

BOOK REVIEW

THE MEDIEVAL CANON LAW

(D. M. Owen, Cambridge University Press, 1990, pp.xii + 82, Hardback, £25.00)

A review by Norman Doe, Cardiff Law School

In recent years, the study of medieval canon law has been dominated by the concentration of modern legal historians upon the systematisation of the medieval canon law, the methodology of canonist and civilian scholarship. These interests have occupied not only Anglo-American historians, but also European historians of canon law, such as Becquet, Gaudemet and Munier. In relation to canon law in medieval and early modern England, still a topic of discussion in contemporary literature is the precise applicability and authority of Roman canon law. This is even now the subject to which Richard Helmholz's first-class *Roman Canon Law in Reformation England* (1990) is devoted. Largely, comprehensive explanations of the substantive rules of canon law have been neglected – though there have been some worthy exceptions to this recently, particularly in studies dealing with the influence of canon law upon the development of western notions of morality (such as those by Ingram and Brundage), the influence of canonist doctrines upon the development of political theory (such as those by Pacaut and Walter Ullmann), and the impact of canonist doctrines upon the medieval English common law (such as that, in the area of contract law, by Brian Simpson). Placing Dorothy Owen's excellent book is not difficult. It continues in the tradition of those concerned with the systematisation, scholarship and methodology of canon law. Its principal focus is the 'teaching, literature and transmission' of the medieval canon law.

The book is a short one, divided into four chapters. The first deals with the teaching and study of canon law in the later middle ages, mainly at Cambridge. It portrays the universities' approach to canon law, in the period before the Reformation, as a response to the demand for practical professionalism in ecclesiastical business – to provide vocational training. Indeed, because of the variety of possibilities for employment, 'the study of canon law seemed to many young and able clerks to offer the sort of multiple choice which we are told nowadays to expect of accountancy, or law, or computer science'. Dorothy Owen attempts to reconstruct, from manuscripts, the schemes of study of the various (and lengthy) canon law degrees, bachelor's, master's and doctorate, the bachelor's degree course, for example, requiring the study of, amongst other things, the civil law, the decretum, the decretals, the Bible, to engage in disputations, and also to attend the ecclesiastical courts. She also traces the provision of books to feed the courses, principally through the colleges and private libraries: though there seems to have been no serious attempt by the university at Cambridge to establish a canon law library until about 1424. Interestingly, she also offers detail about the arrangements made by colleges to cover a host of problems related to the provision of arrangements for study: from the protection of books to the accommodation of gifts of canon law books. Another interesting aspect of this part of the book is the discussion about the colleges' exclusion or limitation, by their statutes, of the numbers of canonists admitted. These arrangements, however, came to an end abruptly: 'for official purposes the injunctions of the royal visitors of 1535 forbade the teaching and examination of the canon law in the university'.

Dorothy Owen sets the scene for the second chapter in this way: 'One cannot remain a student of the canon law for ever. What does one do, and for what is one now equipped? To what, in fact does this long and expensive training lead?' Dealing with the canonists and their careers, Owen traces their employment, briefly, in public service and diplomacy, attachment to foundations and in the church itself. In this latter case, there was 'a recognisable career structure' – there is ample detail about the range of offices attached to ecclesiastical courts (with a discussion of a document among benefice papers at Lincoln, from a suit of 1439, setting out the way in which a proctor occupied his time – a prominent feature is his list of expenses), and Owen traces the careers of specific clerical administrators. Somewhat outside the scope of the chapter, there is a short but useful discussion of the procedures of church courts.

The third chapter deals with the canonists' formularies. Outside the standard canonical texts, and commentaries on them, it is in these formularies, the records of procedural documents (methods of pleading and types of cause) that so much canonist learning is found. She discusses efforts made to produce compilations of the local practices of courts ('statutes of courts'), and writes generally of the contents of formularies, their purposes, where they are now to be found and their availability, then, in the open market. She emphasises their 'passing from hand to hand', particularly their transmission within families and by executors. The significance of the formularies is the picture painted of actual rules of canon law, and the place of importance given to the citation of authorities, in the modern sense. The discussion clearly points to the need for a thorough examination of these documents. Though Dorothy Owen's hope was that there was 'a common source on which they relied', her conclusion is that, for the most part, 'there is no common stock', 'they are almost all an amalgam of notorial and canonistic knowledge'. Their end, it seems, was merely to record practitioners 'learning their trade': 'Only for short periods, and in a few cases, do they incorporate direct examples of academic teaching and only intermittently can they be regarded as (canon) law reports'.

The fourth chapter deals with post-Reformation literature. Dorothy Owen looks at the place and practical application of canonistic literature in the church courts after the Reformation. This leads to a discussion of 'the revival of an interest never completely dead, by sympathisers with the Oxford Movement', its culmination in Bishop Stubbs, and its re-definition in Cambridge by F. W. Maitland'.

The book is beautifully produced, with a dozen excellent illustrations from some notable canonical texts, though several are not actually from the medieval period. It is a stimulating and succinct account of the way in which canonists learnt their trade, the need for learning, and the way in which this learning was communicated and survived. There are so many points of contact, however, with similar trends in the development of the literature of the medieval common law, though in quite different settings, that some useful parallels and comparisons might have been drawn, particularly the formularies discussion, which might have been linked to the Year Book debate and the use of 'notebooks' by common law practitioners at the end of the fifteenth century. Though such an inclusion might easily blunt the thrust of the basic themes.

Walter Ullmann once wrote that the attempts of early modern canonists to convey their subject show 'the relevance of canonistic jurisprudence as a social science in the literary meaning of the term, though these efforts have not yet attracted the attention they deserve'. Dorothy Owen's book, though it tells little of substantive rules themselves (but that is not, after all, its object), clearly identifies an abundance of sources. If we want to reconstruct systematically an understanding of canonist jurisprudence at this time, based upon an analysis of substantive rules, Dorothy Owen has succeeded admirably in guiding us in our quest.