

OUTLINE — LECTURE 1

Medieval Studies 119
Constitutional and Legal History of
Medieval Continental Europe
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Law 2165
Legal History:
Continental Legal History
Prof. Donahue

I. INTRODUCTORY REMARKS

1. The legal and constitutional history of Continental Europe: the ‘civil’ law and the ‘Western legal tradition’
2. Chronological range: 450 AD to 1648, with looks backward 400 years for the legacy of the ancient world and forward 250 more for the codifications on the Continent in the 19th century. Geographical range: all of Continental Europe with occasional glances at England. How to avoid superficiality?
3. By testing our generalities against three particular topics:
 - a. The formation of marriage
 - b. The capture of wild animals as the foundation of ‘property’.
 - c. Witnesses in both criminal and civil procedure

They come from the three principal areas into which Europeans historically divided their law:

- a. The law of persons (marriage)
- b. The law of things (capture of wild animals)
- c. The law of actions (witnesses)

The development of these topics comes from two different sources of law:

- a. The formation of marriage (canon law)
- b. The capture of wild animals (Roman law)
- c. The law of witnesses (the product of canonists and Romanists working together)

These are all topics of private law (the law about the legal relationships between members of the community). There is no single topic about public law (the law that deals with the relationships between the governing authorities and the members of the community). We deal with public law when we talk about constitutional and institutional developments and, to some extent, when we talk about witnesses in criminal cases (a public-law topic).

4. By relating our generalities to one particular region when we reach the early modern period: France (with England, Italy, Germany, Spain, the Low Countries, giving examples for comparison and contrast)
 - a. France because we can see it becoming a nation-state in our period
 - b. France because it is close to England

5. By checking our generalities against the documents in the coursepack.
6. Two questions:
 - a. How does the way people were thinking about law in each period proceed from what had gone before and lead to what was to come next (a largely diachronic question)?
 - b. How does the way that people were thinking about law in each period relate to the broader political, social and intellectual developments in the period (a largely synchronic question)?
7. Two hour-and-a-half classes on Mon. and Wed. Discussions of prerecorded lectures and documents. A separate section for the undergraduates in the latter half of the week. For the details about the topics of the classes, the reading assignments, and the course requirements see the off-Canvas [website](#).

II. WHAT IS THIS COURSE ABOUT?

1. ‘law’ – the English word is related to Old English *licgan*, not *lecgan*, i.e., ‘lie’ not ‘lay’
2. *lex* vs. *ius*; *loi* vs. *droit*; *Gesetz* vs. *Recht*; *wet* vs. *recht*; *legge* vs. *diritto*; *ley* vs. *derecho*. The former refers to a specific law, the latter to law in general and is also the word for ‘right’. The relationship of this distinction to the distinction between natural law and positive law, between the law that exists notionally in all times and places as opposed to the law adopted for a particular community.
3. Gratian, *Concordance of Discordant Canons*, c. 1140: “Mankind is ruled by two things, natural law and custom. The law of nature is what is contained in the Mosaic law and the Gospels, in which everyone is ordered to do to another what he wants done to himself and is prohibited from doing to another what he does not want done to himself.”
4. ‘Constitution’ – The word is only beginning to be used in the sense of a body of fundamental law, a law about laws, at the end of our period in England. For our period, we are, for the most part, going to have to try to discern what the fundamental law might have been by looking at documents that contemporaries did not label as constitutional in the modern sense, or at what seem to be unspoken assumptions about how the system ought to work. Quite a bit can be discerned from discussions about the relative powers of emperors, kings, and popes.
5. ‘Civil law’ vs. ‘common law’ – In traditional comparative law terminology this is a course about Continental European civil law as opposed to English common law. Though the focus of this course is very much on the European Continent, the area that Anglo-American lawyers call the region of the civil law, we will do enough comparison to suggest that the differences between the Anglo-American and Continental European law tend to be exaggerated.

