

ST. RAYMUND AND THE DECRETALS

THE present year marks two notable anniversaries associated with events which had wide-spread importance, though very different results within the area of Law. The one was the publication of the famous Decretals of Gregory IX in 1234, a compilation of ecclesiastical law brought together by a Dominican friar, St. Raymund of Penafort, in the direction of centralization in Church government, which took its rise from the great Hildebrand, steadily but surely moved forward through the reigns of successive popes, and finally almost came to rest with Pope Gregory IX. Then there is that other most tragic event, three hundred years later, in 1534, the passing of the Act of Supremacy, whereby the death blow was struck at Canon Law, as far as England is concerned, and any lively influence that it might still have exerted on our own legal institutions was stifled at its source, though in shadowy forms it lingered on.¹ But in the following year even the study of Canon Law was crushed out, when Cromwell as Henry VIII's vicegerent visited the Universities and issued injunctions to the effect that lectures on the Decretals and the conferring of degrees in Canon Law should be abolished. The sequel was a notable depression also in the study of civil law in this country.²

All but the prejudiced sectarian have come to acknowledge the Papacy as a wonderful piece of machinery and organization, not only within the sphere of religion and political prestige, but as a centre of law and government. That the Papacy and its headship of the Church was with-

¹ Even to-day we have the interesting survival among many others of the dual matters of Probate and Divorce pertaining to the same division of the High Court of Justice. *cf.* Richard O'Sullivan, *Canon Law in Medieval England*.

² Holdsworth, *Hist. of English Law*, vol. IV, p. 228, vol. I, p. 592.

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out hesitation acknowledged and always presupposed, may even be proved by reference to such as the Pseudo-Isidore or Burchard, whose viewpoint, we may say, was rather episcopal than papal. Not infrequently though it has been assumed that the False Decretals of the ninth century were the instrument whereby papal power was consolidated and the centralization of ecclesiastical government partially achieved. Whilst however admitting a certain previous legal uniformity, one may with some historical reason suggest that the real effective movement towards consolidation was inaugurated much later under the reform of Pope Gregory VII, brought to perfection particularly under Alexander III, Innocent III, Honorius III, and definitely established and made articulate in the Decretals of Gregory IX.

The endeavour of the Pseudo-Isidore was to defend the episcopal power against the intrusions of the laity, and this he could only do by establishing a link of authority between the episcopate and the Pope at the apex of the hierarchy. He considered therefore the foundation of episcopal independence to be the supremacy of the Pope.³ This explanation alone will give the underlying reason for the systematic and ingenious forgeries, which remained long undetected, in the Pseudo-Isidorian group of documents. Again, Burchard, Bishop of Worms in the eleventh century, who was by no means an eager promoter of the Pope's cause, was obliged to cite papal decretals on account of their acknowledged weight. The steady progress however towards central control, which appeared as an accomplished fact in the thirteenth century, was conducted under the headship of the popes, and it was quickly realized that if the movement was to rest on a solid basis, a coherent legal system must be constructed of genuine laws not entirely new, but in the main emanating from an authority which could not be challenged.⁴

³ P. Fournier, *Hist. des Collections Canoniques*, vol. I, p. 133.

⁴ *The English Church and the Papacy*, by Z. N. Brooke, p. 32.

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To picture any one of the popes as sitting down and visualizing central government in the same focus and amplitude as we view it now would be an unhistorical distortion. Legal centralization is indeed a logical outcome of the doctrine of the primacy, but the legal bonds drawn between the head and members of the visible Church are consequent on a multiplicity of acts on the part of the legislature. Such disciplinary utterances con-signed to writing, afterwards to be known as Decretals, were provoked by circumstances or called forth at the instance of petitioners. The very universality of the Church, and its gradual expansion to remote and segregated territories, made it incumbent on the Supreme Pontiffs to take measures which would ensure these places being under his supervision and control. Only by the exercise of a power coming from the centre could laxity and abuses of one kind and another here be swept aside. From the prevailing evils of the times, 'nothing but the long arm of Rome could save them.'⁵ Distant papal control but rarely exercised and only in extreme cases was found insufficient, and the assembled bishops of the province were scarcely capable of coping effectively with the many difficult situations. Gradually a monarchical leadership began to replace the almost feudal headship of the Church, but as Professor Smith remarks, 'it was a living growth from below, not a mechanical structure superimposed from above' (p. 45). In fact the practice of recourse to the Pope by ecclesiastics which began in England during the reign of Stephen, whether by way of appeal or with a view to decisive and authoritative answers to consultations, tended in no small degree to shift the centre of gravity towards Rome. 'The ideal of the golden age of the canonists was to make a working reality of the kingdom of God upon earth; to express the laws of that kingdom in a coherent, all-embracing code, and to enforce that code

⁵ *Church and State in the Middle Ages*, by A. L. Smith, Lecture I, p. 39.

