

Draft

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Foreword

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Abstract

A brief overview of an important new collection of essays on great Christian jurists in Italian history from the Middle Ages until today.

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“Thrice has Rome conquered the Western world,” Rudolf von Jhering once wrote: “by her arms, by her church, and by her law.” Another volume in this series analyzes the first of these conquests, and the shaping influence of the ancient Roman Empire on law and religion in the first-millennium Western world. This volume takes up the second and third of these “conquests” – the transformative power of the Roman church and Roman law on the Italian peninsula (“Italy” today) in the second millennium. Italy was the site of the “papal revolution,” when Pope Gregory VII (r. 1073-85) and others established the Roman Catholic Church as the preeminent legal and political ruler of medieval Christendom. Italy was the site of the rebirth of Roman law when scholars rediscovered the *Digest* of Justinian in ca. 1070 and created the first law faculties in Bologna, Padua, Naples, and Siena dedicated to its intense study and new application in statutes and cases. Italy was the site of the rebirth of the Church’s canon law with the publication of Gratian’s *Decretum* in ca. 1140 unleashing a massive new industry of church legislation and canonical jurisprudence, built in part on Roman law prototypes. And Italy was the birthplace of scholastic theology and philosophy, catalyzed by the rediscovery of Greek, Roman, and patristic sources and brought to sublime expression in the monumental *Summae* of Thomas Aquinas and others.

This Italian story of birth and rebirth in law and religion repeats itself in the middle of the second millennium. The Italian renaissance brought the world not only breathtaking new art, architecture, and literature, based in part on classical Roman prototypes. It also brought the Church comprehensive reforms and renewals of its doctrine, liturgy, catechesis, and governance set out in the monumental decrees of the Council of Trent (1546-63), the church’s definitive response to Protestant and other

reform movements in Christendom. The Tridentine decrees also transformed the canon law, leading to the publication of the Roman edition of the books of the *Corpus Iuris Canonici* in 1582 and the (re)establishment of canon law faculties and methods in many major universities around Italy and well beyond. The Renaissance renewed Roman law and civilian learning both through application of the famous *mos gallicus* method to numerous public, private, penal and procedural law questions and through publication, with the new printing press, of masterful new legal treatises, the best of them gathered in the massive *Tractatus universi juris* of 1584 issued under the auspices of Pope Gregory XIII. And this was the time of a brilliant neo-Thomist renaissance in theology, philosophy, and jurisprudence, led more centrally by the University of Salamanca in neighboring Spain, but also transformative of legal, political, and social scholarship in many Italian universities.

And rebirth and renewal in law and religion recur yet again at the end of the second millennium. The Catholic Church, badly shaken by the attacks of modern liberalism and sharply divided across a vast new colonial empire, responded with another renewal of Thomistic thought in the sweeping new social teachings movement inaugurated by Pope Leo XIII and culminating in the constitutions, declarations, and decrees of the Second Vatican Council (1962-1965) a century later. The Church transformed its canon law with the promulgation of a new Code of Canon Law, first in 1917 and again in 1983, reviving anew deep canon law jurisprudence, now regularly taught in seminaries and law faculties. Renewal and reform of state law came with the great legal codification movements of the 19th and 20th centuries, the constitutional transformation of Italy in the grim aftermath of Mussolini and two world wars, and the negotiation of a whole series of brilliant new concordats between the Holy See and Italy and various nation-states in Europe and the Middle East.

This volume tells this millennium-long story of law and religion in Italy through a series of 26 well-chosen and well-written biographical case studies. The chapters range from the first Italian civilians and canonists, Irnerius and Gratian in the early twelfth century to the leading architect of the Second Vatican Council, Pope Paul VI. Between these two book ends, we get exquisite case studies of familiar civilians like Bartolo, Baldo, and Gentili and familiar canonists like Hostiensis, Panormitanus, and Gasparri but also a number of other distinguished jurists who deserve much more attention today from non-specialists. A few famous popes and cardinals who shaped the law, Innocent IV, Cajetan, Bellarmine, and Paul VI make an appearance on these pages. So do a few theologians and philosophers with profound legal insights and reforms, such as Aquinas and Sturzo. But most of the case studies focus on canon law and civil law jurists – judiciously selected from the 2159 jurists who appear in the two-volume biographical dictionary of Italian jurists (*Dizionario biografico dei giuristi italiani*, 2013), and collectively representing the major schools and shifts in thought about the multiple interactions of law and Christianity over the second millennium. And almost all the case studies feature devout Catholics who dominate the religious landscape of Italy until the twentieth century when creative free-thinkers begin to reconstruct and reform traditional teachings yet again.

