

The early Church

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According to a tradition recorded by the second-century Christian writer Hegesippus, the grandsons of Jude, Jesus' brother, were denounced to the Roman emperor Domitian (81-96) because they, like Jesus himself, were descendants of King David. Fearing a restoration of David's kingdom, Domitian summoned Jesus' relatives to his imperial court and interrogated them directly:

Domitian asked them if they were descended from David and they admitted it. Then he asked how much property and money they had, and they replied that they only had 9,000 denarii between them, half belonging to each. And this, they said, was not in the form of cash but the estimated value of only thirty-nine plethra of land, from which they paid taxes and supported themselves from their own labour.¹

Having seen their calloused hands for himself, Domitian proceeded to question the men about Christ and his kingdom, "its nature, origin, and time of appearance." Jude's grandsons explained that Christ's kingdom "was not of this World or earthly, but angelic and heavenly, and that it would be established at the end of the world when he would come in glory to judge the living and the dead and reward everyone according to his deeds."² On hearing this statement, Domitian immediately ordered

¹ Eusebius, Ecclesiastical History 3.20, trans. Paul L. Maier, Eusebius, the Church History (Grand Rapids, Mich., 2007), 94--95.

² Eusebius, Ecclesiastical History 3.20, trans. Maier, 95.

that the men be freed, “despising them as simple sorts.” According to Hegesippus, Jesus’ descendants then went on to become leaders within the Christian Church.

This story, included by Eusebius in his early fourth-century Ecclesiastical History, deliberately contrasts Rome’s earthly Empire (and the possibility of a mundane restoration of the Biblical King David’s rule) with Christ’s heavenly kingdom. More specifically, the story juxtaposes the spectacle of a Roman emperor sitting in judgment over Jesus’ humble descendants with Christ’s own future judgment over both the living and the dead. There are at least two ancient legal traditions implicit within Hegesippus’ narrative. The first is that of Imperial Rome, a legal order that Jesus’ descendants would have been directly familiar with as (poor) landowners and taxpayers in the first-century province of Judaea. The second is that of Israel: the covenantal Law of Moses, David, and the Prophets.

Like this story from Hegesippus, the history of law and the early Christian Church is traditionally told in terms of institutional Christianity’s changing relations with Jewish and Roman law: having rejected biblical (and talmudic) law during the first three centuries CE, the institutional Church began a slow but inevitable process of accommodation to Roman imperial power culminating in the twin ideologies of theocracy and “caesaropapism” that characterize the age of Justinian (527--565). The historical reality, as we shall see, was more complex. To what extent did early Christian communities establish their own rules and legal practices in this life, whilst preparing for Christ’s judgment in the life to come?

In 545 the Roman emperor Justinian ruled that the canons of the holy church enacted or confirmed by the four councils of Nicaea (325), Constantinople (381), Ephesus (431), and Chalcedon (451) should have the force of law.³ From 545

³ Justinian, Novel 131.1, given at Constantinople March 18, 545.

onwards, then, we can unambiguously refer to canons as law, in the conventional sense of state-promulgated statute legislation. In the same 545 constitution Justinian confirmed the primacy of the bishop of Rome and the jurisdictional preeminence of the Patriarch of Constantinople (Novel 131.2--3); restated the legal privileges, benefactions, and fiscal exemptions previously granted to the recently reconquered sees in the West and confirmed them for elsewhere too (Novel 131.4); reaffirmed the public munera owed by “possessors of the holy churches” (Novel 131.5); ruled on the founding of new chapels and monasteries (Novel 131.6-7 and 10); legislated on legal technicalities relating to inheritances and legacies, including those left to “the name of God or Jesus or Savior,” to “the holy saints,” to “the poor,” or for the purposes of redeeming captives (Novel 131.9 and 11--12); stated a set of complex rules to govern the relationship between a bishop’s private property and the property owned by his church, extended by analogy to govern “the pious managers of orphanages, poor houses, hospitals and infirmaries” (Novel 131.13, see also 15); and laid down a detailed set of restrictions on heretics, Jews, Samaritans, pagans, Montanists, Arians “or other heretics” owning, purchasing, or leasing immoveable ecclesiastical property (Novel 131.14). As the contents of Justinian’s Novel 131 demonstrate, the late antique development of an empire-wide network of Christian institutions -- including churches governed by monarchical bishops (episkopoi) within a universal (oecumencical) diocesan structure, monasteries, poor houses (ptocheia), guest-houses for travelers (xenodocheia), hospitals, orphanages and other kinds of Christian foundations -- drove the expansion of Roman law itself into new legislative fields.

It is a striking fact that in the last decades of the fourth century, around the same time as the New Testament canon was being formalized as a fixed and closed

collection,⁴ the apostles themselves were being framed as authors of a fixed and closed set of “apostolic constitutions,” including eighty-five rules (“canons”) laid down specifically for episcopal use (Apostolic Constitutions, 8.47). “As sources of ecclesiastical law, lex and canon remain distinct, especially in the Latin conception where their formal fusion into nomocanones never became recognized. The point, however, is that the canones themselves, from the fourth to the sixth century, bear the imprint of Roman legal or organizational notions.”⁵ Late Roman emperors self-consciously promulgated laws for Christian clerics “according to the precept of the divine canons and the apostolic tradition” (Novel 6, issued 534), whilst late Roman clerics shaped their own rules, conciliar procedures, and disciplinary practices by borrowing either wholesale or in part from Roman law. In contrast to the first two apostolic centuries and the subsequent “era of Christian persecution,” the fourth to sixth centuries thus appear as an age of relentless juridification of Christian institutions, structures, and beliefs.

According to the Pauline epistles, probably written between 50 and 60, followers of Christ should obey all governing authorities since all government comes from God (Rom 13:1--7).⁶ Alongside his injunction to obey the powers-that-be, the apostle Paul also laid down guidelines on how Christians should “use” the world. At 1

⁴ Geoffrey Hahneman, The Muratorian Fragment and the Development of the Canon (Oxford, 1992), 132--82, surveys late fourth-century lists of New Testament texts.

⁵ Stephen Kuttner, “Some Considerations on the Role of Secular Law and Institutions in the History of Canon Law” in Scritti di Sociologia e Politica in onore di Luigi Sturzo II (Bologna, 1953), 359. See also Jean Gaudemet, Les sources du droit de l'Église en Occident du II^e au VII^e siècle (Paris, 1985).

⁶ Also Tit 3:1--3. Compare 1 Tim 2:1--3, Mt 22:16--22, Mark 12:13--7, 1 Peter 2:13--17 and First Letter of Clement to the Corinthians 59.3--61.3, in Bart D. Ehrmann, ed. and trans., The Apostolic Fathers, The Loeb Classical Library 24--25 (Cambridge, Mass., 2003), 1:140-147.

