FONDAZIONE ERNESTA BESSO

TRIVENT

INTERNATIONAL CONFERENCE ON

LAW AND THE OTHERS

MANAGING DIVERSITY AND MARGINALITY IN MEDIEVAL CANON LAW (12TH–15TH CENTURIES)

– PROGRAM –

12 MARCH 2024

FONDAZIONE BESSO
ROMA

ABOUT THE CONFERENCE

DESCRIPTION

Aiming to regulate the entire life of Christian communities, Medieval Canon Law was inevitably confronted with the immense diverseness of human experience, having to address both the great structural differences which existed within the Church and countless specific situations of marginality. If, through the Middle Ages, political theologians elaborated the ideal of a uniformly Christian society, in which physical and spiritual diversity almost had no place at all, reality was in fact often much more complicated. Realistically avoiding – in most cases – to pursue both the complete assimilation of marginalized individuals and groups and their total exclusion from society, the Church handled the tensions arising from the great variety of human circumstances, first of all through legal instruments.
The aim of this conference is to bring into focus the groups that were perceived as alien bodies within the Christian society, reconstructing both the strategies that were put in place to deal with them and the differentiated legal treatment elaborated in each particular case to this end.

ORGANIZERS

The conference is organized by
Fondazione Besso in collaboration with Trivent.

ABOUT THE CONFERENCE

PUBLICATION

The proceedings of this conference will be published in the book series *Canon Law: New Perspectives on the Law of the Church in Medieval Society*. The book series is published by Trivent Publishing and edited by Federica Boldrini (Universita di Parma) and Andrea Errera (Universita di Parma).

CONTACT

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10:30 PANEL 1. THE GREAT 'OTHERS' OF THE CHURCH: HERETICS, SCHISMATIC, JEWS

* Registration to the conference starts at 10:00

1

AN IRRECONCILABLE VISION: HERESY AND SCHISM IN DANTE AND IN THE OSTIENSE (AND IN THE OTHER OTHER CANONISTS)

Emanuele Ciarrocchi (Ludwig-Maximilians-Universität, Munich)

In this paper, I will make a comparison between the treatment of the sins of heresy and schism in Dante Alighieri and in some canonists, primarily Henry of Susa. I will then show how Dante's clear separation between heretics and schismatics is radical in relation to contemporary thought. In this way, despite all the peculiarities of Dante's case, it can shed light on some aspects of the resistance and counter-pressures that civil society exerted against the precepts of canon law. This separation can also tell us much about his conception of these two sins and the nature of the characters condemned in Cantos X (heresy) and XXVIII (schism). Indeed, the heresy of disobedience, a political weapon created ad hoc to further the imposition of the hierocratic model, tended, in the canonists' thinking, to bring together these two sins so well separated by Dante. The proposal of a new interpretation of these concepts, more in keeping with their historicity, with a specific and radical meaning, can open up interesting reflections on Dante's possible desire to influence this historical process and, despite his various accusations against canonists and canon law, to propose his own regulation. It also brings new interpretations to questions that still lack a convincing answer, such as the silence about the numerous heretical movements that had characterized the decades before the writing of the Comedy and the presence of fra' Dolcino among the schismatics.

2 *VALDO DI LIONE "NUOVO APOSTOLO": UN ITINERARIO ACCIDENTATO VERSO L'ESCLUSIONE CONFLITTUALE*

Francesca Tasca (Università di Padova)

Nell'anno 1174 Valdo, ricchissimo cittadino di Lione, decise di liberarsi di tutti i propri beni e di lasciare la famiglia per intraprendere una vita di predicazione itinerante in totale povertà sul modello apostolico. In breve tempo raccolse intorno a sé uomini e donne, prevalentemente di condizione laicale, che ne imitarono la scelta esistenziale: andare per il mondo a due a due a predicare in volgare il Vangelo. Per il proprio sostentamento essi mendicavano e si affidavano all'altrui generosità, confidando convintamente nell'indicazione paolina secondo cui «chi annuncia il Vangelo del solo Vangelo viva». Inevitabile fu l'intervento delle autorità ecclesiastiche, volto a normare, depotenziare e contenere tale dirompente iniziativa che minacciava la struttura gerarchica della società cristiana, fondata invece sulla nitida distinzione tra clero e laicato soprattutto per quanto riguardava il possesso e la proclamazione della Parola.

