OUTLINE — LECTURE 6

Canon Law and Church Reform

74T = The Collection in 74 Titles, in Materials Part VI]

1. The importance of the reform movement in our overall story
2. Law in the early Church: *kerygma* and *didache*. Canons of church councils, papal decretal letters.
3. Little search for principle; no building of a legal system

**Main Canonic Collections Prior to 74 T:**

Dionysiana (early 6th c.)—PL 67.139–316

In two parts: the first (2d ed.) contains Greek councils from Nicea (315) to Chalcedon (451) and the ‘African Codex’ of the council of Carthage (419); the second 39 decretal letters of popes from Siricius (384–99) to Anastasius (496–98).

Hispana (1st ed. c. 633; 2d ed. c. 694)

Contains, in chronological order, the Greek councils, the African councils, the Gaulish councils to 511 (549 in 2d ed.), the Spanish councils to 633 (694 in 2d ed.), 104 decretals up to Gregory I (604).

The Tabula of the Hispana (mid-7th c.) arranges the canons in the following titles:

1. Ordination, orders, the life of the clergy
2. Monks, nuns, widows, public penitents.
3. Church courts, trials, accusations, etc., councils, church property
4. Liturgy, baptism
5. Marriage, sins of the flesh, murder
6. Duties and moral conduct of clergy and laity
7. The crown
8. Theological questions
9. Heresy
10. Idolatry, apostacy

The organization of the *Decretals of Gregory IX* (1234): hierarchy, procedure, substantive rights and duties, marriage, and crimes.


From an Irish Penitential of c.800 (McNeil and Gamer p. 165):

“Ch.5 Of anger. 2 Anyone who kills his son or daughter does penance twenty-one years. Anyone who kills his mother or father does penance fourteen years. Anyone who kills his brother
or sister or the sister of his mother or father, or the brother of his father or mother, does penance ten years: and this rule is to be followed to seven degrees both of the mother’s and father’s kin — to the grandson and great-grandson and great-great-grandson, and the sons of the great-great-grandson, as far as the finger-nails.... Seven years of penance are assigned for all other homicides; excepting persons in orders, such as a bishop or a priest, for the power to fix penance rests with the king who is over the laity, and with the bishop, whether it be exile for life, or penance for life. If the offender can pay fines, his penance is less in proportion.”

“Ch. 4 Of envy. 5.... There are four cases in which it is right to find fault with the evil that is in a man who will not accept cure by means of entreaty and kindness: either to prevent someone else from abetting him to this evil; or to correct the evil itself; or to confirm the good; or out of compassion for him who does the evil. But anyone who does not do it for one of these four reasons, is a fault-finder, and does penance four days, or recites the hundred and fifty psalms naked.”

The Hadriana.

Basically the Dionysiana to which have been added decretals of Hormisdas (d. 523) and canons of the Roman Synod of 721. The new material is in PL 67.315–46. The collection was transmitted to Charlemagne in 774 by Pope Hadrian, hence the name.

The Forgeries.

Capitula Angilrami (c. 850) — P. Hinschius, Decretales Pseudo-Isidorianae (Leipzig, 1863)

Capitularia Benedicti Levitae (c. 850) — PL97.598–912
Isidorus Mercator (c.850) — Hinschius, supra

Regino of Prüm (c.900) — F. Wasserschleben, Reginonis abbatis Prumiensis libri duo de synodalibus causis et disciplinis ecclesiasticis (Leipzig, 1840)

Burchard of Worms (c. 1010) — PL 140.537–1090:
1. Papacy, metropolitans, bishops, councils, appeals, etc.
2. The lower clergy
3. Church buildings, tithes, fees, etc.
4. Baptism and Confirmation
5. Eucharist
6. Murder
7. Incest
8. Monks and nuns
9. Virgins, rape; marriage
10. Magic and sorcery
11. Excommunications: theft and robbery
12. Perjury
13. Fasting
14. Gluttony and drunkenness
15. Emperors, princes and other laity
16. Procedure in spiritual courts
17. Fornication and other forms of immorality
18. Visitation and absolution of the sick
19. A penitential, known as ‘The Corr ector’ and often published separately
20. Theological matters

