

The Medieval Origins of the Legal Profession

Canonists, Civilians, and Courts

James A. Brundage



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The University of Chicago Press Chicago and London

The University of Chicago Press, Chicago 60637
The University of Chicago Press, Ltd., London
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All rights reserved. Published 2008
Paperback edition 2010
Printed in the United States of America

19 18 17 16 15 14 13 12 11 10 2 3 4 5 6

ISBN-13: 978-0-226-07759-8 (cloth)

ISBN-13: 978-0-226-07760-4 (paper)

ISBN-10: 0-226-07759-4 (cloth)

ISBN-10: 0-226-07760-8 (paper)

Frontispiece: A cardinal sitting as judge. On his right, a solider and his proctor put forward their case, while an advocate kneels at his left, holding a plea for his client. At the cardinal's feet sit three notaries, one of whom is taking notes on the proceedings. Italian, ca. 1355–60; attributed to Bartolomeo dei Baroli. Fitzwilliam Museum, Cambridge, MS 331, 1r. Reproduced by permission.

Library of Congress Cataloging-in-Publication Data

Brundage, James A.

The medieval origins of the legal profession : canonists,
civilians, and courts / James A. Brundage.

p. cm.

Includes bibliographical references and index.

ISBN-13: 978-0-226-07759-8 (cloth : alk. paper)

ISBN-10: 0-226-07759-4 (cloth : alk. paper) 1. Law,

Medieval. 2. Law—Europe—History. I. Title.

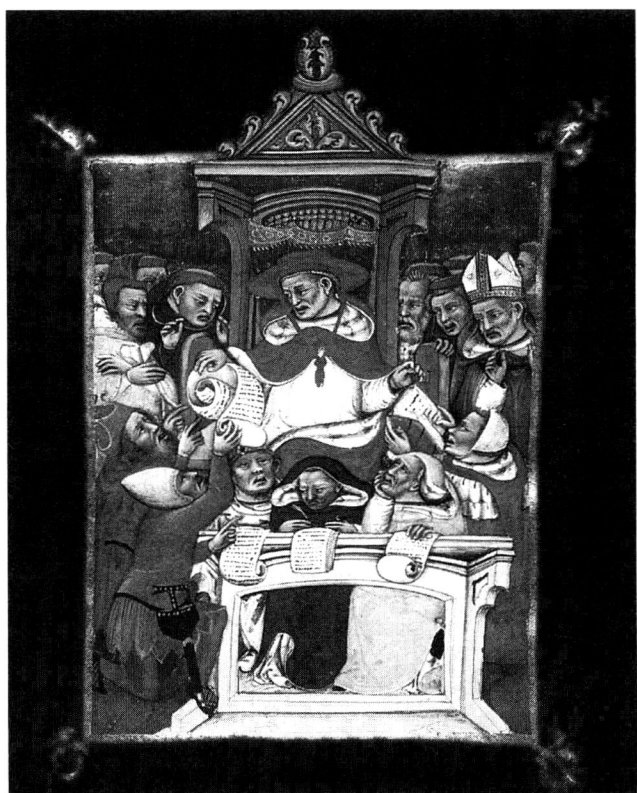
KJ147.B78 2008

340.5'5—dc22

2007036086

Ⓢ The paper used in this publication meets the minimum
requirements of the American National Standard for Information Sciences—
Permanence of Paper for Printed Library Materials, ANSI Z39.48-1992.

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*For Mike and Karen
and Ken and Marlene
in gratitude*

