

CLASS OUTLINE — LECTURE 1

Medieval Studies 119
Constitutional and Legal History of
Medieval Continental Europe
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Law 2165
Legal History:
Continental Legal History
Prof. Donahue

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I. LECTURE 1A

1. Questions about the mechanics.?
2. The specific topics: (a) the capture of wild animals as the foundation of property; (b) the formation of marriage, (c) the use of witnesses in both criminal and civil procedure.
3. I intend to spend most of this class on what was in Lecture 1b, Christianity as a legacy of the ancient world, a topic that comes before our chronology officially begins. Let us begin, however, by looking at some highlights of Lecture 1a.

A quotation from the beginning of Gratian of Bologna, *Concordance of Discordant Canons* d.a. D.1. Written around 1140, this may be greatest book about law written in the Middle Ages.

“Humankind is ruled by two things, natural law (*naturale iure*) and customs (*moribus*). The law of nature (*ius naturae*) is what is contained in the Mosaic law and the Gospels (*lege et evangelio*), in which everyone is ordered to do to another what he wants done to himself and is prohibited from doing to another what he does not want done to himself. Whence Christ in the Gospels (Matthew 7:12): “Everything that you want other persons to do to you, do you also the same to them, for this is the law (*lex*) and the prophets.”

What strikes you as odd about that passage?

This is a course about something that is decidedly not politically correct, the Western legal tradition. Indeed it’s aggressively western because we say little about northern and eastern Europe and practically nothing about the rest of the world. Taking it as non-PC, what is the first thing that would occur to you if someone woke you up in the middle of night and said “Western legal tradition”? Think about that; we’ll come back to it on Wednesday.

II. PERIODIZATION

1. Much of European legal history is still written from a rather rigid national point of view. The periodization thus tends to be dictated by the periodizations of national histories. We are trying to do something different.

2. Periodization is important in any kind of history, but it is also a problem, because the way we organize may predetermine how we come out, what our overall points will be.
3. Look at the table immediately below.

Continental Legal History

<i>Period</i>	<i>Description</i>	<i>Politics</i>	<i>Intellectual</i>	<i>Roman</i>	<i>Canon</i>	<i>Customary/National</i>
450–1100	Early Middle Ages: primitive collections	Barbarian Invasions	Monastic scholars	Romano- barbarian Codes	Collections	Barbarian Codes Capitularies
1100–1250	High Middle Ages: academic study	Feudalism, Feudal monarchy	Early scholasticism	CJC–glossators	Gratian→decretists Papal decretals	Customals
1250–1500	Later Middle Ages: academic application:	National monarchy	Late scholasticism	CJC– commentators, <i>Consilia</i>	Decretalists →ency- clopedic jurists	Customals and statutes
1450– 1550	Renaissance and Reformation: academic bifurcation	Absolutism	Humanists and reformers	Humanist jurists	Councils, <i>Consilia</i>	Codification of custom, Reception
1550– 1750	Early Modern: bureaucracy and philosophers	Absolute monarchy	Political theory; Mathematics	Natural law, <i>usus modernus pandectarum</i>	Papal bureaucracy, Handbooks	‘Institutes’ and statutes
1700– 1917	Modern: codification	Revolution	Enlightenment, Pandectists, Historical School	Pandectists →Codification	Modern decretalists →Codification	Codification

Roman Legal History

<i>Period</i>	<i>Description</i>	<i>Politics</i>	<i>Sources of Law</i>
500-250 BC	Archaic	City-State	XII Tables
250-1 BC	Pre-Classical	Urban Empire	Statutes/Cases
1-250 AD	Classical	Principate	Cases
250-500 AD	Post-Classical	Dominate	Imperial Constitutions
550 AD	Justinian	Byzantine	Code

English Legal History

<i>Period</i>	<i>Description</i>	<i>Politics</i>	<i>Sources of Law</i>	<i>Roman Influence</i>	<i>Compare Continent</i>
600–1150	Age of Tort	Tribal→Feudal Monarchy	Barbarian Codes, Custom	Non-existent	Weak
1150–1300	Age of Property	Feudal monarchy	Custom, Case law, Statute	Strong on method	Same
1300–1500	Age of Trespass	National monarchy	Case law	Weak	Strong
1500–1700	Age of Equity	Absolute monarchy →Const. Monarchy	Case law, Statute	Strong in spots	Quite strong
1700–2000	Age of Reform	Const. monarchy →Parliamentary sovereignty	Case law, Statute, Some codification	Submerged but there	Quite strong