III. PERIODIZATION

1. Much of European legal history is still written from a rather rigid national point of view. The periodization thus tends to be dictated by the periodizations of national histories. We are trying to do something different.
2. Periodization is important in any kind of history, but it is also a problem, because the way we organize may predetermine how we come out, what our overall points will be.
3. Look at the table immediately below.

Continental Legal History

<i>Period</i>	<i>Description</i>	<i>Politics</i>	<i>Intellectual</i>	<i>Roman</i>	<i>Canon</i>	<i>Customary/National</i>
450–1100	Early Middle Ages: primitive collections	Barbarian Invasions	Monastic scholars	Romano- barbarian Codes	Collections	Barbarian Codes Capitularies
1100–1250	High Middle Ages: academic study	Feudalism, Feudal monarchy	Early scholasticism	CJC–glossators	Gratian–>decretists Papal decretals	Customals
1250–1500	Later Middle Ages: academic application:	National monarchy	Late scholasticism	CJC– commentators, <i>Consilia</i>	Decretalists –>ency- clopedic jurists	Customals and statutes
1450– 1550	Renaissance and Reformation: academic bifurcation	Absolutism	Humanists and reformers	Humanist jurists	Councils, <i>Consilia</i>	Codification of custom, Reception
1550– 1750	Early Modern: bureaucracy and philosophers	Absolute monarchy	Political theory; Mathematics	Natural law, <i>usus modernus pandectarum</i>	Papal bureaucracy, Handbooks	‘Institutes’ and statutes
1700– 1917	Modern: codification	Revolution	Enlightenment, Pandectists, Historical School	Pandectists –>Codification	Modern decretalists –>Codification	Codification

We can organize the material:

- a. By events or even political periods. May overemphasize the political.
- b. By intellectual centers. May overemphasize the intellectual.
- c. By formal sources of law. May be too diachronic.
- d. We can try to create a matrix of all three.
- e. Some tag phrases with which to begin:
 - 450–1100 age of the primitive collections
 - 1250–1500 age of academic application
 - 1450–1550 age of academic bifurcation
 - 1550–1750 age of bureaucracy and philosophers
 - 1750–1917 age of codification
- f. In all these ages except perhaps for the 1550–1750 period there was a close parallel between the canon law developments and the Roman and some with the customary/national.
- g. The absence of a social, economic, or cultural column is troublesome.

4. A word about the periodization of the history of Roman law.

Roman Legal History

<i>Period</i>	<i>Description</i>	<i>Politics</i>	<i>Sources of Law</i>
500-250 BC	Archaic	City-State	XII Tables
250-1 BC	Pre-Classical	Urban Empire	Statutes/Cases
1-250 AD	Classical	Principate	Cases
250-500 AD	Post-Classical	Dominate	Imperial Constitutions
550 AD	Justinian	Byzantine	Code

We can divide the legal history of Rome into four periods, archaic, pre-classical, classical, and post-classical with the so-called ‘codification’ of Justinian at the end. There is a quite tight, almost definitional relationship between the type of politics and the sources of law. It turns out, that there is also a quite tight relationship between types of procedure and politics and sources of law. Archaic procedure is highly formal; much depends on the consent of the parties; the power of the state is weak. With the elaboration of the law in the pre-classical and early classical periods, the procedure became more flexible but was still heavily dependent on the will of the parties. As the empire became more bureaucratic, state officials came to play a more important role in the procedure and appeal to the emperor rather than elaboration by jurists became the most important source of law. Some people have seen in this development a paradigm of all legal history. The sketch of European legal history that we just looked at (except for the end) suggests that in some sense Roman legal history repeated itself in medieval and early modern Europe. That may or may not be right.

