, changed the face of Europe during their often astonishingly brief reigns, we must refer to the many cardinals and other high ecclesiastics, by whom the popes were surrounded and decisively influenced. Without these princes of the Church a medieval canonistic scholarship cannot be envisaged. And a number of them were very strong candidates for the pontificate. Henricus de Segusia, better known by his function as cardinal-bishop of Ostia (Hostiensis), was only prevented by illness from filling the vacant chair after Clement IV's death; perhaps the future relations between England and the papacy might have taken a different turn, if this canonist, the “*juris utriusque monarcha*”, at one time the paid adviser and ambassador of King Henry

¹ For contemporary opinions on the collection and its value for canonistic scholarship, see A. Theiner, *Commentatio de Collectionibus et Decretalium Codice*, 1829, pp. 35–8.

² See *Epistolae Cantuarienses*, (R.S.), pp. 471–2, 476–7, 506–7.

III,¹ had become the occupant of the bishopric of Rome. Premature death prevented Cardinal Zabarella from ascending to the height of ecclesiastical power at a very critical time, and these examples could easily be multiplied. In passing we may mention the famous collectors of canons, Cardinal Deusdedit and Anselm of Lucca. Whilst little is known about the life of the former,² the latter's biography is preserved:³ a nephew of Alexander II⁴ he was particularly busy in North Italy during the great political conflicts at the time of Gregory VII. Then there was Magister Bernardus, the archdeacon of Compostella and professor at Bologna, who acquired fame as the collector of Innocentian decretals (1208) which came to be known as the *Collectio Romana* until superseded by Innocent's official collection, the already mentioned *Compilatio Tertia* (1210);⁵ Cardinal Laborans, an able, though little known, canonist;⁶ the Spanish bishop Laurentius whose *Apparatus* (written between 1210 and 1215) gained such universal acceptance, as is shown by the very frequent references to him in later works; the redactor of the official collection of decretals, Cardinal Petrus Beneventanus Collivaccinus;⁷ the Bishop of Osma in

¹ On the somewhat mysterious circumstances of his departure from England, see Matthew Paris, *Chronica Majora*, vol. iv, pp. 33, 286, 351, 353, and Maitland, *Roman Canon Law in the Church of England*, p. 115. It is mere guessing to say that Hostiensis taught in an English school, cf. Schulte, *Quellen*, vol. ii, p. 124, P & M, vol. i, p. 122, and the late Kantorowicz, *Studies in the Glossators of Roman Law*, p. 91; see also Gaines Post, "A Romano-Canonical Maxim . . . in Bracton", in *Traditio*, vol. iv, (1946), p. 213.

² See W. Glanvell, *Die Kanonessammlung des Kardinals Deusdedit*, introduction, and P. Fournier and G. Le Bras, *Histoire des collections canoniques*, vol. ii, pp. 36 ff.

³ See *Mon. Germ. Hist. (Scriptores)*, tom. xii, pp. 1-35.

⁴ A. Fliche, *La Réforme Gregorienne et la Réconquête Chrétienne*, p. 185.

⁵ See especially H. Singer, "Die Dekretalensammlung des Bernardus Compostellanus Antiquus" in *SB d. kaiserl. Akad. d. Wiss. (phil. hist. Cl.)*, vol. clxxi, ii, pp. 1 ff., and Professor Kuttner, "Bernardus Compostellanus Antiquus" in *Traditio*, vol. i (1943), pp. 277 f. This Bernardus, should not of course be confused with his younger namesake who was a chaplain of Innocent IV, see Johannes Andreae, *Additio in Speculum*, III De inquisitione, § 1, and Professor G. Barraclough in *EHR*, vol. xxxix (1934), pp. 487-94, *idem*, in *Dictionnaire de Droit Canonique*, vol. ii, pp. 777 f.

