

# **INSTITUTES OF CANON LAW**

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Institutes of canon law by Robert Owen

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**ROBERT OWEN**

**INSTITUTES  
OF CANON LAW**



BY THE SAME AUTHOR.

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SANCTORALE CATHOLICUM ;  
OR, BOOK OF SAINTS.

Price 18s.

KEGAN PAUL, TRENCH, & CO., 1 Paternoster Square, London.  
1880.

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NOTE.—The 'Introduction to the Study of Dogmatic Theology' (1868), is *out of print*. The 'Essay on the Communion of Saints' *perished* by fire on Messrs. Paul, Trench, & Co.'s premises in April, 1883.

# INSTITUTES OF CANON LAW

BY THE

REV. ROBERT OWEN, B.D.

AUTHOR OF 'AN INTRODUCTION TO THE STUDY OF DOGMATIC THEOLOGY'

'SANCTORALE CATHOLICUM' 'AN ESSAY ON THE COMMUNION OF

SAINTS' 'THE PILGRIMAGE TO ROME, A POEM' ETC.



LONDON

J. T. HAYES, 17 HENRIETTA STREET, COVENT GARDEN

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## P R E F A C E.

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THE PRESENT WORK was commenced near twenty years ago at the instance of the late Bishop of Salisbury, the saintly Walter Kerr Hamilton. He complained to the writer that his clergy continually put questions to him, which 'the faintest tincture of Canon Law' on their part might have obviated. In those days one rarely met with any who paid attention to the subject: now we hear of 'most eminent Canonists' in our midst, yet somehow they manage to hide themselves, and remain veiled Prophets. Two works however have recently appeared, professedly translated or adapted from foreign sources (Pelliccia and Le Queux,) not claiming the merit of original research, yet deserving respectful or kindly notice.

On the Bishop's demise, I naturally shrank from prosecuting an ungrateful task. Warned by the evening-star of life, I now resume it, as a tribute of respect and affection to the only Anglican prelate, whose friendly regard I could in any sense claim. Whether he would have endorsed my judgments herein expressed, I cannot say. Events have come to pass, which call for an out-spoken utterance on



subjects, which usually demand and obtain a decorous, even timid, reserve. I write with the full sense of my responsibility to God; and am therefore undeterred by the cavils that wait on unwelcome statements, and look only unto the last remunerations.

1. Before I touch the points, which seem to me requisite to the profitable application of the Canon Law, I would beg to warn the reader what he must *not* expect to find herein. If anyone understands by 'ecclesiastical Law' the product of legal rulings and Statute Law, let him refer to Cripps and Phillimore, I know nothing of it, and do not pretend to interpret the ways of the Establishment. My province is to call attention to the principles and rules, whereby the Catholic Church grew to maturity. If much thereof still survives in the usages of the English Church, it is well. But Acts of Parliament and decisions of lawyers are not germane to the constitution of the Church of God.

Again, seeing that the Canon Law has no practical independent working among us, I have not touched the complex machinery once employed in its operation.

Again, I recognize no distinction of 'Roman' and 'English' Canon Law. What profits it to set up a phantom of Independence of Rome, on the ground of local differences, when the profession of *Catholicity* should lead us to seek points of union rather than of divergence? What Primate of All England, from

Augustine to Warham, would not have revolted from the notion of separation from the See of S. Peter, "unde exorta est sacerdotalis unitas"? How are matters mended by acknowledging the Constitutions of Papal Legates (Otho and Othobon,) as part of 'English Canon Law,' while girding at the Rescripts of their Papal masters, especially when we find so many of the latter addressed to English bishops and intended for *their* guidance, yet forming part of the Roman Canon Law?

A Doctor in Canon Law at Oxford was one who proceeded in *the Decrees* or Canon Law.<sup>1</sup> Henry VIII. would never have abrogated that Degree, had it not borne too close a relation to Rome. In truth, the most part of the Roman Canon Law is merely the tradition common to both the East and West. At the same time I allow that a great difference exists between the ancient Canon Law while the Roman empire stood, and the later portion which grew up during the tutelage of the barbarians. And it is with a feeling of despondency that I read the endorsement by Fleury of the pretensions set forth by the Bull *Unam Sanctam*.<sup>2</sup> Still, I feel it a great inconvenience to attempt to set aside, if possible, Papal enactments which have been allowed to stand even in Protestant jurisprudence. And if I must reject Papal decrees, let me be excused accepting Legatine constitutions.

<sup>1</sup> Anthony & Wood, *Fasti Oxonienses*, Vol. I.

<sup>2</sup> See below, Chap. XVIII. § 1. Note.

2. The extinction of the monasteries was fatal to the study of Canon Law. Henry Siddall in A.D. 1536 was the last Oxford Bachelor in Canon Law. One may find traces of some study thereof, as also of Scholastic Divinity, in the Caroline Divines; a circumstance which renders their resolutions so much clearer and more solid than those of later writers versed in the declamatory treatises of the Latin Fathers.

At the beginning of the eighteenth century a certain antiquarian revival took place connected with the debates in Convocation; but ever in humble vassalage to the Statute Law, (as in Bishop Gibson's Codex,) or spoilt by homely vulgarity, (as, e.g. in John Johnson's Notes on the English Canons.)<sup>1</sup>

3. Pardon me, worthy reader, if I advert to two former works, as supplying a corrective to the feeling of depression induced by dwelling on the details of Canon Law; for I venture to think thy feeling will correspond to my own? For, surely, it *is* depressing, to come across such abundant proofs of the *earthly* defilement which the Kingdom of God has encountered in its passage 'under the cloud and through the sea.'<sup>2</sup> To think of that Kingdom as a thing to be right cunningly managed by leaders of parties and by hierarchs, whose success depends on machinery and worldly gear, is of a nature to crush the soul of a

<sup>1</sup> As e.g. when he says that Stephen Langton "could no more humble himself to *the old gentleman at Rome* than to his prince at home."—Vol. II. p. 97.

<sup>2</sup> I. Corinthians X. v. 1.