



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



Source: Niccolò de Tudeschi, *Lectura super V libris decretalium* (Basel, 1477).

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 be-

coming 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.

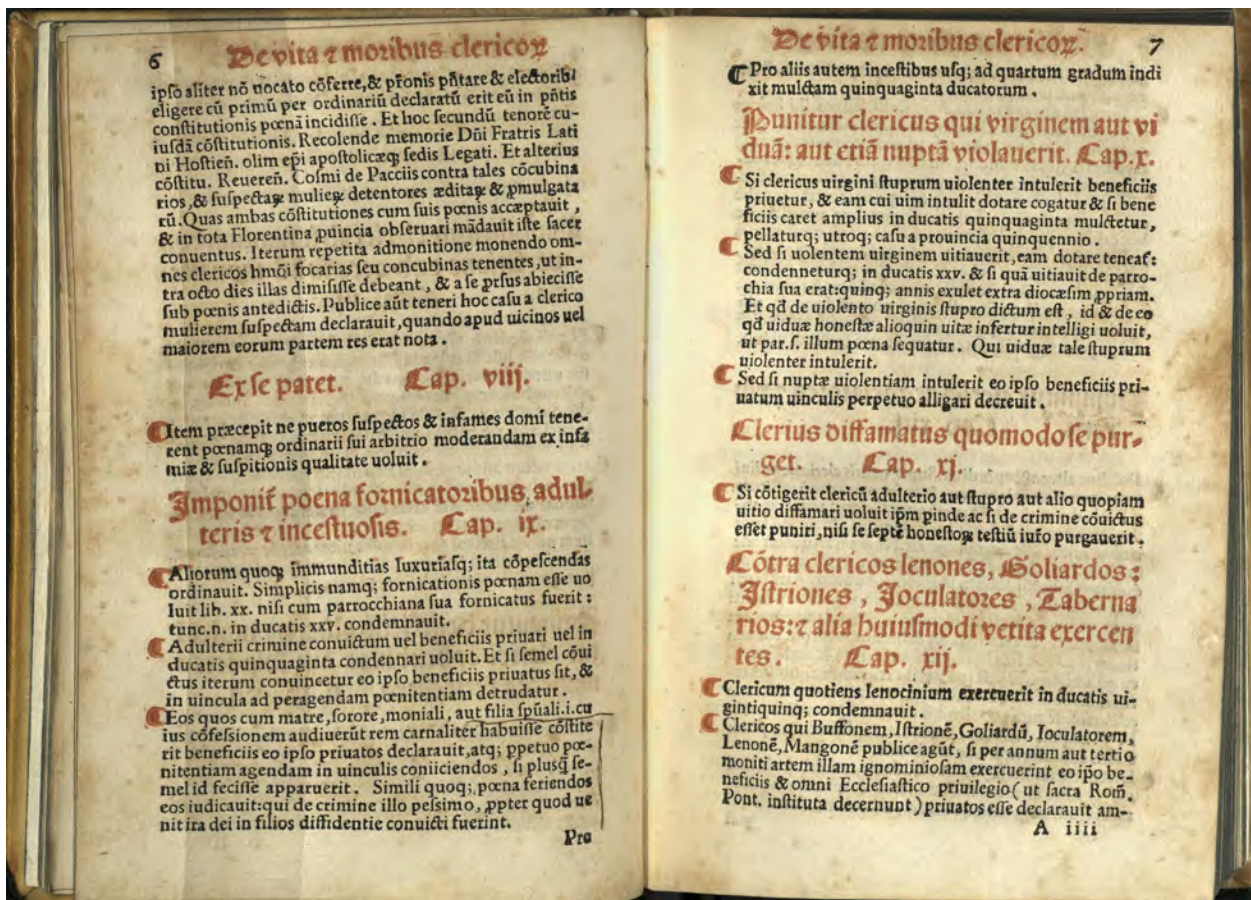
**ANDERS WINROTH
MICHAEL WIDENER**



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*.

***Statuta Concilii Florentini.* Florence: Bartolomeo Sermartelli, 1564.**

corrigendus qui sua dicta aut malefacta ecclesie subicit ac nouit emendanda. est enim qui factum emendat subtiliter laudabilior eoq; illud primus adiuuenit