5. A word about the periodization of the history of English law (and to some extent Anglo-American law generally).

English Legal History

<i>Period</i>	<i>Description</i>	<i>Politics</i>	<i>Sources of Law</i>	<i>Roman Influence</i>	<i>Continental Compare</i>
600-1150	Age of Tort	Tribal →Feudal Monarchy	Barbarian Codes, Custom	Non-existent	Weak
1150-1300	Age of Property	Feudal monarchy	Custom, Case Law, Statute	Strong on Method	Same
1300-1500	Age of Trespass	National monarchy	Case Law	Weak	Strong
1500-1700	Age of Equity	Absolute Monarchy→ Const. Monarchy	Case Law, Statute	Strong in spots	Quite strong
1700-2000	Age of Reform	Const. monarchy, Parliamentary Sovereignty	Case law, Statute, Some Codification	Submerged but there	Quite strong

Note: When the outline says ‘some codification’ in the modern period, it is referring to the fact in England (and generally in the Anglo-American legal world) commercial law (e.g., the Uniform Commercial Code in the U.S.), criminal law, civil and criminal procedure, and public law more generally are largely codified. There are, however, relatively few codes of private law that are so characteristic of the Continent.

The periodization of English history has remarkable parallels with that of the Continent. The political and constitutional developments in most of the periods are similar. The English, I would argue, have a tendency to exaggerate the differences in these departments. Whether they also have a tendency to exaggerate the differences in legal development is more problematic. What the outline shows is that the influence of Roman law on English legal thought has varied over time. It was quite strong in High Middle Ages, quite weak in the later Middle Ages. That led to a situation, when knowledge of Roman law and Continental developments returned in the early modern and modern periods, where the English (and the Anglo-American) legal systems can better be described as cousins of the Continental rather than as siblings.

IV. THE CODIFICATION PHENOMENON.

1. At the beginning:
 - a. literacy
 - b. the beginnings of a realization that law belongs in separate category
 - c. realization of the connection between what we would call the state, and what they called different things, and the law
2. At the end:
 - a. a long period of professional development
 - b. sources of law proliferating and becoming unmanageable
 - c. person of power and/or genius
3. Taking Justinian, the Napoleonic Code, and the Uniform Commercial Code as examples of ‘end-codifications’, the differences may be more important than the similarities:
 - a. Justinian is a collection of texts, the Napoleonic Code and Uniform Commercial Code are systematic rewritings of the law.
 - b. The politics seem to be similar between Justinian and Napoleon but not Karl Llewelyn, the drafter of the UCC.
 - c. Justinian is legally conservative; Napoleon and Llewelyn are much less so.
4. ‘True codes’, i.e., codes that follow the model of the 19th European codes, are:
 - a. authoritative
 - b. exclusive
 - c. systematic

Applying these tests there is no Western code as opposed to a collection before the Prussian Civil Code of 1794; this is followed by the Napoleonic code of 1804, and by the Austrian Civil Code of 1811 (1st ed. 1786). Once these three codes had been promulgated, the ones that followed showed a considerable amount of influence from them, particularly from the French code.

5. At the end of the table above for Roman law, we have the great Roman collections: 529–533 A.D. They are going to become very important in our story. We'll talk about them in the next class. In the rest of this class I would like to talk about another legacy of the ancient world: Christianity, beginning with a document: Paul's letter to the Romans.

V. THE LEGACY OF THE ANCIENT WORLD: CHRISTIANITY

1. Around the year 30 of our era an obscure itinerant Galilean preacher named Jesus – the name means “the Lord saves” – was executed by the Roman authorities. After his death his followers believed that they saw him risen from the dead. By the end of the first century his followers had produced a considerable body of literature about him that we know as the New Testament. By the middle of the second century, if not before, it had become clear that this group has become a separate religion; it is not just a sect of Judaism. The New Testament is not a law book, even in the way that parts of the Hebrew Bible, the so-called Old Testament, are law books. The New Testament does, however, have some things to say about law and legal topics.

