

CANADIAN JOURNAL OF

Disability Studies

Published by the Canadian Disability Studies Association · Association Canadienne des Études sur l'Incapacité

Canadian Journal of Disability Studies

Published by the Canadian Disability Studies Association

Association Canadienne des Études sur l'Incapacité

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Propter deformitatem: Towards a Concept of Disability in Medieval Canon Law

Brandon Parlopiano

Abstract

This essay tests the idea of whether or not a concept of disability as distinct from impairment existed in the Middle Ages. Using clerical illness and impairment as a test case, I argue that medieval canon lawyers developed a sophisticated understanding of the various physical, social, and cultural forces that might transform an impairment into a disability. In particular, the medieval canonists, though ambiguous themselves about whether impairment had any connection to sin, expressed a great deal of concern as to whether the laity would make such a connection, and how that connection would affect the clerical responsibility for the spiritual welfare of the laity. The canonists attempted to strike a balance between avoiding the generation of a scandal for the laity while still preserving the rights and status of the clergy. In this way, while the canonists discussed how an impairment or illness might be disabling, they also sought ways to mitigate that disability as much as they deemed possible.

Keywords

Middle Ages, Disability, Impairment, Canon Law, *Ius commune*, Irregularity, Scandal, Rights

Propter deformitatem: Towards a Concept of Disability in Medieval Canon Law

Brandon Parlopiano*

The Problem of "Disability" in the Middle Ages

Disability Studies has its roots in the increased awareness of the rights for those with disabilities and the movement for the greater actualization of those rights in the 1970s and 1980s. As part of this campaign, activists and advocacy groups tried to reframe disability as a constructed concept. They rejected the notion of disability as a static historical constant, and instead emphasized the ways in which the norms, laws, and assumptions of society "disabled" individuals. Scholars, particularly historians, soon seized on this approach and began working to show in detail the historical variability of disability and how modern notions came into being. The political background of Disability Studies has meant that many of these studies have focused on the near-history of disability and its impact on the present day. More recently, however, scholars have increasingly turned to the more distant past.

Although medievalists had long touched upon topics related to disability, Irene Metzler was the first to launch a large-scale investigation into medieval disability and took as her first subject an investigation into the whether the Middle Ages possessed a theoretical understanding of disability akin to a modern one.¹ She conceived of this as a jumping-off point for later studies. Obviously practice will vary by region and time, but the use of medieval intellectual culture as a starting point makes sense. Thanks to the medieval universities, philosophical, theological, medical, and legal writings were able to shape intellectual culture throughout Europe. The universities trained bishops, judges, magistrates, physicians, lawyers, and officials, both secular

* I would like to thank Atria Larson, Sara Scalenghe, Ken Pennington, and the anonymous commentators for their help in this paper. Any remaining errors are my own.

¹ Irina Metzler, *Disability in Medieval Europe: Thinking about Physical Impairment during the High Middle Ages, c. 1100-1400* (London: Routledge, 2006). In this essay, I will follow Metzler's general chronological range and focus on sources from the mid-twelfth to the mid-fifteenth centuries.

and ecclesiastical.² In short, the university fields of study provide a good insight into the normative approach to thinking about disability in the Middle Ages. In particular, Metzler focused on theological, medical, and hagiographical texts, though she largely left jurisprudential sources to the side. She framed her study according to the basic distinction offered by the social model of disability and its subsequent variations. In short, she established impairment as the physical reality and disability as the social or cultural assessment of that reality, as "a matter of perception, both by others and the individual concerned."³

Armed with this basic outlook, Metzler began to ask whether any major medieval discourse possessed a similar notion of disability. She comes to the rather shocking conclusion that "as far as 'intellectual' texts of the Middle Ages are concerned, one must conclude that although in reality there were probably as many physically impaired people, proportionately, as there were in other societies, including our own modern world, there were very few medieval disabled people."⁴ How did she arrive here? In short, Metzler found a high degree of ambiguity regarding the impaired in normative discourse, particularly on the connection between impairment and sin. Impairment and illness might be the result of sin, or they might be natural. Even a condition that is the result of sin may have an unclear meaning: is the impairment meant as punishment or as purgation? Penelope Doob raised similar questions in her study of madness in medieval literature. The wild madman in the woods may be forced to the margins of society to be punished for his sins, as a way to do penance for his sins, or even as an exercise in pious asceticism.⁵ This ambiguity stretched outside the discourse of theology strictly speaking. For

² See, for example, James Brundage, *The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts* (Chicago: University of Chicago Press, 2008)

³ Metzler, *Disability in Medieval Europe*, 7

⁴ *Ibid.*, 189

⁵ See Penelope Doob, *Nebuchadnezzar's Children: Conventions of Madness in Middle English Literature* (New Haven; Yale University Press, 1974)

example, Metzler points out that learned physicians of the Middle Ages report that the conception of a child through “non-standard” sexual positions could result in a variety of congenital defects. However, she also shows that this is not necessarily intended as a reflection on or denunciation of the sinfulness of the parents.⁶ If disability, as opposed to impairment, starts with perception, Metzler found no standard lens through which the impaired could be viewed as disabled.

This conclusion has not passed without criticism. Joshua Eyler has addressed the over-reliance on the social model of disability in Metzler’s conclusion.⁷ Moreover, the social model itself is not without problems. As Tom Shakespeare observed, the social model begins by defining disability as oppression, thus assuming what it hopes to prove. The distinction it establishes between disability and impairment, between the physical limitations of the impairment and the social limitations of the disability, can break down easily under close examination.⁸ Furthermore, if disability truly begins with perception, if the distinction of terms rests on the difference between an observation and the meaning given to that observation, then even the mere existence of an impairment is grounds for interpretation the moment it exists. If even the perception is colored by socio-cultural norms, then its existence as an independent concept is shaky at best.

In response to these concerns, Eyler points to a “cultural model” that “does away with distinctions between impairment and disability, preferring instead to use the term ‘disability’ to include both the reality of corporeal differences as well as the effects of social stigmatization.”⁹ I

⁶ Metzler, *Disability in Medieval Europe*, 123-24.

⁷ Joshua R. Eyler, “Introduction: Breaking Boundaries, Building Bridges,” in *Disability in the Middle Ages: Reconsiderations and Reverberations*, ed. Joshua R. Eyler (Farnham: Ashgate, 2010) 1-8, here 7-8.

⁸ Tom Shakespeare, “The Social Model of Disability,” in *The Disability Studies Reader*, 3rd ed. Lennard Davis ed. (New York: Routledge, 2010), 266-73.