Abbreviations

<i>AKKR</i>	<i>Archiv für katholisches Kirchenrecht</i>
Angelica Statutes	Angelica Statutes, in M. B. Hackett, <i>The Original Statutes of Cambridge University: The Text and Its History</i> (Cambridge: Cambridge University Press, 1970).
<i>ANRW</i>	<i>Aufstieg und Niedergang der römischen Welt: Geschichte und Kultur Roms im Spiegel der neueren Forschung</i> , ed. Hildegard Temporini and Wolfgang Haase, 22 vols. to date (Berlin: Walter De Gruyter, 1972–).
BAV	Biblioteca Apostolica Vaticana
BL	British Library, London
<i>BMCL</i>	<i>Bulletin of Medieval Canon Law</i>
BN	Bibliothèque Nationale, Paris
Bologna University Statutes, ed. Denifle	Heinrich Denifle, “Die Statuten der Juristen-Universität Bologna vom J. 1317–1347 und deren Verhältnis zu jenen Paduas, Perugias, Florenz,” <i>Archiv für Literatur- und Kirchengeschichte des Mittelalters</i> 3 (1887) 196–397.
Bologna University Statutes, ed. Maffei	Domenico Maffei, “Un trattato di Bonaccorso degli Elisei e i più antichi statuti dello Studio di Bologna nel manoscritto 22 della Robbins Collection,” <i>BMCL</i> 5 (1975) 73–101.

- BRUC* A. B. Emden, *A Biographical Register of the University of Cambridge to 1500* (Cambridge: Cambridge University Press, 1963).
- BRUO* A. B. Emden, *A Biographical Register of the University of Oxford to 1500*, 3 vols. (Oxford: Clarendon Press, 1957–59).
- Caius glosses Cambridge, Gonville and Caius College, MS 283/676
- CCL Corpus Christianorum, series Latina
- CCM Corpus Christianorum, continuatio mediaevalia
- Clm. Codex latinus Monacensis
- Cod. Theod. Codex Theodosianus, in *Codex Theodosianus, cum constitutionibus Sirmondinis*, ed. Paul Krueger and Theodor Mommsen, 2 vols. in 3 (Berlin: Weidmann, 1905; repr., 1990).
- Coing, *Handbuch* *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte*, ed. Helmut Coing, vol. 1, *Mittelalter, 1100–1500: Die gelehrten Rechte und die Gesetzgebung* (Munich: C. H. Beck, 1973).
- Compilationes antiquae* *Quinque compilationes antiquae necnon collectio canonum Lipsiensis*, ed. Emil Friedberg (Leipzig: Bernhard Tauchnitz, 1882; repr., Graz: Akademische Druck- u. Verlagsanstalt, 1956).
- 1 Comp. Bernard of Pavia, *Compilatio prima* (*Breviarium extravagantium*)
- 2 Comp. John of Wales, *Compilatio secunda*
- 3 Comp. Petrus Beneventanus, *Compilatio tertia*
- 4 Comp. Johannes Teutonicus, *Compilatio quarta*
- 5 Comp. Tancred, *Compilatio quinta*
- Const. Sirmond. Constitutiones Sirmondianae, in *Codex Theodosianus, cum constitutionibus Sirmondinis*, ed. Paul Krueger and Theodor Mommsen, 2 vols. in 3 (Berlin: Weidmann, 1905; repr., 1990).

<i>Corpus iuris canonici</i>	<i>Corpus iuris canonici</i> , ed. Emil Friedberg, 2 vols. (Leipzig: Bernhard Tauchnitz, 1879; repr., Graz: Akademische Druck- u. Verlagsanstalt, 1959).
Gratian	<i>Decretum Gratiani</i>
X	Liber Extra (= <i>Decretales Gregorii IX</i>)
VI	Liber Sextus Decretalium
Clem.	Constitutiones Clementinae
Extrav. Jo. XXII	Extravagantes Johannis XXII
Extrav. comm.	Extravagantes communes
<i>Corpus iuris civilis</i>	<i>Corpus iuris civilis</i> , ed. Paul Krueger et al., 3 vols. (Berlin: Weidmann, 1872–95; repr., 1963–65).
Auth.	Authenticum
Cod.	Codex Iustinianus
Dig.	Digesta (= <i>Pandekta</i>)
Nov.	Novellae leges
CSB	<i>Chartularium studii Bononiensis: Documenti per la storia dell'Università di Bologna dalle origini fino al secolo XV</i> , 14 vols. to date (Bologna: Commissione per la storia dell'Università di Bologna, 1909–).
CSEL	Corpus scriptorum ecclesiasticorum latinorum
CUL	Cambridge University Library
CUP	<i>Chartularium Universitatis Parisiensis</i> , ed. Heinrich Denifle and Émile Chatelain, 4 vols. (Paris: Delalain Frères, 1889–97; repr., Brussels: Culture & Civilisation, 1964).
DA	<i>Deutsches Archiv für Erforschung des Mittelalters</i>
DDC	<i>Dictionnaire de droit canonique</i> , ed. R. Naz, 7 vols. (Paris: Letouzey & Ané, 1935–65).
DEC	<i>Decrees of the Ecumenical Councils</i> , ed. Giuseppe Alberigo et al., trans. Norman P. Tanner et al., 2 vols. (London: Sheed & Ward; Washington, DC: Georgetown University Press, 1990).