III. THE CODIFICATION PHENOMENON.

1. At the beginning:
 - a. literacy
 - b. the beginnings of a realization that law belongs in separate category
 - c. realization of the connection between what we would call the state, and what they called different things, and the law
2. At the end:
 - a. a long period of professional development
 - b. sources of law proliferating and becoming unmanageable
 - c. person of power and/or genius
3. Taking Justinian, the Napoleonic Code, and the Uniform Commercial Code as examples of 'end-codifications', the differences may be more important than the similarities:
 - a. Justinian is a collection of texts, the Napoleonic Code and Uniform Commercial Code are systematic rewritings of the law.
 - b. The politics seem to be similar between Justinian and Napoleon but not Karl Llewelyn, the drafter of the UCC.
 - c. Justinian is legally conservative; Napoleon and Llewelyn are much less so.
4. 'True codes', i.e., codes that follow the model of the 19th European codes, are:
 - a. authoritative
 - b. exclusive
 - c. systematic

Applying these tests there is no Western code as opposed to a collection before the Prussian Civil Code of 1794; this is followed by the Napoleonic code of 1804, and by the Austrian Civil Code of 1811 (1st ed. 1786). Once these three codes had been promulgated, the ones that followed showed a considerable amount of influence from them, particularly from the French code.

5. At the end of the table above for Roman law, we have the great Roman collections: 529–533 A.D. They are going to become very important in our story. We'll talk about them in the next class. In the rest of this class I would like to talk about another legacy of the ancient world: Christianity, beginning with a document: Paul's letter to the Romans.

IV. THE LEGACY OF THE ANCIENT WORLD: CHRISTIANITY

Paul's Letter to the Romans

The argument of the letter:

The anger of God against both pagan and Jew.

Why God is angry against the Jews is easy. They have the Law but they do not keep it, 2:21–22 (bottom of p. 13 of the *Materials*): “You preach against stealing, yet you steal; you forbid adultery, yet you commit adultery; you despise idols, yet you rob their temples.”

Why God is angry against the pagans is more complicated, 2:14–15 (JB): “Pagans who never heard of the Law (νόμον) but are led **by reason** (φύσει, *naturaliter* in the Latin Vulgate, literally ‘by nature’) to do what the Law commands, may not actually ‘possess’ the Law but they can be said to ‘be’ the Law. They can point to the substance of the Law engraved on their hearts – they can call a witness, that is, their own conscience – they have accusation and defense, that is, their own inner mental dialogue. . . . on the day when, according to the Good News I preach, God, through Jesus Christ, judges the secrets of mankind.”

2:14–15 (NJB): 14. So, when gentiles, not having the Law, still **through their own innate sense** behave as the Law commands, then, even though they have no Law, they are a law for themselves. 15. They can demonstrate the effect of the Law engraved on their hearts, to which their own conscience bears witness; since they are aware of various considerations, some of which accuse them, while others provide them with a defence . . . on the day when, 16. according to the gospel that I preach, God, through Jesus Christ, judges all human secrets.

2:14–15 (NRSV) ¹⁴ When Gentiles, who do not possess the law, do **instinctively** what the law requires, these, though not having the law, are a law to themselves. ¹⁵ They show that what the law requires is written on their hearts, to which their own conscience also bears witness; and their conflicting thoughts will accuse or perhaps excuse them ¹⁶ on the day when, according to my gospel, God, through Jesus Christ, will judge the secret thoughts of all.

It’s pretty clear that *nomos* here, the Greek word for law, is being equated with *torah*, the Hebrew word for law and, in particular, what is found in the first five books of the Bible. There would seem to be a notion of natural law in this passage. Elsewhere, Paul suggests that God’s plan can be seen in creation (1:19) – that certain sins are ‘unnatural’, homosexual acts being among those mentioned (1:26), but also envy, murder, treachery, rebelliousness to parents (1:29–30). Where Paul got this idea of natural law is a matter of some debate today. Many Biblical scholars today would argue that the parallel between what Paul says and Greek and Roman Stoic ideas of natural law arises almost by chance, and the more recent translations reflect that view. We need not get into that issue, for it is clear that anyone who knew the Stoic idea of natural law would certainly see the parallel.