⁹ Eyler, “Introduction,” 5.

still believe, however, that the distinction between impairment and disability is useful if only as a starting point to uncover the cultural assumptions surrounding disability. The distinction serves to remind us that disability does not arise automatically from a physical or mental impairment. It encourages sensitivity to the processes that shape interpretations of impairment and thus retains utility as a tool of historical investigation. Edward Wheatley, for example, has advanced an interesting approach to medieval disability that he terms a “religious model.” The social model defines itself in opposition to a medical model. Rather than a socially constructed concept, disability in the medical model is a condition intrinsic to the person that demands treatment in order to more closely resemble the established norm. Wheatley modifies this approach: whereas the medical model holds out hope that modern medicine will provide a cure, the religious model posits that the healing power of God provides hope for a miraculous restoration. “At its most restrictive, medicine tends to view a disability as an absence of full health that requires a cure; similarly, medieval Christianity often constructed disability as a spiritually pathological site of absence of the divine ‘where the works of God [could] be made manifest.’”¹⁰

The religious model, as Eyler notes, embraces a top-down approach to constructing disability.¹¹ Wheatley, deploys his religious model as way to illustrate the ways in which the medieval Church exerted power, both discursively and institutionally, over the disabled.¹² We need to take into account not only the ways in which the ecclesiastical hierarchy configured disability, but also the ways in which these ideas were internalized by the larger portion of society.

¹⁰ Edward Wheatley, *Stumbling Blocks Before the Blind: Medieval Constructions of a Disability* (Ann Arbor: University of Michigan Press, 2010), 11.

¹¹ Eyler, “Introduction,” 5.

¹² Wheatley, *Stumbling Blocks*, 19.

I believe that scholars would be better served by seeking for an intellectual notion of disability not within the medieval discourses of philosophy, theology, or even medicine, but instead within the study of law. Medieval jurisprudence offers an opportunity to examine a body of thought that was certainly in dialogue with other disciplines while still keeping its eye firmly fixed on the need to provide practical solutions to more immediate problems. The body of jurisprudence known as the *ius commune*, which I will describe in more detail below, was certainly a product of the universities, though we cannot underestimate the countless the numbers of students who passed from those classrooms into offices of ecclesiastical or secular administration. The ideas encountered in texts and in lectures would fundamentally shape the worldview of generations of officials at multiple levels of power, from notaries to bishops.

How, then, did the jurists of the medieval *ius commune* approach the idea of disability? Did they have a clear understanding of disability as distinct from impairment? To fully answer this question would take much longer than the space allowed here. I can only provide a brief sketch of some of the main ideas of the canonists related to disability. I hope to show though that an examination of canon law is indispensable to answering the question of whether a notion of disability existed in the Middle Ages.

As a test case, I have chosen the topic of clerical disability, which will be instructive, I believe, for a number of reasons. First, focusing on the clergy provides a view of disability in the Middle Ages from a different angle. As I mentioned above, Wheatley bases much of his religious model on the hegemonic power of the Church. Where the modern medical model views medical expertise and technology as part of an oppressive discourse on disability, the religious model substitutes the authority of the medieval Church. While I agree that the Church did exercise a great deal of influence in shaping ideas towards impairment and disability, I would add that the

Church itself was also subject to the same ideas. If the religious model understands the Church as contributing to the cultural stigma associated with impairment, we must also acknowledge that religious authority, in particular the incarnation of that authority in the bodies of the clergy, were subject to the same stigmatizing gaze.

Second, canonists gave clerical impairment a fair amount of attention. Although this topic did not receive the same level of study as issues more fundamental to church government like papal jurisdiction, clerical benefices or heresy, canonists still viewed physical and mental impairments in the clergy as serious problems. For example, Bernard of Pavia, who assembled the first systematic collection of papal decretals around 1190, included two major sections, or titles, on clerical impairment: *De corpore vitiatis ordinandis vel non* [On whether those who are damaged bodily should be ordained or not] (1 Comp. 1.12) and *De clerico egrotante vel debilitato* [Concerning a sick or incapacitated cleric] (1 Comp. 3.6).¹³ These titles persisted through each subsequent major collection and into the *Liber extra*, the definitive collection of papal decretals issued in 1234. The emphasis on clerical impairment should not be surprising when seen in the context of the growth of canon law during the eleventh century reform. Suitability for clerical office was one of the driving issues of reform, and physical impairment and appearance figured heavily in such considerations alongside literacy, simony,¹⁴ freedom, and marital status.

Third, an examination, even a brief one, of clerical impairment provides an excellent window onto a nexus of issues connected with the cultural and intellectual understanding of disability in the Middle Ages. These issues set the basic questions that I hope to address. What meaning did the Church read into or out of particular impairments? In particular, was there, as

¹³ On Bernard and his importance for canon law, see Pennington, "Decretal Collections," 295-300. Also see Pennington, "The Decretalists," 211-15.

¹⁴ Purchasing ecclesiastical offices.

we might assume, a close connection between sin and impairment that provided the Church with a privileged access to its interpretation and treatment? How did the laity access and respond to ecclesiastical notions of impairment? And finally, to what extent in canon law did impairment constitute a disability? What were the conditions for this transformation? Were attempts made to mitigate the disability that might result from an impairment?

Although I will argue that the medieval canonists did develop a notion of disability, I must stress that this is an implicit notion only. For example, the canonists had no clear and consistent word corresponding to "disabled." The closest they came was the use of the term "inhabilis" among some later writers, though this only means "unsuitable" in a sense that extends beyond the effects of physical or mental disability. Instead, I argue that the canonists came to treat the effects of impairment in such a way that we, from a modern perspective, can perceive a working, albeit unstated, notion of "disability" as something separate from the bare fact of impairment.

Clerical disability serves as the focus of this paper, but I believe that my conclusions could be drawn out to other areas of medieval jurisprudence. Further studies will need to confirm this, but blending of canon and civil law in the *ius commune* (by the later Middle Ages most university graduates would receive a doctorate "*utriusque iuris*," in both laws) suggests that the framework established by canonists for dealing with the clergy was applicable to a broader population.

Law and Jurisprudence in the Medieval Ages

Before moving on to my main argument in earnest, I should pause to offer a brief explanation of the sources I will be using. Alongside philosophy, theology, medicine, and the liberal arts, law

was one of the major subjects of study in the medieval university. Indeed, the University of Bologna developed out of a group of students who would contract *magistri* to lecture on law in the twelfth century as the scientific study of law re-emerged in Western Europe. Certainly law did not cease to exist after the fall of the Western Roman Empire, but the systematic reflection on and exposition of law seem to have declined greatly. Those considered to be skilled in law were those who could recall the greatest amount of orally transmitted custom. The legal historian Manlio Bellomo would characterize the early Middle Ages as “an age without jurists.”¹⁵

One of the significant factors that helped advance the state of legal learning was the rediscovery of Roman law, particularly the *Digest* of Justinian. In an effort to revivify the empire, the emperor Justinian began to issue key legal texts in the 530s. These included the *Institutes*, a basic textbook for beginning students of law; the *Codex*, an updated collection of imperial legislation; and the *Digest*, an edited compilation of the opinions of classical Roman jurists on nearly every aspect of civil and criminal law. The *Digest* was a marvel of legal erudition, though it failed to make much of a splash in its own day. Despite ruling over a linguistically Greek empire, Justinian attempted to harken back to the glory days of Rome by issuing his compilation in Latin. Fragments of Roman law had survived in the West in some form, such as through inclusion in Germanic law codes. The *Digest*, however, appears to have been lost until the late eleventh century. Around this time manuscripts of the *Digest* seem to reappear, and the efforts of liberal arts masters to understand its contents helped spur a more scientific approach to legal study.¹⁶