A Lione, probabilmente nel 1180, al tempo dell'arcivescovo Guiscardo, venne raggiunto un accordo tra Valdo e le gerarchie ecclesiastiche: il propositum di vita religiosa che ne risultò fa però riferimento al solo pauperismo radicale. Non vi è alcun minimo cenno alla predicazione. Tuttavia questo fu un compromesso assai precario: una breve battuta d'arresto di circa due anni. Ripresa la predicazione, il nuovo arcivescovo Giovanni Bellemani cacciò Valdo e i suoi da Lione. Se il pauperismo era accettato nel mondo urbano come condizione di marginalità, la contestazione dell'ordinamento vigente non poteva invece essere accolta, generando così l'espulsione inappellabile. La pericolosità della proposta di Valdo non consisteva infatti nel contestare il denaro e le ricchezze bensì nel mettere in discussione attraverso la propria scelta esistenziale la struttura stessa della società cristiana, la sua organizzazione gerarchica e la marcata divisione tra chierici e laici.

Si spiega così la definitiva condanna ereticale formulata contro i Poveri di Lione nel 1184 a Verona con la decretale Ad abolendam emanata da papa Lucio III, in sintonia con l'imperatore Federico Barbarossa.

3 *EVERYDAY KNOWLEDGE: COMPARING MEDIEVAL RABBINIC AND CANONICAL NOTIONS*

Aviad Markovitz (The Hebrew University of Jerusalem)

By the end of the 12th century, several notable canon lawyers distinguished between notorium and fama – different types of evidence by hearsay, differed by their origin and strength. Similarly, contemporary Broccards rated various presumptions, and distinguished between presumptio probabilis and praesumptio violenta. Two notions, performed by two distinct legal actors – and yet, quite similar.

This legal vocabulary, often contextualized by the 'revival' of Roman law and the birth of the inquisitorial process, has a dual character. It is both high and low – 'worldly' content of rumors and communal intuitions incarnated by 'formal', artificial terminology.

What is the true nature of such concepts? How they functioned in real courtrooms? In my lecture, I would like to offer an answer by comparison – looking closely at the ways in which the Jewish minority experienced and participated in much same juridical discourse. I will focus on one example – 'presumption that never stops', coined by Ashkenazi scholar named R. Simcha b. Shmuel of Speyer. This hybrid term blurs the border between rumors and presumptions, and defines the subject of notorium to be eternal and humane.

The comparison allows me to advance a twofold argument. First, I would like to state that the medieval admissibility of hearsay should be grounded in legal conceptions of common knowledge and judicial prudence. However, I would like to suggest also a functional explanation, arguing that medieval legal realism was 'born' under lack of standard regulation, in order to gain consent and obedience.

12:00 PANEL 2. CANON LAW AND GENDER

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4 ***GENDER OF THE ADOLESCENT MALES, "UNNATURALNESS", SODOMY AND MASCULINITY IN THE ECCLESIASTICAL LAW OF THE MUSCOVITE KINGDOM***

Hanna Filipova (University of Gothenburg)

The first attempts to regulate homosexual behavior by secular law were made in Russia during the reign of Peter I (military articles of 1706 and 1716). Idea was borrowed from Swedish law, and they were of a disciplinary and military nature – only rape of one male over another was punishable. Outside the army and navy, it was applied very sporadically, and until the 19thcentury Russian legal perceptions (and persecutions) of homosexuality were dominated by church law. The relatively mild punishment for male sodomy (in the category of "unnatural" sexual practices and fornication) gave rise to many Western Orientalist stereotypes about the abnormal sexuality of the Muscovites – e.g. that they kept boys in their houses "for debauchery" and openly boasted about it.