This volume is part and product of an ongoing project on “Great Christian Jurists in World History.” The project is directed by the Center for the Study of Law and

Religion at Emory University, where the editors Professors Orazio Condorelli and Rafael Domingo are senior fellows. Each volume in this global Great Christian Jurists series focuses on a specific country, region, or era, and samples the life and work of a score or more of its greatest legal minds over the centuries. These legal minds include not only civil and canon lawyers and judges but also theologians, philosophers, and church leaders who contributed decisively to legal ideas and institutions, or who helped create landmark statutes, canons, or cases. Thus, familiar Christian jurists like Gratian, Grotius, Blackstone, Kuttner, and Scalia appear in this series, but so do Augustine, Isidore, Aquinas, Calvin, Barth, and Romero. This biographical approach is not intended to deprecate institutional, doctrinal, social, or intellectual histories of law, nor will it devolve into a new form of hagiography or hero worship of dead white males. It is instead designed to offer a simple method and common heuristic to study the interaction of law and Christianity around the world over the past two millennia. In due course, we hope to produce some fifty volumes and one thousand biographical case studies all told.

Columbia University Press opened this series in 2006 by publishing a three-volume work titled *Modern Christian Teachings on Law, Politics, and Human Nature*, divided into case studies of nearly thirty modern Catholic, Protestant, and Orthodox Christian figures. Cambridge University Press has in print or in press newly commissioned studies on great Christian jurists in the first millennium, as well as in English, Spanish, French, Lowlands, and American history. Routledge will publish major new volumes on Great Christian Jurists in Nordic, Russian, Welsh, and Latin American history. Mohr Siebeck is taking up the German story, Federation Press the Australian story. In due course, the Center for the Study of Law and Religion aims to commission similar studies for other parts of the world, particularly countries in Eastern Europe and Eurasia, and discrete regions and eras in the Middle East, Africa, and the Pacific Rim.

This volume was made possible by a generous grant from the McDonald Agape Foundation which supported the work of the editors and contributors. On behalf of the editors and my colleagues in the Center for the Study of Law and Religion, we express our deep thanks to Ambassador Alonzo McDonald, Ms. Suzie McDonald, Mr. Peter McDonald, and the other members of the Foundation board for their generous support for this and many other related volumes on law and Christianity. We are also most grateful for the perennial support, counsel, and encouragement of Gonzalo Rodríguez-Fraile for Rafael Domingo's work on fundamental questions of law, religion, and spirituality viewed in rich interdisciplinary perspective.

We are deeply grateful to Dr. Gary S. Hauk, former Emory University historian and current senior editor in our Center, for sharing his superb editorial talents so generously in copyediting this manuscript. We also express our warmest thanks to our Center colleagues, Ms. Amy Wheeler and Ms. Anita Mann for their skillful administration of this and other scholarly projects.

It was a joy for me to work with Professors Condorelli and Domingo and to learn from the two dozen leading scholars from European and North American universities whom they commissioned to write fresh chapters. We are especially grateful that so many great Italian jurists and legal historians were kind enough to join this volume and present their work in English form – no easy task for those scholars grounded in Latin

sources and accustomed to writing in Italian, French, or Spanish, and no easy method to accept in a day when doctrinal, social, and political historiography is more fashionable.

It is a delight to publish this volume and several others in the distinguished Law and Religion series edited by one of the world's preeminent scholars of law and religion, Professor Norman Doe. Professor Doe and his many colleagues in the Cardiff Centre for Law and Religion have been vital trans-Atlantic allies with our Emory Center for the Study of Law and Religion. We give thanks for their leadership in this expanding global field of interdisciplinary legal study, and for their partnership with us in publishing this and parallel volumes on law and Christianity.

Finally, we express our warm thanks to Alison Kirk and her colleagues at Routledge in taking on this volume and applying their usual standards of excellence in their editing, production, and marketing.

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