But where are we to find this law “engraved on the hearts” of the pagans? in the Torah? Yes, of course. but also (and this is the first big move in the letter):

The relationship of faith and law. 3:21–3:31:

“God’s justice that was made known through the Law and the Prophets has now been revealed outside the Law . . . to everyone who believes in Jesus Christ. . . . [3:31] do we mean that faith makes the Law pointless? Not at all: we are giving the Law its true value.”

But that might suggest that the Law is still in force.

The Christian is freed from the Law. 7:1–8:1:

7:1: “Brothers, those of you who have studied law will know that laws affect a person only during his lifetime. A married woman, for instance, has legal obligations to her husband while he is alive, but all these obligations come to an end if the husband dies. . . . That is why you, my brothers, who through the body of Christ are now dead to the Law, can now give yourself to another husband, to him who rose from the dead to make us productive for God. . . . The reason [8:1] therefore why those who are in Christ Jesus are not condemned, it that the law of the spirit of life in Christ Jesus has set you free from the law of sin and death. God has done what the Law, because of our unspiritual nature was unable to do.”

But what is now law?

A new law for a new covenant.

NRSV 13:8–10 “[8] Owe no one anything, except to love one another; for he who loves his neighbor has fulfilled the law. [9] The commandments, ‘You shall not commit adultery, You shall not kill, You shall not steal, You shall not covet,’ and any other commandment, are summed up in this sentence, ‘You shall love your neighbor as yourself.’ [10] Love does no wrong to a neighbor; therefore love is the fulfilling of the law.”

Cf. NRSV Leviticus 19:18: “You shall not take vengeance or bear a grudge against any of your people, but you shall love your neighbor as yourself: I am the LORD.”

But what of the secular law?

NRSV 13.1–7: Let every person be subject to the governing authorities, for there is no authority except from God, and those authorities that exist have been instituted by God.² Therefore whoever resists authority resists what God has appointed, and those who resist will incur judgment.³ For rulers are not a terror to good conduct but to bad. Do you wish to have no fear of the authority? Then do what is good, and you will receive its approval,⁴ for it is God’s agent for your good. But if you do what is wrong, you should be afraid, for the authority does not bear the sword in vain! It is the agent of God to execute wrath on the wrongdoer.⁵ Therefore one must be subject, not only because of wrath but also because of conscience.⁶ For the same reason you also pay taxes, for the authorities are God’s agents, busy with this very thing.⁷ Pay to all what is due them: taxes to whom taxes are due, revenue to whom revenue is due, respect to whom respect is due, honor to whom honor is due.

Most Christian churches today are decidedly uncomfortable with this statement. Not that many Christian churches urge people not to pay their taxes, but most Christian churches would back away from the implications of the statement that the civil authorities are appointed by God. Part of the story of how that came to happen will be part of our story. We might also note that Paul wrote this before the Roman authorities began systematically to persecute Christians. He might not have said this this way if they had.

Some themes

1. The descending theory of governmental power: “[T]here is no authority except from God, and those authorities that exist have been instituted by God.”

2. The sword imagery: “[T]he authority does not bear the sword in vain.”
3. The notion of natural law: “Pagans who never heard of the law but are led by reason to do what the law commands”
4. Winnow out the essential from the Mosaic law. The church had already decided, probably c. 50CE, that male gentile converts did not have to be circumcised, and the gentile converts generally did not have to obey the Jewish dietary law.
5. The importance of authority but also freedom and equality. Galatians 3:28: “[28] There is neither Jew nor Greek, there is neither slave nor free, there is neither male nor female; for you are all one in Christ Jesus.”
6. The multiplicity of meanings of the word “law” (*nomos*). In Romans, it frequently means the Torah, but it can hardly mean that in Romans 8:1 “the law of the spirit of life in Christ Jesus has set you free from the law of sin and death”.

Marriage: the *logia* on divorce

Mark 10:9: “What God has united, man must not divide.”

Mark 10:11–12: “The man who divorces his wife and marries another is guilty of adultery against her. And if a woman divorces her husband and marries another she is guilty of adultery too.”

Luke 16:18: “Everyone who divorces his wife and marries another is guilty of adultery, and the man who marries a woman divorced by her husband commits adultery.”

Matthew 5:32: “Everyone who divorces his wife, except for the case of fornication, makes her an adulteress; and anyone who marries a divorced woman commits adultery.”

Matthew 19:6: “What God has united, man must not divide.”