In this paper, based on a wide range of sources from 11th–18th centuries (ecclesiastical didactics and polemics, confessional questionnaires, testimonies of European travelers and early ethnographers, and even folklore stories) I examine the phenomenon of dynamically changing gender of male adolescents through the prism of medieval church law in the pre-Petrine Muscovite Kingdom. I am interested in placing this phenomenon within the broader context of the Mediterranean model of pederasty, which dates back to Greco-Roman antiquity and, at the time under study, was comparable, e.g., to attitudes towards homosexuality in the Muslim world (especially in Ottoman Empire). Boys were not traditionally perceived as full-fledged males until the first appearance of facial hair, and sexual intercourse with them by an adult man could legally be equated with sex with a woman. At the same time, the concept of sex was phallo- and androcentric: a man could act as a penetrative partner for socially inferior subjects. These ideas were closely intertwined with perceptions of masculinity, homosociality, otthering and violence.

5 ***WOMEN IN CANON LAW: MARRIAGE, SEXUALITY, AND SUBVERSION IN 12TH-13TH CENTURY LEGAL TEXTS***

Carolina Gual Silva (Universidade Federal Rural do Rio de Janeiro)

The place reserved to women in medieval Canon Law often puts them in a role of submission in relation to male figures, be it in terms of religious or married life. However, there are also nuances that must be taken into consideration in an analysis that considers gender relations in the medieval context. Canon Law does ensure certain prerogatives to women and one might even argue that there are ways in which the legal text itself can be used to subvert some general conceptions of women's marginal role in society. This paper's goal is to analyze how canonical legal work from the 12th and 13th centuries, such as Gratian's Decretum, the Liber Extra, and Hostiensis's Summa Aurea, interpret women's roles and rights in areas concerned with marriage and sexuality through a perspective of gender relations.

6 ***WOMEN AS ADMINISTRATORS OF TITHES IN THE CROWN OF ARAGON AND CASTILE***

Maria del Camí Dols Martorell (Universitat de les Illes Balears)

15:30 PANEL 3. SACRAMENTS AS A MEAN OF INCLUSION AND EXCLUSION

7 *LA QUESTIONE DEL MATRIMONIUM FURIOSI DAL DECRETO DI GRAZIANO AL LIBER EXTRA DI GREGORIO IX*

Giancarlo Ruggiero (Pontificia Università Gregoriana)

Il presente contributo intende descrivere, in maniera puntuale e sistematica, il significato che assume, all'interno del diritto canonico medievale, la categoria dei cosiddetti furiosi -termine questo ereditato dal diritto romano e oggetto di una particolare rilevanza in diversi ambiti del diritto canonico e in modo preferenziale in quello matrimoniale dove, è proprio con il Decretum Gratiani che si registra una prima, sebbene incerta, normativa sul tema aprendo così la strada per una successiva legislazione in merito come emergerà nell'epoca successiva ed in particolare nello ius decretalium pontificio a cavallo tra il XII e il XII secolo. In questo senso il suddetto studio procederà, dopo una generale introduzione sul tema precisando così lo status quaestionis, ad un approfondimento in merito al decreto di Graziano ovvero sulla Causa 32 dedicata proprio allo ius matrimoniale da parte dei furiosi. A tale Causa si affiancherà, de relato, l'analisi intorno ai canoni 25-26 da cui si ricavano alcuni rilievi determinanti sull'argomento: di essi, e principalmente del can.26, si procederà altresì ad uno studio intorno alla sua origine offrendo un breve commento sistematico che funge così da "ponte" per la legislazione successiva ovvero quella relativa all'opera della canonistica duecentesca e trecentesca nonché delle norme sussistenti nelle coeve Decretali. Proprio su quest'ultime si concentrerà la pars finalis di tale studio principalmente attorno alla Decretale di Papa Innocenzo III Dilectus Filius in cui si registra una certa convergenza normativa vòlta così a chiarire, sia da un punto di vista sostanziale che operativo, i limiti connessi al riconoscimento della validità del matrimonio contratto se una delle parti sia da considerare, per l'appunto, furiosus e il cui regime normativo verrà ripreso e accettato nella legislazione successiva ed in particolar modo all'interno del Liber Extra. Completa l'analisi un breve accenno all'attuale assetto canonico rivolto principalmente ad osservare l'evoluzione storico-normativa in tema di incapacitas nubendi ed offrire così un quadro completo e puntuale su una questione rilevante ieri ma ancora oggi alquanto pertinente nel diritto canonico.