De origine sacerdotij & imperij.
Habent autem Sacerdotium & Imperium vnū principiu vn de pce. Terunt. x. di. c. Constitutiones in glo. Nam in veteri testamento ante legem sacerdotium & imperium primogenito cōpetebant. Sed israel transtulit imperium a Rubē primogenito suo ad tribū iuda. vt habetur Gen. xlix. Et sacerdotiū trāslatum est ad tribū Leui. Quādo populus israel fuit in egypto: vt habetur. j. Regū. ij. De tribu autē iuda ortus est dominus noster Iesus christus & ad eadē ipse transtulit sacerdotium: vt habetur Hebre. v. & extra de cōsti. c. Trāslato sacerdotio. Ideoq; ipse christus vtraq; potestate vsus est. x. di. c. Quoniam idem Quedam enim fecit vt imperator: Cum vēdentes & ementes de templo flagello eiecit & cathedras vendentium & ementium colūbas euertit & nūmulariorum es effudit sui precepti auctoritate denūcians & dicens. Nolite facere domum patris mei domum negotiationis. i. q. iij. Ex multis. Quedam autem fecit vt sacerdos. Quando se obtulit hostiam discipulis dicens: Hoc est corpus meum. Ipse enim sacerdos dei patris dicitur filius dei secundum humanitatem In qua se pro nobis acceptabile sacrificium obtulit deo patri vt sit ipse sacerdos qui est sacrificium de conse. di. ij. c. Sacerdos. Sed licet christus vtraq; sit vsus potestate. Ipsas tamen distinctas esse voluit quatenus spiritualis a carnalibus distaret: In cursibus & deo militans minime se negocijs secularibus implicaret. Ac vicissim ille non rebus diuinis presidere
 bij.

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.

Johannes Hug. *Quadruium Ecclesie*. Paris: Guillaume Eustace, 1509.

Sedem, nosque ipsos amore sese invicem osculantibus, perpetua quoque iustitia, & pax tantopere utrique profutura sese invicem osculentur, & firmissimo constant. Interim Majestati tui Apostolicam benedictionem amantissimè impertimur. Datum Romæ apud Sanctam Mariam Majorem sub Annulo Piscatoris die decima Septembris millesimo septingentesimo quinquagesimo tertio. Pontificatus nostri anno decimoquarto. = Cajetanus Amatus. = Loco ✠ Annuli Piscatoris.



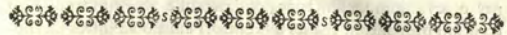
BULLA ALEXANDRI VI
in qua concedit Regibus Catholicis Insulas Novi Orbis repertas, & reperendas. Data Romæ quarto Nonas Maij 1493.

ALEXANDER EPISCOPUS,
Servus Servorum Dei.

CHARISSIMO IN CHRISTO FILIO FERDINANDO REGI & charissima in Christo filia Elisabeth Regina Castellæ, Legionis, Aragonum, Siciliæ, & Granatæ illustribus, salutem, & Apostolicam benedictionem.

NUM. IV. **I**nter cetera Divinæ Majestati beneplacita opera, & cordis nostri desiderabilia, illud profectò potissimum extitit, ut Fides Catholica, Christiana Religio, nostris præsertim temporibus exaltetur, ac ubilibet amplietur, & dilatetur, animarumque salus procuretur, ac barbaricæ nationes deprimantur, & ad Fidem ipsam reducantur. Unde cum ad hanc sacram Petri Sedem Divina favente clementia (meritis licet imparibus) evec-ti fuerimus, cognoscentes vos tamquam veros Catholicos Reges, & Principes, quales semper fuisse novimus, & à vobis præclare gesta toti penè jam Orbi notissima demonstrant, nedum id

mismo, se enlacen tambien mutuamente, y subsistan firmisimas la perpetua justicia, y la paz, que han de ser tan utiles à ambas Partes. Entre tanto damos à tu Magestad amantissimamente la Bendicion Apostolica. Dada en Roma en Santa Maria la Mayor, baxo del Anillo del Pescador, el dia diez de Septiembre de mil setecientos y cinquenta y tres. De nuestro Pontificado año decimo quarto. = Cayetano Amato. = Lugar ✠ del Anillo del Pescador.



BULLA DE ALEXANDRO VI
en que concede à los Señores Reyes Catholicos las Islas halladas, ò que se hallaren en las Indias. Su data en Roma à 4. de Mayo de 1493.

ALEXANDRO VI. OBISPO,
Siervo de los Siervos de Dios.

A LOS ILUSTRES CHARISSIMO EN CHRISTO HIJOS Fernando, è Isabel, Rey, y Reyna de Castilla, Leon, Aragon, Sicilia, y Granada, salud, y bendicion Apostolica.

Entre las demás obras agradables à la Divina Magestad, y dignas del deseo de nuestro corazon, à la verdad tiene el primer lugar, que la Fè Catholica, y Religion Christiana se ensalce, con especialidad en nuestros tiempos, y se amplie, y dilate por todas partes, procurando la salud de las Almas, que se destruyan las Barbaras Naciones, y se reduzcan à la misma Fè: Por lo qual, habiendo sido exaltado, favoreciendonos la Clemencia Divina, (aunque sin meritos) à esta Sagrada Silla de San Pedro, conociendos como verdaderos Reyes Catholicos, y Principes, segun que siempre hemos conocido lo sois, y lo demuestran vuestras claras hazañas, notorias à

Ccc 2

qua-

Pope Alexander VI (the Borgias 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 Joaquín de Ribadeneyra Barrientos. Manual compendio de el regio patronato indiano. Madrid: Antonio Marin, 1755.