Paul's Letter to the Romans

2. Paul of Tarsus was an observant Jew, who was not one of Jesus' followers during the latter's life. He violently opposed the early Christians, participating in efforts to suppress them. He experienced a conversion and became as ardent a Christian as he had earlier been an opponent of Christianity. He felt that he was called to a special mission to be the apostle of the Gentiles, to convert non-Jews to Christianity. He went on three missionary journeys, preaching and founding churches in Greece and Asia Minor. The New Testament book called the Acts of the Apostles contains an extensive account of his activities. More can be determined from his letters, also found in the New Testament, although there is some doubt whether all of these may properly be attributed to him.
3. The letter to the Romans was written in winter 57–58 at Corinth on Paul's third missionary journey. Paul went from there to Jerusalem where he was imprisoned by the civil authorities and taken to Rome; he probably was released in 63, the point at which the Acts of the Apostles ends. Traditionally Paul died a martyr's death in Rome in 67.
4. The letter to the Romans is perhaps the most theological of Paul's letters, certainly among the most polished. Its great theme is the relationship between Judaism and Christianity. Its immediate occasion may have been the problem of the mixed church in Rome and the tensions between Jewish

and pagan Christians, but all we can sure of is that it is a letter of self-introduction.

5. The letter has been used for many purposes. It is the great letter of Martin Luther because of its emphasis on justification by faith and the free grant of God's grace. Perhaps less well known is the fact that many of the medieval and early modern treatises on law are laced with references to Romans, indeed, some may be said virtually to be commentaries on Romans.
6. This ought to strike you as odd. What Paul has to say about law in Romans is not altogether flattering, and one can hardly escape the initial impression that in the great religious dichotomies between grace and free will, faith and reason, faith and good works, Romans emphasizes grace and faith at the expense of free will, reason and good works. Yet free will, reason, and good works would seem to be the foundations of any legal system, certainly of Western ones.

The translation that is on the outline and in the slides capitalizes the word 'law', when the translators think that Paul is referring to the Mosaic Law, the Torah, the first five books of the Hebrew Bible, and uses a lower-case 'l' when they think that he is not. But this distinction in spelling does not exist in the manuscripts of the original Greek.

The argument of the letter:

The anger of God against both pagan and Jew.

Why God is angry against the Jews is easy. They have the Law but they do not keep it, 2:21–22 (bottom of p. 13 of the *Materials*): “You preach against stealing, yet you steal; you forbid adultery, yet you commit adultery; you despise idols, yet you rob their temples.”

Why God is angry against the pagans is more complicated, 2:14–15: “Pagans who never heard of the law but are led by reason to do what the law commands, may not actually ‘possess’ the law but they can be said to ‘be’ the law. They can point to the substance of the law engraved on their hearts – they can call a witness, that is, their own conscience – they have accusation and defense, that is, their own inner mental dialogue.”

Does this idea correspond to the Greek and Roman Stoic idea of natural law? Elsewhere, Paul suggests that God's plan can be seen in creation (1:19) – that certain sins are ‘unnatural’, homosexual acts being among those mentioned (1:26), but also envy, murder, treachery, rebelliousness to parents (1:29–30). Whether Paul is thinking of the idea of natural law we need not get into, because it is clear that anyone who knew the Stoic idea of natural law would see the parallel.

But where are we to find this law “engraved on the hearts” of the pagans? in the Torah? Yes, of course. but also (and this is the first big move in the letter):

The relationship of faith and law. 3:21–3:31:

“God's justice that was made known through the Law and the Prophets has now been revealed outside the Law . . . to everyone who believes in Jesus Christ. . . . [3:31] do we mean that faith makes the Law pointless? Not at all: we are giving the Law its true value.” But that might suggest that the Law is still in force.

The Christian is freed from the Law. 7:1–8:1:

7:1: “Brothers, those of you who have studied law will know that laws affect a person only during his lifetime. A married woman, for instance, has legal obligations to her husband while he is alive, but all these obligations come to an end if the husband dies. . . . That is why you, my brothers, who through the body of Christ are now dead to the Law, can now give yourself to another husband, to him who rose from the dead to make us productive for God. . . . The reason [8:1] therefore why those who are in Christ Jesus are not condemned, it that the law of the spirit of life in Christ Jesus has set you free from the law of sin and death. God has done what the Law, because of our unspiritual nature was unable to do.” But what is now law?