Matthew 19:9: “The man who divorces his wife—I am not speaking of fornication—and marries another, is guilty of adultery.”

1 Corinthians 7:10–12: “A wife must not leave her husband—or if she does leave him, she must either remain unmarried or else make it up with her husband—nor must a husband send his wife away.”

Hypothetical reconstruction of the earliest form of the more common *logion*: “The man who divorces his wife and marries another is guilty of adultery.”

Mt. 19:3–12: “³Some Pharisees approached him, and to test him they said, “Is it against the Law for a man to divorce his wife on any pretext whatever?” ⁴He answered, “Have you not read that the creator from the beginning *made them male and female* [Gn 1:27] ⁵and that he said: *This is why a man must leave his father and mother, and cling to his wife, and the two become one body?* [Gn 2:24] ⁶They are no longer two, therefore, but one body. So then, what God has united, man must not divide.”

⁷They said to him, “Then why did Moses command that a writ of dismissal should be given in cases of divorce?” ⁸“It was because you were so unteachable” he said “that Moses allowed you to divorce your wives, but it was not like this from the beginning. ⁹Now I say this to you: the man who divorces his wife—I am not speaking of fornication—and marries another, is guilty of adultery.”

“¹⁰The disciples said to him, “If that is how things are between husband and wife, it is not advisable to marry.” ¹¹But he replied, “It is not everyone who can accept what I have said, but only those to whom it is granted. ¹²There are eunuchs born that way from their mother’s womb, there are eunuchs made so by men and there are eunuchs who have made themselves that way for the sake of the kingdom. Let anyone accept this who can.”

Mishna Gitin 9:10, as reported in the Babylonian Talmud Gitin 90a (Soncino trans. modified by CD): “The school of Shammai say: a man should not divorce his wife unless he has found her guilty of some unseemly conduct, as it says, because he hath found some *unseemly* thing in her. [See Deuteronomy 24:1]. The school of Hillel, however, say [that he may divorce her] even if she has merely spoilt his food, since it says, because he hath found *some* unseemly *thing* in her. R. Akiba says, [he may divorce her] even if he finds another woman more beautiful than she is, as it says, it comes to pass, if she find no favour in his eyes. [Again, a reference to Dt 24:1.]” Dt 24:1 reads in the NRSV: “Suppose a man enters into marriage with a woman, but she does not please him because he finds something objectionable about her, and so he writes her a certificate of divorce, puts it in her hand, and sends her out of his house” The Hebrew is more ambiguous.

Marriage: Paul on divorce

1 Cor. 7:12–15. If a brother has a wife who is an unbeliever, and she is content to live with him, he must not send her away; ¹³and if a woman has an unbeliever for a husband, and he is content to live with her, she must not leave him However, if the unbelieving partner does not consent, they may separate; in these circumstances, the brother or sister is not tied; God has called you to a life of peace.

Marriage as a “mystery”

Ephesians 5:25–33: “Husbands should love their wives just as Christ loved the Church and sacrificed himself for her to make her holy. He made her clean by washing her in water with a form of words so that when he took her to himself she would be glorious, with no speck or wrinkle or anything like that, but holy and faultless. In the same way, husbands must love their wives as they love their own bodies; for a man to love his wife is for him to love himself. A man never hates his body, but he feeds it and looks after it; and that is the way Christ treats the Church, ³⁰because it is his body—and we are its living parts. *For this reason, a man must leave his father and mother and be joined to his wife, and the two will become one body.* [Gn 2:24] This mystery has many implications; but I am saying it applies to Christ and the Church. ³³To sum up; you too, each one of you, must love his wife as he loves himself; and let every wife respect her husband.”

Two witnesses

Dt. 19:15: “A single witness will not suffice to convict anyone of a crime of any kind; whatever the misdemeanour, the evidence of two witnesses or three is required to sustain the charge.”

Mt. 18:16: “If your brother does something wrong, go and have it out with him alone, between your two selves. If he listens, you have won back your brother. If he does not listen, take one or two others along with you: *whatever the misdemanour, the evidence of two or three witnesses is required to sustain the charge.* But if he refuses to listen to these, report it to the community; and if he refuses to listen to the community, treat him like a gentile or a tax collector.”

1 Cor. 13:1–2: This will be the third time I have confronted you. *Whatever the misdemeanour, the evidence of two or three witnesses is required to sustain the charge.* I gave you notice once, and now, though I am not with you, I give notice again, just as when I was with you for a second time, to those who sinned before, and to all others; and it is to this effect, that when I do come next time, I shall have no mercy.