Cor 7:29—31, Paul explains that our time on earth is “pressed together,” hence those who “make use of the things of this world” -- including legal institutions such as marriage, slavery, and property ownership -- should do so in the certain knowledge that the world itself is passing away (1 Cor 7:29--31). Rather than elaborating a new and separate Christian legal system -- with its own substantive rules governing persons, things and obligations -- early Christian writings focus on working out how, exactly, Christians ought to behave whilst in this world, in line with Christ’s teachings and his judgment to come: “For we must all appear before the judgment seat of Christ, so that each one may be recompensed for his deeds in the body, according to what he has done, whether good or bad” (2 Cor 5:10). The Shepherd of Hermas -- a text probably composed by a member of a Christian household community at Rome before 150 and copied more frequently in the first Christian centuries than most of the books that finally made it into the New Testament canon -- warns Christians to avoid multiple business transactions. One business deal at a time, however, is not necessarily a problem:

But if someone should engage in just one business transaction he will also be able to serve as the Lord’s slave. For his thoughts will in no way be corrupted away from the Lord, but he will be enslaved to him, keeping his thoughts pure. So then, if you do these things you will be able to bear fruit in the age that is coming.⁷

The possibly contemporary Epistle to Diognetus employs the legal metaphor of citizenship rather than slavery to similar effect: Christians should “participate in

⁷ Shepherd of Hermas, Parable V.1.5, trans. Bart D. Ehrman, ed. and trans., Apostolic Fathers, 2:319.

everything as citizens and endure all things as foreigners,” so that “they obey the fixed laws, but by their lifestyle rise above the laws.”⁸

The “things of the world” which Jesus and his earliest followers experienced in the villages of rural Judaea, Galilee and Samaria were of course different from the “things of the world” experienced by the tightly-organized apostolic community at Jerusalem (Acts 2:44--45 and 4:32--37), or the urban Christian household groups of Antioch, Ephesus, Corinth, or Edessa and different again from the house churches of Rome, Lyon, or Alexandria.⁹ We also need to look beyond the Roman Empire, towards the socio-legal cultures experienced and created by Christian communities in Parthian and Sassanid Mesopotamia and Iran; in the Christian kingdoms of Axum (Ethiopia) and Georgia; in the pre-Islamic Arabian peninsula; and in what is now Azerbaijan, Afghanistan, Armenia, China, Pakistan and India.¹⁰ This vast cultural and legal diversity is mirrored by linguistic multiplicity. Sources relating to law in the early Church survive in Greek, Latin, Syriac, Middle Persian, Nabatean, Armenian, Georgian, Coptic, Ethiopic and Sogdian. The Shepherd of Hermas, for example, was originally written in Greek with evidence for multiple Latin translations, in addition to Ethiopic, Coptic (both Akhmimic and Sahidic dialects), Middle Persian and Georgian versions. Similarly, the so-called ancient “church orders”: the Didachè (c. 150) and the Didascalia (c. 200--250 CE) both probably compiled in Syria; the Apostolic

⁸ Epistle to Diognetus 5 and 6.10, in Clayton N. Jefford, ed. and trans., The Epistle to Diognetus, with the Fragment of Quadratus: Introduction, Text, and Commentary (Oxford, 2013), 145 (revised). See also 1 Pet 2:13--17 on God wanting Christians to be good citizens.

⁹ Todd D. Still and David G. Horrell, After the First Urban Christians: The Social Scientific Study of Pauline Christianity Twenty-Five Years Later (London, 2009).

¹⁰ For an introductory overview see David Bundy, "Early Asian and East African Christianities," in Augustine Casiday and Frederick W. Norris, eds., CHOC, 2 (Cambridge, 2007), 118-148.

Tradition (c.250--400); and the Apostolic Constitutions (compiled mid to late fourth century), were probably all composed in Greek and then translated, with revisions and additions, into Latin, Syriac, Coptic, Ethiopic, Arabic, and Georgian. Early collections, both private and official, of conciliar canons were also copied and translated into numerous different languages, dialects, and scripts.¹¹ If we want to understand law in the early Church -- whether we mean “law” in the sense of a set of normative rules for living, or as expert jurisprudence, or as authoritative conciliar enactment -- we need to place the early Christian evidence within much broader historical contexts.

<A>1.Living law

“Again and again I ask you, be your own good lawgivers...” (Epistle of Barnabas, 21:4).¹²

The idea that “custom governed early Christian communities, not a body of written law” is standard in modern scholarship.¹³ Yet we find an immense value placed on the act of making rules explicit in early Christian texts. The centrality and complexity of early Christian thought about legal rules -- including law as covenant, law as commandment, and (self-)governance by rules -- is partly due to the centrality and

¹¹ See also Chapter 8. On the translation of conciliar canons in the early Eastern Tradition see Hubert Kaufhold, “Sources of Canon Law in the Eastern Churches,” in Wilfred Hartmann and Kenneth Pennington, eds., The History of Byzantine and Eastern Canon Law to 1500, HMCL (Washington, D.C., 2012), 215--342.

¹² Epistle of Barnabas 21:4, in Ehrman, ed. and trans., Apostolic Fathers 2:83.

¹³ Kenneth Pennington, “The Growth of Church Law,” in Casiday and Norris, eds, CHOC, 2:386.

complexity of law and applied jurisprudence within both ancient Hebrew and Judaic (including but not limited to rabbinic) traditions.¹⁴

The first five books of the Tanakh (the Hebrew Bible), known as the Pentateuch or (written) Torah, contain a number of legal covenants established between man and God. In the Noahic Covenant, concluded at Mount Ararat, Noah -- acting also on behalf of his descendants, in other words all humanity -- agreed to observe a set of commands later referred to in rabbinic and Christian writings as the seven Noahide laws: not to commit idolatry, blasphemy, robbery, murder, or sexual transgressions; not to eat flesh cut from a live animal; and to establish courts of justice and formal legal procedures (Gen 9:8--17).¹⁵ The Abrahamic Covenant, made between God and Abraham at Mount Moriah, includes God's promise to make a great nation out of Abraham's descendants (by natural birth and adoption) and is sealed by the solemn sign of male circumcision (Gen 12--22). The covenant agreed by Moses at Sinai details a further set of rules and practices by which the Israelites had to live in order to maintain their covenanted status as God's elected people.¹⁶ These commands include the "Decalogue" or "Ten Commandments" (Ex 20:2--17 and Deut 5:6--21), as well as the so-called "priestly code" of ceremonial ordinances in addition to rules concerning ritual purity, tithing, the preparing and eating of food, the observance of the Sabbath, the administration of justice as well as other matters. Israel's covenantal responsibilities are thus framed in terms of divine commands to be obeyed (mitzvot).

¹⁴ For an introductory overview see Robert Goldenberg, The Origins of Judaism: From Canaan to the Rise of Islam (Cambridge, 2007).

¹⁵ On "Noahide Law" see David Novak, The Image of the Non-Jew in Judaism: The Idea of Noahide Law, 2nd ed. (Oxford, 2011).

