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# An Investigation of the Extent of the Authority of the Roman Canon Law in Medieval England

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History of Western Law
1988

"Those who do not look backward to their ancestry will not look forward to their posterity." Edmund Burke[1]

..."The first modern legal system was the canon law of Roman Catholic Church, and that legal system had many characteristics in common with what contemporary social theorists would call the secular, rational, materialistic, individualistic legal structure of liberal capitalist society."
Harold J. Berman[2]

Harold J. Berman in the introduction to his book Law and Revolution, makes the strong point that while many legal experts are quite enamored with the Western legal tradition and the effects of that tradition on Twentieth century life, they often are less than excited, however, when forced to consider that many of the modern institutions that they see as road blocks to the perfection of mankind (ie. religion) are ~~in essence~~ at the very basis and foundation of the tradition that they so cherish. This has led, Berman says, to an economic and class interpretation of Western legal tradition, and is in effect a dangerous view for the simple reason that this type of analysis tends to bury the true influences of our modern legal systems in a morass of economic and sociological rhetoric. To paraphrase Edmund Burke, if we refuse to understand or admit the true nature and development of our present day legal systems than we are putting ourselves in a unfortunate position when we attempt to make statements or policy concerning the proper route of development for the future.[3]

The purpose of this paper will be to examine a subject

that has often been a source of great controversy, that of the influence of the Roman Canon Law on the English Legal system, and ultimately our own. As we shall see, the debate is certainly not a new one. In fact the debate will center around the claims of the Right Reverend William Stubbs, and his claims concerning the authority of the canon law outlined in his famous "Seventeen Lectures", and the opposing view claims of Frederick William Maitland, M.A.[4] who in his equally well known work The Roman Canon Law in the Church of England makes quite the opposite argument about the effects of the canon law in Medieval England.[5] Both sides of the argument will be stated, and evidence will be presented in the forms of cases and legal history in order to determine which historian is correct in his assumptions. Finally an attempt will be made to show that both Stubbs and Maitland are in many ways both right and wrong in their conclusions and as is so often the case in historical debate, the true answer lies somewhere between the two opposing points of view.

We will first concern ourselves with the position of the Reverend Stubbs, who in his report on the Ecclesiastical Courts Commission states unequivicably that the canon law of Rome, though always regarded as of great authority in England, was not held to be binding on the courts.[6] Stubbs admits that the canon law of Rome was very much a part of Medieval law (the others being the civil law of Rome and the provincial law of the Church of England) but, that it (canon law of Rome) was only binding and authoritative if ratified in national

or provincial church councils.[7]

Stubbs also relies on the historical struggle between the English monarchy and the church to support his main point that the King, being at odds with the Church, was not about to let the canon law of Rome take precedence in areas that he felt were his own. Stubbs claims that the King, having the military and political advantage, would never forfeit power to an ecclesiastical authority that had none.[8] Thus simply stated, Stubbs was of the view that the canon law of Rome was a factor in the Medieval law at the time, but that only those parts of the law that had been approved by the nation at large and were not at odds with the jurisdiction of the King were binding and authoritative. Stubbs seems to imply that there were many good elements in the canon law of Rome, and that those parts that made sense and were not in conflict with the King and local authority were put to good use by the English system of law, however, Stubbs is insistent that when the canon law and the King's law conflicted it was the King's law (and English custom) that took precedence.[9]

It is apparent from Stubb's viewpoint that he views English law as a very special and distinct entity, and that this uniqueness, of which he is so fond, can only be justified by the theory that the development of the English legal tradition, was very different from that of those legal traditions that originated on the Continent, and were more under the influence of Rome and Roman canon law. Probably the greatest reason for

the Reverend's thinking on this issue has to do with the simple fact that he was an Anglican minister and was simply more loyal to his church than to his historical research methods. Charles Donahue, Jr. in his Michigan Law Review article "Roman Canon Law in the Medieval English Church; Stubbs v. Maitland Reexamined"...comments on this ecclesiastical conflict of interest in a most revealing way..."The question of how binding the Roman Canon law was in Medieval England was an important one for Stubbs, because he wanted to use the results of his inquiry to support his positions in the ecclesiastical controversies of his day. If he could demonstrate the independence of the English Church from Rome prior to the Reformation he could use that independence to counteract the "Romish" churchmen of his time, if he could demonstrate an identity of position of the medieval English Church and the medieval English kings, he could use that identity to argue at least on historical grounds, against the disestablishment of the Anglican Church."[10] Stubbs may or may not have been a captive of his ecclesiastical loyalties, the major factor was that he was an accomplished and respected legal scholar, and that the report on the ecclesiastical courts of which he was a major contributor was not anything to be taken lightly. Many of the conclusions that Stubbs arrived at it seems were justified, his research indicated (at least to his satisfaction) that the Canon law during the Medieval period played a minor role at best in the legal proceedings