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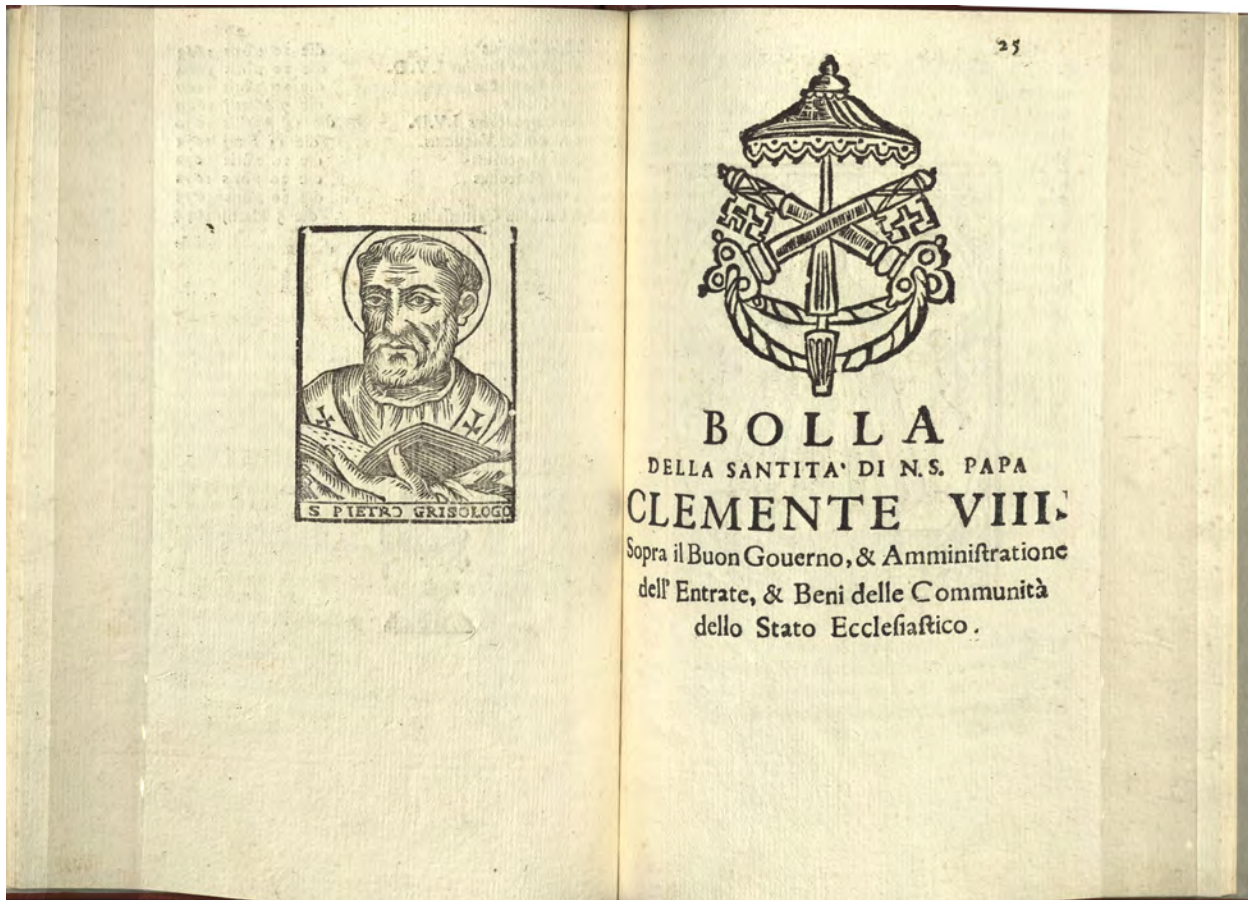
Bulla S. D. N. Pij Papae V.
super prohibitione agitationis Taurorum & Fera-
rum, & annullatione votorum & iuramen-
torum, super eisdem pro tempore
interpositorum.



R O M A E
Apud hæredes Antonii Bladi Impres. Camerales
M. D. L X V I I.

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.

Catholic Church. *Bulla S.D.N. Pij Papae V. super prohibitione agitationis taurorum & ferarum.* Rome: Heirs of Antonio Blado, 1567.



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 città d'Imola*. Imola: Giacinto Massa, 1674.

TAVOLA

Delle Ritensioni Mensuali.