8

MERETRICEM DUCERE IN UXOREM. IL MATRIMONIO DELLE PROSTITUTE NEL DIRITTO CANONICO MEDIEVALE (SECOLI XII-XV)

Vincenzo Roberto Imperia (Università di Palermo)

Il fenomeno della prostituzione femminile – storicamente attestato sin dagli albori dell'umanità nei più diversi contesti sociali, sia pure con forme e secondo modelli antropologici talvolta profondamente divergenti tra loro – è stato da sempre oggetto di attenzione e riflessione da parte della Chiesa. Nonostante alcune linee di fondo tendenzialmente coerenti e stabili, basate sull'intrinseca condanna morale di tale pratica – con la conseguenza che, nel Medioevo, le prostitute costituirono uno dei gruppi sociali 'ai margini' per eccellenza – la disciplina ecclesiastica del fenomeno, sin dai primi secoli del Cristianesimo, appare permeata da una certa ambiguità di fondo. Esemplare, in tal senso, quanto affermato da Sant'Agostino nel De Ordine, per cui la prostituzione andava considerata come un "male necessario", la cui eliminazione avrebbe comportato conseguenze sociali ancora peggiori per l'intera comunità. Sebbene, dunque, i Padri della Chiesa tenessero una posizione tutt'altro che indulgente nei riguardi del fenomeno, tuttavia, tanto nella prassi quanto nella legislazione romana della tarda antichità prevalse un atteggiamento improntato al pragmatismo. Accanto ad affermazioni di stigma, infatti, si rintracciano misure di tollerante apertura, che si estrinsecavano nel riconoscimento di certi diritti – e nella loro tutela e salvaguardia – anche per le prostitute. Tra le questioni dibattute, una riguardò la possibilità, per le stesse, di contrarre matrimonio. La dottrina della Chiesa del primo millennio si caratterizza per una certa rigidità sul punto, volta a scoraggiare tale tipologia di unioni. Ma, a partire dal XII secolo, le opere dei canonisti medievali recano testimonianza di un dibattito destinato a non univoche conclusioni in materia, protrattosi per generazioni. Graziano dedica un'intera quaestio del suo Decretum all'argomento (C. 32 q. 1 cc. 1- 14), in cui si trovano fissate le autorità di riferimento che, in seguito, avrebbero costituito altrettanti punti fermi per le argomentazioni di decretisti e decretalisti. Dalla Summa al Decretum del magister Rolandus, inoltre, emerge la consapevolezza, da parte dei giuristi canonisti, che l'attitudine alla questione in proposito era recentemente mutata. L'opera lascia intravedere quasi un cambio di paradigma rispetto al passato, confermato da alcune decretali pontificie tra la fine del XII e l'inizio del XIII. Il contributo intende dunque indagare, innanzitutto, quali furono i presupposti alla base del cambiamento avvertito nel XII secolo rispetto ai secoli precedenti e, in prospettiva diacronica, esaminare secondo quali argomentazioni, e sulla spinta di quali specifici fattori sociali, economici e politici, i pontefici e i giuristi canonisti stabilirono norme e princìpi sul tema. La tematica, oltre a intersecare una serie di ulteriori questioni – come quelle relative alle 'affinità' in ambito matrimoniale o allo status dei chierici – si presta, altresì, a termini di confronto rispetto alla complessiva regolamentazione della prostituzione da parte degli ordinamenti secolari.