in the English Ecclesiastical Courts. It is not enough to say that Stubbs had an axe to grind; it must also be shown that his research and the conslusions that he drew from that research were wrong.

This arduous task was left to Professor Frederick William Maitland, the Downing Professor of the laws of England at Cambridge and unlike the Reverend Stubbs, a confirmed agnostic. Maitland took quite a different approach to the debate in question. Maitland claimed that Papal law was indeed binding in English ecclesiastical courts, and to bolster his argument utilized three main sources of evidence. The first consisted of William Lynwood's "Provicale", a 1430 collection of English ecclesiastical legislation. It was Maitland's conclusion that "Provicale" contained many statements which spelled out in an explicit matter the binding nature of canon law in the ecclesiastical courts of England.[11] When one adds to this the fact that the author William Lynwood was Chief Judge of the Court of Cantebury and later Bishop of St. Davids, it seems that Maitland was on solid ground in using the aforementioned text as proof of the wrongness of Stubbs position on the issue. The second element of Maitland's evidence relies on the historical practice of the Pope delegating the authority to hear cases brought before him to judges in the area in which the case originated. The authority for this claim comes from a book by a one William of Drogheda, an Anglo-Irish canonist of the 13th century. Maitland claimed

that Droghedas' book outlined an elaborate judge delegate system which would have been next to impossible to administer had there not been a strong body of Papal law and authority to back it up.[12] Finally and most importantly Maitland gives the lie to the idea that the military and political power of the king made it highly unlikely that the canon law would have the last word in any dispute over juristiction. On the contrary, Maitland is of the opinion that "...the English Church maintained - stoutly in the case of Becket, and less stoutly in but still maintained in the case of Papal provisions- the postion of the canon law of Rome against the royal assertion of native English law and customs."[13] It would seem then, upon the examination of the facts presented by Maitland, that the argument had come to a close. Maitland refuted much of what Stubbs had claimed to be the case, revolutionized much of the previous thinking about the power of the Roman canon law in Medieval England. Most amazing perhaps, is the 1947 Anglican Archbishops Commission on Canon Law (hardly a candidate for the Knights of Columbus Literary Award) which rejected the previous findings of the Ecclesiastical Court Commissioners' Report and praised Maitland for his analysis and research of the question.[14]

This, however, is not the end of the question, but only a beginning for many questions remain unanswered. First off, it becomes apparent that while Stubbs may have been wrong in viewing the canon law of Rome as a minor factor at best, Maitland

may also have been wrong in trying to paint a picture of strong Papal power and jurisdiction in an England that was definitely moving in the opposite direction. Perhaps Charles Donahue, Jr. is correct in his assertion (made in the aforementioned law article) that the real question is not about the authority of the canon law per se, but rather is it possible for two different legal systems to operate simultaneously in the same geographic area, particularly when those two legal systems make overlapping claims of jurisdiction?[15] Donahue claims that the answer to this question can be found in the court records of the Consitory Court of York in the 14th century and the famous case of Abbot and Convent of St. Albans C. Flemming and Johanna, daughter of Mariota. What Donahue found was amazing. First, it would seem that the York Court was not merely an ecclesiastical court, but a court of law for any dispute in which a churchman was involved. "In many cases it would seem that the courts claim to jurisdiction rested on the canon laws notion that cases involving churchmen belonged before the ecclesiastical courts regardless of the subject matter of the suit."[16]