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upon the still half-heathen kingdoms of the world.'⁶ The accomplishment of this lofty ideal was entrusted to Raymund of Penafort by Gregory IX, under whose auspices and express command the first coherent statute book of Canon Law was compiled and promulgated.

St. Raymund was born about the year 1175 at Barcelona, and from the first seems to have shown extraordinary brilliance. Early in his career he was professor of philosophy in his native town and, we are informed, made no charge for the frequenting of his lectures. About the year 1210 he left Spain for Bologna to complete his studies in law, after which he graduated in both Roman and Canon Law and was thus enabled to occupy the chair of law at the University of Bologna. Here again he gave his services gratuitously as a professor, with the result that the city government found it expedient to raise a subsidy out of which they could offer him and other doctors a yearly salary.⁷ Either at Barcelona or here at Bologna, where he was regarded as a most distinguished professor, he published a treatise on ecclesiastical legislation. Having occupied the chair of law in Bologna for three years, he returned to Spain, where shortly after his arrival at Barcelona he was nominated by the Bishop as a canon of his chapter. He had already made the acquaintance of many of the Dominican Friars whilst still at Bologna, and had especially been attracted by the preaching of the prior, Blessed Reginald. When passing through Viterbo he had met St. Dominic himself. Accordingly in 1222 he received the Dominican habit at the recently-founded convent at Barcelona. Here with St. Peter Nolasco, in 1223, he became co-founder of the Order of Mercedarians for the

⁶ A. L. Smith, *op. cit.* p. 51.

⁷ During the early days of the University the doctors of Bologna depended for their livelihood on the fees of their students, who as we learn from Odofred, 'volunt scire, sed nolunt solvere.' (in *Dig. Vet.* (Lyons 1559) T. II. f. 102, quoted in *Cambridge Medieval History*, vol. VI.) This may perhaps explain St. Raymund's position.

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redemption of captives and contributed considerable assistance in adapting some of the Dominican constitutions to the needs of the new Order.

During the years 1223 to 1228 St. Raymund was occupied in active ministry and apostolic work, and at this period he wrote his *Summa casuum* under the obedience given to him by the Provincial of Spain, Suero Gomez. On account of the great increase of the study of Canon and Civil law, penitentials or manuals for the use of confessors multiplied and were perfected; St. Raymund's *Summa* was one of these and exercised a wide influence.

In 1239 Cardinal John of Abbeville, Bishop of Sabina, was sent on a legation to Barcelona, to re-establish ecclesiastical discipline, to encounter the Moors, and particularly to settle the cause of nullity instituted against the marriage contracted between King James I of Aragon and Eleanor of Castile. The case was a very delicate one, owing to the many political issues which were at stake. The document in which the parties declared themselves under oath to be willing to abide by the decision of the Papal Legate, received the signature of Raymund below that of the Archbishop of Tarragona and the Prior of Barcelona. It is more than probable, therefore, that Raymund took an authoritative part in the discussions, and directed the final issue, which was to declare the marriage null and void. Further, the son born of the marriage, Don Alphonso, was declared legitimate and the heir to the throne of his father.

On his return to Rome, the Cardinal Legate wished Raymund to accompany him and to remain in his suite as his private chaplain and adviser. But he was unable to prevail over the humility of the Saint. The reigning Pontiff evidently was soon informed by the Cardinal of his remarkable ability,⁸ since he was shortly to receive pontifical letters summoning him immediately to Rome. When

⁸ Tournon asserts that John of Abbeville in rendering an account to His Holiness of the success of the legation, delivered on the same occasion a eulogy of St. Raymund.

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St. Raymund left for Rome is difficult to determine with precision, but the probable date is 1230 or 1231. At once Gregory IX appointed him his chaplain (now known as consultor or auditor, whose advice is sought in solving important and difficult cases that come before the Roman Chancery), nominated him Grand Penitentiary and chose him as his personal confessor. The Pope was not slow in recognizing that the reputation he had gained for sanctity, as well as skill and prudence in juridical matters, was well founded; wherefore, he decided to employ Raymund in the work he had in mind, of re-arranging and codifying the canons of the Church. In 1230 Gregory IX ordered St. Raymund to form a new canonical compilation which was to replace all former collections.