¹⁵ Manlio Bellomo, *The Common Legal Past of Europe, 1000-1800*, trans. Lydia Cochrane, Studies in Medieval and Early Modern Canon Law, 4 (Washington, D.C.: Catholic University of America Press, 1995), 34-55

¹⁶ A good introduction to Roman law and its later influence on European Jurisprudence is Peter Stein, *Roman Law in European History* (Cambridge: Cambridge University Press, 1999),

This increase in legal study readily found an eager audience, particularly in the Church. During the eleventh century, reformers sought to preserve “ecclesiastical liberty” against secular lords and kings. They attempted to instill greater discipline among the clergy by forbidding simony and clerical marriage, and by emphasizing the primacy of papal jurisdiction. In order to achieve these ends, clerics compiled numerous collections of canon law that would provide the authority for the reforms they hoped to implement. The proliferation of canonical collections presented certain problems though. Even a brief survey of the various conciliar canons, papal decrees, and theological assertions would render numerous contradictory opinions and positions. Although a prologue attributed to Ivo of Chartres laid down some guidelines on how to resolve any apparent contradictions, no canonical collection attempted a critical and analytical approach until the early to mid-twelfth century.

At some point in the early to mid-twelfth century a master known as Gratian penned the *Concordia discordantium canonum*, more commonly known as the *Decretum*, which underwent a number of recensions and reached its final form by around 1140.¹⁷ Almost nothing is known about Gratian himself, but his impact on canon law was profound. For one, Gratian’s explicit purpose in his collection was to show how seemingly contradictory canons could be made to harmonize with one another through critical and comparative readings. Just as significant as Gratian’s aim was his intended audience. The *Decretum* is divided into three parts, the last of which, a treatise on sacramental law, was not an original composition of Gratian. The first part is a set of 101 distinctions through which Gratian established basic terms and concepts. The second part, however, was truly innovative. It consists of 36 *causae*, or hypothetical cases, from which he derived a series of questions. Gratian answered these questions by drawing on relevant canons

¹⁷ See Anders Winroth, *The Making of Gratian’s Decretum*, Cambridge Studies in Medieval Life and Thought, 4th ser., 49 (Cambridge: Cambridge University Press, 2000).

and explaining how differences among the canons should be understood. Looking at its structure and layout, the *Decretum* bears many characteristics of a text intended for teaching. Indeed, Gratian’s *Decretum* would remain the basic textbook of canon law in the Catholic Church until 1918.¹⁸

As the *Decretum* entered into use in medieval school, it began to receive glosses and more extensive commentaries on the text. The earliest forms of commentary on the *Decretum* took the form of marginal and interlinear glosses. The latter often attempted to define unfamiliar terms, while the former most frequently contained citations to other portions of the *Decretum* that could be used to support or contradict the text at hand (though we do also see references to outside texts, such as Roman law). By the end of the twelfth century though, these marginal glosses had grown by leaps and bounds to include fuller analyses of the text. Several gloss apparatus, regular sets of glosses began to circulate, and by the early thirteenth century, the apparatus of the canonist Johannes Teutonicus became the standard set of glosses, or “*glossa ordinaria*,” that circulated alongside the *Decretum*. We also find a number of *summae*, or free-standing commentaries on the *Decretum*. Both the text itself and its commentaries became authoritative sources of law and legal understanding in the medieval universities.¹⁹

Gratian’s text was a compendium of past canon law that generated significant intellectual rumination. However, by the end of the twelfth century, the Church was generating a significant amount of new law through papal decretals, letters issued by popes containing decisions on cases referred to Rome. As the authority of the papacy increased during the twelfth century, so too did

¹⁸ Several good introductions to medieval canon law exist. See, for example, James Brundage, *Medieval Canon Law* (New York: Longman, 1995). Also see the essays included in Wilfried Hartmann and Kenneth Pennington, eds., *The History of Medieval Canon Law in the Classical Period, 1140-1234: From Gratian to the Decretals of Pope Gregory IX*, History of Medieval Canon Law (Washington, D.C.: Catholic University of America Press, 2008).

¹⁹ On the literature of canonical commentary, see Rudolf Weigand, “The Development of the *Glossa ordinaria* to Gratian’s *Decretum*,” *The History of Medieval Canon Law in the Classical Period*, 55-97.

the output of decretals. Many of these letters were gathered into collections that circulated in the schools of canon law alongside the *Decretum*; they too became subject of intense study and exposition. In 1234, Gregory IX officially endorsed a collection of papal decretals compiled by Raymond of Peñafort and declared that it superseded any other collections circulating in the schools. This collection came to be known as the *Liber extra*, the book in addition to the *Decretum* that formed the basis of canonical study.²⁰

Roman and canon law became closely intertwined. Canon law was an ever expanding body of living law, but Roman jurisprudence supplied many norms and principles as well as much of the conceptual vocabulary of jurisprudence. A contemporary saying summed the close relationship between the two up by claiming: “A legist [Roman law expert] without the canons is worth little, while a canonist without [Roman] law is worth nothing at all.”²¹ By the thirteenth century, Roman and canon law formed the *ius commune*, a system of law common throughout the universities of medieval Europe. The *ius commune* was not a system in the sense of positive law, but was rather a body of jurisprudence, a common way of thinking critically about the law.²² Nor was it merely an academic exercise devoid of any connection to practice. The *ius commune* formed the basic conceptual background of legal practitioners trained in universities throughout Europe. Most of the doctors of law who lectured in the schools and wrote commentaries had active careers as administrators or as advocates in court. As I said above, the

²⁰ Subsequent collections of decretals and conciliar canons would be added to the curriculum, such as the *Liber sextus* of Boniface VIII in 1298 and the *Clementines*, promulgated by John XXII in 1317. Additional collections of decretals, the *Extravagantes Ioannis XXII* and *Extravagantes communes*, were not officially recognized until their inclusion in the authoritative *Editio Romana* of the *Corpus iuris canonici* in 1582. On early decretal collections, see On the decretal collections of the late twelfth and early thirteenth centuries, see Kenneth Pennington, “The Decretalists, 1190-1234,” *History of Medieval Canon Law in the Classical Period*, 211-245; Charles Duggan, “Decretal Collections from Gratian’s *Decretum* to the *Compilationes antiquae*: The Making of the New Case Law,” *History of Medieval Canon Law in the Classical Period*, 246-292; and Kenneth Pennington, “Decretal Collections, 1190-1234,” *History of Medieval Canon Law in the Classical Period*, 292-317.

²¹ See Friedrich Merzbacher, “Die Parömie ‘Legista sine canonibus parum valet, canonista sine legibus nihil,’ *Studia Gratiana* 13 (1967), 273-82.

²² Bellomo, *Common Legal Past*, 192-95.

jurisprudence of the *ius commune* gives us an opportunity to glimpse an aspect of medieval intellectual culture as it comes into contact with practical situations.