As the translation shows, the italicized passages in Mt. 18:15–17 and 1 Cor. 13:1–2 are direct quotations in Greek of the Hebrew of Dt. 19:15.

To these should be added chapter 13 of the book of Daniel, a Greek addition to the Hebrew text, the story of Susannah and the elders. It is a wonderful law story about how to examine witnesses:

[In Babylon, Susannah, the daughter of Hilkiah and the wife of Joachim, was the object of the lust of two elders of the people. They trapped her in her garden where she was taking a bath alone and told her that they would accuse her of being with a young man if she did not have sexual relations with them. She screamed, and the elders appeared before the people and accused her of committing adultery with the (fictitious) young man. As we pick up the story, Susannah, being led to execution, cries out to God for help:]

⁴⁴The Lord heard her cry ⁴⁵and, as she was being led away to die, he roused the holy spirit residing in a young man named Daniel ⁴⁶who began to shout: “I am innocent of this woman’s death!” ⁴⁷At this all the people turned to him and asked, “What do you mean by that?” ⁴⁸Standing in the middle of the crowd he replied, “Are you so stupid, children of Israel, as to condemn a daughter of Israel unheard, and without troubling to find out the truth? Go back to the scene of the trial: these men have given false evidence against her.” ⁵⁰All the people hurried back, and the elders said to Daniel, “Come and sit with us and tell us what you mean, since God has given you the gifts the elders have.” ⁵¹Daniel said, “Keep the men well apart from each other. “You have grown old in wickedness,” he said, “and now the sins of earlier days have overtaken you, ⁵³you with your unjust judgments, your condemnation of the innocent, your acquittal of the guilty, although the lord has said “You must not put the innocent and upright to death.” ⁵⁴Now then, since you saw her so clearly, tell me under what sort of tree you saw them lying under.” He replied, “Under an acacia tree.” ⁵⁵Daniel said, “Indeed, your lie recoils on your own head:¹ the angel of God has already received from him your sentence and will cut you in half.” ⁵⁶He dismissed the man, ordered the other to be brought and said to him, “Son of Canaan, not of Judah, beauty has seduced you, lust has led your heart astray! ⁵⁷This is how you have been behaving with the daughters of Israel, and they have been too frightened to resist; but here is a daughter of Judah who could not stomach your wickedness! ⁵⁸Now then, tell me what sort of tree you surprised them under.” He replied, “Under an aspen tree.” ⁵⁹Daniel said, “Indeed! Your lie recoils on your own head: the angel of God is waiting with a sword to rend² you in half, and destroy the pair of you.”

⁶⁰Then the whole assembly shouted, blessing God, the Saviour of those who trust in him. ⁶¹They turned on the two elders whom Daniel had convicted of false evidence out of their own mouths. ⁶²As the law of Moses prescribes,³ they were given the same punishment as

¹ A play on words in the Greek.

² Another play on words in the Greek.

³ Cf. Dt 19:16–21, which appears just after the two-witness requirement quoted above.

they had schemed to inflict on their neighbour. They were put to death. And, thus, that day an innocent life was saved.

Some key dates in the legal history of Christianity:

?30 — Crucifixion of Jesus

67 — Traditional death of SS. Peter and Paul

70 — First Roman destruction of Jerusalem

c.96 — Letter of Pope Clement I to the Corinthians

c.100 — approximate date of the last canonical books of the New Testament (though some of the epistles, e.g., 2 Peter, are almost certainly later)

132–35 — Bar Cocheba revolt (second Roman destruction of Jerusalem)

mid-2d century — Beginnings of the tradition of pseudo-apostolic canons known as the *didache* (teaching)

2d century — Scattered papal letters (later called ‘decretals’) concerning heresy and discipline

c.200 — Redaction of the *Mishna* at Jamnia

3d century — Continues papal letters concerning heresy and discipline

3d century — Earliest known local councils or synods (deal with Easter date, baptism conferred by heretics, those lapsed during persecutions, bishops suspected of heresy or irregularly promoted)

312 — Edict of Milan (toleration of Christianity)

325 — Council of Nicaea (condemns Arius: Christ ‘of same substance’ as God the Father; disciplinary canons)