¹⁶ Ex 19:20, 24:16, 31:18, and Deut 30:1-16. Jonathan Burnside, God, Justice and Society: Aspects of Law and Legality in the Bible (Oxford, 2011).

According to a late antique rabbinic text, God increased the number of mitzvot in order to justify the People of Israel and to ensure them life in the world to come.¹⁷

Halakhah, sometimes understood as “the path that one walks” but usually translated by the term “law,” is derived from a creative, on-going, engagement with Torah, itself a gift of God’s grace and goodness (as stated by Paul at Rom 7:12).¹⁸ Hence the sages and teachers of Torah, the rabbis -- in particular those active after the destruction of the Second Jerusalem Temple in 70 CE, during the Tannaitic and Amoraic periods (first to second centuries CE and third to fifth centuries CE respectively) -- deduced mitzvot from Torah, at the same time as instituting other rulings and regulations through their sayings. The Mishnah, a written version of which was compiled c. 200 CE and perhaps intended as a training text for rabbinic study in Palestine and Babylonia, alongside the Tosefta and the two Talmudin: the Yerushalmi of Late Roman Palestine (the “Jerusalem / Palestinian Talmud”) and the Bavli of Sasanian Persia (the “Babylonian Talmud”), are the central texts within the tradition known as Talmudic law. “Talmudic law governs all personal and interpersonal aspects of human life, specifying, with regard to any given behaviour, a code of acceptable conduct.”¹⁹ The rabbis developed complex methods for what is termed “legal” and “non-legal” exegesis: halakhic midrashim and aggadic midrashim, respectively, including hermeneutic practices for deriving the Law and for

¹⁷ Yair Furstenberg, review of Tzvi Novick, What is Good and What God Demands: Normative Structures in Tannaitic Literature (Leiden, 2010), Association for Jewish Studies Review 37.1 (April 2013), 152 citing Mishnah Makkot 3.14.

¹⁸ According to the Babylonian Talmud, (tractate) Hagiga 3b: “...the words of Torah direct those who study them from the paths of death to the paths of life.”

¹⁹ Hanina Ben-Menahem, “Talmudic Law: A Jurisprudential Perspective,” in Steven T. Katz, ed., The Cambridge History of Judaism (Cambridge, 2006), 4:880.

distinguishing between different types of rule observance.²⁰ Keeping this very brief sketch in mind, we can now turn to the early Christian material.

Running throughout the synoptic gospels and the Pauline epistles is a question also posed, in different ways, in rabbinic discourse: does the Law of the God of Israel grant life? At Lev 18:1--5 God commands Moses to tell the people of Israel not to live according to the laws of Egypt (the land of their past) or the laws of Canaan (the land of their future), but to live only according to His laws: "So you shall keep my statutes and judgments, by which a man may live if he does them; I am the Lord" (Lev 18:5). As the third-century Rabbi Simlai is said to have questioned, however, must all of Torah's 613 commandments be observed perfectly -- would this even be humanly possible? ²¹ In the Gospel of Matthew, probably composed during the 80s and thus after the Jewish revolt against Rome and the destruction of the Jerusalem Temple (66--70), Jesus teaches that he has not come to abolish the Law or the prophets, but to complete them (Mt 5:17--19). When the Pharisees and scribes -- described as those who "occupy the chair of Moses" (Mt 23:1) -- pose their various questions to Jesus concerning the Law, his censure is directed against them and not against the Law itself. It is the Pharisees and "the teachers of the Law" who break God's commands for the sake of their own traditions (Mt 15:1-6).²² They fail to understand the Law correctly (Mt 19:3--9) and they do not practice what they preach (Mt 23:1--7).²³ They are "blind guides" who neglect the "weightier matters" of the Law: justice, mercy and good faith, "straining out gnats and swallowing camels" (Mt 23:23--4). Jesus excuses

²⁰ For a specific example see Devora Steinmetz, Punishment and Freedom: The Rabbinic Construction of Criminal Law (Philadelphia, 2008).

²¹ Babylonian Talmud, Makkoth 23b--24a.

²² See also Mark 7:1--23.

²³ See also Mark 10:1--12 and Mt 22:23--33.

his own disciples from breaking with the traditions of the elders on the grounds that they understand the Law more fully, as “something greater than the Temple” (Mt 12:17).²⁴ The Apostle Paul expresses a similar idea but denotes a further revelation of God’s justice, outside Torah: “God’s justice that was made known through the Law and the Prophets has now been revealed outside the Law, since it is the same justice of God that comes through faith to everyone, Jew and Greek alike, who believes in Jesus Christ” (Rom 3:21-23).²⁵ According to Paul, God will justify both the circumcised and the uncircumcised because of their faith: “Do we mean that faith makes the Law pointless? Not at all: we are giving the Law its true value” (Rom 3:27-31). What value, then, does Torah have in Christ’s new dispensation?

As the later history of Christian denominationalism suggests, a number of different answers to this complex question can be reasoned out from the Pauline epistles alone. First, however, we should note that there is no “law-free” proclamation in either Pauline or Gospel texts, or indeed in any other early Christian writings with the exception of Marcion of Sinope, denounced as the arch-heresiarch by patristic authors, and the “apostle” Mani, the third-century founder of what contemporary heresiologists classified as the Christian sect of Manichaeism. Paul excluded Torah as a sufficient path to salvation (Gal 2:21, 3:10--14, and 5:3--6; Eph 2:13--15; Phil 3:9--10; 1 Tim 1:8--11); he also limited its operative validity (Gal 3:19); and advised (gentile) Christian converts that if they looked to the Law for justification they would separate themselves from Christ (Gal 5:3--6). Yet, “the first commandment, the love command, and the ten commandments ... played a central part in [Paul’s] message.

²⁴ See also Mark 12:28--34 and Mt 15:1--6

²⁵ Hebr 8--9 refers to Christ's revelation as a new covenant.

Paul was no true ‘antinomian,’ even if in Corinth he was misunderstood in this way.”²⁶

According to the Gospel of Matthew, Jesus taught in his Sermon on the Mount that the whole Law and the prophets hangs on two Mosaic commandments: “Love the Lord your God with all your heart and with all your soul and with all your mind” and “Love your neighbor as yourself” (Mt 22:34--40; Deut. 6:5 and 11:1; and Lev. 19:18). Similarly, Paul states that the Law is to be fulfilled by keeping the Mosaic commandment: “...for whoever loves others has fulfilled the law” (Rom 13:8). In Pauline theology the Law cannot justify man and no longer has the status of binding covenantal law, as Christ himself is the mediator between God and all humanity. Nonetheless, according to all the texts that, by the late fourth century, formed the New Testament canon, divine commandments have soteriological value. Jesus and Paul were both, of course, working with established exegetical traditions -- as were the Late Antique rabbis. According to the Babylonian Talmud, Rabbi Simlai used a similar process of reasoning to contend -- perhaps against arguments such as those of Paul -- that it was possible to keep all of the 613 mitzvot given to Moses and thus to be justified by the Law. Rabbi Simlai states that King David reduced Moses’ 613 commandments to eleven, the prophet Isaiah came and reduced them to six, the prophet Micah came and reduced them to three, Isaiah came again and reduced them to two, and the prophet Amos to a single command, which Rabbi Nahman b. Isaac then linked to the one precept of the Prophet Habakkuk: “But the righteous shall live