The Flemming case is an excellent example of the jurisdictional right of the ecclesiastical courts. Suffice to say that Flemming was a priest of some substance who left a great deal of land and property to his niece and nephew (and or brother). At the time of his death it was found that during the time that he had spent at Avingdon he had changed the will and left the property to St. Albans Abbey. Naturally, Johanna was not

thrilled at the aforementioned events and brought suit at the York Court. This begs the question, why in a matter in which contract property and inheritance was involved did the aggrieved parties attempt to seek justice in an ecclesiastical court rather than a royal court? Donahue claims that this particular case illustrates quite well that the Church courts were for the most part independent of Kings laws and that at least some litigants prefered the ecclesiastical courts justice to the kings, even though the cases and ecclesiastical issues involved were not always where they should have been.[17] In short, Johanna went to the ecclesiastical court because she felt that she could get a better deal, It is pure conjecture on my part, but it seems to me that the reason she felt that she would get a more understanding ear from the Church than the King is the fact that what we know as equity did not yet really exist. A royal court would more than likely go by the rules and if the abbey could produce the proper legitimate documentation, then the case would be moot. Johanna probably felt that by going to the Papal law rather than the common law she would get a much fairer hearing of her grievances. As it turns out, she did not. The Church court ruled against her. However, this does not change the final and most important point of Donahue's thesis, that Johanna and many like her viewed the ecclesiastical court not merely as a place where disputes were to be settled but as a arena where arbitration and compromise could take place.[18]

As Donahue says, no one should be surprised that far

more cases were filed in the York Court than ever reached sentences. It can be said then, that in the cases heard, Papal law may have indeed been binding, but at the same time it was, in the final analysis, not very important, and as Donahue claims "the relative unimportance of Papal law suggest that the York Court was not viewed by contemporary society, and perhaps it was not viewed by the personel of the court themselves, primarily as a place not where Papal law was enforced, but rather as one of a number of places where disputes could be resolved.[19]

So it would seem that in examining the research of Donahue, both Stubbs and Maitland were wrong in the view of the role of the Papal canon law and the ecclesiastical courts. This we know, however, is not the case. Historical research is not a question of rightness or wrongness, but a constant process by which new concepts and historical points of view are brought out into the open and either accepted or rejected on the evidence produced. One can say that both Stubbs and Maitland can claim a vital role in the discovery of the foundations and roots of our western legal tradition. They can make such a claim because they had the pressence of mind to propose questions and as was mentioned earlier in the introduction of this paper, the danger in researching our legal roots lies not in the asking of questions, but in the misguided act of reaching self conclusions before those questions have even been asked.[20]

# ~~BIBLIOGRAPHY~~


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3 Ibid, p. 41-45

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5 Maitland, Frederick, Roman Canon Law in the Church of England in Charles Donahue, Jr. Roman Canon Law in the Medieval English Church (1974) 72 Michigan Law Review p. 649

6 Ecclesiastical Courts Commission, Report of the Commissioners Into the Constitution and Working of the Ecclesiastical Courts in Charles Donahue, Jr. Roman Canon Law in the Medieval English Church (1974) 72 Michigan Law Review p,648

7 Charles Donahue, Jr. Roman Canon Law in the Medieval English Church (1974) 72 Michigan Law Review p.648

8 Ibid, p. 651

9 Ibid, p. 649

10 Ibid, p. 655

11 Lynwood, William, Provincale in Charles Donahue Jr. Roman Canon Law in the Medieval English Shurch (1974) 72 Michigan Law Review p. 648

12 William of Drogheds, Summa Aurea in 2 Quellen Zur Geschichte Des Romish Kanonischen Processes in Charles Donahue, Jr. Roman Canon Law in the Medieval English Church (1974) 72 Michigan Law Review p. 650

13 Charles Donahue, Jr. p. 651

14 Archbishops Commission on Canon Law in Charles Donahue, p. 651.

15 Charles Donahue, Jr. p. 656.

16 Ibid, p. 663

17 Ibid, p.664

18 Ibid, p. 706

19 Ibid

20 Berman, Harold J. Law and Revolution, p. 44-45

In addition to the aforementioned sources the following book was used for background and informational purposes:

Baker, J. H. An Introduction to English Legal History, London, Butterworths, 1979, p.110-113

Patrick,

You take a very mature and scholarly approach to this controversy; and you raise fundamental question about both the legal issues and the methodological issues. I haven't read your sources, but my guess is that Donahue is at bottom arguing that as a body of principles Roman / Canon law clearly was used in English courts ... but as "persuasive authority" rather than as "binding authority" in many instances.

Most of my marginal remarks (+ corrections) are in the clean-up / sharpen up category. Look these over carefully, please.

A-

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