Disability in Medieval Canon Law

Let us begin by examining some of the prohibitions imposed on the physically and mentally impaired. In the *Decretum*, we tend to find a set of more general prohibitions. Certainly Gratian sought to provide some nuance and contextual understanding for these texts, but the main distinctions that would become a feature of canonical jurisprudence came from pens of others. Later canonists gradually built on the work of their predecessors by maintaining most of the basic scheme for approaching impairment, but modifying or refining some portions of it as new cases, new precedents, and new concerns presented themselves.

Part of the reason why we do not see a clear concept of disability, at least in the clerical context, is that the effects of impairment can be subsumed into the larger category of irregularity. Over generations, canon law accumulated a number of qualifications for the clergy. Violation of any of these qualifications could render a cleric or potential cleric irregular, which would act as a barrier to ordination, promotion to higher office, or even the exercise of one’s own office. Although such a state could be cleared up through a dispensation (either episcopal or papal depending on the severity of the offence), any number of factors could lead to irregularity. A few involved at least some volition: homicide or marrying more than once could make one irregular. But many were out of one’s hands: illegitimate or unfree birth could make one irregular, as could mental illness, epilepsy, or physical deformity.²³

²³ R.H. Helmholz, *The Spirit of Classical Canon Law*, (Athens GA: University of Georgia Press, 1996), 64-65.

Distinction 55 in the *Decretum*²⁴ is an extended investigation of bodily injury and deformity as barriers to ordination or promotion. Gratian records a number of seeming blanket prohibitions against the illiterate, bigamists, the unfree, and those with a deformed or mutilated body, including a canon from the Council of Arles (524) that threatens excommunication any who presume to ordain the irregular.²⁵ Although, as we have seen, many aspects of irregularity do not require volition, Gratian begins to distinguish between those whose bodies are damaged “not by accident, but by their own wills.”²⁶ To support his point he cites the first canon of the Council of Nicaea (325), which does not impute irregularity to anyone castrated by physicians or by others involuntarily.²⁷ He will expand on this point by referring to examples where irregularity does not attach to clerics who have been operated on by physicians,²⁸ who are eunuchs “from birth,”²⁹ or who have been wounded by “barbarians,” such as the Vikings.³⁰ However, Gratian notes that this distinction is not absolute. He cites a letter of Pope Pelagius (c. 555-60) touching on a priest who involuntarily lost an eye when attacked by another priest.³¹ Gratian does not elaborate on how to explain this difference from the rule of thumb that he had established, though the text itself seems to suggest that the victim, having provoked the anger of

²⁴ A brief note on canonical citation: the two main sections of the *Decretum* are the *distinctiones* and the *causae*, the latter which were subdivided into *quaestiones*. References to the former cite the *distinctio* and the particular *capitulum*, as in D.33 c.2. References to the latter include the *causa*, *quaestio*, and *capitulum*, as in C.7 q.1 c.14. References to the *Decretales* of Gregory IX, also known as the *Liber extra*, appear as an X followed by book number, title number, and *capitulum*, as in X 1.20.2. I also include the page number for the text as found in the current standard critical edition, Emil Friedberg, ed. *Corpus iuris canonici*, 2 vols, (Leipzig: B. Tauchnitz, 1879/81). [=ed. Fr.]

²⁵ See D.55 cc.1-2 (ed. Fr. I.215)

²⁶ D.55 d.a.c4 (ed. Fr. I.216)

²⁷ The early church made a special point to ban those who made themselves eunuchs. See Matthew S. Kuefler, “Castration and Eunichism in the Middle Ages,” in *The Handbook of Medieval Sexuality*, eds. Vern L. Bullough and James A. Brundage (New York: Routledge, 2000), 277-304, esp. 282-83 regarding the Council of Nicaea.

²⁸ D.55 cc.9-10 (ed. Fr. I.217)

²⁹ D.55 c.8 (ed. Fr. I.217)

³⁰ D.55 c.11 (ed. Fr. I.217-18)

³¹ D.55 c.13 (ed. Fr. I.218-19)

attacker, is not completely without blame. We shall see, however, that later canonists would take a different explanation.

The second chapter of Distinction 33, an excerpt from a letter attributed to Pope Gregory I, contains another list of impediments to ordination, including many that could come under the heading of physical or mental impairment, such as those who engage in self-mutilation, those who are assailed by demons, and those who, at any time, have gone mad.³² Beyond serving as another locus for the various ways one can become irregular, this particular text stands out as one of the few references to demonic possession in medieval canon law. Many might be surprised to learn just how infrequently this occurs. Commentaries on this text tend to focus more on the legal consequences of insanity and epilepsy rather than possession. The famed late-twelfth century canonist Huguccio, for example, discussed the “*demoniacus*” alongside the “*furiosus et lunaticus [insane] vel caduco morbo percussus [epileptic]*.”³³ Moreover, we do not find a significant discussion of possession in the canonical jurisprudence outside of commentaries on this text. Even if a popular notion of possession as the cause of mental illness or seizures existed, it does not seem to have had a major impact on canonical discourse.

This is not to say though that mental impairment and epilepsy did not themselves have an effect. Regarding the latter, canonists rested their distinction on the severity and frequency of the seizure. The *casus*, or summary of C.7 q.1 c.2 sums the distinction up nicely as “whether one [a priest in this case] is afflicted with epilepsy frequently or rarely. If frequently, then he must

³² D.33 c.2 (ed. Fr. I.123). I use the terms “mad,” “madness,” and “insanity” purposefully. The terminology of the *ius commune* was not especially precise. The jurists tend to refer to mental impairment in a vague sense which is best rendered by the sense of these modern English words.

³³ Huguccio, *Summa decretorum* (Admont, Stiftsbibliothek 7), fol. 45v, D.33 c.2. Huguccio finished his *Summa* around 1188-90 before becoming the bishop of Ferrara in 1190. See Wolfgang P. Müller, *Huguccio: The Life, Works, and Thought of a Twelfth-Century Jurist*, Studies in Medieval and Early Modern Canon Law, 3 (Washington, D.C.: The Catholic University of America Press, 1994). See also Pennington and Müller, “The Decretists: The Italian School,” *History of Medieval Canon Law in the Classical Period*, 142-160. In the latter, Müller states definitively that the canonist Huguccio cannot be identified with the grammarian Huguccio of Pisa, the author of the *Derivationes* who also taught in Bologna.

altogether cease from celebrating the Mass... But if rarely, either he is afflicted by foaming at the mouth or by emitting an inarticulate sound, and he cannot celebrate. Without these, then he can.”³⁴

Mental illness was a different matter. Gratian conducts his main discussion of mental illness in connection with the issue of determining fault. The first question of Causa 15 probes the nature of the insanity defense in canon law. Ultimately he decides that a cleric who kills someone while insane cannot be considered guilty of homicide. However, mental illness itself has its effects. “One cannot be promoted to the priesthood who was at any time insane. But if he should go mad after [receiving] the priesthood, he will not lose the priesthood, unless perhaps it happens that he never regains his sanity.”³⁵ Even after dismissing any blame for crimes committed while insane, Gratian still maintains that the insanity itself might serve as an impediment to the priesthood.