²⁶ Martin Hengel, "The Stance of the Apostle Paul toward the Law in the Unknown Years between Damascus and Antioch," in D.A. Carson, Peter T. O'Brien, and Mark A. Seifrid, eds., Justification and Variegated Nomism (Tübingen, 2004), 2:79.

by his faith” (2:4).²⁷ Debates concerning the Mosaic Law thus extended far beyond the issues of ritual prescription decided at the so-called Apostolic Council of Jerusalem (c. 49), where it was agreed that gentile followers of Christ should not be circumcised but should abstain from food sacrificed to idols, from unchasteness, from blood and from eating the meat of strangled animals.²⁸ For example, the Epistle of Barnabas -- probably written in Alexandria during the reign of Nerva (96--98) and copied together with the New Testament in the fourth-century Codex Sinaiticus -- God’s commands should be obeyed spiritually: “We should be spiritual; we should be a perfect temple to God. As much as we can, we should concern ourselves with the reverential awe of God and struggle to guard his commandments, that we may be glad in his righteous acts.”²⁹

It is within this broader context of Jewish and Christian discourse on God’s Law that we need to place the ancient “ethical handbooks” and so-called “Church Order Literature” that circulated amongst (some) early Christian communities; texts that were (mis)understood from the early modern period onwards as providing a normative set of proto-legal ecclesiastical “customs.”³⁰ As noted above, the second-century text known as the Shepherd of Hermas had a wide circulation in the first six

²⁷ Babylonian Talmud, Makkoth 23b-24a. For discussion see Steinmetz, Punishment, 71-72.

²⁸ Acts (possibly composed by Luke in the 90s) 15:1--29. On the “Apostolic decree” of the Jerusalem Council see Roland Deines, “The Apostolic Decree: Halakhah for Gentile Christians or Christian Concession to Jewish Taboos?” in Christoph Ochs and Peter Watts, eds., Acts of God in History (Tübingen, 2013), 121-188.

²⁹ Epistle of Barnabas, 4.11, in Ehrman, ed. and trans., Apostolic Fathers 2:25.

³⁰ Joseph G. Mueller, “The Ancient Church Order Literature: Genre or Tradition?” Journal of Early Christian Studies 15.3 (2007), 337--380. See also Bruno Steimer, Vertex Traditionis: Die Gattung der altchristlichen Kirchenordnungen (Berlin and New York, 1992).

centuries and was included in the fourth-century Codex Sinaiticus. The Shepherd of Hermas is focused on teaching individual Christian converts -- and their households -- how to become their own good lawgivers, within the context of a shared communion: the universal Church.³¹ The first section of the text records a series of visions granted to Hermas, a freed slave who is about to be accused before God for his sinful desires, by Rhonda, his former owner. After a series of revelatory visions in which the personified Church reveals herself to Hermas, the Angel of Repentance appears -- dressed as a shepherd -- and orders Hermas to write down his commandments (Greek entolai, Latin mandata) and parables, “that you may read them regularly and so be able to keep them.”³² The author of the Shepherd thus derives a set of Christian rules for living from three types of source material: revelation, divine commandment, and parabolic storytelling. The Angel’s twelve sets of commands and ten parables, each accompanied by a detailed commentary, make up the second and third parts of the text respectively. The topics covered include prohibitions against blasphemy, slander, lies, fraud and hypocrisy, sexual immorality, anger and bitterness, “evil luxury,” pride; bearing a grudge, giving false witness and robbery -- in addition to a casuistic working out of various rulings concerning marriage, adultery, and divorce. Hermas doubts whether anyone would be able to keep all these commands as they are so difficult; but the Angel of Repentance responds: “If in your own mind you think they can be guarded, you will do so easily, and they will not be difficult... And now I say to you, if you do not guard these commandments, but neglect them, you will not be saved, nor will your children or household, since you have already judged in your

³¹ The whole text can perhaps be understood as a creative exegesis of Ecclesiastes 12:11--12.

³² Shepherd of Hermas, Vision V, in Ehrman, ed. and trans., Apostolic Fathers 2:237).

own mind that no one can guard them.”³³ The rules in the Shepherd of Hermas are thus not framed as ethical or moral guidelines: they are divine commands that have to be obeyed in order to achieve salvation.

The ancient “church order literature” includes the possibly second-century Didachè (given two titles: The Teaching of the Twelve Apostles and The Teaching of the Lord through the Twelve Apostles to the Gentiles, by the only complete, late eleventh-century, manuscript copy of its contents); the probably third-century Didascalia (titled in the Syriac edition as The Didiscalia, that is the Catholic Doctrine, of the Apostles and Holy Disciples of our Savior); the composite third to fourth-century Apostolic Tradition (previously attributed to Hippolytus); and the probably mid to late fourth-century Apostolic Constitutions, alongside a number of other minor texts. These “church orders” do not simply lay out a set of ecclesiastical and liturgical rules whose normativity depends on them having been observed as unwritten custom in early Christian communities -- despite the fact that medieval and modern readers have tended to understand them in this way.³⁴ Rather, their compilers were engaged in a creative, multi-generational, exegesis of scriptural tradition, with the aim of making God’s rules explicit -- thereby disclosing the fixed pattern, the “way of life,” according to which (all) men should live. The multiple redactors of the three earliest “church orders,” each working within their own local communities and contexts (Antioch, Alexandria, and beyond), were effectively producing Christian halakhah: revealing the path that God intended man to walk upon and translating that knowledge

³³ Shepherd of Hermas, Commandment XII.4--6, in Ehrman, ed. and trans., Apostolic Fathers 2:297--299).

³⁴ For example, Susan Wessel, “The Formation of Ecclesiastical Law,” in Hartmann and Pennington, eds., History of Byzantine and Eastern Canon Law, 5.

into a set of required human actions.³⁵ Bradshaw’s term “living literature” accurately captures the multi-redactional, yet timeless, nature of these texts.³⁶ When the late fourth-century compilers of the pseudepigraphic Apostolic Constitutions placed a revised version of the Didascalia (books 1--6) an adaptation of the Didachè (7) and a fourth-century version of the Apostolic Tradition (8.3--46) together with a list of eighty-five “apostolic canons” (8.47),³⁷ they were self-consciously working within a living, historical, tradition in order to fix a “way of life”: a Christian politeia for the here and now.³⁸

The Didachè opens with “the two paths” teaching: the “path of life” and “the path of death,” also found in Judaeen “sectarian” community texts (Qumran, I Enoch, Jubilees) and other Christian and Jewish writings. The “path of life” comprises a twofold set of commandments addressed to individuals -- perhaps here catechumens being prepared for baptism -- based on the Decalogue and the teachings of Christ as transmitted to the apostles (Didachè 1--4). Chapters 7 to 10 of the Didachè move on

³⁵ On “Christian halakhah,” see Markus Bockmuehl, Jewish Law in Gentile Churches: Halakhah and the Beginning of Christian Public Ethics (Edinburgh, 2000) and Adam H. Becker and Annette Yoshiko Reed, eds., The Ways that Never Parted: Jews and Christians in Late Antiquity and the Early Middle Ages, Texts and Studies in Ancient Judaism 95 (Tübingen, 2003).

