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## Canon Law.

By EDWARD F. EMMET, Esq.

CANON Law deals with matters of ecclesiastical dogma and discipline. It is obvious that as the corporate existence of the Church began to be recognized, the necessity of the regulation of her affairs upon some sort of a system must have been felt. We know that questions arose in the very early days of her history. In the Acts of the Apostles we read, for instance, of the question of the circumcision of the Gentiles being referred to the Apostles and elders at Jerusalem. Their decision, embodied in a formal letter to "the brethren which are of the Gentiles in Antioch and Syria and Cilicia," may be regarded as the first example of Canon Law. There can be but little doubt that other questions were settled in a similar manner. These decisions would, of course, have no legal binding effect in the sense that there was any means of enforcing them, but it is probable that they were accepted by the general conscience of the Church. Situated as the Church was in the midst of paganism, problems of morality and discipline must have been of almost daily occurrence, and it is but natural that they should have been referred to some recognized authority. In course of time collections would begin to be made of the opinions and decisions of Apostles and elders to whom such questions were referred. Probably the earliest collection of any such Church rules is that contained in the "Didache," or "The Teaching of the Twelve Apostles," which dates from the sub-Apostolic age, and in the second part of which are contained certain rules for worship and Church government. Other early collections are known as "The Apostolic Church Ordinances," "The Apostolic Canons," and "The Apostolic Constitutions" (an expansion of the "Didache"). The exact date of these various collections, and how far they are authentic, are matters of controversy, but it is only reasonable to suppose that some such collections would

be made for the guidance of the Church. Though they had no effect as positive law, they may be regarded as one of the sources of the later *Jus Canonicum*.

The other sources are the decrees of the Episcopal body assembled in Œcumenical Council, the decrees of local councils, and the opinions and decretals of individual Bishops. Though somewhat contrary to what might have been expected, it was not the Œcumenical Council from which the major part of ancient Canons emanated; it was from the local councils and isolated Bishops. Most of the old Canons would therefore originally only have been valid for certain localities. They subsequently became "Canon Law" because and only in so far as they were adopted elsewhere.

For some centuries no attempt was made in the West to compile an authoritative collection of Canons, or to draw up any uniform system. The earliest compilations were made in the East. The Canons of the Council of Nicæa (A.D. 325) were accepted everywhere; and shortly afterwards, in 341, an authoritative collection was promulgated at the Council of Antioch. By the sixth century the Greek Canon Law had received what was practically its final form. It consisted of (1) the so-called "Apostolic Canons," (2) the Canons of about twelve Œcumenical Councils, and (3) a series of canonical letters of certain great Bishops. To these were added later twenty-two canons of the Second Council of Nicæa (A.D. 787).

As has been said, progress was much slower in the West. There were not even any local compilations until the fifth century, and it was not until the eighth or ninth century that any attempt was made at unification. Of the local collections, the most ancient is that of Africa, where there were two compilations—that known as the *Hispana*, and that of Dionysius Exiguus. The Roman Church itself was especially tenacious of its own local customs and traditions. These were based on usage and papal letters, called "Decretals," either addressed to various Bishops or written in answer to questions especially submitted. Towards the beginning of the sixth century, how-

ever, the collection of Dionysius Exiguus was adopted. This consisted of (1) the first fifty of the Apostolic Canons translated from the Greek, and (2) the papal Decretals. The second part naturally received additions from subsequent Decretals. It was this code of Canons which is stated to have been presented by Adrian I. to Charlemagne. It became known as the "Liber Canonum," and was received by nearly the whole of the Western Church. Though never officially adopted, it was recognized in England.

This was the only official collection in the Roman Church until the eleventh or twelfth century. It was, however, a collection without system or real unity. There was no grouping according to subjects. This was first attempted in the "False Decretals" of the ninth century which were issued in Spain by Isidore Mercator. These were never formally adopted, but they were widely accepted, and formed the model for subsequent collections, of which many followed, until the twelfth century. All these were then superseded by the famous Decretum of Gratian.

Gratian was a Benedictine monk and a native of Chiusi in Tuscany. His great work, which he called "Concordia Discordantium Canonum," was published at Bologna about 1148. It is not merely a collection of Canons, but a treatise also. It was thus all the more fitted to become, as it did, the standard book for teaching and practice for students of Ecclesiastical Law. It consists of three parts. The first deals with the sources of Canon Law and with ecclesiastical persons and offices; the second comprises a collection of "Causæ" (*i.e.*, cases for solution), which are subdivided into "Quæstiones" (*i.e.*, points solved in each case), with authorities bearing on each question; the third part is denoted by its title, "De Consecratione" (*i.e.*, the law on Church Ritual and Sacraments).