	Colonnello - - -	Sc.	1 09
	Capo Squadrone - -		- 81
	Capitano - - -		- 46
	Tenente - - -		- 31
	Sottotenente - -		- 24
Maresciallo d'Allog.	a Cavallo - - -		- 06
	a Piedi - - -		- 04½
Brigadiete	a Cavallo - - -		- 05½
	a Piedi - - -		- 03½
Carabiniere	a Cavallo - - -		- 03½
	a Piedi - - -		- 03

Dalla Segreteria di Stato li 22. Ottobre 1816.

E. CARD. CONSALVI.

SENTIMENTI MORALI

E BREVI ISTRUZIONI

PER UN

CARABINIERE

ROMA MDCCCXVI.

Presso Vincenzo Poggioli Stampatore
della Rey. Cam. Apost.

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 *Colonnello* (colonel) to the *Piedi* (patrolling policemen) in the pope's capital. The second work bound in the same volume provides moral instruction, reminding po-

lice officers that they are patrolling the sacred center of the Catholic world.

Papal States. *Regolamento sulla istituzione del corpo dei carabinieri pontifici*. Rome: Vincenzo Poggioli, 1816. [With] *Sentimenti morali e brevi istruzioni per un carabiniere*. Rome, 1816.

ex vero vidisse, neque tamen ille ad primam
verbi originem et potestatem penetrauit, quam
deinde exposituri sumus, si prius VESTRII
Romani iurisperiti, qui Seculo XVI. vixit
verba attulerimus. *Rotae auditores*, inquit
vulgo appellantur propterea, quod, ut auguror, in et-
hem sedentes controuersas rotant atque examinant.
Nihil autem verius esse puto, quam Germanos
veteres de re quadam consultaturos, more etiam
Iudaeis in Synedrio visitato et fere naturali, in
circulum conuoluisse, qui nostra in lingua *Rad* di-
citur. Miror id WACHTERVM et HALTAV-
SIVM latuisse, qui in suis Glossariis alios verbi
Rathen fontes quaerunt. Sed res plane mani-
festa est. Nempe cum circulum et orbem quem-
libet maiores nostri, ut diximus, rotam appella-
uerint, facile intelligitur, cur *Rad* confectum in
conciliis denotet; quod verbum, mutata deinde
orthographia, nunc *Rath* et *Rathen* ex ignorantia
scribimus. Adhuc hodie vulgari sermone dicere
solemus: *Zu Rade geben*, quae locutio proprie
significat: in rotam et ad circulum ire, metony-
mice autem *confulere*. Ut vero primam Gothi,
postea Longobardi suam linguam, suas consuetu-
dines et iura apportarunt in Italiam, imo vestium
formas



CAROLI FERD. HOMMELII
IVRISPRVDENTIA
NUMISMATIBVS

ILLVSTRATA

NEC NON

SIGILLIS GEMMIS

ALIISQVE

PICTVRIS VETVSTIS

VARIE EXORNATA

LIBRI DVO

LIPSIAE

APVD IOANNEM WENDLERVM

MDCCLXIII.

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.

Karl Ferdinand Hommel.
*Iurisprudentia numismatibus
illustrata.* Leipzig: Ioannes
Wendler, 1763.

Decisiones rote nove et Antique.



Decisiones rote nove et Antique cum additionibus casibus dubijs et regulis cancellarie apostolice. diligentissime emendate.

Veniuntur Lugduni a Stephano Gueynard bibliopola et ciue eiusdem civitatis

YALE LAW LIBRARY

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.

Catholic Church. Rota Romana.
Decisiones Rote nove antique.
Lyon: Stephano Gueynard, 1509.

Processus sathane

Spurellimi Sathane litigationis ifernalisq; nequitie procuratoris contra genus humanum. Cuiam domino nostro Iesu xpo agitate Beata virgine Maria eius matre pro nobis aduocata comparente liber feliciter incipit.

Ostis fratres charissimi qliter Sathanas subintrans viscera Iude procurauit q; ipse Judas magistrū suūz pphetam qui filium dei se faciebat morti tradi faceret. Postq; etiam qualiter genus humanū ab exordio mundi fuit dānatum per inobedentiā Eue z postea fuit saluatū per Mariam. Nam mulier damnauit scz Eua. et mulier saluauit scz virgo Maria. Cogitauit itaq; nequitia ifernalis intra se conuocata ei astutia diabolice fraudis quomodo z qualiter posset redigere genus humanū i uam pristinam seruitutem z intuens nullam nationē seu naturā fraudulentōez existerē muliere suggessit vt orī Pilati suggere pylato vt impediret mortē illi. **U**nde legit in passione illam dixisse pylato. Quid tibi z iusto illi. multa em̄ passa sum. videbāt Iesum in finita miracula facientem. dicebant hic est enim filius dei. cum aurem esuriebant contrarium dicebant. vnde quandoq; dicebāt non expedit vt iste moriatur. tūz em̄ dicebant prophete q; oportet vnūz mori pro populo q; descendat ad inferos z porte inferni aduersus eum non preualebunt. z extrahet captiuos quare non expedit ipsum mori. quia solatium est miseris socios habere pernarum. vnde in hoc dubio existens pylatus dixit. Qd scripsi scripsi. et ita Iesus christus fuit crucifixus mortuus z sepultus. Demum cogitauit nequitia inferna