³⁶ Paul Bradshaw, “Liturgy and Living Literature,” in Paul Bradshaw and Bryan Spinks, eds., Liturgy in Dialogue: Essays in Memory of Ronald Jasper (London, 1993), 138.

³⁷ Heinz Ohme, “Sources of the Greek Canon Law to the Quinisext Council (691/2),” in Hartmann and Pennington, eds., The History of Byzantine and Eastern Canon Law, 28--33, notes that these are in fact synodal canons taken from fourth-century Church councils.

³⁸ Compare the preface to the later fourth-century Euthalian edition of the Pauline Epistles: “...altogether through the web of these fourteen epistles he [the Apostle Paul] circumscribed for people the entire way of life,” quoted from Eric W. Scherbenske, Canonizing Paul: Ancient Editorial Practices and the Corpus Paulinum (Oxford, 2013), 125.

to the “way of life” that God requires of his Christian community, including the initiatory ceremony of “dipping” in water in the name of the Lord Jesus (baptismos); fasting and praying, which if done correctly means not following the practices of “the hypocrites”; and the sharing of the common meal, the thanksgiving (eucharistia). Chapters 11 to 15 turn to individuals within the community: how itinerant apostles and prophets should be received and treated, as well as rules for choosing bishops and deacons.³⁹ The text ends with a warning concerning the end-days and an exhortation: “Be watchful for your life.”⁴⁰

The Didascalia, the Syriac translation of which has been characterized as “a Mishnah for the disciples of Jesus,” teaches a more complex hermeneutical strategy.⁴¹ Possibly in response to a concrete dispute within the community (Didascalia 24.6.12), the text instructs its readers to distinguish between the “simple” or “first” law of Moses, that is the ten commandments and all the judgements that came before the Israelites fashioned the golden calf, and the “second law,” that is all laws given after the golden calf, as punishment for idolatry. “Without the weight of these burdens [namely the ‘second law’], read the simple Law, which agrees with the Gospel; and again the Gospel itself and the prophets.”⁴² The Didascalia thus elaborates a fixed order for Christian community living -- including rules concerning communal rituals, the election and consecration of the ecclesiastical hierarchy and the instruction and baptism of the laity -- whilst at the same time shaping the boundaries of that

³⁹ Based on a creative exegesis of Pauline texts such as 1 Cor 11, 1 Tim 2:9--15, 1 Tim 3:1--7; 1 Tim 3:8--13, 1 Tim 5, and Tit 1:5--9.

⁴⁰ Didaché 16, in Ehrman, ed. and trans., Apostolic Fathers 1:441).

⁴¹ Charlotte Elisheva Fonrobert, “The Didascalia Apostolorum: A Mishnah for the Disciples of Jesus,” Journal of Early Christian Studies 9.4 (2001), 483-509.

⁴² Didascalia 2, quoted from Fonrobert, “Didascalia,” 501.

community, by excluding anyone who (needlessly) follows the bonds and burdens of Moses' "second law."

According to the Didascalia, Christ's gospel and the teachings of his apostles exist in harmony with the "simple Law" of Moses and the wisdom of the (Hebrew) Prophets. At some point, however, the text was also given an explicit literary framework: the so-called Apostolic Council of Jerusalem (c. 49). In Chapter 24, the apostles themselves are made to state that "it 'seemed to us in one mind' [Acts 15:25] to write this catholic Didascalia for the confirmation of you all."⁴³ This idea of the apostles writing down a detailed set of authoritative -- and exclusionary -- rules, having received them directly from Christ himself, is also found in a probably late fourth-century compilation known as the Apostolic Tradition.⁴⁴ "These are the things that we counsel you to keep, those who have a mind for them. For if everyone follows the traditions of the apostles, these things that they heard and kept, no heretic will be able to lead them astray, not any man at all."⁴⁵ The rules that are made explicit within the later "Church Orders" were intended to anchor the institutionalized church of Late Antiquity within apostolic foundations.

The concept of apostolic rules for living, however, is also found outside ecclesiastical institutions, in Christian monastic literature. As the fourth-century Pachomian Rules for cenobitic (communal) living state: "These are the precepts of

⁴³ Didascalia 24, quoted from Fonrobert, "Didascalia," 490.

⁴⁴ On the text and its later tradition, including the Canons of Hippolytus and the Testamentum Domini Nostri Iesu Christi, see Paul Bradshaw, Maxwell E. Johnson, and L. Edward Philips, The Apostolic Tradition: A Commentary (Minneapolis, 2002) and Wolfram Kinzig, Christoph Marksches and Markus Vinzent, Tauffragen und Bekenntnis: Studien zur sogenannten "Traditio Apostolica," zu den "Interrogationes de fide" und zum "Römischen Glaubensbekenntnis" (Berlin, 1999).

⁴⁵ Apostolic Tradition, 43 (Sahidic text), trans. Bradshaw Apostolic Tradition, 221.

life handed down to us by the elders.”⁴⁶ According to Pachomius’ disciple, Theodore of Tabennisi, the monastic koinonia was nothing less than “a revelation from the time of the apostles to all those who want to live for the Lord after their example.”⁴⁷ The writing down of binding rules to govern community monastic life may have originated with Pachomius the Great (292--346), but he worked within a much broader tradition of Christian “living law.”

<A>2. Expert Law

“And since we know that the words of the God-inspired Scripture shall rise up before us at the judgement seat of Christ: ‘For I will rebuke you and expose to your face your sins’ (Ps 49:21), let us attend soberly to what is said and let us hasten zealously to the work of the divine teachings, for we do not know the day or the hour when our Lord shall come (Mt 24:42).” (Basil, Asketikon, Longer Responses, prologue 18--20)⁴⁸

Basil, Bishop of Caesarea from 370 to 378/9, wrote his Asketikon over fifteen or so years in response to concrete situations and events. At its base, the text records Basil’s responses to ascetic communities in Cappadocia who repeatedly sought his advice on how to live perfectly, in explicit obedience to God’s commandments.⁴⁹ Basil’s warning that the “God-inspired Scripture” itself will testify at the Last Judgement underscores the need for authoritative scriptural exegesis and its

⁴⁶ Armand Veilleux, ed. and trans., Pachomian Koinonia, Cistercian Studies 46 (Kalamazoo, Mich., 1981), 146.