This great treatise never received official recognition so far as is known, but for all practical purposes it was accepted by the Church. It has sometimes been called the "Corpus Juris Canonici," but it is more correct to regard it as the basis of

what subsequently formed the body of Canon Law. On it were founded the subsequent collections of Decretals known as "Compilationes," issued by various Popes, the first of which was called the "Breviarium Extravagantium." The subjects of the five books into which this is divided are indicated by a well-known hexameter :

"Judex, iudicium, clerus, connubia, crimen."

They may be shortly expressed in English as (1) ecclesiastical persons ; (2) procedure ; (3) rights, duties, and properties of clergy ; (4) marriage ; (5) penalties.

Pope Gregory IX. commissioned Raymond of Pennaforte to reduce this and four subsequent compilations, known respectively as "Tertia," "Secunda," "Quarta," and "Quinta," into one. The result was the first official code, issued about 1234, and known as the "Decretalia Gregorii Noni." A sixth book was added by Boniface VIII., and later still the decrees of Clement V., called the "Clementinæ," were admitted into the official code. The "Extravagantes" of John XXII., and those of some of the later Popes, known as the "Extravagantes Communes," were the only subsequent additions until the "Corpus Juris Canonici" was finally closed.

It remains to consider shortly the sources and contents of the English Ecclesiastical Law. This aspect of the subject has been much to the fore of late both in connection with political controversies and also in consequence of the publication by Mr. Arthur Ogle of a book on "The Canon Law in Medieval England." Shortly, the object of this book is to controvert the conclusions come to by the late Professor Maitland, who maintained, as against Dr. Stubbs, that the English Church before the Reformation accepted the Roman Canon Law in its entirety as absolutely binding, and overriding any English Ecclesiastical Law which might be opposed to it. Professor Maitland's results are used as an argument against the continuity of the English Church. It is maintained that the Church after the Reformation could not be the same as the Church before the

Reformation, as it recognized and was bound by an entirely different code of Ecclesiastical Law. Dr. Stubbs, whose claim to be an authority upon the subject was probably even greater than that of Professor Maitland, had previously held that the Roman Canon Law, as such, was never binding in the English Ecclesiastical Courts. Mr. Ogle's purpose is to prove that the Bishop was right, and that the Professor was wrong. It is not our purpose to go into the question, but if we may judge from the comments on the book of those who are entitled to speak with authority, it would seem that Mr. Ogle has clearly made out his case.

On the assumption that this is so, it is clear that there is no need, in considering the sources of the English Canon Law, to differentiate between such law before and after the Reformation. The sources may be stated to be threefold: (1) The general principles of the *jus commune ecclesiasticum*; (2) particular foreign constitutions received and adopted in England, either expressly or impliedly; and (3) constitutions and Canons of English Synods.

As to the general principles of the Common Ecclesiastical Law, these were undoubtedly adopted by the Church in England. They were, however, subject to many limitations where they came into conflict with any earlier English custom or rule, and the English Church never surrendered her right to repeal or vary any part of the law previously adopted. As to the second of the three sources mentioned above, there were many foreign constitutions current in England before the Reformation, and the fact that this was so is recognized by the Statute 25, Henry VIII., cap. 19 (on which the authority of Canon Law now depends), which enacted that a general review should be made of Canon Law, and that until such review all Canons, constitutions, ordinances, and synodals provincial being then already made, and not repugnant to the law of the land or the King's prerogative, should still be used and executed. Any such foreign constitutions would be subject to repeal or variation in the same way as the general principles of the Roman Canon Law.

The third source is the only one which is English. This "National" Canon Law is composed of constitutions and Canons of English Synods. These constitutions are either provincial or legatine. The former are the decrees of the Provincial Synods held under the different Archbishops of Canterbury from Stephen Langton in the reign of Henry III. to Henry Chichele in the reign of Henry V. The legatine constitutions are papal decrees, formally enacted in National Synods held under Cardinals Otho and Othobon, two papal legates in the reign of Henry III. The great medieval authority for English Canon Law is Lyndwood's "Provinciale," wherein are collected the most important of the provincial and legatine Canons.