<i>DMA</i>	<i>Dictionary of the Middle Ages</i> , ed. Joseph R. Strayer et al., 13 vols. (New York: Scribner, 1982–89).
<i>EDR</i>	Ely Diocesan Records
<i>Gaius, Inst.</i>	<i>The Institutes of Gaius</i> , ed. E. Seckel and B. Kuebler, trans. W. M. Gordon and O. F. Robinson (Ithaca: Cornell University Press, 1988).
<i>Glos. ord.</i>	<i>Glossa ordinaria</i>
<i>HUE</i>	<i>A History of the University in Europe</i> , ed. Walter Rüegg, vol. 1, <i>Universities in the Middle Ages</i> , ed. Hilde de Ridder-Symoens (Cambridge: Cambridge University Press, 1992).
<i>HUO</i>	<i>The History of the University of Oxford</i> , ed. T. H. Aston, vol. 1, <i>The Early Oxford Schools</i> , ed. J. I. Catto (Oxford: Clarendon Press, 1984).
<i>IRMÆ</i>	Ius Romanum medii aevi
<i>JEH</i>	<i>Journal of Ecclesiastical History</i>
JE } JK } JL }	Philip Jaffé, <i>Regesta pontificum romanorum ab condita ecclesia ad annum post Christum natum MCXCVIII</i> , 2nd ed., revised by S. Loewenfeld (JL = AD 882–1198), F. Kaltenbrunner (JK = AD?–590), and P. Ewald (JE = AD 590–882), 2 vols. (Leipzig: Veit, 1885–88; repr., Graz: Akademische Druck- u. Verlagsanstalt, 1956).
<i>JMH</i>	<i>Journal of Medieval History</i>
<i>JTS</i>	<i>Journal of Theological Studies</i>
<i>Mansi</i>	Giovanni Domenico Mansi, <i>Sacrorum conciliorum nova et amplissima collectio</i> , 53 vols. in 60 (Paris: H. Welter, 1901–27).
<i>Markaunt Statutes</i>	Markaunt Statutes, in M. B. Hackett, <i>The Original Statutes of Cambridge University: The Text and Its History</i> (Cambridge: Cambridge University Press, 1970).
<i>MGH</i>	Monumenta Germaniae Historica
<i>SS</i>	Scriptores
<i>SSRG</i>	Scriptores rerum Germanicarum