⁴⁷ G.J.M. Bartelink, “Monks: The Ascetic Movement as a Return to the Aetas Apostolica,” in Anthony Hilhorst, ed., The Apostolic Age in Patristic Thought (Leiden, 2004), 208.

⁴⁸ Anna M. Silvas, trans., The Asketikon of St Basil the Great (Oxford, 2005), 160.

⁴⁹ Basil, Asketikon Longer Responses, prologue and chapters 1--6, trans. Silvas, 153--180.

translation into action in the here and now.⁵⁰ As Wolfgang Müller notes, the period from 500 to 1140 has been characterized as an age without jurists.⁵¹ Yet in ways that are at least comparable to the scholarly-juristic development of Talmudic and Islamic Law, late antique and early medieval Christian scholars responded to concrete socio-legal situations through scriptural exegesis, expert interpretation and legal argument.⁵² They may not have been “jurists” of the canon law in the same ways as those who came after the twelfth-century juristic revival, but they nonetheless elaborated a body of rules, commands and prohibitions -- in particular those relating to marriage, children and changes to civil status (manumission from slavery) -- that were normative, yet at the same time grounded within specific circumstances and contexts.⁵³

Early Christian texts contain numerous discussions of legal rules, rights and obligations, judicial procedures, punishments and sanctions. Some of this discussion

⁵⁰ On the early development of Christian penance and penitential rules see Alexis Torrance, Repentance in Late Antiquity: Eastern Asceticism and the Framing of the Christian Life c. 400--650 CE (Oxford, 2012) and Julia Hillner, Prison, Punishment and Penance in Late Antiquity (Cambridge, 2015).

⁵¹ Wolfgang P. Müller, "Introduction: Medieval Church Law as a Field of Historical Inquiry" in Wolfgang P. Müller and Mary E. Sommar, eds., Medieval Church Law and the Origins of the Western Legal Tradition. A Tribute to Kenneth Pennington. (Washington D.C., 2006), 1-14.

⁵² On Rabbinic law see Moshe Simon-Shoshan, Stories of the Law: Narrative Discourse and the Construction of Authority in the Mishnah (Oxford, 2012), David Weiss Halivni, The Formation of the Babylonian Talmud (New York, 2013), and Shai Secunda, The Iranian Talmud: Reading the Bavli in its Sasanian Context (Philadelphia, 2014). On medieval Islamic jurisprudence see Kristen Stilt, Islamic Law in Action (Oxford, 2011).

⁵³ For a concrete example, see Yifat Monnickendam, “Articulating Marriage: Ephrem’s Legal Terminology and its Origins,” Journal of Semitic Studies 58 (2013), 257--296.

is systematic. Tertullian (155--220), the first patristic author whose works survive in Latin, self-consciously deploys classical Roman legal terms and juristic concepts, alongside techniques developed from forensic rhetoric. He identifies an unwritten natural law -- given to Adam and Eve and reformed for the Hebrew Patriarchs -- that is distinct from the laws of Rome, Athens, Sparta and Israel, all of which “were given at a definite time and for a definite time” (Answer to the Jews 2:1--8).⁵⁴ In his polemic against Marcion’s rejection of the Tanakh, Tertullian stresses the primacy of the Law of the one God: “But Moses and God existed before all your Lycurguses and Solons. There is not one after-age which does not take from primitive sources” (Tertullian, Against Marcion 3.17.3). The “Christian law” of the Gospels is eternal, states Tertullian, but changes through human time: centered on Jesus Christ, it comes into effect with John the Baptist, is elaborated by the apostles and is continually supplemented by communal, Christian practices grounded within tradition, custom, and faith.⁵⁵ Biblical scripture, apostolic tradition and (unwritten) custom were all handled as legal sources by Tertullian -- as they were by other early Christian writers and ecclesiastics.⁵⁶

In the Hebrew Tanakh Moses the lawgiver is also Moses the judge: he decides between parties according to God’s decrees and instructions and also appoints others

⁵⁴ Compare Origen, Against Celsus 5.37, trans. Henry Chadwick (Cambridge, 1953), 301, Eusebius, Demonstration of the Gospel, and Rufinus of Syria’s (Vulgate) Prologue, Primum quaeritur, in John Wordsworth and H. J. White, eds., Novum testamentum latine: Editio maior (Oxford, 1913--1941), 2:1-5).

⁵⁵ Tertullian, On Idolatry 24, Apology 45.1--4, and On the Crown, 3--4 (citing the example of veiling women).

⁵⁶ Caroline Humfress, “Patristic Sources,” in David Johnston, ed., Cambridge Companion to Roman Law (Cambridge, 2015), 97--118.

as judges (Ex 18:13--24).⁵⁷ The Gospels, in contrast, repeatedly portray Jesus Christ as refusing to decide legal cases.⁵⁸ In answer to a request to settle an inheritance dispute between two brothers, the Gospel of Luke quotes Jesus' words: "Why not judge for yourselves what is right? For example, when you go to court with your opponent, try to settle with him on the way..." (12:57--58).⁵⁹ The New Testament precept that disputes should be resolved within Christian communities had a liturgical function (disputants had to be reconciled before celebrating holy rites so as not to defile the sacrifice), as well as a social function in terms of maintaining community cohesion.⁶⁰ It also meant that individual Christian communities looked to each other for advice, when they could not resolve their own internal disputes.

Almost all of the Apostle Paul's Epistles, alongside the deuterio-Pauline Pastoral Epistles, address concrete disputes of various kinds. The practice of (monarchical) bishops sending requests for guidance to other bishops and receiving epistolary replies in turn is well attested: from Irenaeus of Antioch and Polycarp of Smyrna in the early second century; to Dionysius of Alexandria, Gregory Thaumaturgus (bishop of Neocaesaria) and Cyprian of Carthage in the third century; to the fourth- and fifth-century bishops of Alexandria, Peter, Athanasius, Timothy, Theophilus and Cyril; the Cappadocians, Basil of Caesarea, Gregory of Nazianzus, Gregory of Nyssa and Amphilochius of Iconium; and the fifth-century Patriarch of

⁵⁷ The tractatoria (final decree) of the 393 North African Council of Cebsarsussi cites the Exodus commandments as a proof of the bishops' God-given right to judge the case of Primian, (Donatist) Bishop of Carthage. For the text of the tractatoria, see Brent D. Shaw, Sacred Violence: African Christians and Sectarian Hatred in the Age of Augustine (Cambridge, 2011), 115--117.

⁵⁸ Luke 12:13--5, John 7:13--20.

⁵⁹ Luke 12:57--58. Also Mark 18:15--18 and 1 Cor 6:1--6.

⁶⁰ Liturgical function: Mt 5:23--26. Social function: 1 Cor 5:9--13 and 6:1--6.

