

## **DRAFT**

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### **Modern Classics in Church and State**

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Brian Tierney, *The Crisis of Church and State, 1050-1300: With Selected Documents* (Englewood, NJ: Prentice-Hall, Inc., 1964; repr. ed., Toronto: University of Toronto Press, 1988), xi + 211 pp.

In an impressive series of books, spanning more than half a century, Cornell University historian Brian Tierney has brought to brilliant life and life the Catholic legal and political thought of medieval and early modern times. A score of his book titles are now standard citations. They include *Foundations of the Conciliar Theory* (1955, 1989); *Medieval Poor Law* (1959); *The Origins of Papal Infallibility* (1972); *Church Law and Constitutional Thought in the Middle Ages* (1979); *Religion, Law and the Growth of Constitutional Thought, 1150-1650* (1982); and *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625* (1997). Tierney has shown that many of our cardinal Western ideas and institutions of property and charity, authority and sovereignty, rights and liberties, church and state, and more were shaped by medieval and early modern Catholic thought. In turn, many modern Catholic teachings on conciliar government, natural rights, and religious liberty, especially those forged during and after Vatican II, have been shaped by Tierney's exquisite historical writings.

Nowadays, every serious historian of law, politics, and church-state relations, recognizes the immense intellectual riches of the Middle Ages. This we owe to Tierney's pioneering work and that of other historians like Harold Berman, James Brundage, Dick Helmholz, John Noonan and their many students. The ongoing publication of fresh critical editions and translations of many medieval masterworks of canon law and political philosophy has further helped deepen our understanding.

The exact opposite assumption about the middle ages prevailed when Professor Tierney started his career after World War II. The middle ages, conventional history texts of the day taught, were the dark ages between the fall of Rome in the fifth century and the dawn of the Renaissance nearly a millennium later. This was the grim time of crusades, pogroms, and inquisitions, of massive illiteracy and black plagues, of papal theocracy and backward feudalism, with only a few bright lights and moments worth remembering. The middle ages were just that – “middling” – with nothing to compare to the glories of classical Greece and Rome or the splendors of Renaissance Italy and France. This caricature of

medieval thought was aided by a pervasive anti-Catholicism in the populace (this was before the breakthrough election of the first Catholic President, John F. Kennedy) and a growing academic bias against all things religious (this was the heyday of Marxism, positivism, and “The God is Dead” movement). There were exceptions among historians, of course, including notably Tierney’s Cambridge professor, Walter Ullmann who published prolifically on everyone from Gratian to Grotius. But such work hardly penetrated the mainline textbooks.

It was a stroke of marketing genius that, early in his career, Professor Tierney published this authoritative but accessible little textbook on *The Crisis of Church and State 1050-1300*. Here, in 200 pages, half of them crisply translated primary texts, half of them lucidly written commentaries, a student gets just enough evidence to conclude that the middle ages were anything but dark. Two generations of college and graduate students have had this as their textbook for courses in Western civilization, medieval history, church history, political history, and more. The book is still in print 55 years later, and continues to find its way into classrooms throughout the West and now well beyond -- in places like South Korea, Japan, India, Malaysia, Singapore, South Africa, and Brazil.

This textbook has been so popular and enduring because it is so beautifully crafted. A master teacher and lecturer, Tierney knows just how much erudition to reveal to enlighten and excite his student readers, just how many primary sources to marshal to document his main case, just how forcefully to challenge his readers so that they will be enticed to dig deeper in the field. The book provides an expertly guided tour of the great battles between medieval popes and emperors, bishops and kings, abbots and princes as they struggled for jurisdiction, property, and control within Western Christendom. Some of the story is high theater: as in the freezing stand-off between Pope Gregory VII and Emperor Henry IV in the snows of Canossa, or the tragic martyrdom of Thomas Becket at the hands of King Henry II of England, or the epic battles between the Roman papacy and the French monarchy over taxation, clerical appointments, and privileges of forum. Some of the letters and pamphlets produced in the heat of battle are brilliantly sardonic, bitterly acerbic, rhetorically violent. Others are masterful understatements with ingenious phrases and aphorisms that started whole new schools of political thought. Tierney provides juicy and judicious excerpts from many of the best such texts.