In addition to the Canon Law as it existed before the Reformation, there are the important post-Reformation Canons of 1603. Certain of these were altered in Convocation in 1866 and again in 1888; but, with these exceptions, they have remained unaltered to the present day, except in so far as they have been abrogated by civil legislation (*e.g.*, in testamentary and matrimonial matters) or have become obsolete by disuse. As is well known, these Canons were never confirmed by Parliament, and it has accordingly been held that they are not binding on the laity. They are, however, binding on the clergy so far as they have not been abrogated, and they would also be obligatory upon any laymen who have expressly or impliedly submitted themselves to their authority. Though the review of the Canon Law ordered by the Act of Henry VIII. previously mentioned was never taken, it is probable that the Canons of 1603 were intended to be enacted in pursuance of that Act. A large majority of them are in fact merely declaratory of the law then already existing. Those which partake of this nature are therefore binding on the whole Church unless they have since been repealed or have fallen into disuse. It would be of interest to examine the Canons, with a view to showing how far they merely adopted pre-Reformation Canons. It must, however, suffice to indicate shortly their subject-matter.

The first twelve treat of the Church of England, declaring

the King's supremacy in ecclesiastical matters, and containing various anathemas against those who impugn such supremacy or the constitution or faith of the Established Church. The following eighteen Canons relate to "Divine Service and Administration of the Sacraments." They enjoin the proper celebration of Sundays and Holy Days, the use of the prescribed forms of service, and the reverent conduct of such services. Directions are given as to Holy Communion, its reception, and those to whom it is to be denied. The last of the Canons under this heading is a long statement declaratory of the lawful use of the cross in Baptism. The subjects of the next forty-six Canons are "Ministers, their Ordination, Function, and Charge." They contain minute rules on these matters, and the majority of them are still in force. The last of them (No. 76) may, however, serve as an example of the Canon Law being overridden by Statute Law. The Canon in question provides that "no man being admitted a deacon or minister" (which expressions have always been understood as including all those who have been ordained) "shall from thenceforth voluntarily relinquish the same nor afterwards use himself in the course of his life as a layman upon pain of excommunication." It is, however, now provided by the Clerical Disabilities Act, 1870, that any minister in the Church of England may execute a deed of relinquishment, and shall thereupon, after certain formalities, be discharged from all disabilities or restraints to which he was subject as a minister of that Church.

The close connection which formerly existed between the Church and education is indicated by the three Canons which follow, and which provide for the licensing of all schoolmasters by the Bishop (a preference being given to curates desirous to teach), and set out the duties of schoolmasters. "Things appertaining to Churches" is the heading of the next set of nine Canons. They order the provision of a Great Bible, the Book of Common Prayer, a font of stone, a Communion table, a pulpit, and chest for alms in every church, and bid churchwardens to see that churches and churchyards are kept in proper repair and order. They also deal with the periodical



survey of churches, and the making and preserving of a terrier of glebe lands and other Church property. Canons 89 to 91 relate to the choice of churchwardens or questmen, sidesmen, and parish clerks, the keeping of churchwardens' accounts, the duties of sidesmen, and the qualifications of parish clerks. One of such qualifications is that he shall be sufficient "for his competent skill in singing, if it may be"! It may be mentioned that it is provided that churchwardens are to be chosen by the joint consent of the minister and the parishioners; but if they cannot agree, then the minister shall choose one and the parishioners another; and that parish clerks are to be chosen by the minister.

The Canons which follow (Nos. 92 to 138) relate to the Ecclesiastical Courts, their procedure and officers. They are divided into six different headings: (1) The courts belonging to the Archbishop's jurisdiction; (2) those belonging to the jurisdiction of Bishops and Archdeacons, and the proceedings in them; (3) Judges ecclesiastical and their Surrogates; (4) Proctors; (5) Registrars; (6) Apparitors. The greater number of these are now archaic. The subject-matters of some, especially those relating to probate and divorce, have been removed from the cognizance of the Ecclesiastical Courts. Others, such as those relating to presentments by churchwardens and ministers, have practically fallen into disuse. Probably the only one of the Canons relating to the Ecclesiastical Courts which is now of any great importance is No. 99, which forbids marriage within the prohibited degrees. Of interest in another manner is the Canon No. 133, which enjoins that Proctors are not to be clamorous in court, but that they "refrain from loud speech and behave themselves quietly and modestly." Now that solicitors are allowed to practise in the Ecclesiastical Courts, Proctors are no more.

The three Canons 139 to 141 contain anathemas against those who impugn the authority of the sacred Synod (*i.e.*, Convocation), and the last authorizes the Bishop or Archbishop to declare a benefice vacant by reason of the beneficed priest becoming disqualified from holding the preferment.