Contra genus humanum

lis longo malitioso z ponderoso consilio q; procuratorem mitteret ad presentiam Iesu christi bene instructū ad petendū q; genus humanū in eorum pristinam redigeret seruitutem. Nec miremini si dicimus q; ad presentiam superioris potest accedere. quia loquimur more humano. aut quia sicut scitis vbicunq; sit demō principaliter potencialiter cruciatur. quia eius pena ei offēbus sicut lepra laproso est infixa. vltinea tinea. aut sicut rusticus vel iumentū non releuatur pena portādo pondus ferreum in aula regia. sic demō vbicunq; a sua pena non releuatur.

Procurator igitur legitime constitutus astutus et versutus ad presentiam xpi accedens dixit. Creator es li z terre ego sum quidam damnatus procurator totius nequitie infernalis coram vobis comparens ad agendum contra genus humanū. Placeat vobis ad informationem vestram aliquantulū me audire. Dixit em̄ dñs ei. audias me dicere. Respondit demon. Non debes dñe sed ad informationē vestram aliq; vobis explanabo si placet. Dixit dñs. tu scis q; materna causarū nobis veraci affectione pandunt quare a te non decet informari recolimus enim dum mundum perambulauimus qualiter nos informare volebas dum dixisti. Sic vt lapides isti panes fiant.

Dixisti quoq; q; innūerabilia nobis dares si te adoremus. Demon dixit. tu es iusticia z iusticiam postulo. peto genus humanum vocari coram te ad certū diē responsurū mihi procuratori nequitie infernalis z ecce procuratorium meū. quo inspecto per dñm cuius careret oī calūnia dixit dominus de die agat. Respondit demō qd dixit crastinam. respondit dominus. tu nosti experientiā

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 iure [with] Processus Sathane infernalis contra genus humanum. Cologne: Cornelius de Zyrickzee, 1505.