A new law for a new covenant. 13:8–9:

“Avoid getting into debt except the debt of mutual love. If you love your fellow men you have carried out your obligations. All the commandments . . . are summed up in this single command: You must love your neighbor as yourself.” 13:1: “You must obey the governing authorities. Since all government comes from God, the civil authorities were appointed by God, and so anyone who resists authority is rebelling against God’s decision The state is there to serve God for your benefit. If you break the law, however, you may well have fear; the bearing of the sword has its own significance. The authorities . . . carry out God’s revenge by punishing wrongdoers This is also the reason why you must pay taxes since all government officials are God’s officers”

Some themes

1. The descending theory of power: “Since all government comes from God, the civil authorities were appointed by God”
2. The sword imagery: “the bearing of the sword has its significance.”
3. The notion of natural law: “Pagans who never heard of the law but are led by reason to do what the law commands”
4. Winnow out the essential from the Mosaic law.
5. The importance of authority but also freedom and equality.
6. The multiplicity of meanings of the word “law”

Marriage: the *logia* on divorce

Mark 10:9: “What God has united, man must not divide.”

Mark 10:11–12: “The man who divorces his wife and marries another is guilty of adultery against her. And if a woman divorces her husband and marries another she is guilty of adultery too.”

Luke 16:18: “Everyone who divorces his wife and marries another is guilty of adultery, and the man who marries a woman divorced by her husband commits adultery.”

Matthew 5:32: “Everyone who divorces his wife, except for the case of fornication, makes her an adulteress; and anyone who marries a divorced woman commits adultery.”

Matthew 19:6: “What God has united, man must not divide.”

Matthew 19:9: “The man who divorces his wife—I am not speaking of fornication—and marries another, is guilty of adultery.”

1 Corinthians 7:10–12: “A wife must not leave her husband—or if she does leave him, she must either remain unmarried or else make it up with her husband—nor must a husband send his wife away.”

Hypothetical reconstruction of the earliest form of the more common *logion*: “The man who divorces his wife and marries another is guilty of adultery.”

Mt. 19:3–12: “³Some Pharisees approached him, and to test him they said, “Is it against the Law for a man to divorce his wife on any pretext whatever?” ⁴He answered, “Have you not read that the creator from the beginning *made them male and female* [Gn 1:27] ⁵and that he said: *This is why a man must leave his father and mother, and cling to his wife, and the two become one body?* [Gn 2:24] ⁶They are no longer two, therefore, but one body. So then, what God has united, man must not divide.”

⁷They said to him, “Then why did Moses command that a writ of dismissal should be given in cases of divorce?” ⁸“It was because you were so unteachable” he said “that Moses allowed you to divorce your wives, but it was not like this from the beginning. ⁹Now I say this to you: the man who divorces his wife—I am not speaking of fornication—and marries another, is guilty of adultery.”

¹⁰The disciples said to him, “If that is how things are between husband and wife, it is not advisable to marry.” ¹¹But he replied, “It is not everyone who can accept what I have said, but only those to whom it is granted. ¹²There are eunuchs born that way from their mother’s womb, there are eunuchs made so by men and there are eunuchs who have made themselves that way for the sake of the kingdom. Let anyone accept this who can.”

Mishna Gitin 9:10, as reported in the Babylonian Talmud Gitin 90a (Soncino trans. modified by CD): “The school of Shammai say: a man should not divorce his wife unless he has found her guilty of some unseemly conduct, as it says, because he hath found some *unseemly* thing in her. [See Deuteronomy 24:1]. The school of Hillel, however, say [that he may divorce her] even if she has merely spoilt his food, since it says, because he hath found *some* unseemly *thing* in her. R. Akiba says, [he may divorce her] even if he finds another woman more beautiful than she is, as it says, it comes to pass, if she find no favour in his eyes. [Again, a reference to Dt 24:1.]” Dt 24:1 reads in the NRSV: “Suppose a man enters into marriage with a woman, but she does not please him because he finds something objectionable about her, and so he writes her a certificate of divorce, puts it in her hand, and sends her out of his house” The Hebrew is more ambiguous.