Constantinople, Gennadius I. The letters of these bishops entered both eastern and western canonical traditions as sources of law in their own right, having all originated as expert responses to concrete situations.⁶¹ This is also the context in which we should place the beginnings of what came to be known as the papal decretal tradition, of which the earliest collections date to the fourth and fifth centuries.⁶² As Innocent I, bishop of Rome, put it in his 404 response to Victricius bishop of Rheims, he was not issuing new decrees in the “rules of discipline” which he attached to his letter, he was rather providing a primer and guide to authoritative rules already established by the apostles and fathers who came before him.⁶³

<A>3. Law as Collective Enactment: Conciliar Legislation

If we turn finally to canon law in the sense of canons agreed by bishops (and on occasion other clerics) acting in councils, we can see that this type of governance by collective decision and enactment was just one aspect of a much broader, Christian legal culture. As we have seen in the case of early Christian “living law” and “expert law,” late antique conciliar enactments -- and the specific textual forms through which they were variously transmitted -- need to be understood in historical context.

Ecclesiastical councils and assemblies were first and foremost events: some drew together bishops from local areas, others from across a province or region.⁶⁴ The first ecumenical (“universal”) Church council was held at Nicaea in 325 under the

⁶¹ For an overview, including textual editions and translations, see Ohme, “Sources,” 84-114.

⁶² Detlev Jasper and Horst Fuhrmann, Papal Letters in the Early Middle Ages, HMCL (Washington, D.C., 2001), 20--26. See also Chapter 11.

⁶³ Innocent I, Letter to Victricius, bishop of Rheims, ed., PL 67.241--245.

⁶⁴ For a detailed analysis of early Byzantine church councils and conciliar collections, including lists of editions and translations, see Ohme, “Sources,” 24--83.

authority and patronage of the Emperor Constantine. Like the earlier conciliar canons from Elvira (Southern Spain, usually dated to 305 or 306) and Arles (314) in the West and from Ancyra (314) and Neocaesarea (c. 318) in the East, the twenty canons agreed at Nicaea were normative responses to specific events, reasoned out from Scripture and “apostolic statement” (as the second Nicene canon phrases it). The subjects covered by fourth to sixth century conciliar canons range across the entire “organization and functioning of the legal life of the Church.”⁶⁵ They state how ecclesiastical life ought to be ordered, in keeping with the general principle that there is one set of rules for the clergy and another for the laity; they lay down procedures and penalties for when those rules are infringed; they formalize a sacramental system of hierarchical governance; and they (gradually) establish an internal appeal structure, including a number of specific rules governing exactly how and when imperial authority could be invoked legitimately by Christian ecclesiastics, acting either as individuals or collectively.

From the age of Constantine onwards, a number of ecclesiastical synods and councils were convened by imperial and royal mandate.⁶⁶ Certain conciliar decrees, moreover, were explicitly confirmed by imperial and royal legislation.⁶⁷ The imperial constitutions excerpted in book sixteen of the Theodosian Code (promulgated by the Emperor Theodosius II in 438) and book one of the Justinianic Code (second edition

⁶⁵ Spyros Troianos, “Byzantine Canon Law to 1100,” in Hartmann and Pennington, eds., History of Byzantine and Eastern Canon Law to 1500, 115.

⁶⁶ These include councils held at Arles (314), Nicaea (325), Tyre (335), Sirmium (351), Arles (c. 353), Milan (355), Rimini and Seleucia (359), Constantinople (381), Ephesus (431), Chalcedon (451), Carthage (484), Agde (506), Orléans (511), Epaon (517), Constantinople II (553), and Toledo (589).

⁶⁷ For example, Theodosian Code 16.1.3 (issued by Theodosius II at Constantinople) confirms the decrees of the 381 Council of Constantinople.

534) showcase the ways in which Roman emperors, from Constantine onwards, attempted to maintain “right” relations between their imperial subjects, the Christian God, and his chosen agents, through legislating on behalf of the institutional Christian church. Behind these imperial laws, however, lies a process of petition and response that was driven, from the ground up, by Christian bishops and other ecclesiastics. The phenomenon of bishops petitioning Roman emperors predates Constantine.⁶⁸ In the case of Paul of Samosata, bishop of Antioch from c. 260 to 269, the appeal to the Emperor Aurelian against Paul’s continued possession of “the house of the church” was also intended as a means of enforcing the sentence of deposition passed against him three or so years earlier by a regional church council.⁶⁹ Christian bishops before Constantine, as well as after, made use of Roman imperial authority.

Alongside disciplinary and regulatory canons, late antique councils also issued credal statements, doctrinal definitions, and anathemas. The first canon from the ecumenical council of Constantinople (381), for example, confirms the faith of the “318 Fathers” who gathered at Nicaea in 325 and anathematizes every heresy.⁷⁰ Some regional and ecumenical councils, including Ephesus I (431) and Chalcedon I (451), undertook the legal trial and condemnation of specific Christian clerics.⁷¹ The binding authority of all (Catholic) conciliar decisions, whether regulatory or judicial, was held

⁶⁸ Eusebius, Ecclesiastical History 7.13 and 7.30, trans. Maier, 236 and 249.

⁶⁹ For further discussion see Fergus Millar, “Paul of Samosata, Zenobia and Aurelian: The Church, Local Culture and Political Allegiance in Third-Century Syria,” The Journal of Roman Studies 61 (1971), 1--17.

⁷⁰ Mansi 3.567.

⁷¹ On Ephesus I (431), Ephesus II (449) and Chalcedon (451), see Richard Price and Michael Gaddis, eds. and trans, The Acts of the Council of Chalcedon (Liverpool, 2005), 1:17--51.

to derive ultimately from the Holy Spirit.⁷² Conciliar enactments thus denote a special kind of normative legal practice. As we shall see, however, the production of canonical collections (Libri canonum) was governed by the conventions of a manuscript legal culture, in which texts were drafted, copied, and circulated on the basis of private initiative.⁷³

“One can, indeed one must, regard all the manuscript collections of council acts as propaganda.”⁷⁴ Late antique conciliar decisions were mostly disseminated via the bishops who participated at any given council. Ecclesiastics, in turn, were expected to know the relevant (local) canons.⁷⁵ Redactions of conciliar acts and canons were thus tailored to specific Christian communities and networks: John Chrysostom, for example, objected at the Synod of the Oak (402) to being tried by canons drawn up by Arian heretics.⁷⁶ The (Persian) Council of Seleucia-Ctesiphon (410), on the other hand, approved twenty-one canons which were stated to be Nicene but which were actually products of the 410 synod itself.⁷⁷ In fact all conciliar

⁷² Ramsay MacMullen, Voting About God in Early Church Councils (New Haven, 2006).

⁷³ On canon law in manuscript cultures see David Wagschal, Law and Legality in the Greek East: The Byzantine Canonical Tradition (Oxford, 2015), 24-32.

⁷⁴ Eduard Schwartz, quoted from Thomas Graumann, “‘Reading’ the first council of Ephesus 431,” in Richard Price and Mary Whitby, eds., Chalcedon in Context: Church Councils 400--700 (Liverpool, 2009), 28, n. 5.