366–384, 384–399 — ‘Decretal’ letters of Popes Damasus and Siricius

381 — Council of Constantinople I (confirmation of Nicaea; canons)

431 — Council of Ephesus (condemns Nestorius: Mary is ‘Mother of God’)

440–61 — Decretal letters of Pope Leo the Great

451 — Council of Chalcedon (condemns monophysites: Christ has 2 natures)

4th & 5th centuries — Many Western local councils (Rome, Gaul, Spain, Africa) promulgate canons on an ever-wider range of topics

c.500 — Redaction of the *Talmud* (in Babylon and Jerusalem)

V. A ROMP THROUGH THE EARLY LEGAL HISTORY OF CHRISTIANITY

1. The relative absence of law in Christian writing of the apostolic period. Considering the cultural background of Christianity and the relatively early association of Christianity with Roman culture, this is a bit surprising. Perhaps we are looking for the wrong thing when we look for ‘law’. Jewish culture did not separate law from morality in the way that we do. A cultural explanation of the relative absence of law might focus on the influence of Greek culture on early Christianity.

2. A streak of antinomianism?
 - a. “Woe unto you lawyers” (Lk. 11:43, Mt. 23:4).
 - b. Opposition the early Christians to what was going on at Jamnia.
That was going to lead to the Mishna and ultimately to the Talmud.
3. The importance of the letter to the Romans in this regard. The argument is theological: a Christian is not justified by the Mosaic law, a Christian is justified by faith.
4. The ‘council of Jerusalem’ (Acts 15; Galatians 2). Three related but separate issues about gentile converts: do the men have to be circumcised, do they all have to follow the Jewish dietary laws, and can Christians eat meat that has been offered up in a pagan sacrifice? The answer to the first question was no; the answer to the second question seems to have been a compromise by which the elaboration of the dietary rules was relaxed, though the rules about blood were retained, and the answer to third question seems to have been no. The very early church saw the need for something very close to what we would call legislation.
5. Why this seeming absence of law?
 - a. Jesus in opposition to the legalism of the Pharisees
 - b. Our own preconceptions of what law ought to be like: herewith of *kerygma* and *didache*
 - c. The mission to the gentiles
 - d. Preservation of unity, the concept of *koinonia*
6. Three initial concepts: (1) prophets, teachers, speakers in tongues are all mentioned in the sources; (2) people who had a connection with Jesus—those who were literally sent, the apostles, and those whom the apostles commissioned; (3), the elders, *presbyteroi*, the other group in the church of Jerusalem, who along with the apostles, and especially Peter, took the decision on circumcision.. These become in a not much later age pope, bishops, priests, deacons, exorcists, porters, lectors and acolytes.
7. What happens to all of this in the fourth century? Acceptance by secular authority, particularly in a world that would have regarded the notion of separation of church and state as bizarre, automatically involved a number of things: It now became even more important to know who was in and who was out. The Greek councils and the struggle for orthodoxy involve a struggle for the loyalty of an empire. Councils also adopt *canons*, rules for administration. The decretal letters of the popes take on a vocabulary similar to the constitutions of the Roman emperors. When the Roman emperors abandon Rome, the pope takes on many of the functions of the Roman authority in Rome. Leo the Great, pope from 440–461, is the name most associated with this phenomenon, though it began earlier.

8. Are we asking too much of law? There will be a moment in our story, in the twelfth century, when the development of a genuinely religious legal system, or something quite close to that, will happen.
9. Summary: *nomos* and *kanon*. In the period of the apostolic church, law was associated with particular movement, indeed what was probably the dominant movement within Judaism. Christianity was founded in reaction to that movement. It also received its first strong intellectual influences from Hellenistic sources, and law, as we have said, was not the Greeks' long suit. The separation of law and morals, something that had a profound effect on the history of canon law and indeed on western law generally can probably be traced back to this period. The first examples of a peculiarly ecclesiastical law are not called *nomos*, the Greek word for law and also the word for *torah* in the Greek translation of the Hebrew Bible, they are called *kanon*, a curious word that means a rudder or a guide. This is not, I think, to suggest that they are any less binding, but to suggest rather that they are not the Jewish law by which, in some sense, the observant Jew believed that he was justified, nor the *nomos* of the Greeks, a word redolent of overarching philosophical ideas and with firm associations with secular authority. Law was to become more important in the life of the church; we can see this happening already in the late Roman empire. But the flowering of law within the church belongs solidly to the period that is the subject of this course.