Regnum and Sacerdotium, 11th through mid-12th Centuries

The Reform Movement and the Investiture Controversy:

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<thead>
<tr>
<th>Popes</th>
<th>Emperors</th>
<th>Others</th>
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<tbody>
<tr>
<td>Leo IX, 1049–54</td>
<td>Henry III, 1039–56</td>
<td>Humbert of Silva-Candida d. before 1065</td>
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<tr>
<td>(1st generation, simony and celibacy)</td>
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<tr>
<td>Alexander II, 1061–73</td>
<td>Peter Damian, d. 1072</td>
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<td>(2d generation, the problem of investiture comes to the fore)</td>
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<tr>
<td>Gregory VII, 1073–85</td>
<td>Henry IV, 1056–1106</td>
<td>74T written before 1073</td>
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<tr>
<td>(Canossa, pope and emperor depose each other)</td>
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<tr>
<td>Urban II, 1088–99</td>
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<td>Ivo of Chartres, 1040–1116</td>
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<td>Paschal II, 1099–1118</td>
<td>Henry V, 1106–1125</td>
<td>1st Crusade, 1095–1099</td>
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<td>Henry I (England), 1100–27</td>
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<td></td>
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<td>Philip I (France), 1060–1108</td>
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<td>(Radical reform proposal and compromise: Concordat of Worms 1122)</td>
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The Collection in 74 Titles

Organization of 74T

1. The Petrine supremacy—tit. 1–3
2. Monks—tit. 4
3. Accusatorial procedure—tit. 5–14
4. Qualifications for ecclesiastical office—tit. 15–17
5. Bishops and priests (mode of taking office)—tit. 18–21
6. Pope—tit. 22–24
7. Bishops—tit. 25–27
8. Priests—tit. 28
9. Sacraments—tit. 29–37
11. Bishops—tit. 40–41
12. Clerics—tit. 42
13. Roman church—tit. 43–44
14. Bishop of Arles—tit. 45
15. Clerics and nuns (54)—tit. 46–55
16. Penance—tit. 56
17. Laying charges—tit. 57
18. Clerics—tit. 58–61
19. Marriage—tit. 62–64
20. Canons of the synod of 721—65
21. Selected capitula Angilrami-66
22. The finding of the cross—tit. 67
23. Outside the church—tit. 68–71

Gilchrist suggests the following order (or themes):
1. The primacy of the Roman church (tit. 1–2, 22–24, 43–44)
2. Procedure affecting the clergy (tit. 5–14, 57)
3. Unworthy candidates for clerical office (tit. 15–20)
4. Powers of the minister of the church (tit. 25–37, 59, 62–64)

Others could perhaps be organized under these heads.

Selections from 74T

4. The first thing that we might note is the the first three titles are tied together, constituting a juridical view of the papacy, perhaps a juridical view of the world. c. 1 (Deut. 17:8–13):
   If you perceive that there is a hard and doubtful judgment among you between blood and blood, cause and cause, and if you see the words of the judges do vary within your gates, arise and go to the place which the Lord your God shall choose, and come to the priests of the tribe of Levi and to him who shall be the judge at that time, and ask of them and they shall show you the truth of the judgment. And you shall do whatever they who preside in the place which the Lord has chosen shall say, and what they shall teach you according to his law. You shall follow their pronouncements and shall stray neither to the right nor to the left. But he that shall be proud, refusing to obey the command of the priest who at that time serves the Lord your God, and the decree of the judge, that man shall die. And you shall take away wickedness from Israel, and all the people hearing shall fear, so that henceforth no one shall be filled with pride.

   This is an important proof text in Talmudic commentary in period of 74T. It is just possible that the author of 74T got it from the Roman Jews. Later collectors, by and large, don’t use it.

