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James A. Brundage,

Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts.

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James A. Brundage's magisterial study proposes that medieval legal practitioners emerged as full-fledged professionals in the context of the ecclesiastical legal structure during the second quarter of the thirteenth century, the culmination of a gradual process that had begun a century earlier. *Medieval Origins*, too, has been long in the making, and represents the culmination of some four decades of engagement with the sources for medieval legal history. Professor Brundage has been specifically interested in legal practitioners since at least the publication of his "The Ethics of the Legal Profession: Medieval Canonists and Their Clients" (*The Jurist* 33 [1973]: 237-248), and his early ideas about the origins of professionalization were first broached in his 1988 article "The Medieval Advocate's Profession" (*Law and History Review* 6 [1988], 439-464). A string of related articles (mostly listed in the substantial bibliography of the present work) chart the development of Brundage's thought on the subject up to *Medieval Origins*, the capstone of these earlier studies.

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Here, Brundage defines professionalization, in its strictest sense, as much more than the acquisition of the skills necessary to making a living in a given occupation. Rather, a true professional has studied and mastered a body of esoteric knowledge, an accomplishment that confers a degree of prestige; the occupational application of that knowledge is not only useful, but purports to promote the interests of the whole community; the professional has pledged to uphold an ethical standard different and more demanding than ordinary community norms require. These criteria lie at the base of Brundage's thesis and provide the framework for his account of the development of the medieval legal profession.

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In the first two chapters, Brundage introduces the larger historical context to the novice and refreshes the memory of more advanced scholars as he lays the foundations of his argument. Chapter 1, "The Foundation: The Roman Legal Profession," concisely summarizes

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the history of Roman law in antiquity and makes the case for the development of a legal profession in the last two centuries of the republic. In this context, several of the issues related to professionalization (e.g. education, social status, ethics, practice, and fees) make their first appearance—just as the Roman legacy supplied a normative and procedural background for later medieval development, so too it provided the ideological backdrop against which professionalization occurred. Noting that the growth of empire ultimately demanded the development of a legal procedure more suitable than that of the early republic, Brundage makes an important connection between the demands of procedure and legal professionalization.

This notion is reiterated in a different context in chapter 2, “Law without Lawyers: The Early Middle Ages,” which explores the aftermath of Roman decline in the West and the survival of the imperial structure in the East. In the latter region, substantive Roman law was rationalized by the *Corpus iuris civilis* of Justinian, a text destined to play a major role in later developments in the West. In the meantime, specialized legal expertise was supplanted in the Germanic kingdoms by the formal rituals that composed customary procedures of dispute resolution, which were often circumvented by informal arbitration in any case. Although men with distinct roles as legal functionaries, sometimes advisory, begin to appear in the documentary record towards the end of the early medieval period, Brundage argues that they cannot be considered professionals and stresses here the absence of institutions that provided formal legal education. This is not to say that the possession of a degree of legal knowledge never resulted from schooling; the literate clergy, in particular, were bound to know at least something of ecclesiastical, or canon, law to carry out their functions.

Later developments in canon law are crucial to Brundage’s argument and in chapters 1 and 2 he traces its development from origins in the Roman context of late antiquity through the early medieval evolution of a distinct jurisdiction centered on episcopal courts and founded on an ever growing body of law.

Chapters 3-6 of *Medieval Origins* provide the immediate context of legal professionalization, beginning with a description of the development of a learned law in the third chapter, “The Legal Revival of the Twelfth Century.” After examining the establishment of the academic study of Roman civil law at Bologna and the establishment of schools of civil law beyond Italy (occasioned by the interaction of socio-economic needs, the Gregorian reform movement, and the recovery of the Justinian’s Digest), chapter 3 addresses the re-ordering of canon law that began—in the context of this Roman law revival—with the composition of Gratian’s *Decretum*. Brundage emphasizes the dynamic nature of canon law thereafter and outlines its growth as an ever expanding, but increasingly rationalized body of law that was studied and taught in the same manner as the civil law.

This revival of jurisprudence, which relied on the intellectual interdependence of civil and canon law, lay at the foundations of the new legal culture of the *ius commune*, the develo-

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ment of which had profound practical consequences, which are the subject of chapter 4, “Church Courts, Civil Procedure, and the Professionalization of Law.” Here, Brundage begins his argument in earnest. The growth of canon law and its elaboration as a unique discipline were not merely academic, but rested on an increasing demand (produced by a quickening of socio-economic structures) for judicial rulings on matters ranging from marriage and probate to issues of ecclesiastical discipline. In response to this demand, the judicial structure of the church was restructured during the second half of the twelfth and opening decades of the thirteenth centuries: powers were delegated, courts established at each level of the ecclesiastical hierarchy, legal officials and functionaries multiplied, and methods of proceeding devised. All of this is described in the narrative, which provides a good deal of information about these institutions, the people who staffed them, and the procedures with which they operated.