In order to eliminate the many legal obscurities which were constantly arising, and to put an end to useless litigation, a canonical statute book was an urgent necessity. The motives behind this epoch-making undertaking are clearly set forth, though perhaps in somewhat stilted Latin, by the Pope himself in the Bull of promulgation *Rex pacificus*. Some however have presumed to repudiate the reasons stated by the Pope, and have asserted without proof that the Pope was moved by the desire to expand and emphasize the papal authority over the Universal Church.⁹ This is an unworthy view, and one which forgets that 'principles precede practice, and practice precedes theory.'¹⁰ In the thirteenth century the papacy was already at the zenith of its power, and we should therefore expect that its influence would be made articulate in its legislation, particularly when the common law now systematized and presented in a coherent form, is for the

⁹ By German writers the movement is described as 'hierarchische Tendenzen.' The theory is founded, and seems first to have been propounded by Schulte, *Geschichte der Quellen und Literatur des canonischen Rechts*, and transcribed by Friedberg in his Prologue to his critical edition of the Decretals of Gregory IX. The true scope of the collection is made clear in the Bull *Rex pacificus* which cannot be ignored.

¹⁰ W. E. Collins, *The Study of Ecclesiastical History*, p. 133.

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most part composed of fragmentary repetitions of special rulings given by successive pontiffs under the stress of particular circumstances. In point of fact, the decretals in the Gregorian code though radiating from the centre, as is natural in a properly organized society, are not by any means exclusively of a centralizing order.

We learn from the Bull of Gregory IX the chaotic state of the Canon Law in his time and the need of a new collection. Papal constitutions and decretals were scattered in several volumes which were generally inaccessible. Confusion was inevitable; decisions in extant collections were often repetitions of ones already given, others were only similar, others again were contradictory and tediously long; many decrees were of uncertain authority, since they had never been embodied in any official collection; certain cases were left pending owing to gaps in the legislation, and frequently the legislation itself was obscure and uncertain. There was also a great mass of legislation poured out since the time of Gratian (A.D. 1140) whose work had already grown old and out-of-date. Two very important Lateran councils had intervened in 1179 and 1215, and the sovereign pontiffs, chiefly Alexander III, Innocent III, Honorius III, and Gregory IX, had shown themselves more than able law-givers.

The task therefore imposed on St. Raymund, which he accomplished in about four years, was sufficiently exacting. He did far more than collate documents reposing in former collections. His work, the first of its kind, shows a deal of originality and an acute legal insight. Raymund did not hesitate to omit many decisions or modify others as he thought desirable to make the law clear and concordant. The original source of some of the chapters is uncertain. The 185 rubrics of titles have been lifted bodily from their surroundings in the *quinque compilationes antiquae*¹¹ chiefly from the first, the work of Bernard of

¹¹ Thus are designated five of the more important collections of decretals published in the interval between Gratian and Gregory IX.

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Pavia, and only six are due to Raymond's composition, and seven others are only slightly altered. The material has been distributed, with few exceptions, in the same chronological series as in the ancient collections, under titles and headings, and in some instances the false rubrics or headings have been retained. From this and other indications it may be gathered that Raymund cites his authorities second-hand. At first sight this would appear to reflect unfavourably on St. Raymund's work, but it must be remembered that living in an age when higher textual criticism was unknown, nothing could have been more natural than that he should have followed the method of his predecessors and contemporaries in adapting passages to the need of the moment, regardless of their origin and spurious character. Raymund was in a favoured position, working under the immediate auspices and sanction of the Pope. For this reason the Gregorian compilation carried particular weight, unlike others which, although following a similar method, were products of private enterprise. Further, Raymund had been commissioned to make a universal law book, which would be worthy to receive papal sanction, and not merely to provide a repository for the conservation of critical texts.

Owing to the miscellaneous character of the texts incorporated into the ancient collections which were used as sources by Raymund, a number of apocrypha crept into the ecclesiastical common law. In the same way certain fragments of the Roman Law, from the law of the Visigoths and from the capitulars of the Frankish kings, gained admittance into the company of decretals. Likewise four of the so-called Canons of the Apostles, a spurious document of the fifth century purporting to convey a set of rules given by St. Clement, some of the false decretals pertaining to the Pseudo-Isidorian group, and one of the statutes attributed to the fourth council of Carthage A.D. 398, stand side by side with genuine decretals.¹² A few

¹² The original source of this Carthaginian statute is a sixth century collection known as *Statuta ecclesiae antiqua*. As no

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texts originate from the seventh century Penitential of the Pseudo-Theodore, which is probably a collection made of the *judicia* of St. Theodore, Archbishop of Canterbury.