MIC	Monumenta iuris canonici
NCMH	<i>The New Cambridge Medieval History</i> , 7 vols. in 8 (Cambridge: Cambridge University Press, 1995–2005).
Nov. Theod. } Nov. Val. }	Novellae Thedosiani and Novellae Valentiniani, in <i>Codex Theodosianus, cum constitutionibus Sirmondinis</i> , ed. Paul Krueger and Theodor Mommsen, 2 vols. in 3 (Berlin: Weidmann, 1905; repr., 1990).
PL	<i>Patrologiae cursus completus . . . series Latina</i> , ed. J.-P. Migne, 221 vols. (Paris: J.-P. Migne, 1841–64).
Po	<i>Regesta pontificum romanorum inde ab a. post Christum natum MCXCVIII ad a. MCCCIV</i> , ed. August Potthast, 2 vols. (Berlin: R. de Decker, 1874–75).
<i>Proceedings II–X</i>	<i>Proceedings of the International Congress of Canon Law</i> . MIC, Subsidia (Vatican City: BAV, 1965–2001).
Powicke & Cheney	<i>Councils and Synods with Other Documents Relating to the English Church, II, A.D. 1205–1313</i> , ed. Frederick M. Powicke and Christopher R. Cheney, 2 vols. (Oxford: Clarendon Press, 1964).
QFIAB	<i>Quellen und Forschungen aus italienischen Archiven und Bibliotheken</i>
QGRKP	Quellen zur Geschichte des römisch-canonischen Processes im Mittelalter
RDC	<i>Revue de droit canonique</i>
RHDF	<i>Revue historique de droit français et étranger</i>
RHE	<i>Revue d'histoire ecclésiastique</i>
RIDC	<i>Rivista internazionale di diritto comune</i>
Sarti-Fattorini	Mauro Sarti and Mauro Fattorini, <i>De claris archigymnasii Bononiensis professoribus a saeculo XI usque ad saeculum XIV</i> , ed. C. Albacino and C. Malagola, 2 vols. (Bologna: Merlani, 1888–96; repr., Turin: Bottega d'Erasmus, 1962).
Schulte, <i>QL</i>	Johann Friedrich von Schulte, <i>Die Geschichte der Quellen und Literatur des canonischen Rechts</i> , 3 vols.

(Stuttgart: Ferdinand Enke, 1875–80; repr., Graz: Akademische Druck- u. Verlagsanstalt, 1956).

SDHI	<i>Studia et documenta historiae et iuris</i>
SG	<i>Studia Gratiana</i>
TRG	<i>Tijdschrift voor Rechtsgeschiedenis</i>
TUJ	<i>Tractatus universi juris</i> , 22 vols. in 28 (Venice: Franciscus Zilettus, 1584–86).
VCH, Cambs.	<i>Victoria History of the County of Cambridgeshire and the Isle of Ely</i> , ed. L. F. Salzman et al., 10 vols. to date (London, 1938–).
Whitelock, Brett & Brooke	<i>Councils and Synods with Other Documents Relating to the English Church I, A.D. 871–1204</i> , ed. Dorothy Whitelock, Martin Brett, and Christopher N. L. Brooke, 2 vols. (Oxford: Clarendon Press, 1981).
ZRG	<i>Zeitschrift der Savigny-Stiftung für Rechtsgeschichte</i>
KA	Kanonistische Abteilung
RA	Romanistische Abteilung
GA	Germanistische Abteilung

Preface

This book has been close to forty years in the making. It began with questions that occurred to me while searching the glosses, commentaries, and legal opinions written by canon lawyers who lived in the twelfth, thirteenth, and fourteenth centuries for evidence about the regulation of crusades and the efforts of medieval churchmen to formulate and implement rules for Christian sexual behavior. I began to wonder about the authors of the works I was reading, about where they studied law and with whom. I wondered, too, about their social and economic backgrounds and the careers they pursued. Most of the authors I was reading taught law and many of their writings were by-products of teaching, but was law teaching their only, or even their principal, occupation throughout their adult lives? Did they practice as well as teach? Did their legal training provide a stepping-stone to high office in church or state?

As I thought about these questions and began accumulating notes on the evidence that might help answer them, I began to realize that subtle changes in the ways these jurists thought and acted were gradually occurring during the decades between the middle of the twelfth century and the middle of the thirteenth. The notion of what it meant to be a jurist slowly altered during that period. Roman and canon lawyers who wrote during the second half of the twelfth century and the opening decades of the thirteenth seemed primarily, if not exclusively, interested in the intellectual problems that the law presented. By the middle of the thirteenth century, however, their successors seemed far more preoccupied than their predecessors had been with the details of legal practice and procedure, both in the courts and in providing clients with legal advice. In the process, legal

writers' approach to the law seemed to be shifting. What had been an academic occupation was becoming a learned profession. This book embodies what I have been able to discover and infer about what that entailed and how the process worked.

