

14th and 15th Centuries—Political and Institutional Developments

The tenor of the times: Johan Huizinga, *The Autumn of the Middle Ages*

Events and Councils

1347–50, The Black Death, Europe-wide invasion of plague resulting in:

1. A reduction in population that lasted for a century and half.
2. A increase of wealth of the laboring classes.
3. A continual drain of population from the countryside to the towns.
4. A change in mentality? Can we connect this development with the rise of voluntarism?

1305–1378, ‘Babylonian captivity’ of the papacy at Avignon

1. The creation of the Roman Rota.
2. Tighter control over appointments in local churches.
3. The disputed papal election of 1378, which leads to:

1378–1417, the Great Schism (Urban VI [Rome], Clement VII [Avignon])

1409–1447, the ‘age of councils’:

Pisa, 1409

Constance, 1414–1417 (election of Martin V)

Pavia, 1423

Basel, 1431–1449

Ferrara-Florence, 1438–1445

(The last two named began as one and met intermittently.)

Theoreticians of Conciliarism:

John of Paris (Jean Quidort, O.P.), c.1240–1306 (theologian, proto-conciliarist)

Lemoine, Jean (Johannes Monachus), c.1250–1313 (canonist, proto-conciliarist)

Durantis, Guilelmus, junior, c.1250–1328 (canonist, proto-conciliarist)

Marsilius of Padua, c. 1275 – c. 1342 (political thinker)

William of Ockham, c. 1288 – c. 1348 (philosopher, political thinker)

Ailly, Pierre d’, 1350–1420 (theologian conciliarist)

Zabarella, Francesco, c.1335–1417 (canonist conciliarist)

Gerson, Jean, 1363–1429 (theologian conciliarist)

1. The church is a vast corporation (*congregatio fidelium*), the general council is its representative body, it can sit over and depose popes.
2. The early canonists had also explored the problem of what was to be done with a pope who strayed. The most commonly raised problem was what was to be done with an heretical

pope. The tradition that no one could judge the pope was strong. It was one of the foundations of the theory of papal monarchy, even before the idea became current that the pope possessed the *plenitudo potestatis*. Nonetheless, no canonist could countenance the notion of an heretical pope, and a number of them were willing to extend the idea to a pope who was guilty of grievous crimes. The standard resolution of the problem was to say that a general council could depose a pope for heresy, perhaps also for crimes.

3. Writing at the height of the controversy between Philip the Fair and Boniface VIII at the beginning of the 14th century, John of Paris, was to extend the notion that the council is more truly representative of the church than is the pope.
4. Johannes Monachus held that the pope must consult with the cardinals before promulgating general legislation.
5. William Durantis the Younger espoused the powers of a general council in the effort to restore authority to the bishops that he thought was being eaten away by the papacy.

France and England

<i>France</i>	<i>Burgundy</i>
1328–50, Philip VI	
1350–64, John II the Good	
1364–80, Charles V the Wise	1363–1404 Philip
1380–1422, Charles VI the Mad	1404–19, John the Fearless
1422–61, Charles VII the Well-served	1419–67, Philip the Good
1461–83, Louis XI the Spider	1467–77, Charles the Rash
1483–98, Charles VIII	1477–1519, Mary & Maximilian

<i>England</i>	<i>The 100 Years War</i>
1307–1327, Edward II	1346, Battle of Crécy
1327–1377, Edward III	1356, Battle of Poitiers
1377–1399, Richard II	1360, Peace of Bretigny
1399–1413, Henry IV	1415, Battle of Agincourt
1413–1422, Henry V	1429, Seige of Orléans
1422–1471, Henry VI	1453, Effective end of the war
1485–1509, Henry VII	

1. With the extinction of the direct Capetian line upon the death of the last of Philip the Fair's sons without issue in 1328, the next in line to the throne was Edward III of England in the right of his mother Isabella who was a daughter of Philip the Fair. Against this claim was the fact that since the 10th century no woman had ruled over France, indeed, it could be argued that there never was a time when a woman reigned over France. *In terram Salicam mulier ne succedat* ('a woman may not inherit Salic land').
2. The first phase of the war went well for the English and badly for the French.