⁶ He was made a cardinal in 1173, see Eubel, *Hierarchia Catholica*, tom. i, p. 8, and S. Kuttner, *Repertorium*, p. 268. Cf. also A. Theiner, *Disquisitiones criticae in . . . collectiones*, 1836, pp. 401 ff.

⁷ See F. Heyer, "Über Petrus Collivaccinus" in *Zeitschrift, kanon. Abt.*, vol. vi (1916), pp. 395 ff.

Spain, Melendus, at one time teacher of canon law at Bologna and later at Vicenza (about 1209), unequalled in his knowledge "in utroque jure";¹ Raymundus de Pennafort—"in utroque jure peritissimus"²—the compiler of the Gregorian collection. We may further mention Goffredus de Trano who became famous for the first *Summa* written on Gregory's *Decretals*; Richardus de Senis, the vice-chancellor of the Roman curia, who was one of the redactors of the *Liber Sextus*;³ Johannes Monachus, a creation of the unhappy Celestine V, who was the first glossator of his later master's collection, and at the same time an active, though not always blameless politician and intermediary; the subtle, though not prolific Zenzelinus de Cassanis. Petrus Bertrandi, another luminary in the ranks of famous cardinals, wrote a tract whose importance unfortunately has not so far received due recognition.⁴

But we would create an entirely false impression if the idea gained ground that all the canonists were ecclesiastics. It is of course true that the overwhelming majority belonged to the clerical fold, and yet there was an influential minority of lay-

¹ See *infra* p. 15.

² As Ptolomy of Lucca styled him, see *Mon. Germ. Hist., Scriptores*, n.s. vol. viii, "Die Annalen des Tholomeus von Lucca", ed. B. Schmeidler, p. 122.

³ See the decree of promulgation by Boniface VIII, "Sacrosanctae"; cf. also Schulte, *Quellen*, vol. ii, p. 35. Richard was professor at Naples, cf. H. Denifle, *Die Universitäten des Mittelalters*, vol. i, p. 436, and E. M. Meijers, *Juris interpretes saeculi XIII*, pp. 217 ff. He received the cardinal's hat in 1298, see Eubel, *Hierarchia Cathol.*, tom. i, p. 13. See also H. Finke, *Aus den Tagen Bonifaz' VIII*, p. 106, note 1, where the initium of the Munich copy of Richard's *Casus Sexti Decretalium* is reproduced. He died, according to Eubel, *Hierarchia Catholica*, tom. i, p. 13, 10 February 1314, but according to Chevalier, 26 February 1313. The former date seems to be the correct one, as a copy of his last will dated 27 January 1314 proves, see Professor Kuttner, "Bernardus Compustellanus" in *Traditio*, vol. i, p. 334, note 10. Would it be possible that Richard glossed some decretals of Clement V? The *Apparatus* on the *Clementinae* in LC 151, fol. 21-67 verso (hitherto unknown) shows isolated glosses which bear the siglum "rica".

⁴ Apart from those mentioned in the text, the following canonists were also cardinals: Pelagius (whose siglum "p" frequently occurs in the *Apparatus* on *Comp. I* (LB 105)), Berengarius, Guilelmus de Mandagoto, Gabriel Capodilista, Panormitanus, Johannes Turrecremata. The following were bishops: Melendus, Jacobus de Albenga, Vincentius, the Speculator (Guilelmus Durantis), Egidius Mandalbertus, Guido de Terrena, Petrus Boherius, etc., etc. The episcopal canonists increased rapidly towards the end of the fourteenth century. The canonists who were archdeacons, canons, presbyters, papal chaplains, and so forth, are too numerous to be counted.

men. That is not to say that they were surpassed by their clerical brethren in the attempt to exalt the pope's position; as regards their political views, they lagged in no way behind the ecclesiastics. The lay element was almost entirely absent in the twelfth century; it slowly emerged in the thirteenth century and was firmly established in the fourteenth, especially after it was possible to graduate in both the civil and canon laws. Egidius Fuscararius, Dynus de Muxellano and Martinus de Fano may be taken as outstanding lay examples of the thirteenth century, whilst the fourteenth century possessed lay canonists who became most influential. Johannes Andreae, commonly referred to as "the fount and trumpet of the canon law",² Petrus de Ancharano, Johannes de Lignano, Antonius de Butrio, Johannes ab Imola—these were only a few of the better known personalities: Caspar Calderinus was as fertile in the field of canonistic scholarship as in the family sphere: he was survived by not less than eleven children, whilst his elder namesake Johannes Calderinus was married three times.