Summula Raymundi

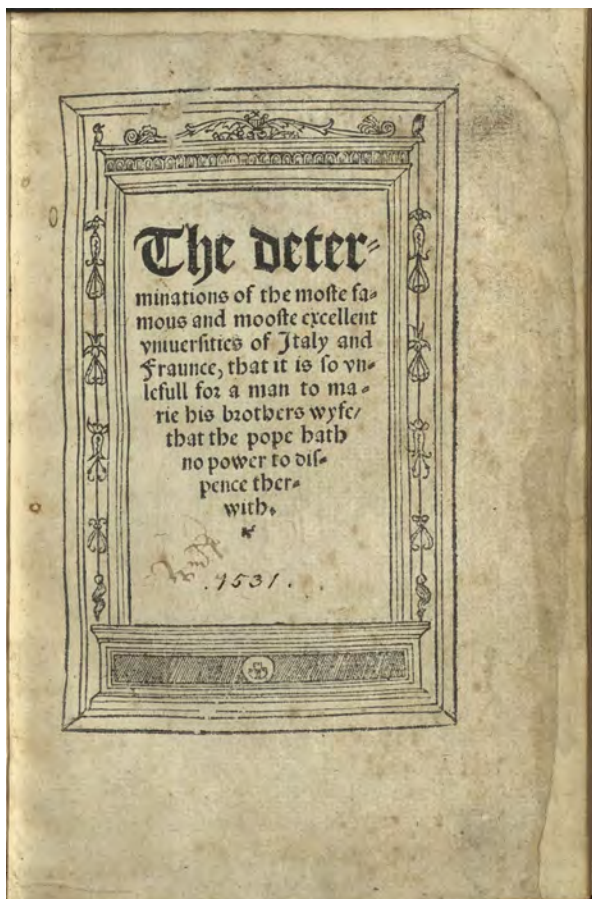
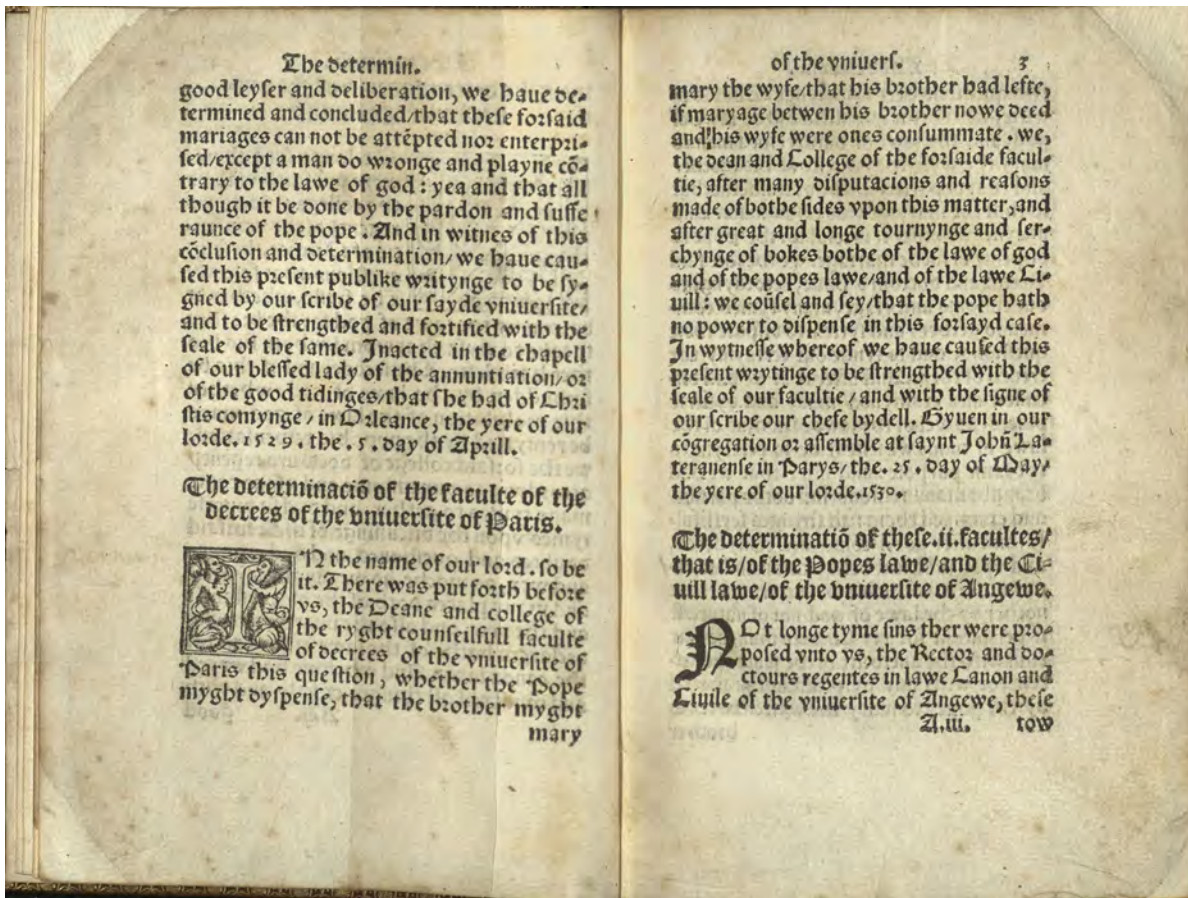
vsurpator: sacraꝝ rex vel matris
Sacrilegus: patris percussor: vel sodomita'
i. ep̄m i. adibis i. fuisti incēdiari' sacri loct
Pontificem queras: papam si miseris ignem
i. lesisti i. clericū i. simoniae
Si percussisti clericum: simonve fuisti
i. lras aplicas ad papā
Vel si falsasti bullam pape simul ibis
sup. hō i. fetum opprimit mulier
Qui partum suffocat: aut que neglexerit eius
i. ppriū fructū sup. talis infans ex negligentia
Infantem mater: quocunq; modo moriatu r
allicuius cū violētia sup. p. plem
Si pater aut mater violenter leditur: aut si
sup. hō pctm extra sp̄m i. traditionē
Qui brutale nefas facit: aut in perditionem
i. herum i. occidit
Si propriū dominū perimit: vel in ecclesia qui
i. q̄ facit sacrilegiū sup. in ecclia
Sacra ledit grauiter: vel qui mechatur z ille
sup. ppriā sanguineā i. carnalit' recognoscit
Qui matrem: cognatam polluit: atq; sororem
i. ep̄i i. prāte pctā talia egerūt
Presulis arbitrium licet occulte subeant hi
sup. aliqūe ppriū p̄sbyterū inuenire
Si confessoꝝem preter te possit habere
i. pctā p̄sbytero i. sanguinea v'l amassa
Non sua probra tibi tua confiteatur amica
sup. qd̄ dicrū ē i. ministrādis
De sacramentis idem intellige dandis