3. When Henry V of England arrived in France in 1415, he arrived in country that was deeply divided. The Burgundians were on his side. The French recovery under Charles VII owes much to one of the most extraordinary women of history, Jeanne d'Arc. Charles VII who appears as a fool in all the stories, was no fool. He bided his time, and when Henry died leaving England with a 9-month-old king he recovered most of the old royal domain.
4. His successor Louis XI turned his attention to the problem of Burgundy.

The Empire and Italy

The Empire:

1356, Charles IV, the Golden Bull, 7 electors: archbishops of Mainz, Trier, Köln; king of Bohemia, count Palatine of the Rhine, margrave of Brandenburg, duke of Saxony; notable for their absence: the pope, the duke of Bavaria

Italy:

The struggles of Gualfs against Ghibbelines

Milan, despotism of the Visconti (14th c to 1447), rise of the Sforza

Venice, oligarchic republic, defeat of Genoa in 1380

Florence, republic, increasingly under control of the Medici in 15th c

Papal states, alternation of humanist and politician popes, the Borgia

Naples, briefly united with Sicily under Alfonso V the Magnanimous, king of Aragon, 1416–1458, divided at his death

Local law in Italy:

1170, Milan: Act of the consuls (regulating relations between lords and tenants)

1216, Milan: *Liber Consuetudinum Mediolani*

1396, Milan: *Statuta Mediolani* (8 bks. promulgated just after Gian Galeazzo Visconti become duke of Milan, contains much of the now-lost compilations of 1330 and 1342)

1246–1324, Florence: fragments only survive of annual legislation

1293, Florence: *Ordinamenta Iustitiae* (triumph of the merchants over the magnates)

1325, Florence: *Statuto del Capitano del Popolo*; *Statuto del Podesta*

1414, Florence: *Statuta populi et communis Florentiae*

1162, Pisa: *Breve Consulium Pisanae civitatis*

1233, Pisa: *Constitutata legis et usus*

1286, Pisa: *Breve Pisani communis*

1303, Pisa: *Breve Pisani communis*

The Iberian Peninsula

<i>Castile</i>	<i>Aragon</i>
Sancho IV, 1284–1295	Alfonso III, 1285–1291
Ferdinand IV, 1295–1312	James II, 1291–1327*
Alfonso XI, 1312–1350	Alfonso IV, 1327–1336

Peter the Cruel, 1350–1369	Peter IV, 1336–1387
Henry II (of Trastamara), 1369–1379	John I, 1387–1395
John I, 1379–1390	Marin I, 1395–1410
Henry III, 1390–1406	Ferdinand I, 1412–1416*
John II, 1406–1454	Alfonso V, 1416–1458*
Henry IV, 1454–1474	John II, 1458–1479*
Isabella, 1474–1504	Ferdinand II, 1479–1516

In Castile, a series of disputed successions from Alfonso X to Isabella. During the reign of Alfonso XI (1348), we get the *Ordinamento de Alcala*. Ferdinand I of Aragon was the younger brother of Henry III of Castile. (Their mother, Eleanor, was the oldest daughter of Peter IV of Aragon.) This connection made the the union under Ferdinand II of Aragon and Isabella of Castile easier. Kings of Aragon with a couple of exceptions noted with an * were also kings of Sicily. If they were not, the king of Sicily was frequently a close relative.

A Way to Think About These Developments

1. A widening to the horizons of ordinary people.
2. The rise of phenomenon of lay spirituality.
3. The emergence of the vernacular.
4. A crisis of legitimacy?
5. The ultimate decline of representative institutions.

The Creation of the *ius commune*:

It doesn't mean what "common law" means in England; rather it means the law that Europeans have in common, a combination of Roman and canon law, to be distinguished from the customary law of a particular city or region or the law embodied in the statutes, customs, or *fueros* of a particularly city or region. In 1348 Alfonso XI of Castile declared that the *fuego real* was to be the basic law for Castile and the *Siete Partidas*, essentially a work of the *ius commune*, were to be the secondary authority, the authority to be used when the *fueros* were silent. The same notion of a hierarchy of sources prevailed over most of Italy and southern France as well. Local statute was primary. If it applied to the case, it was binding. After that came the *ius commune*. But the power of the *ius commune* was even greater than the hierarchy would seem to suggest, because the local statutes were interpreted in the light of the *ius commune*. The terminology and structure of the *ius commune* was the terminology and structure that every trained jurist used, and jurists were increasingly used as judges and consultors.