As it developed, procedure was firmly grounded in the *ius commune* and took the form of an adaptation of Roman procedure. Brundage asserts that the complexity of romano-canonical procedure was the primary impetus for the first steps towards professionalization, a subject elaborated in chapter 5, “Pre-Professional Lawyers in Twelfth-Century Church Courts.” To navigate their cases through ecclesiastical venues, litigants (and the courts) increasingly relied on the advice and services of specialized practitioners who were familiar with the pertinent issues of substantive and procedural law. The chapter discusses the activities of and distinctions between these practitioners, who were identified functionally as advocates, proctors, and notaries, as well as their regulation. Here, Brundage argues that the educational and other qualifications that were beginning to be required of these practitioners, the ethical obligations demanded of them, the benefits they enjoyed, and their recognition as a distinct occupational group indicate that, by the criteria he established at the outset, the practice of law was moving gradually towards the point of professionalization through the twelfth century. Indeed, by the beginning of the thirteenth century lawyers had arrived at the “cusp of a new professional identity,” an identity that was profoundly shaped by the faculties of civil and canon law that were emerging in the decades around 1200 at the nascent universities.

Much of chapter 6, “The Formation of an Educated Elite: Law Schools and Universities,” is devoted to the general history of the earliest universities (Bologna, Paris, Oxford, Cambridge) to provide the context for the development of the faculties that systematized legal education, fostered the development of a common intellectual culture centered on the *ius commune* among their alumni, and provided certification of a graduate’s abilities, all steps toward a professionalized occupation. Brundage pays particular attention to the components of a legal education: the professoriate, curriculum, pedagogical methods, scheduling, and examinations, as well as the costs and financing of an endeavor that provided the intellectual equipment for public and private careers in law and administration and enhanced social status and reputation.

This transformation of legal education, Brundage argues, combined with the practical de-

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mands of the romano-canonical procedure employed by busy church courts to produce the environment in which medieval lawyers were “Attaining Professional Status” (chapter 7) in the second quarter of the thirteenth century. Developments in the church courts were crucial, though these would ultimately make their way to secular venues as well. Beginning in the 1230s, ecclesiastical authorities began to demand that those lawyers who sought the right of audience in church courts swear an oath that they would abide by specific ethical guidelines in their practice—the first step in the creation of a more rigorous admissions procedure that “started to transform the advocates and proctors who appeared regularly in the courts into a profession in the strict sense of the term.” By mid-century, admission to the bar was regulated and limited; candidates were required to meet certain formal and educational requirements and to swear oaths that defined occupational obligations and set ethical standards. Lawyers were encouraged to adhere to these standards and meet their obligations by the establishment of disciplinary mechanisms that could suspend the right of audience as well as the right to collect the compensation that admission to the bar allowed. Thus, by about 1250, the convergence of the elements of professionalization was complete and professional canonists and civilians composed a visible group whose services were not merely useful, but necessary to those who would pursue litigation.

Chapters 8 and 9 detail the functions and duties of various types of legal professionals from the middle of the thirteenth century to the end of the Middle Ages. The former chapter looks at the “Professional Canon Lawyers: Advocates and Proctors” who acted as procedural representatives and legal counsel. Brundage adds another important component to his argument for professionalization at the end of chapter 8 with a discussion of professional organizations (guilds) that secured a monopoly on legal services.

Chapter 9, “Judges and Notaries,” focuses on the professionalization of these roles. As counsel became more sophisticated, judges increasingly needed the knowledge necessary to understand the legal arguments presented before them. Consequently, from the middle of the thirteenth century, future judges had their minds shaped and trained in the schools of law and shared the legal culture of those who pled before them, e.g. judges were similarly required to adhere to ethical standards and subject to disciplinary mechanisms when they did not. With this assimilation, judging became an option on the career path of the legal professional. At the other end of the court hierarchy, the notaries public who produced the massive amounts of documentation required by litigation in church courts were also increasingly expected to have some legal training and some notaries formally studied law, if only briefly. The case for the professionalization of notaries, however, is weaker than that for lawyers and judges, though they clearly formed an occupational group necessary to the work of the legal professionals to whose ranks some of them rose.

Chapter 10, “The Practice of Canon Law” brings the argument together with an exposition of what advocates and proctors actually did as professionals. After establishing a practice, the medieval lawyer could take on a variety of tasks. Brundage explains romano-canonical procedure in some depth to illustrate the lawyer at work in his most visible role, counsel

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and representation in litigation. More often, lawyers were engaged in non-contentious matters such as the dispensing of legal opinions or the conduct of arbitration and negotiation. Fortunate legal professionals might even have had the opportunity to serve secular and ecclesiastical authorities in a diplomatic capacity.