Hic autor ponit alios casus spectātes ad papā vel ep̄m dicēs q̄ qdam
sūt crimina q̄b se null' cleric' simplex hz itromittere: s; spectāt ad papā
vel ep̄m. Quoz p̄mū ē: faciēs incestū. scdm̄: deflorās p̄ginē aliquā nō p̄r
absoluti a simplici sacerdote. Itē nec homicida nec sacrilegus: nec p̄cussor
p̄ris v'l m̄ris: nec sodomita: nec p̄cutiēs cleꝝ: nec falsari' q̄ falsificat bullas
vel sigillū pape: nec mulier q̄ suffocat ppriū p̄uez: nec iste q̄ cognouit car
nalt' suā sanguineā. ocs tales tā enumerati nō p̄nt absoluti a simplici sa
cerdote: sed debēt mitti ad papā vel ep̄m. Et sciēdū q̄ illa metra (Nō sua
probra zc.) s̄m aliqs stant in fine. sic q̄ autor: innuit tales doctriā p̄ ea q̄
null' debz audire p̄fessionē sue ancille v'l amice vel amaste: dūmō ille p̄nt
h̄re aliq̄ p̄fessōre. Et eodē mō intelligendū est d̄ oib; alijs sacris p̄fessōis
Alij text' illa metra habēt circa p̄ncipiū: sic q̄ autor: p̄us p̄mittit notab̄

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

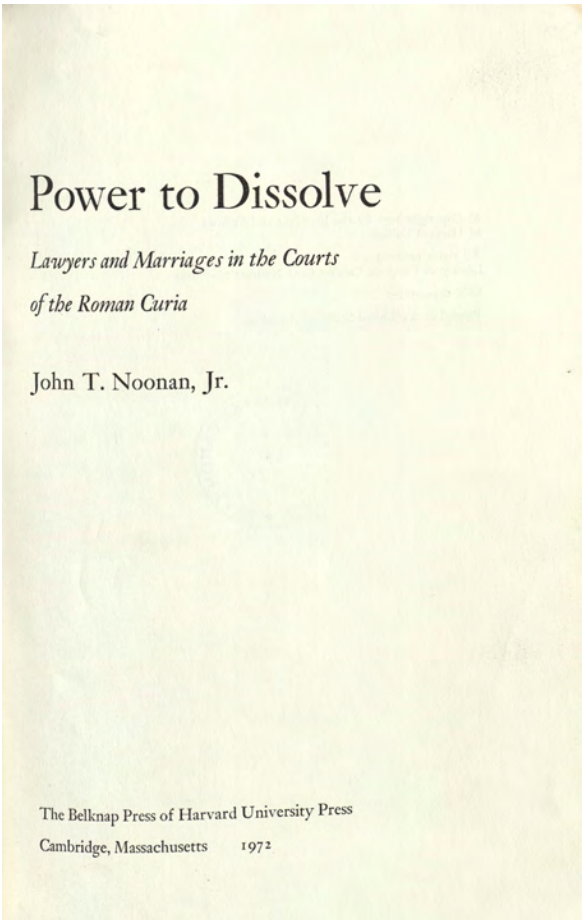
directly from the pope. The prose commentary provides further detail.

Magister Adam. *Summula clarissimi iurisconsultissimique viri Raymundi*. Cologne: Johann Knoblauch, 1518.



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 vniuersities of Italy and Fraunce, that it is so vnlesfull 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.

John T. Noonan, Jr. *Power to dissolve: lawyers and marriages in the courts of the Roman Curia.* Cambridge, MA: Belknap Press of Harvard University Press, 1972.

Argumē-
tal quāz
et iure ab
rogato.

¶ Item dicitur qd mens verborū ecclesiarū arguuntur qd
vii. conuenior ibi dicit aliqd verbum in xii. a more. et
ar. ff. de acq. he. l. vi. in fi. Arg. contra et qd me. ca. sacris.
¶ Necēssaria. Sz si nullus est eay vsus vt qd mebra-
nas occupat. xii. di. si romanorū. sed iō notia est necē-
saria vt sciat ca. qre
tollant. vt. C. de cad.
tollē. l. vna. qz et ipse
papa argumētat. ex
abrogato. vt et d. iu.
di. nouit. et est necē-
saria nō vt pntē
sed vt repobēt ma-
ledictas. vt. xxv. di.
stineti. legimus. r. c.
qui de mensa.
¶ Tercium. hic mī
simulatur postca iu-
stinianus. et fecit vni
codicem ex tribus.
C. de no. co. c. 4. p. n.
Joan. t. x. uo.

¶ Inert
aures.
¶ hec
di. di-
uidit i
duas ptes: in quaz
pma pbat qd de iure
naturali oia cōia sūt
rōa ibi dignitate ve-
ro. **¶** C. d. i. Sup
in. v. di. assignata su-
t oia iuris natura-
lis ad alia iura i. ori-
gine et dignitate: nūc
aut assignat vtiā
iuris naturalis ad
alia iura in ampli-
tudine. qz hoc iure
oia sūt cōia: sed nō
alio iure. Reperit et
de dignitate. D. et er-
go i. hoc. s. q. h. ius
naturale differat a cō-
suetudine et pōne:
nam iure naturali
oia sūt cōia: vt hoc p-
bat auctē noui te-
sta. et auctē platonis
sed iure p̄suetudis
dicitur hoc meū il-
lud iuris: ad hoc in-
ducitur sequens. c.
di. Differat aut. In
hoc. vii. di. ostendit
magis qd iure ius na-
turale excellat alia
iura amplitudine:
qz s̄m hoc ius om-
nia sūt comunia.
¶ Inter ea. i. app-
holos. ty. questio. j.
vltimissimis.