Marriage: Paul on divorce

1 Cor. 7:12–15. If a brother has a wife who is an unbeliever, and she is content to live with him, he must not send her away; ¹³and if a woman has an unbeliever for a husband, and he is content to live with her, she must not leave him However, if the unbelieving partner does not consent, they may separate; in these circumstances, the brother or sister is not tied; God has called you to a life of peace.

Marriage as a “mystery”

Ephesians 5:25–33: “Husbands should love their wives just as Christ loved the Church and sacrificed himself for her to make her holy. He made her clean by washing her in

water with a form of words so that when he took her to himself she would be glorious, with no speck or wrinkle or anything like that, but holy and faultless. In the same way, husbands must love their wives as they love their own bodies; for a man to love his wife is for him to love himself. A man never hates his body, but he feeds it and looks after it; and that is the way Christ treats the Church, ³⁰because it is his body—and we are its living parts. *For this reason, a man must leave his father and mother and be joined to his wife, and the two will become one body.* [Gn 2:24] This mystery has many implications; but I am saying it applies to Christ and the Church. ³³To sum up; you too, each one of you, must love his wife as he loves himself; and let every wife respect her husband.”

Two witnesses

Dt. 19:15: “A single witness will not suffice to convict anyone of a crime of any kind; whatever the misdemeanour, the evidence of two witnesses or three is required to sustain the charge.”

Mt. 18:16: “If your brother does something wrong, go and have it out with him alone, between your two selves. If he listens, you have won back your brother. If he does not listen, take one or two others along with you: *whatever the misdemeanour, the evidence of two or three witnesses is required to sustain the charge.* But if he refuses to listen to these, report it to the community; and if he refuses to listen to the community, treat him like a gentile or a tax collector.”

1 Cor. 13:1–2: This will be the third time I have confronted you. *Whatever the misdemeanour, the evidence of two or three witnesses is required to sustain the charge.* I gave you notice once, and now, though I am not with you, I give notice again, just as when I was with you for a second time, to those who sinned before, and to all others; and it is to this effect, that when I do come next time, I shall have no mercy.

As the translation shows, the italicized passages in Mt. 18:15–17 and 1 Cor. 13:1–2 are direct quotations in Greek of the Hebrew of Dt. 19:15.

To these should be added chapter 13 of the book of Daniel, a Greek addition to the Hebrew text, the story of Susannah and the elders. It is a wonderful law story about how to examine witnesses:

[In Babylon, Susannah, the daughter of Hilkiah and the wife of Joachim, was the object of the lust of two elders of the people. They trapped her in her garden where she was taking a bath alone and told her that they would accuse her of being with a young man if she did not have sexual relations with them. She screamed, and the elders appeared before the people and accused her of committing adultery with the (fictitious) young man. As we pick up the story, Susannah, being led to execution, cries out to God for help:]

⁴⁴The Lord heard her cry ⁴⁵and, as she was being led away to die, he roused the holy spirit residing in a young man named Daniel ⁴⁶who began to shout: “I am innocent of this woman’s death!” ⁴⁷At this all the people turned to him and asked, “What do you mean by that?” ⁴⁸Standing in the middle of the crowd he replied, “Are you so stupid, children of Israel, as to condemn a daughter of Israel unheard, and without troubling to find out the truth? Go back to the scene of the trial: these men have given false evidence against her.” ⁵⁰All the people hurried back, and the elders said to Daniel, “Come and sit with us and tell us what you mean, since God has given you the gifts the elders have.” ⁵¹Daniel said, “Keep the men well apart from each other. “You have grown old in wickedness,” he said, “and now the sins of earlier days have overtaken you, ⁵³you with your unjust judgments,