Some texts of the *Decretum* provide an explanation, albeit briefly for why physical and mental impairments constituted a barrier to ordination or promotion. For the most part, though, later canonists tend to take up these issues in their explanations of the texts, or later popes provide more explicit justifications in decisions they rendered. Still, if we define disability as a barrier to agency or full participation on the basis of an impairment, the irregularity attached to physical and mental impairment strongly indicates a notion of disability. But why? Why are these clerics deemed irregular? What is the basis for transforming impairment into disability in medieval canon law?

³⁴ C.7 q.2 c.1, casus (Rome 1582), col. 1117-1118: “Respondet cum distinctione, scilicet utrum quis vexetur morbo epileptico vel caduco frequenter, aut raro. Si frequenter, omnino debet cessare a celebratione missarum... Si vero raro, aut vexatur cum spumae iactatione et vocis confusae emissione, et tunc nullo modo celebrare potest... aut vexatur sine spumae iactatione, et sine vocis confusae emissione, et tunc celebrare potest.”

³⁵ C.15 q.1 d.p.c.13 (ed. Fr. I.749-50): “Non enim potest ad sacerdotium prouehi qui aliquando insaniuit. Verumtamen, si post sacerdotium furere coeperit, non ideo sacerdotio carebit, nisi forte numquam ad sanae mentis officium illum redire contingat.”

To some extent, we see a concern for the physical or mental requirements of the priestly office. For example, the anonymous *Summa induent sancti* of the late twelfth century notes that “anyone who has been seriously wounded should be excluded from promotion, such as if one lacks an eye, a foot, or fingers, whose loss would render the hand useless.”³⁶ For this canonist, the loss of one or many fingers would not constitute an impairment serious enough to bar promotion unless it severely impeded the use of the hand itself. We can see a similar idea at work in an early thirteenth century decretal of Honorius III to the bishop of Angoulême concerning a monk named Thomas. As a boy, Thomas had an iron bar fall on his right thumb, an accident that tore his nail away. The question posed to Honorius is whether Thomas can be ordained. Honorius says that he can, provided that he is able to break the Eucharist at Mass with his thumb. Again, we can see an emphasis placed on functionality. Likewise, the incredibly influential thirteenth-century canonist Hostiensis, in commenting on this text, added that a lack of teeth or even part of the tongue would not render a cleric unfit for promotion “if he is otherwise suitable, and provided that he is able to speak.”³⁷

Sin and Impairment

Canonists acknowledged that the limitations of the impairment itself might serve as an impediment to ordination or promotion. But this was by no means the sole or even the primary grounds for irregularity. Since we are dealing with canon law, might we not look for a reason more closely tied to Christianity itself? What about Scripture? In particular, Metzler finds the

³⁶ Richard M. Fraher, *Summa induent sancti: A Critical Edition of a Twelfth-Century Canonical Treatise* (PhD diss., Cornell University, 1978), 239, D.55: “Quocumque autem casu enormiter uiciatus fuerit quis repellendus est a promotione, puta si oculum amiserit, si pedem alterum, si digitos quorum amissione ad usum manus incommodetur.”

³⁷ Hostiensis, *Apparatus super quinque libris Decretalium* (Strasbourg 1512), fol. 126v X 1.20.7: “Dentis autem carentia non obsesset... et idem puto de parte lingue, dummodo non impediret organum vel loquela. Nam et balbus et blesus, et qui tardus loquitur sanus est... Sed et religiosum promouerem de gratia, si alias esset idoneus, dummodo loqui posset...”

roots of canonical prohibitions on the impaired in Leviticus and its emphasis on the qualifications of the priesthood.³⁸

If he be blind; if he be lame; if he have a little, or a great, or a crooked nose; If his foot, or if his hand be broken; If he be crookbacked; or blear eyed; or have a pearl in his eye, or a continual scab, or a dry scurf in his body, or a rupture. Whosoever of the seed of Aaron the priest hath a blemish: he shall not approach to offer sacrifices to the Lord, nor bread to his God.

In referring back to an excerpt of Gregory I’s *Liber regulae pastoralis* included in the *Decretum*, Hostiensis explains that these defects can be explained morally. For example, the “rupture” can refer to “one who does not continuously cultivate his indecency, but who is weighed down by it in his mind.”³⁹ Hostiensis goes on to note that some of these defects may be taken literally. Still, we can see that a straightforward reference to scripture does not provide a clear basis for barring the physically impaired from the priesthood. Moreover, Hostiensis, through Gregory, provides a moral reading not of an impairment substantiated in a person, but of the prohibition itself. The impairment itself may not be an ipso facto barrier; instead, we need to pay more attention to the perception of the impairment and the meaning that an impairment could encumber.

Nevertheless, the ability to “read” impairment morally or allegorically raises an interesting question that may help us answer the question of how canonists justified the disability within their jurisprudence. As Wheatley suggests through his study of blindness, because blinding and mutilation were key methods of punishment, impairment in any sense may raise the

³⁸ Metzler, *Disability in Medieval Europe*, 38-41. Lev. 21:18-21.

³⁹ Hostiensis, *Apparatus super quinque libris Decretalium* (Strassbourg 1512), fol 125v, X 1.20.1: “Sed et secundum legem veterem repellitur si cecus fuerit, si claudus, si paruo, si grandi, si torto naso, si frato pede, si mancus, si gibbosus, si lippus, si albuginem habens in oculo, si iungem scabiem, si impetiginem habeat in cipore vel si ponderosus. Que omnia moraliter exponuntur, xlix di. c. i, ubi tamen dicit poderosuy, dicit alia littera herniosus, Levit. xxi. Et dicit herniosus siue ponderosus secundum quod ibi exponitur, ille qui turpitudinem suam non exercet in opere continua tamen cogitatione grauata in mente. Qorum quedam seruamus ad literam. Dubia vero omnia arbitrio iudicis committuntur.” The seeming mismatch between the initial term “rupture” (herniosus) and the explanation is that, as Hostiensis explains, Gregory uses a different word “ponderosus”.

connotation of divine punishment.⁴⁰ In short, God may punish sinners with disfigurement or impairment of some kind. But was this a basis for legal consequence? The connections between sin, divine judgment and impairment do arise in canonical jurisprudence, particularly during the twelfth century. For example, let us return to the first question of Causa 15 in the *Decretum*. Gratian, as you will recall, argued that the insane are not responsible for their misdeeds. Subsequent jurists, however, took a somewhat different view. They developed a theory of “culpa precedens,” a preceding fault that led to insanity.⁴¹ One of the strongest statements of this idea comes from the canonist and theologian, Rolandus of Bologna:

To which it must be noted that madness sometimes occurs because of a hidden judgment of God without any preceding fault, and sometimes because of preceding fault. Therefore we say that those things that proceed from madness not proceeding from fault are in no way held against one by God, but those things that proceed from madness to which one has come by his own fault, there is no doubt that they are held against one.⁴²

For Rolandus, a sin that leads to insanity can be the grounds for the imputability of an act. He acknowledges that God might have other reasons beyond punishment for inflicting insanity, but implies that, in the manner of assigning blame for crimes committed while insane, humans must treat all insanity as deserved. As he states, those who commit crimes due to unmerited madness are not held liable by God, the implication being that they are by man. This view would hold sway throughout the twelfth century. Not until around 1191 did canonists challenge the idea of “culpa precedens.” The highly influential Huguccio plainly rejected this way of thinking; asking whether one is liable for things done while insane, Huguccio responded: “I say, indistinctly, no,

⁴⁰ Wheatley, *Stumbling Blocks*, 29-42, discusses the use of blinding as a punishment in medieval France and England.