5. tit.5: On the procedure for accusation and those who accuse. Every c. in this title is false. The theme is that the accuser must be a witness and that the ancient rules for witnesses apply. Laymen and clerics are separated. No accusation is valid if the accuser is unworthy. Focus on c.48 (Pseudo-Callixtus [217–22]):
   The character of accusers must be thoroughly examined. Never should they be received in writing and only with difficulty in person, because no one can be accused in writing, but everyone should make his own accusation in his own voice and in the presence of him whom he wants to accuse. Nor should any accuser be believed in the absence of the person whom he wishes to accuse. Similarly, witnesses should not proffer any testimony in writing, but, being present, they should give true testimony of what they have seen and know, nor should they give testimony about other cases or matters, unless about those things that are known to have happened in their presence. Also, accusers related by blood should not give testimony against outsiders, nor should servants or members of the same household, but if they desire and mutually consent, relatives may testify against one another, though not against others. Nor should suspect accusers or witnesses be received, because the influence
of relationship, friendship and lordship often impedes the truth. Carnal love, fear, and avarice very often dull the human senses and pervert opinions in such a way that they consider profit a virtue and money a reward for prudence.

6. tit.10: On the judgment and trial of bishops. It’s almost impossible to convict a bishop. Focus on c.84 (Pseudo-Zephyrinus [198-217]):

Patriarchs or primates examining an accused bishop may not pass a definitive sentence before they have consulted the apostolic authority, or [before] the accused confesses his guilt, or is convicted by the testimony of reliable and properly examined witnesses. These witnesses should not be fewer in number than those disciples whom the Lord chose to assist the apostles, that is, seventy-two.

Regnum and Sacerdotium, mid-12th through 13th Centuries

[I do not intend to cover this material in this class. I include it here because it forms an important part of the background of what is to follow.]

Empire and Papacy—Alexander III to Boniface VIII:

1159–1181—Pope Alexander III (controversy with Frederick I (Barbarosa) (emperor, 1152–1190; controversy with Henry II of England (1154–1189) leading to the martyrdom of Thomas Becket (archbishop of Canterbury, 1162–1170); Third Lateran Council (1179); development of the institution of papal judges delegate; large number of decretal letters)

1198–1216—Pope Innocent III (high point of temporal power of the papacy; England becomes a papal fief (1213); Fourth Lateran Council (1215))

1227–1241—Pope Gregory IX (relaxes pressure on Frederick II (emperor, 1211–1250); Decretals published (1234))

1243–1254—Pope Innocent IV (deposes Frederick II at Council of Lyons (1245); with Frederick’s death in 1250 northern Italian Guelfs and Angevins (followers of Charles of Anjou, brother of Louis IX of France (1226–1270), and king of Naples and Sicily, 1268–1282) drive imperial power from Italy)

1294–1303—Pope Boniface VIII (struggle with Philip the Fair of France (1285–1314) ends with the pope’s death; the papacy now becomes subject to the power of France)

Popes, Emperors and Kings:

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<tr>
<th>Popes</th>
<th>Emperors</th>
<th>England</th>
<th>France</th>
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<tr>
<td>1159–81</td>
<td>1152–90</td>
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<tr>
<td>Innocent III,</td>
<td>Henry VI, 1190–97</td>
<td>Henry II, 1154–1189</td>
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<td>1198–1216</td>
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<tr>
<td>Gregory IX,</td>
<td>Frederick II, 1215–50</td>
<td>John, 1199–1216</td>
<td>Philip II, Augustus,</td>
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<td>1227–41</td>
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<td>1180–1223</td>
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<tr>
<td>Innocent IV,</td>
<td>Rudolf of Hapsburg,</td>
<td>Henry III, 1216–1272</td>
<td>Louis IX, saint,</td>
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<td>1243–1254</td>
<td>1273–91</td>
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<td>1226–70</td>
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Boniface VIII, 1294–1303
Adolf of Nassau, 1292–98
Edward I, 1272–1307
Philip IV, the Fair, 1285–1314

The View from England

1066 X 1087 — Ordinance of Conqueror separating secular from ecclesiatical courts

1097–1107 — Investiture Controversy, Anselm of Bec and Henry I

1064–1072 — The Becket Controversy
1064 — The Constitutions of Clarendon
December 29, 1170 — Martyrdom of Becket
1172 — Compromise of Avrenches