your condemnation of the innocent, your acquittal of the guilty, although the lord has said “You must not put the innocent and upright to death.”⁵⁴ Now then, since you saw her so clearly, tell me under what sort of tree you saw them lying under.” He replied, “Under an acacia tree.”⁵⁵ Daniel said, “Indeed, your lie recoils on your own head:¹ the angel of God has already received from him your sentence and will cut you in half.”⁵⁶ He dismissed the man, ordered the other to be brought and said to him, “Son of Canaan, not of Judah, beauty has seduced you, lust has led your heart astray!⁵⁷ This is how you have been behaving with the daughters of Israel, and they have been too frightened to resist; but here is a daughter of Judah who could not stomach your wickedness!⁵⁸ Now then, tell me what sort of tree you surprised them under.” He replied, “Under an aspen tree.”⁵⁹ Daniel said, “Indeed! Your lie recoils on your own head: the angel of God is waiting with a sword to rend² you in half, and destroy the pair of you.”

⁶⁰Then the whole assembly shouted, blessing God, the Saviour of those who trust in him.
⁶¹They turned on the two elders whom Daniel had convicted of false evidence out of their own mouths.⁶² As the law of Moses prescribes,³ they were given the same punishment as they had schemed to inflict on their neighbour. They were put to death. And, thus, that day an innocent life was saved.

Some key dates in the legal history of Christianity:

?30 — Crucifixion of Jesus

67 — Traditional death of SS. Peter and Paul

70 — First Roman destruction of Jerusalem

c.96 — Letter of Pope Clement I to the Corinthians

c.100 — approximate date of the last canonical books of the New Testament (though some of the epistles, e.g., 2 Peter, are almost certainly later)

132–35 — Bar Cocheba revolt (second Roman destruction of Jerusalem)

mid-2d century — Beginnings of the tradition of pseudo-apostolic canons known as the *didache* (teaching)

2d century — Scattered papal letters (later called ‘decretals’) concerning heresy and discipline

c.200 — Redaction of the *Mishna* at Jamnia

3d century — Continues papal letters concerning heresy and discipline

3d century — Earliest known local councils or synods (deal with Easter date, baptism conferred by heretics, those lapsed during persecutions, bishops suspected of heresy or irregularly promoted)

312 — Edict of Milan (toleration of Christianity)

¹ A play on words in the Greek.

² Another play on words in the Greek.

³ Cf. Dt 19:16–21, which appears just after the two-witness requirement quoted above.

325 — Council of Nicaea (condemns Arius: Christ ‘of same substance’ as God the Father; disciplinary canons)

366–384, 384–399 — ‘Decretal’ letters of Popes Damasus and Siricius

381 — Council of Constantinople I (confirmation of Nicaea; canons)

431 — Council of Ephesus (condemns Nestorius: Mary is ‘Mother of God’)

440–61 — Decretal letters of Pope Leo the Great

451 — Council of Chalcedon (condemns monophysites: Christ has 2 natures)

4th & 5th centuries — Many Western local councils (Rome, Gaul, Spain, Africa) promulgate canons on an ever-wider range of topics

c.500 — Redaction of the *Talmud* (in Babylon and Jerusalem)

VI. A ROMP THROUGH THE EARLY LEGAL HISTORY OF CHRISTIANITY

1. The relative absence of law in Christian writing of the apostolic period
2. A streak of antinomianism?
3. The importance of the letter to the Romans in this regard
4. The ‘council of Jerusalem’ (Acts 15; Galatians 2)
5. Why this seeming absence of law?
 - a. Jesus in opposition to the legalism of the Pharisees
 - b. Our own preconceptions of what law ought to be like: herewith of *kerygma* and *didache*
 - c. The mission to the gentiles
 - d. Preservation of unity, the concept of *koinonia*
6. Diverse ministries become pope, patriarch, bishops, priests, deacons, etc.
7. What happens to all of this in the fourth century? The role of councils and decretals.
8. Are we asking too much of law?
9. Summary: *nomos* and *kanon*.