⁴¹ The idea has its roots in Gratian’s own thought. Gratian tries to explain a text that stipulates a light penance for misdeeds committed while insane. “Perhaps this should be understood concerning one whose own fault has led him to insanity.” D.15 q.1 d.p.c.12 (ed. Fr. I.749-50). The text and Gratian’s tentative explanation were a later inclusion.

⁴² Friedrich Thaner, ed. *Die Summa Magistri Rolandi, nachmals Papstes Alexander III* (Innsbruck, 1874), 33, C.15 q.1: “Ad quod notandum, quod alienatio mentis aliquando est ex occulto iudicio Dei absque merito eius praecedente, aliquando ex meritis praecedentibus. Ea ergo, quae procedunt ex alienatione mentis non ex illius merito procedente, dicimus nullomo quoad Deum imputanda, quae vero ex alienatione mentis procedunt, ad quam propria culpa ventum est, ea siquidem imputari dubium non est.”

so long as the person is so out of his mind that he neither knows, nor discerns nor understands what he is doing.”⁴³ His opinion would provide the basis for almost all subsequent canonical jurisprudence on the matter. The point of this example is to show that, while canonists may have had a notion that impairment could be the result of sin, this was a fragile connection and best, and most were not willing to push it very far. As Metzler and other have noted, the connection between sickness, impairment, and sin was ambiguous at best.

If we cannot point to scripture or to sin as the context for the canonical understanding of disability, where can we turn? The early Bolognese canonist Rufinus provides a distinction on how to approach physical impairment that I believe is very instructive, and which will help unravel some of these ideas. The distinction, though long, is worth quoting in full:

“One should pay heed concerning those who are impaired in their members, that some are damaged bodily voluntarily and some involuntarily. Likewise, some are damaged in visible members and some in hidden members. We call anyone voluntarily impaired who takes a blade to himself, or wishes one to be, or consents to this without violent or extreme necessity. We call anyone involuntarily impaired who is voluntarily cut by physicians because of an illness or who is in any way unwillingly damaged. Anyone who is voluntarily mutilated in any member cannot be promoted; if he is promoted, he will cease [to exercise] his office altogether... If someone undergoes the mutilation of his members involuntarily, if they are also hidden members, then the already ordained will not be degraded, and the about to be ordained would not be prohibited even from the episcopacy... But if the member is visible, it is either great or unimportant. We consider greatness with respect to dignity or size, such as an eye, a hand, a foot, or the nose. If an unimportant member is removed involuntarily, one can still be ordained and the already ordained will not be removed. But one who loses a significant member- even involuntarily- can in no way be promoted... But what if this happens after receiving a [clerical] office? We believe that if a hand or foot is lost or so damaged that the cleric could not celebrate the mass without great deformity or detriment to his office, he must cease from celebrating the mass. Regarding the face, if one loses an eye, he will administer the office he took up, but if his nose along with the upper lip is cut off, I think that she should never serve at the altar because of his extreme deformity.”⁴⁴

⁴³ Huguccio, *Summa decretorum* (Admont, Stiftsbibliothek 7), fol. 263r, C.15 q.1 d.a.c.1: “Hic intitulatur prima questio, scilicet utrum ea que mente alienata fiunt sint imputanda, et indistincte dico quod non, dummodo ita sit mens alienata quod hoc nesciat, non discernat, , non intelligat quid agat

⁴⁴ Rufinus, *Summa Decretorum*, ed. Heinrich Singer. (Paderborn, 1902), 145-46, D.55: “Attendendum est quod eorum, qui membris debilitantur, alii sponte, alii casu corpore vitiantur; item qui casu, aliquando in membris evidentibus, aliquando in occultis. Eum autem sponte debilitatem dicimus, qui sibi ferrum apposuit vel apponi fecit vel consensit absque necessitate violenta vel nimia; casu vero copore vitiantur qui vel voluntarii propter egritudinem

This basic understanding of how to approach impairment would set the tone of canonical jurisprudence for centuries. We can see find it repeated in many subsequent canonists. Rufinus continues to emphasize that voluntary self-mutilation is absolutely forbidden. The addition, which he borrows from Paucapalea, one of the earliest canonists to comment on the *Decretum*, is the notion of visibility.⁴⁵ The key feature of the impairment that leads to disability is not its mere existence, but its publicity. The driving fear, the engine by which canonists justified the transformation of impairment into disability, was the concern over public scandal.

Scandal and the Public Good

As Richard Helmholz explains, scandal to the medieval canonists was not quite the same concept as it is today. As the canonists understood it, a scandal was “a statement, act, or sign by which one’s neighbor was offended or anyone drawn into mortal sin.”⁴⁶ Despite its more particular meaning than the modern sense of the term, scandal was a fairly broad concept. We can see a concern within canon law that an impaired cleric might serve as an occasion to lead to the laity to sin. Although canonists were unwilling to attempt reading God’s judgment into an impairment,

a medicis secantur aut alio modo inviti debilitantur. Cum itaque quispiam sponte in membro quolibet mutilatus fuerit, nec promoveri potest, et promotus, si hoc fecerit, a suo officio omnino cessabit... Cum autem casu aliquis membrorum concisionem patitur, si utique secretiora membra fuerint, tunc nec ordinatus degradabitur nec ordinandus etiam ab episcopatu prohibebitur... Si membrum evidens fuerit, aut minimum aut magnum erit; magnum autem decore vel corpulentia dicimus, ut oculus, pes, manus, nasus. Si minimum itaque membrum casu absciderit, tam poterit ordinari quam ordinatus non poterit removeri... Qui vero magnum membrum- etiam casu- perdiderit, promoveri nulla ratione valebit... Sed quid, si post susceptum officii gradum hoc ei contigerit? Credimus quia, si manum vel pedem perdiderit vel ita vitiata hec fuerint, ut nunquam sine multa deformitate vel officii detrimento celebrari missa possit, omnino a missarum celebratione cessare debet. In facie autem si oculum tantum perdiderit, susceptum officium administrabit; nasus vero si radicitus cum superno labio abscisus fuerit, puto propter deformitatem vehementem quod altaris officium numquam celebrabit.” On Rufinus, see Kenneth Pennington and Wolfgang P. Müller, “The Decretists: The Italian School,” *History of Medieval Canon Law in the Classical Period*, 121-73, here 135-36

⁴⁵ See Paucapalea, *Die Summa des Paucapalea über das Decretum Gratiani*, ed. Johann Friedrich von Schulte (Giessen: Roth, 1890), 37, D.55, sv. “qui vero per languorem a medicis secantur aut a barbaris absciditur”: “Nisi oculo aut aliquo maximo et evidenti membro careant, ordinari non prohibentur.”