With all deference one may be justified in advancing the opinion—assuredly not novel, though in constant need of repetition—that medieval history cannot be fully grasped, if the academic activity of popes and cardinals is not taken into account. These personages were first and foremost canonists. Can one wonder that the policy of these popes who shaped the destiny of the empire, nay of Europe itself, was merely the translation of their own canonist teachings into the world of practical politics? Can one wonder, we must furthermore ask, that the interpretation of the canonist later became the final and absolute word of the vicar of God (the "vicarius Dei") as the popes were wont to style themselves?³ Indeed, the over-

¹ In order to honour the memory of this canonist (who died 1289) the Bolognese statute which forbade the wearing of scarlet robes at funerals of the doctors of canon law, was cancelled; until then scarlet robes were allowed only at funerals of the doctors of civil law, see Schulte, *Quellen*, vol. ii, p. 140.

² Or, as a contemporary chronicler called him when lamenting his untimely death during the plague: "egregius doctor juris canonici", "Die Chronik Heinrichs Taube von Selbach" in *Mon. Germ. Hist., Scriptores*, ed. H. Bresslau, n.s., vol. i, p. 59.

³ A. Harnack, "Christus praesens—Vicarius Christi" in *SB d. preussischen Akademie d. Wissenschaften*, vol. xxxiv (1927), pp. 415-46, shows that in early medieval times this appellation was used for kings (at pp. 438-41). On the *rex-sacerdos* conception of the king especially under the Ottonians, in fact down to

whelming majority of canons embodied in the great collections came from the pen of popes who were fully-fledged canonists. Any attempt to understand medieval history without registering the theories of the canonists and of canon law itself, is doomed to be fruitless. It would be no less futile than trying to understand the French revolution without first probing its literary sources or trying to comprehend the policy of recent dictatorial régimes without a prior investigation of their ideological basis. Even at the risk of being tedious one must emphasize that the issue of empire versus papacy was a legal contest: the whole quarrel was fought in the arena of the law. When we speak of a medieval lawyer we should not compare the modern lawyer with his medieval ancestor. The terms law and lawyer comprised then a far larger field than they do now: law was a collective name for those branches of scholarship now rather loosely termed social sciences. And political science was wholly indistinguishable from legal science: politics and law were interchangeable terms in medieval days. Empire versus papacy was a constitutional quarrel: the canonists forged the weapons for the papacy, the legists or civilians for the empire. To expose the fundamental ideas underlying this contest was the business of the canonists (or legists), and our understanding of medieval history should benefit from an inquiry into these sources.

For the reconstruction of the canonistic political views—the very background and source of papal politics—cannot fail to provide a contribution to the history of diplomacy in the international government of Western Europe. If by history of diplomacy is understood an account, not only of the progress of international intercourse, but also—and this seems perhaps still more important and pertinent—the exposition of the motives and ideas underlying international actions, a reconstruction of canonistic political theory must appear an indispensable requirement to him who is anxious to understand the often complicated and sometimes apparently meaningless sequence of events. The examination of the genesis of papal political activity is bound to lead us into the canonistic camp; and in particular to the canon law books. A good deal of what nowadays constitutes the subject-matter in the so-called coloured

Henry II (1024), see G. Barraclough, *The Origins of Modern Germany*, 2nd ed., p. 33: "Whereas the bishops were merely the representatives of Christ, the king was the vicar of God the Father himself."