9

MEDIEVAL INFANT BURIALS BETWEEN LAW AND PRACTICE

Miria Ciccarone (Università di Torino)

Child burials have been a problematic issue since the early Christianity. Although deceased infants were neither marginalised during their lifetime nor guilty of sin, they could not be buried in the sacred ground of a cemetery if they had not been baptised beforehand. Therefore, the first sacrament was the sine qua non for receiving the usual post-mortem treatment, as this was the only way to obtain remission of original sin. Infants who died before baptism therefore had to be buried elsewhere, as they could not reach paradise. Instead, they were to spend their eternity in the so-called limbus puerorum, on the edge of hell. While it is true that canon law stated that unbaptised children and pregnant women had not to be buried in cemeteries, it also recommended an appropriate burial that preserved the dignity of the deceased. Be that as it may, in the Middle Ages people of all social classes used to baptise their newborns to avoid such a terrible fate. But what happened to foetuses that were stillborn or died shortly after birth? We can understand people's behaviour on the basis of various sources from the late Middle Ages. Not only are there many written sources that document various ways of circumventing canon law, but there is also archaeological evidence that helps to reconstruct a complex picture in which three different actors (ecclesiastical authority, local churches and laity) act – and sometimes interact – to allow the dead children of their community to attain eternal salvation. The aim of this contribute is to shed light on the problem of the marginalisation of infant burials and to show how people reacted by resorting to various means without openly breaking the religious law.

17:00 PANEL 4. CANON LAW AND SOCIAL MARGINALITY

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10 *THE CANONICAL REGULATION OF MEDIEVAL HISTRIONES (12TH-14TH CENTURY)*

Ignazio Alessi (University of Geneva)

The figure of the histriones was common and widespread throughout the Middle Ages. The 'diversity' of the jester/actor manifested in their public connotation as a multifaceted, unreliable element capable of creating performances where sacred laws were subverted, making them dangerous for Christian morality. These figures were consequently condemned by the Church in the general disapproval of all non-sacred forms of representation and became subject to early forms of discrimination that prevented their integration into urban environments. The histriones indeed embodied the truth of the fool, as Michel Foucault observed in the medieval and Renaissance conception of the order of discourse, where the fool had the right to speak and the power to disseminate hidden truths to be divined and interpreted. The reason why such performances were objectionable to the Church became clear, as it could perceive them as a channel for the expression of uncontrolled thoughts, free from the aims and rules of ecclesiastical hierarchy and power. Another underlying reason for this reprobation, purely theological-legal, was related to the fact that the histriones, through scenic fiction, altered the immutable reality willed by God. The histriones played the role of the countercurrent subject, and his words represented those of the mad, the abnormal — a reversal of common sense. Legislation against them was extensive in both civil and canonical spheres. One can recall passages from Gratian's Decretum that equated these figures with prostitutes, prohibiting contact with them (D. 86, c. 7-8; D. 33, c. 2), as well as the Liber Poenitentialis by Robert of Flamborough, which codifies the simultaneous interdiction common to both jesters and fools. Magister Rufinus also pronounces on the status of the histriones, as do some decretals of Pope Alexander II and Innocent III. This framework raises some questions: what was the canonical regulation for the histriones? What legal status can be attributed to them in the XII-XIV century? How did the Church manage to reconcile the 'right' to entertainment for the faithful with the 'danger' inherent in theatrical performances? What relationship can be established between stage fiction and legal fiction? This paper aims to address these questions by focusing on a figure who, legally placed on the fringes, was actively sought by society for its own amusement.

11 *PERSONAE MISERABILES AS A SPECIAL CATEGORY: DEFINING ECCLESIASTICAL PROTECTION OF THE DISADVANTAGED FROM GRATIAN TO THE DECRETALISTS*