⁴⁶ R.H. Helmholz, “Scandalum in the Medieval Canon Law and in the English Ecclesiastical Courts,” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kan. Abt.* 127 (2010), 258-274, here 260.

can we say the same for the laity? For the canonists, much more important than any objective connection between sin and impairment is the possibility of a perceived connection. We may be able to add to this a more general revulsion at or derision of impairment conditioned by other cultural sources. Nevertheless the canonists likely feared that the laity would not take such priests, or the doctrines they taught, seriously, that they would be more open to anti-clerical or heretical ideas. In this way, impairment might prevent a cleric from properly caring for the souls in his charge.

One major area of concern was the Eucharist. Although the laity would not physically receive the Eucharist frequently, they often partook of it visually. Eamon Duffy describes how, in large churches where multiple masses might be said simultaneously, a crowd followed after the bells being rung during the elevation to “partake” of the Eucharist several times.⁴⁷ Given this intense visual devotion, as well as more general contemporary attitudes toward impairment, we can see how the canonists hoped to preserve a pristine and reverential aura around the consecration. For example, a decretal of Alexander II (1061-1073) contained in the *Decretum* prohibited a cleric who suffered from frequent seizures from celebrating the Mass, since “it would be indecent and dangerous for someone who suffers from epilepsy to fall during the consecration of the Eucharist. But if by the mercy of God he should recover, we do not forbid him from offering the sacrifice.”⁴⁸ The fifteenth-century canonist Nicholas de Tudeschis, better known as Panormitanus, emphasized the Eucharist as a main ground for scandal: “Note that a defect of the body impedes one from promotion when it is such that it would generate a scandal

⁴⁷ Eamon Duffy, *The Stripping of the Altars: Traditional Religion in England 1400-1580*, (New Haven: Yale University Press, 1992), 95-107.

⁴⁸ C.7 q.2 c.1 (ed. Fr. I.588): “Consulimus itaque, ut si frequenter hoc morbo tangitur, ab oblatione et missarum celebratione modis omnibus prohibeatur. Indecens enim est et periculosum ut in consecratione Eucharistiae morbo victus epileptico cadat. Si vero Dei misericordia conualuerit (quandoquidem non culpa, sed infirmitas in causa) eum sacrificare iam non interdicimus.”

in celebrating [the Mass], or in the act of celebrating.”⁴⁹ Panormitanus goes on to note that a bishop can provide a dispensation to an impaired cleric conceding to him “all things pertaining to the office of a priest except for the ministry of the altar.”⁵⁰

The Eucharist is just one potential ground for scandal among many. Moreover, scandal was, as Helmholz noted, a considerably variable concept, one open to various interpretations. Goffredus of Trani, writing in the thirteenth century, noted that “what deformity or disability constitutes irregularity lies in the judgment of the superior.”⁵¹ Panormitanus maintains this idea, and notes that, in the case of a possible clerical promotion, the decision of whether a deformity is scandalous or not should be left to the judgment of the one granting the promotion.⁵²

Although scandal could be a category open to interpretation, the canonists considered that serious and visible impairment or deformity would generate scandal. As I stated above, scandal is the defining feature of canonical disability. For example, Goffredus of Trani poses a question concerning one who has an overabundance of fingers on his hand: “What if one should have six fingers on his hand? I respond that he is not impeded, since, as Ofilius says, a defect or augmentation of a limb should not be considered, but only the use of the impeded [limb].”⁵³ Goffredus seems to deny the cultural understanding of impairment as disabling and urges his readers to focus more on the actual functional impediment. He raises an example from Roman

⁴⁹ Nicholas de Tudeschis [Panormitanus], *Commentaria super libris Decretalium* (Venice 1588), fol. 91v X 1.20.1: “Nota prima quod sit vitium corporis impediens quem a promotione, quando scilecet est tale quod scandalum generat in solemniter celebrando, uel in actu solemniter celebrandi.”

⁵⁰ Nicholas de Tudeschis [Panormitanus], *Commentaria super libris Decretalium* (Venice 1588), fol. 93v, X 1.20.7: “Posset tamen cum tali et per episcopum dispensari, quamquam haberet uel prebendam, vel personatum, uel ecclesiam, vel Abbatiam... Et si sit presbyter possent sibi concedi spectantia ad officium sacerdotis preter altaris ministerium.”

⁵¹ Goffredus da Trani, *Summa super titulis decretalium*, (Lyon 1519), fol. 40r, X 1.20: “Que autem deformitas vel debilitas irregularitatem constituat est in arbitrio superioris.”

⁵² ⁵² Nicholas de Tudeschis [Panormitanus], *Commentaria super libris Decretalium* (Venice 1588), fol. 92r, X 1.20.2: “Nota quod dicatur macula inducens scandalum, vel deformitatem scandalosa, relinquatur arbitrio iudicis et promoentis uel eius cui promotio committitur.”

⁵³ Goffredus da Trani, *Summa super titulis decretalium*, (Lyon 1519), fol. 40r, X 1.20: “Quid si habeat sex digitos in manu? Respondeo non impeditur quia ut ait Offilius, defectum membri vel augmentum non consideratur, sed usus impedimenti.”

law to argue that, since this hypothetical cleric is not impeded by his sixth finger, he should not be irregular.⁵⁴ Hostiensis, however, responds to this question in a different way. He counters Goffredus’ point by distinguishing between the proper focus of secular law [Roman law in this case] and canon law. “The laws [Roman laws] do not consider the defect or augmentation of the limb, but only the impeded usage... However, we consider damage, deformity, and scandal.”⁵⁵

We can thus describe a medieval concept of disability in canon law as resting at the crossroads of clerical status, publicity, and the cultural understanding of impairment. Canonists feared that an impaired clergy would invite a lack of respect or reverence both for the clergy itself and for the sacraments and theology of the Church. The story might very well end here. However, I would like to briefly point to one further aspect of the canonical discourse of disability, one that at the same time emphasizes the concern for how impairment might be interpreted publicly while still seeking to mitigate the effects of that impairment for the individual cleric.

The Rights of the Disabled

We have seen that the possibility of scandal justifies, in the eyes of medieval canonists, the irregularity of impaired clerics. These restrictions could be quite severe, ranging from impediments to ordination or promotion, suspension from certain duties, particularly celebrating mass, or even, in the case of a leprous cleric, a ban from entering into a church. As Lucius III declares in a decretal around 1183-84, a priest afflicted with leprosy “should be removed from

⁵⁴ Goffredus draws on a text of the *Digest* relating to actions on defects in slaves Dig. 21.1.10. See *The Digest of Justinian*, ed. Alan Watson (Philadelphia: University of Pennsylvania Press, 1998), II.146: “Ofilius, again, says that if the slave has lost a finger or suffered the laceration of some limb, even though the injury be healed, he will not be regarded as healthy, if his usefulness be diminished thereby.”