The general endeavour of St. Raymund was to make a synthesis of texts, not already found in the Decrees of Gratian, which he considered most apt to meet the existing needs of the Church at large. This he did by judiciously searching among the compilations published subsequently to the time of Gratian and by choosing texts which were sufficiently cogent to warrant their retention, regardless of the fact that they were spurious in origin or adulterated by interpolations. He was amply justified in this course by the full mandate given him by the Pope and the sanction bestowed on the finished work. Inasmuch as the vast majority of the materials pressed into service were genuine decretals of the sovereign pontiffs or canons of general councils, they carried with them the plenitude of authority which few would dare to challenge. There are also selected passages from Holy Scripture, from the Fathers, and from ecclesiastical writers. The frequent adoption of local and national usages, which had been consolidated or introduced by statutes of provincial or diocesan synods, tended very markedly to introduce a certain uniformity combined with universality and gave Church Law a much more internationally legal character.

Finally, the great work was brought to successful completion and received the full force of enacted law from the Bull of promulgation *Rex pacificus* given at Spoleto, September 5, 1234, whereby it was transmitted to the Universities of Bologna and Paris and thence to the other Universities. There can be little doubt that the University of Oxford, where a flourishing school of Roman and Canon Law had grown up¹³, was among the first to receive the new Decretals and to comment on them. Here at

council was held at Carthage in the year mentioned, the canons are held to be spurious.

¹³ *cfr.* Pollock & Maitland, *History of English Law*. Vol. I, p. 100.

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Oxford the learned Lombard lawyer, Vicarius, very probably taught, and if this is so some of his scholars must still have been lecturing when the Gregorian Code appeared. We learn that by Papal ordinance the Dominican Friars at Oxford had licence to review, correct and promulgate official collections of Canon Law, and there is no reason to suppose that the Decretals were any exception in this regard. Another prominent teacher in the Oxford law-school was William of Drogheda, who was probably writing his *Summa Aurea* in 1239, and whose sole authority for the Decretals was the code of Gregory IX.¹⁴

It was the intention of Pope Gregory IX, as revealed in his Bull, that by the promulgation of his Decretals all other decretals of general import not incorporated or found in Gratian should thereby be repealed. Henceforth this new code alone was to be regarded both as a text-book for law students and for practical use in the ecclesiastical courts. Each part however was not of equal legal value, although the whole received unqualified approval from the reigning Pontiff. The enactments or decisions (*partes dispositivae*) alone were given the force of law; not so the accounts of controversy (*species facti*) nor the historical notices which, it may be remarked in passing, are not always free from inaccuracies. The rubrics of the titles, as pertaining to the authentic text, had full legal force whenever they conveyed the complete sense of the chapters contained under them.¹⁵ Moreover, it was never allowable to interpret them in a sense contrary to the decision expounded in the chapters themselves.

This Codification of the Church's law inevitably introduced a legal formalism and precision into Canon Law which perhaps sometimes was in danger of becoming purely formalistic. However that may be, the result was

¹⁴ F. de Zulueta, *William of Drogheda*, pp. 644, 654.

¹⁵ A lack of accuracy is shown in saying that every sentence, every rubric, contained in this compilation was law. *cf.* Pollock & Maitland, *History of English Law*, vol. I, p. 93.

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not a transitional product but a completion and rounding off of the law, which gave a fresh impulse to its life. Thus the study of both Canon and Civil Law, in many directions was influenced and encouraged, procedure in the courts Christian was now conducted on sure lines and with greater briskness. Lastly, it is beyond question, that our English Law underwent modifications consequent on borrowings from the Law of the Decretals, though we are unable with safety always to argue dependence merely by the enumeration of coincidents in the two systems of law.

It has become a commonplace that the present law which rules the Church has its roots in the soil so carefully prepared by Raymund and it often happens that the canons of the Codex of Canon Law, published in recent times, can only be understood and correctly applied by reference to the Gregorian Decretals, since our law is in many particulars substantially the same. The modern Codex, a true offspring of St. Raymund's larger volume, is indeed an unparalleled achievement which assures us that our contemporary canon lawyers are not unworthy of the inheritance left to them by their medieval predecessors. Small wonder, then, that the canonists have selected as their patron the great Dominican lawyer-saint, under whose guidance the Church has shown once again to the world her divine power for making all things new.

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