⁷⁵ Ralph Mathisen, “Church Councils and Local Authority: The Development of Gallic Libri canonum during Late Antiquity,” in Carol Harrison, Caroline Humfress, and Bella Sandwell, eds., Being Christian in Late Antiquity (Oxford, 2014), 176.

⁷⁶ Andrew Louth, “Conciliar records and canons,” in Frances Young, Lewis Ayres, and Andrew Louth, eds., Cambridge History of Early Christian Literature (Cambridge, 2004), 395, n.4.

⁷⁷ Sebastian P. Brock, “The Church of the East in the Sasanian Empire up to the Sixth Century and Its Absence from the Councils in the Roman Empire,” Syriac Dialogue (Vienna, 1994), 69--86, repr. in

collections, before the thirteenth century, were undertaken through private initiative. The first known collection of conciliar canons -- which ordered canons from the councils of Ancyra and Neocaesarea in a single sequence -- seems to have been made at Pontus (Asia Minor) around 343. This edition was subsequently incorporated into a further, expanded, local collection, known as the Corpus Antiochenum, which possibly originated in anti-homoean circles around Antioch (hence the addition of the 325 Nicene creed and canons at the beginning of this manuscript). This collection in turn was repeatedly expanded and modified in both eastern and western canonical collections. It was included in the first edition, dating to around 550, of John Scholastikos' Synagoge (Compilation) of Ecclesiastical Canons Divided into Fifty Titles -- also probably compiled at Antioch.⁷⁸ John's collection was ordered systematically according to discrete topics, each corresponding to a grade within the ecclesiastical hierarchy; it was probably also supplemented by an appendix containing relevant imperial legislation.⁷⁹ We can thus begin to appreciate the importance of local conciliar traditions, as well as the ways in which "editorial practices were shaped by interpretation" -- what Scherbenske terms (in a different context) editorial hermeneutics.⁸⁰

Sebastian Brock, Fire from Heaven: Studies in Syriac Theology and Liturgy (Aldershot, 2006).

Compare the controversy over specific Nicene canons during the North African Apiarian controversy (417/418), on which see Hamilton Hess, The Early Development of Canon Law and the Council of Serdica (Oxford, 2002), 55--56.

⁷⁸ Vladimirus N. Benesevic, ed., Ioannis Scolastici Synagoga L titulorum ceteraque eiusdem opera iuridica (Munich, 1937).

⁷⁹ On the Synagoge see Troianos, "Byzantine Canon Law," 118--120.

⁸⁰ Scherbenske, Canonizing Paul, 4.

Early western collections of conciliar canons and decretals are usually arranged chronologically, rather than systematically according to topic; they also tend to cluster around specific geographical locations such as Arles and Rome, which functioned as regional centers for manuscript copying and archive storage.⁸¹ Working in Rome under the patronage of its bishop, Hormisdas (514--523), Dionysius Exiguus collated the first (extant) collection of Greek and Latin conciliar canons. Later canonists referred to Dionysius' conciliar compilation, together with his collection of decretals, as the Collectio Dionysiana. In later centuries, the contents of the Collectio Dionysiana were supplemented and altered in a process comparable to that of "living literature." The sixth-century Italian cleric Cresconius, for example, adopted a systematic arrangement for his Concord of Conciliar Canons -- ordering the material into 300 topics in order to enlighten the ignorant, facilitate learning, and aid those who sat in judgement.⁸² Later medieval canonists may have approached the earliest canonical collections as fixed and unchanging witnesses to a (single) early Church, but the historical realities that lie behind the compilation and transmission of these texts were local, fluid, and dynamic.

⁸¹ Kéry, Canonical Collections. Chronologically arranged collections noted by Kéry include the late fifth-century Concilia secundi Arelatensis (Arles); the early sixth-century Collectio Quesnelliana (Gaul, or possibly Rome), Collectio Sanblasiana and Collectio Parisiensis (Italy, possibly Rome), and the Collectio Vaticana (Rome); the mid sixth-century Collectio Corbeiensis, Collectio Laureshamensis, Collectio Remensis, Collectio Lugdunensis, and Collectio Coloniensis (all Southern Gaul, possibly Arles); and the probably late sixth-century Collectio Sancti Mauri (Southern Gaul), Collectio Tuberiensis (Diocese of Trent), Collectio Weingartensis (Rome), and Collectio Iustelliana (Italy).

⁸² Klaus Zechiel-Eckes, Die Concordia canonum des Cresconius (Frankfurt am Main, 1992). Other systematic collections include the Breviatio canonum of Fulgentius Ferrandus, deacon at Carthage (died 546 or 547), the Capitula of Martin, Archbishop of Braga (compiled shortly after 572), and the Collectio Vetus Gallica ascribed to Bishop Etherius of Lyon (compiled between 585 and 627).

<A>4.Conclusion

The idea that early Christian communities were governed by unwritten custom obscures the extent to which early Christian exegetes and ecclesiastics developed their own, textualized, “living law.” Being your own good lawgiver meant making the rules explicit, whether those rules were derived from revelation, God’s commandments, or parables and stories. As we have seen, early Christian exegetes understood the Mosaic commandments precisely as legal commandments and not as moral precepts or behavioral norms. Being your own good lawgiver also demanded a continual -- expert -- exegesis of biblical Scripture (Old and New Testaments), apostolic tradition, and concrete communal practices. The development of a systematic ius ecclesiasticum: a body of legal enactments that regulated and governed the life of the institutional Church, belongs to the post-Constantinian era. For example, the ordering of ecclesiastical legislative material under separate books and named titles in the law codes of Theodosius II and Justinian I introduced a systematic structure and coherence, which is also mirrored in the ordering of some sixth-century ecclesiastical compilations.⁸³ The fact that late antique ecclesiastics continued to produce their own,

⁸³ Clarence Gallagher, Church Law and Church Order in Rome and Byzantium: A Comparative Study (Aldershot, 2002). On the Theodosian Code and its influence, see Elisabeth Magnou-Nortier, Le Code Théodosien, livre XVI et sa réception au Moyen Âge (Paris, 2002). For the constitutions relevant to (Christian) religion, see Jean Rougé and Roland Delmaire, Les lois religieuses des empereurs Romains de Constantin à Théodose II, vol. 1, Code Théodosien XVI, Sources Chrétiennes 497 (Paris, 2005) and Jean Rougé, Roland Delmaire, Oliver Huck, François Richard, and Marie-Gabrielle Guérard, Les lois religieuses des Empereurs Romains de Constantin à Théodose II, vol. 2, Code Théodosien 1-XV, Code Justinien, Constitutions Sirmondiennes, Sources Chrétiennes 531 (Paris, 2009). Both works contain the standard Latin texts edited by Theodor Mommsen, Paul M. Meyer, and Paul Krüger.

local, collections of conciliar canons, in response to concrete situations and events, should alert us to the ongoing importance of “living law” within the ius ecclesiasticum of the Middle Ages and beyond.