During the years that I have wrestled with these problems I have accumulated intellectual and personal obligations beyond counting. Several of those to whom I am deeply indebted, although no longer among the living, still live in my memory. They include Robert L. Benson, Leonard Boyle, O.P., Christopher Cheney, Geoffrey Elton, John Gilchrist, Philip Grierson, Edgar N. Johnson, Stephan Kuttner, Charles Loughran, S.J., Jack McGovern, Jeremiah O'Sullivan, Dorothy Owen, Gaines Post, Robert Reynolds, Michael Sheehan, C.S.B., and Schafer Williams. My gratitude to them remains undimmed.

Happily, many more of those who have helped me remain very much alive. Martin Brett, Elizabeth A. R. Brown, Marjorie Chibnall, Giles Constable, Gero Dolezalek, Charles Donahue, Jr., Linda Fowler-Magerl, Richard Fraher, André Gouron, Richard Helmholz, Michael Hoefflich, Mia Korpiola, Peter Linehan, Elizabeth Makowski, Laurent Mayali, Jasonne Grabher, Kenneth Pennington, Olivia Robinson, Jonathan Rose, Barbara Seater, Carole Shammas, Tim Sistrunk, Jacques Verger, and Patrick Zutshi, among others, have patiently answered questions and shared their insights with me. I am grateful to Ernest Metzger, Michael Hoefflich, and especially to Paul Brand and Kenneth Pennington, for generously taking time from their own work to read my drafts. They have saved me from countless errors both of omission and commission. I am indebted to the research assistants who have helped me over the years, including Clay Barker, Robert Berberich, Charles Harbaugh, Mark Munzinger, and Kristine Utterback. I am grateful as well to Randolph Petilos, Carlisle Rex-Waller, and the editorial staff at the University of Chicago Press for their care and efficiency in bringing this book into being. Despite the best efforts of all these kind people, the errors and misjudgments that remain are inescapably my own.

I could not have written this book without access to the riches of numerous libraries and the help that members of their staffs have provided over many years. Among them are the Bayerische Staatsbibliothek, the Biblioteca Apostolica Vaticana, the British Library, the Cambridge University Library, the Golda Meier Library at the University of Wisconsin–Milwaukee, the Memorial Library at the University of Wisconsin–Madison, the Newberry Library, the Robbins Collection at Boalt Hall in the University of California at Berkeley, and the Watson, Anschutz, Law, and Spencer Re-

search Libraries of the University of Kansas, as well as the libraries of several Cambridge colleges, notably Gonville and Caius, Pembroke, Peterhouse, Trinity College, and Trinity Hall. To all of them my warmest thanks.

I have resorted to a number of strategies in order to keep this long and complicated book within a moderate compass and at a reasonably affordable price. To economize on space, I have provided only the author's name, title, and page references in my notes, so that readers who want complete bibliographical details on the works cited will need to turn to the bibliography to find them.

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Introduction

Around the year 1150, a small number of jurists were teaching Roman or canon law and practicing in ecclesiastical courts in a handful of cities, but there is no evidence that a legal profession in the rigorous sense of that term existed at that point anywhere in western Europe. Roughly a century later, by around 1250, professional lawyers had set up shop in every European city of any consequence and in some smaller towns as well.

Trained lawyers by the late twelfth century represented and argued on behalf of clients with some regularity in courts that functioned according to new procedural rules that were emerging in the medieval *ius commune*, the European general law, during that period.¹ Lawyers were usually rewarded for performing these services, and the fees they received apparently provided at least some of them with a livelihood. They differed significantly, however, from their thirteenth-century successors. For one thing, thirteenth-century lawyers learned their law by systematic study that followed a curriculum prescribed by a university law faculty, whereas neither universities, law faculties, nor curricula existed before the end of the twelfth century. By the mid-thirteenth century, many lawyers held academic degrees in law. Their degrees certified that they had performed well enough in rigorous examinations that their examiners deemed them competent to teach the subject. Credentials of this sort likewise did not exist

1. The medieval *ius commune* drew upon both Roman and canon law to adjudicate disputes; see Calasso, *Medio evo del diritto*, 377–86; Bellomo, *Common Legal Past*, 55–77; Pennington, “Learned Law, Droit Savant, Gelehrtes Recht”; Lange, *Römisches Recht im Mittelalter*, 461–62; and Brundage, “Universities and the ‘ius commune.’”