¶ Inert autē
ius natura-
le a cōsuetu-
dine et pō-
ne. Nam iure
nāli oia sūt
cōia oibus: qd nō solū inter
eos seruatiū credit: de quib⁹
legit: Multitudinis creden-
tium erat eoz vnus et aia vna
et. Hereticas ex pcedēti ipe
a p̄bis traditi inuenit. vnde
apud Platonem illa ciuitas
iustissime ordinata tradit in
qua qsqz p̄p̄tes nescit affe-
ctus. Iure ergo consuetudi-
nis vel pōnis hoc meū est:

debant: contra quos inuehit Augustinus dicens eos
nō posse cōqueri. naz aut possident iure diuino aut hu-
mano. si iure diuino oia sūt cōia: ita res ecclesie possi-
dere nō p̄t. si iure humano: sed iura humana sūt le-
ges imperatorū q̄ statuit vt heretici nil noie ecclesie pos-
sederent: si ergo re-
nūciant legibus impe-
ratorū: et per p̄ris pos-
sessorib⁹: sicut noie
ecclesie vel p̄prio nō
mine vclint posside-
re: cū ap̄s reges p̄-
ceperit honorari.
¶ Defendit. i. pe-
ris vel defendendo
retines.
¶ Nam iure diuini
no. Ex hoc vi. q. tm̄
iure humano aliq̄
possident et nō di-
uino: sic obstat. J.
xxij. q. v. c. i. vbi di-
citur qd iure diuino
aliq̄ possidet. Sed
nō est p̄tū: qz di. ibi
qz iustoz sūt oia
cōia iure diuino: be-
ne potest esse qd iure
diuino aliq̄ sit p̄-
p̄riū: sed iō dicit h̄ qz
iure humano possi-
dent possessorē: qz
iura humana possi-
sime tractant et pos-
sessoribus: sed ius
canonicū principaliter
de vicinis vel p̄-
mitis. Et dic qd ibi
ius diuinus stricte
sumit pro iure ca-
nonico: sed hic ius
canonicū comp-
tēditur sub iure hu-
mano: et habes hic
qz petenti restituo-
nem obstat exceptio
hereticis: heretico enī
nihil est licitū possi-
dere. vt. xxij. q. v. si
vs. r. q. vii. ca. j. r. ij.
Item est h̄ ar. q. a pe-
tente restituo-
nem possum⁹ q̄rere quo
iure p̄tatan per in-
terdictū vel iudicis
officio. Itē qz cām pe-
tendi tenet expli-
care: et qz s̄m iura ca-
nonica actio sit pro-
ponenda: habes et
de iudi. examina. c.
et de lib. ob. vltim.
nec ob. extra de iud.
vltim. Jo. Sol. ego
credo qd causa et modus agendi est. proponendus: vt s̄m
illum modū iudex serat sniam. extra de simo. l. 3. h̄. l. i.
et nō cogatur actionē proponere: qz enī s̄m leges s̄
lq̄ causa sufficit. vt. C. de ecclie. diu. adria. tollē. l. 19.

succedēb⁹: erātqz p̄mixte et
inordinate. Postea vō theo-
dosi⁹ m̄io: augustus ad sumi-
tudinē gregoriani et hermo-
gentiani codicē sc̄m p̄stōnum
a cōstantini t̄pibus sub p̄prio
cuiuscūqz imperatoris titulo
disposuit: quē a suo nomine
theodosianus vocauit. S. a-
tianus. **¶** Distinco. vii.

Postea
an sit de
iure diu-
no an hu-
mano.

Plat. m̄
Sol. j.

Actio v̄s
sit, pone-
da de iure
canonico

¶ Inert autē
ius natura-
le a cōsuetu-
dine et pō-
ne. Nam iure
nāli oia sūt
cōia oibus: qd nō solū inter
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qua qsqz p̄p̄tes nescit affe-
ctus. Iure ergo consuetudi-
nis vel pōnis hoc meū est:

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.

Gratian. Decretum Gratiani.
Venice: Luca-Antonio Giunta, 1514.

★ 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 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.

Bill of Rights, 1789. San Francisco: Grabhorn Press, 1943.



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.

The Great Charter called in Latyn Magna Carta, with diuers olde statutes. London: Thomas Petyt, 1542.

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