⁵⁵ Hostiensis, *Apparatus super quinque libris Decretalium* (Strasbourg 1512), fol 125v, X 1.20.1: “Quicquid tamen dicant leges, aliter est de hac materia quaestum ad hoc de quo hoc agitur sentiendum, quia leges non considerant defectum membri vel augmentum, sed solus usus impedimentum... Nos autem consideramus et diminutionem et deformitatem et scandalum.”

the administration of his office due to the scandal and aversion of the people.”⁵⁶ As other canonists noted, the consequences of impairment or illness seem unjust: “thus one is punished without fault, which should not be.”⁵⁷ The ordinary gloss, building on the work of previous canonists, notes that in some cases “one is deprived [of his right] without fault, but not without cause.”⁵⁸ Scandal and its effects were so feared that they could disrupt the normal principles of canonical jurisprudence, in this case, the principle that, usually, no one should be punished or deprived of their rights without fault. Nevertheless, as the ordinary gloss to the *Liber extra* notes, “many things are left behind because of scandal.”⁵⁹

However, since scandal in the public performance of the clerical office was the basis for disability, many canonists were emphatic that the entirety of clerical status was not extinguished by the disability. A focal point for this doctrine was a decretal of Gregory I found in the *Decretum*. Gregory held that a bishop unable to discharge his duties due to mental illness could not be deposed involuntarily because of his condition. During a period of lucidity, he might voluntarily resign his office, but if he did not have the soundness of mind to do so, he would be provided with an assistant, a “*coadiutor*,” who would administer his see until his recovery or death.⁶⁰ Gregory firmly held that one could not involuntarily lose clerical status without cause, even if one is impeded from exercising that status. Although some canonists tried to argue for a

⁵⁶ X 3.6.3 (ed. Fr. II.482): “De sacerdote vero, qui diuino iudicio leprae morbo repercussus in parochiali officio fungitur, dicimus, quod pro scandalo et abominatione populi ab administrationis debet officio remoueri, ita quidem, quod iuxta facultates ecclesiae sibi necessaria, quamdiu vixerit, ministrentur.”

⁵⁷ X 3.6.4 sv. “administrationis” (Rome 1582) col. 1061-62: “Et ita sine culpa punitur, quod esse non debet.”

⁵⁸ Ibid. “In quibus casibus priuatur quis sine culpa, sed non sine causa.” Here Bernardus Papiensis, the compiler of the gloss to the *Liber extra*, draws on the opinion of an earlier thirteenth-century jurist, Tancred of Bologna. Tancred, *Apparatus in compilationem secundam*, (Melk Stiftsbibliothek 190), fol. 108r, 2 Comp. 3.5.2 sv. “fungere”: “Hii sunt casus in quibusquis priuatur iure suo sine culpa sua, sed non sine causa.”

⁵⁹ X 3.6.2 (Rome 1582) col. 1060, sv. “scandalo”: Propter scandalum enim multa sunt dimittenda.”

⁶⁰ D.7 q.1 c.14 (ed. Fr. I.572-73).

way in which disabled clerics could be removed from office, standard canonical opinion followed Gregory.⁶¹

The canonists distinguished between the possession of the rights (*iura*) of clerical status and their exercise. A disabled cleric did not lose his rights even while he may be barred from executing his office. For example, in the above-mentioned decretal, Lucius III follows the prohibition on leprous clerics administering or even entering their churches with the stipulation that such clerics should still retain their rights to be supported by the church.⁶² A *coadiutor* may be provided to administer the priest’s or bishop’s actual duties, but the cleric himself did not lose his status or his rights to support. The fourteenth-century canonist Johannes Andreae sums this up succinctly: “The *coadiutor* has the care of souls in so far as its exercise. The prelate [the disabled cleric] nevertheless retains his right, but not its exercise.”⁶³ Panormitanus could justify this retention of status and rights through the hope that the disabled cleric “would be free from his infirmity by a divine miracle.”⁶⁴ Hostiensis, however, provides an argument based more on the balance of private rights and the public good:⁶⁵

⁶¹ For example, Rufinus, 286, C.7 q.1, makes a distinction of whether a bishop’s illness is curable or incurable. If it is incurable, he holds that the bishop should be forced to resign. His argument is careful here. The canons are clear that a bishop must voluntarily resign; for this reason a mentally ill bishop cannot resign. Rufinus instead argues that the incurably ill bishop should “not only be able to petition that another be substituted for him, but also that he will be forced to make this petition to renounce all episcopal rights.” Here we can see a good lawyer at work: the bishop is not forcefully deprived of his rights, though Rufinus argues that he should be compelled to “voluntarily” renounce. He drives this point home by further maintaining that a bishop who is “out of his mind” cannot make such a petition. Huguccio would reject this opinion, as would many subsequent canonists. See Huguccio, *Summa* (Admont, Stiftsbibliothek 7), fol 107r, C.7 q.1 c.14, sv. “renunciacionis”: “Dico si uoluerit, quia non debet cogi. Licite tamen potest rogari.”

⁶² See above, n. 55.

⁶³ Johannes Andreae, *Novella super quinque libros Decretalium* (Venice 1581), fol. 42v, X 3.6.3: “Curam habeat tanquam coadiutor, et quo ad exercitium. Et prelatas nihilominus sit sed quo ad ius, non quo ad exercitium.”

⁶⁴ Nicholas de Tudeschis [Panormitanus], *Commentaria super libris Decretalium* (Venice 1588), fol. 82r, X 3.6.4: “Item posset contingere quod saltem diuino miraculo iste liberaretur ab infirmitate, et si substitutus non posset remoueri inde remaneret iste priuatus sine culpa.”

⁶⁵ Hostiensis, *Apparatus super quinque libris Decretalium* (Strassburg 1512), fol. 1.94v, X 1.9.10: “Et sic videtur in eis priuata utilitas publice preferatur... Hoc enim non est uerum. Immo ibi seruatus utraque utilitas priuata, scilicet in eo quod infirmus non remouetur; publica uero in eo quod ei coadiutor datur.”

The public good should be preferred to the private. The possible objection of the insane and infirm who are not removed does not stand. It seems that the private good is preferred to the public for these. This is not true. Rather, both are preserved, the private good in that the afflicted person is not removed, and the public in that a *coadiutor* is given to him.

Despite the serious concern with scandal and the public good that it might jeopardize, canonists still maintained the personhood and status of the disabled and relied on a rights-discourse to attempt at least to mitigate the attempts of disability.

Let us return to the original question: can we speak of an intellectual understanding of disability as separate from impairment in the Middle Ages? If we turn our gaze to the study of law, we certainly can. Canonists acknowledged that popular attitudes towards and interpretations of impairment imposed very real restrictions on the clergy. At the same time, by framing irregularity due to disability as an issue of public and private right, the canonists sought to restrict the extent of “disability” as much as they deemed possible. Impairment was not without its effects, but those effects involve a host of issues beyond the mere fact of impairment. Of course much work still needs to be done regarding medieval notions of disability, and canonical discourse is only one piece of the puzzle. Even within jurisprudence, we could look to the study of Roman law, which might offer a very different notion, since scandal would not be as powerful of a concept. Nevertheless, I hope to have shown that the intersection of religion and law produced a much richer view of disability in the Middle Ages than might be expected.

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