

HISTORY OF WESTERN LAW

TAKE HOME EXAM

QUESTION # 1

3.2
B+

3-2-88

PATRICK D. WEADON

The study of
History is a precarious discipline, ^{became} the final effects and results of any historical revolution often turn out to be quite different than one would suspect. →

← The history of the Western legal tradition and its' precepts and philosophy are no exception to this theory, particularly when one considers the final result of what Harold J. Berman calls the "Papal Revolution".

When Pope Gregory in 1075 issued the Dictatus Papae, ^{underline foreign languages} one would have expected one of two things to occur. (i) The Pope would be successful in his attempt to subordinate imperial authority, and Medieval Europe would begin a new age dominated by Papal and ecclesiastical concerns or (ii) Pope Gregory's Dictatus Papae would be rebuked or ignored by the imperial authorities, and Europe would then continue with the King as lord and ruler of both the secular and religious worlds. ^{Yet in fact, neither of these alternatives "won out" and the "Papal Revolution"} The course of history, however, like many human affairs, ^{produced something that could be called an unresolved compromise} does not always follow a logical and obvious path, and the Papal Revolution was no exception. What is important about the aforementioned historical event, is not that it failed to produce a clear and coherent picture of the division of power between Church and State, but, that it gave birth to historical and legal developments that would ultimately be the vital force in what we know today as secular law.

In order to understand how this came about, one must understand that before 1075, the idea of a ^{as supreme ruler of Europe} ~~supreme~~ Pope was not only foreign to most kings and imperial ^{powers} ~~concerns~~ but was likely to be considered ^{RADICAL} due to the fact that it placed ^{also} ~~the idea of~~

your "idea plan" for setting this up is good; the transitions are a bit rough though

TO NE: sounds too grandiose

the imperial sovereign in a subordinate role.

Parallel Construction
This position was largely ~~unfathomable~~ ^{radical} for the time, due to the ^{general} acceptance of the King ~~not only as~~ ruler of the secular arena, ^{also as} but the ecclesiastical arena as well. The King was the leader in all respects. The Bishop of Rome (i.e. the Pope) had a definite role to play, but for all intensive purposes he had no more real authority than any local bishop or cleric within a typical feudal arrangement of the day.

~~This subordination of the Church to imperial authority had produced~~
~~was largely responsible for what became known as the Cluniac Reforms,~~ *an important backdrop for Gregory's claims.* →

← The Cluniac Reforms took place in the 10th and 11th centuries, and were a reaction to the corruption and immorality that had arisen from the close relationship and control of imperial authority. The main crux of the movement was to break the Church away from its' imperial binds and establish a church subject only to the control of God.

This movement was the beginning of the process ^{BY WHICH} the Pope ^{BECAME SUPREME RULER OF THE} christian religion, all rulers were to be subserviant to Him in all things. When Henry IV ^{Emper} of ~~England~~ finally capitulated to Pope Gregory in 1075 the revolution was well on its way to completion. As mentioned before, however, this "Papal Revolution" was far from being a simple triumph of the Papacy over imperial authority. The major effect was that society was no longer embodied in a single entity (the king over all), but was now composed of two distinct areas, the secular and the ecclesiastical. It followed that if there were both

heavenly and earthly concerns then there must be heavenly and earthly nations, (Augustine), and (for our purposes) heavenly and earthly law.

this reaction needs more emphasis

This new way of looking at things produced diverse legal systems, Cannon law, Royal law, Feudal law, Urban law, etc. This myriad of systems of law produced a high level of legal sophistication, which in turn produced such questions as: Who is subject to what set of laws? What court has jurisdiction? How are legal arguments and differences to be settled?

The final result was that law could no longer remain within the realm of custom or tradition. The stakes were now too high, the new legal pluralism (which was a product of the Papal revolution) demanded that a system of rules be implemented, in order that the concept of supremacy of the law be respected and obeyed.

An additional point of major importance, is the fact that the lines between these many forms of law were far from distinct. Each form of law influenced the other, laymen were subject to both Cannon law and Secular law as was the clergy. What this meant was that even though the Papal revolution had declared the Church independent of secular and imperial control, the splitting of the authority of the King into two distinct groups, secular and ecclesiastical (both subserviant to the Pope) was the very vehicle by which the secular law would grow and mature into a system all its own.

at what did this work?

~~Thus, on the face of it,~~ a skeptic might say that the

"Papal Revolution" was simply a power play by the Church to gain hegemony in the affairs of Medieval Europe. In truth, however, it is much more than that. The Papal Revolution when all was said and done can simply be said to be the driving force which ultimately gave rise to the secular nation state as we know it today and to the system of laws that govern those same nation states.

It is for this reason that when a wise student examines the events of the Papal Revolution, he should see not only a simmering conflict between secular and ecclesiastical authorities, but the formation of the very foundations of Western legal system and civilization.

Patrick.
It's good to see you having fun with the language, and emphasizing the importance of all this. And I don't want to "break your spirit" but... you need to work on tone. Precisely because it isn't "black & white", you ought to stay away from terms like "truth" & "wise".
- a more careful analysis reveals...
- a more balanced examination...
- Bertram's interpretation suggests...
- a more convincing view is...
etc... get the idea?
(My main substantive criticisms are on p. 3)