But Tierney also takes his readers behind the catchy headlines and tag lines of the medieval propagandists to uncover the immense learning of the high middle ages. The great battles of church and state, he shows, were the driving engines of Western law reform and constitutional development. This was the day when the first great universities were established in Italy, France, Germany, and England, with their core faculties of law, theology, and medicine. This was a day when the great books of Roman law and Greek philosophy were being rediscovered and reconstructed by supporters of church and state authorities alike. And this was a day when the clergy threw off their royal and political

patrons and established the Catholic Church as an independent legal and political entity. Indeed, the medieval Catholic Church was, in effect, the first modern Western state. It had its own intricate system of laws called canon laws, and its own system of hierarchical government, with executive, legislative, and judicial offices headquartered in Rome.

From the twelfth to the fifteenth centuries, Tierney shows, the church claimed a vast new “jurisdiction” -- literally the power “to speak the law” (*jus dicere*) for Western Christendom. The church claimed personal jurisdiction over clerics, pilgrims, students, the poor, heretics, Jews, and Muslims. It claimed subject matter jurisdiction over doctrine and liturgy; ecclesiastical property, polity, and patronage; sex, marriage and family life; education, charity, and inheritance; oral promises, oaths, and various contracts; and all manner of moral, ideological, and sexual crimes. The church also claimed temporal jurisdiction over subjects and persons that also fell within the concurrent jurisdiction of one or more civil authorities.

Some of these jurisdictional claims were a simple extension of the church’s traditional authority to govern the seven sacraments of baptism, confirmation, penance, eucharist, marriage, ordination, and extreme unction, each of which came to support whole new systems of law. Other jurisdictional claims were based on Christ's famous delegation to Saint Peter and through apostolic succession to the papacy: “I will give you the keys of the kingdom of heaven, and whatever you bind on earth shall be bound in heaven, and whatever you loose on earth shall be loosed in heaven” (Matthew 16:19). Still other claims were rooted in Christ’s discussion of the “two swords” (Luke 22:38), a spiritual sword held by the church and a temporal sword delegated to the state.

This complex new legal system of the church – and how it related to the laws of sundry secular authorities -- attracted sophisticated new legal, political, and constitutional theories. The honor roll of major medieval political theorists included such popes as Alexander III, Innocent III and IV, and Boniface VIII and such scholars as Gratian, John of Salisbury, Thomas Aquinas, John of Paris, and William of Ockham, all of whom make brief appearances in Tierney’s text. These writers reclassified the sources and forms of law, ultimately distinguishing a hierarchy of eternal and natural laws, canon and civil laws, common and customary laws. They developed elaborate rules for conflict of laws and contests of jurisdiction. They developed refined concepts of legislation, adjudication, and executive administration, and core constitutional concepts of sovereignty, election, and representation. They developed a good deal of the Western theory and law of public, private, penal and procedural rights, and of chartered corporations, private associations, and foundations and trusts.

Despite these great advances in church government and canon law, however, medieval writers ultimately learned to separate church and state, Tierney shows. To be sure, in a few papal territories and in some principalities

run by prince-bishops, the church did enjoy plenary jurisdiction and the canon law was the law of the local land. And, to be sure, some antagonists made grand conflicting claims to papal supremacy and imperial preeminence in Western Christendom. But, in most eras and areas of the medieval West, Tierney shows, the medieval churches and states learned to separate their core identities and activities, offices and officers and to live by the basic biblical injunction: “Render to Caesar the things that are Caesar’s, and to God, the things that are God’s” (Matthew 22:21). This book documents the medieval case of church and state so exquisitely that it will likely be read for 55 more years – and hopefully longer.

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