The concluding chapter, “Rewards and Hazards of the Legal Profession,” examines the ambivalence with which lawyers were perceived by the community at large. On the one hand, wealth, power, and authority were accompanied by the prestige, honor, and privilege accorded legal practitioners viewed as indispensable servants of the public good (the final component of professionalization). On the other hand, the medieval lawyer was frequently criticized as greedy, deceitful, and hypocritical. Both praise and criticism, Brundage asserts, led to greater solidarity among legal practitioners, and strengthened their identity as an exclusive professional group. The work concludes with a brief summary of the argument and an emphasis on the understanding that medieval people would have had of the notion of “profession,” a sacred act that entailed a commitment to adhere to certain ethical standards. This commitment, Brundage asserts, defined professionalization in the strict sense and, despite the ever present gap between reality and aspiration, continues to do so.

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Although the thesis is clearly, persistently, and convincingly argued, it ultimately rests on the presupposition that one accepts Brundage’s definition of what constitutes professionalism, which, as noted above, is associated with the medieval notion of *professio*. In another paradigm, it would certainly be possible to argue for an earlier professionalization among the twelfth-century legal practitioners in church courts who Brundage labels “pre-professional lawyers” or even a contemporaneous professionalization of pleaders in English courts. Indeed, though thorough coverage of the subject would be beyond the scope of the work, one would like to see more references to the professionalization of specialists in secular courts, especially those that drew upon the principles of the *ius commune*. Also, although Brundage’s documentation of activity in church courts draws on sources from across western Christendom, he necessarily depends heavily on English and papal sources. The dearth of continental sources warrants the use of caution in applying his conclusions universally.

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Brundage’s style is engaging, elegant, and sometimes picturesque; *Medieval Origins* is generally a joy to read and a model of historical writing. The component parts of the work are well articulated and each chapter draws the reader into the next as Brundage’s argument is pressed forward by fluid prose and a thorough command of a vast array of primary and secondary sources. Each chapter offers a broad overview of the issues, events, and processes concerned that will firmly ground novices in the subject and refresh the memory of experts. In his apparatus, Brundage frequently notes issues on which scholars differ and areas where recent scholarship has modified traditional accounts (both are well illustrated by the notes dealing with the decretists on page 106). In areas of historiographical dispute that are handled in the text, Brundage’s views are usually quite clear, though their exposition is even-handed (e.g. Berman’s “papal revolution,” 79, and the making of Gratian’s *Decretum*,

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100-102). With its bibliography and summaries of historiographical developments, *Medieval Origins* composes a valuable reference work in its own right, and will provide students and professional scholars alike with a starting point for the exploration of several aspects of medieval legal and institutional history.

The careful reader will note a fair amount of almost verbatim repetition of earlier points, but all readers are not so careful and these reminders are generally more a help than hindrance. The scholarly apparatus can be a bit unwieldy at first, but use soon familiarizes the reader with the system employed and it proves to be quite handy in dealing with the great number of citations and references. The wealth of information in Brundage's notes is well-integrated so that these enhance the text and usually do not interfere with the thread of the narrative. A good example of this is provided by a note that explains the reckoning of time in the Middle Ages in the context of an exposition of the lecture schedule at a medieval university (252, n. 125).

Brundage's judicious use of quotations from both primary and secondary sources illuminates his exposition (e.g. an exemplary disputation topic, 120) and his use of medieval observations about law and lawyers, both critical and positive, provides voices that humanize the past (e.g. the complaint of Stephen of Tournai, 116). Similarly, the notes that provide the original Latin of a source when a translation is quoted in the text give the reader a taste of medieval juridical prose and the flavor of its language. Definitions of the terms employed in medieval jurisprudence (e.g. "ordinary jurisdiction," 371) and ecclesiology (e.g. "cardinals," 129), as well as explanations of the medieval understanding of more ordinary terms (e.g. "faculty," 226, n. 26), are usefully embedded in the notes or explained in the body of the text.

If anything, *Medieval Origins* could be criticized on the grounds that it attempts too much and includes material that is not directly relevant to the argument. For example, does discussion of the development of legal faculties require as much background on the origins of universities as is given? Perhaps not, but the work does form a coherent whole and the contextual detail generally enhances understanding of the developments described—in the abovementioned case, the development of an intellectual and social culture among the learned legal elite—and strengthens the argument. Like the novice medieval law student described by Brundage, beginners can pick up the elementary points of the work; the more advanced student can acquire a deeper and more sophisticated understanding of the subject, while experts can focus on the fine points of the argument and their complexities.

Although Professor Brundage modestly deems his book a provisional account to be modified by further research, *Medieval Origins* is nothing less than the magnum opus of a master scholar. As such, it lays the foundation and sets the standard for future work on the subject. *Medieval Origins of the Legal Profession* not only delivers on its title, but is much more besides. Every medievalist, legal historian, and lawyer interested in the history of his or her profession should have a copy on their shelves.

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