Olha Stasiuk

Social diversity and vulnerability were the core topics of Christianity from its very beginning, which declared the protection of vulnerable groups, especially widows, orphans, the poor, pilgrims, and freed slaves. Developed in the teachings of the Old and New Testaments, the charitable practices of the early Church, and the writings of Church Fathers, this commitment found a more structured expression with the separation of Canon Law as a distinct discipline in the 12th century when ecclesiastical protection for the socially marginalized integrated into the legal debates of prominent canonists. The Decretum Gratiani, a pivotal 12th-century Canon Law collection, did not explicitly use the term 'miserabiles' for defining the disadvantaged groups, although the word was used in Roman Law. Conversely, later canonists like Johannes Teutonicus, Geoffrey of Trani, Innocent IV, and Huguccio of Pisa, often referred to the miserabiles as a special category. Contributing to the broader topic of diversity and social groups, this paper examines the usage of 'miserabiles' by these canonists and explores its role in canonical discussions, particularly in relation to clerical responsibilities for protection, the involvement of medieval clergy in secular affairs, and the extent to which the disadvantaged might seek assistance from the Church. Although the category of 'personae miserabiles' was never precisely defined, often being used alongside or inclusive of groups such as widows and orphans, the paper demonstrates that its re-appearance marked a significant transition in medieval Canon Law from biblical narratives of charity and moral obligation towards a formal legal framework of the 'protection of the unprotected,' a development grounded in Roman Law and the concept of tutelage.

12 *THE LOST BOYS OF CHRISTENDOM: THE PLACE OF CLERICS' SONS IN MEDIEVAL CANON LAW AND SOCIETY*

Sarah Wagner-Wassen (Johannes Gutenberg University, Mainz)

In medieval law of persons, the legal status of the parents at the time of one's birth was determinative of a number of legal prerogatives. Marital status was of great importance, as was personal status, particularly clerical office. The intersection of these two aspects in western canon law created a complex situation for the partners and children of major clerics. When a child was conceived could have an enormous impact on their legitimacy, and the evolving understanding of marriage and legal concubinage created new complexities which strained the children's ability to have rights as freemen and women. The separation of ecclesiastical and personal property continued to present a legal difficulty, and the attempts to reduce cleric's partners and children to the status of slaves should be carefully analyzed as a legal solution. Understanding this complexity is important to prevent erasing the presence of fully legitimate clerical children and obscuring the nuances of their canonical rights. Scholars have often simply assumed that all sons of clerics were illegitimate, and that their requests to enter the clerical state required a dispensation for defective birth. However, canon 31 of Lateran IV clearly indicates that the concern was to prevent the sons of canons, both legitimate and illegitimate, from inheriting their father's profession without proving themselves worthy of ecclesiastical office. In a society of family occupation and patronage, the sons of clerics had to earn their own way, usually through education, in order to have an ecclesiastical career, proving their competence through individual merit. The impact of this canonical exclusion of nepotism varied in individual cases, but on top of the exclusion of the inheritance of ecclesial property, it effectively put these children in the same legal and social position of illegitimate children. The need for external validation had the effect of marginalizing these individuals and has marked their lives and achievements with suspicion.

13 *FOLLOW THE CLERICAL EXHORTATIONS WHILE BEING AGAINST THE CLERGY: THE CASE OF AN ILLITERATE KNIGHT HUGUES DE BERZÉ*

Lorris Chevalier (Université de Bourgogne)

Hugues de Berzé is a Burgundian lord, who crusaded during the fourth crusade. He follows the clerical exhortations of the crusade but also the compulsory annual confession after the Fourth Lateran Council of 1215. He devotes himself to the writing of a long poem through which he confesses his public sins.

Inviting the other lords to a life of deprivation and a great mortifications of the senses by the crusade, Hugues de Berzé seeks that his companions fall within the normative framework of the economy of Salvation but puts himself on the sidelines of seigniorial courts. The crusader must abandon his wife, the love of banquets, draperies and ostentation. The cross received during a solemn ceremony prevents certain actions, creating a norm of the crusader but which is at the margin of the other lords.

Hugues being illiterate (ne clerc ne letré) knows that his preaching will also be marginal and doomed to cleric's mockery. He is therefore also on the margins of the preachers since his preaching is sourced only on experiences in the absence of references.

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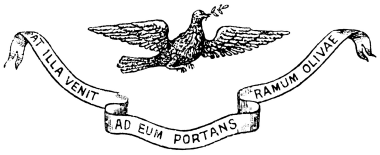

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