

# WILLIAM LYNDWOOD: MEDIEVAL CANON LAWYER

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William Lyndwood lived from c. 1375 to 1446. Modern scholars have described him, variously, as: ‘the best known of all medieval English canonists’ (John Baker); ‘medieval England’s leading canonist’ (Richard Helmholz); and ‘a canonist who may well be compared favourably with his continental peers’ though largely ‘unquarried’ (Walter Ullmann). Unquarried, that is, until a book was written by Brian Ferme in 1996 about Lyndwood and testamentary law.

William Lyndwood is, of course, most well-known for his treatise, *Provinciale*, which he wrote around 1433. I deal here with the legal world in the time of Lyndwood; his life and career; the *Provinciale* editions; its content; and its use.

## THE LEGAL WORLD IN LYNDWOOD’S TIME

The legal world in which he lived was dualist - spiritual and temporal. It had features we recognise today. The western Latin church, of which England and Wales were part, was regulated by canon law – the law of the church. The so-called conciliar controversy – about where supreme authority lay in the church (pope or council) - would resolve, as before, in favour of the papacy.<sup>1</sup> The pope was the principal legislator. Papal canon law was found in texts - containing principles and rules, rights and duties. They included the *Decretum* of Gratian (c. 1140), the *Liber Extra* of Pope Gregory IX (1234), the *Liber Sextus* of Pope Boniface VIII (1298), the *Decretals* of Clement (1305-34), the *Extravagantes* of John XXII (1316-34) and the *Extravagantes Communes* (c. 1300-1480).

Alongside papal law was the native law of the Roman church in England and Wales - such as the legislation of Provincial Councils, of Papal Legates and of Archbishops. These two bodies of church law – the papal and continental, and the native or domestic - regulated so much in the lives of clergy and laity alike – church governance and patronage, ministry and discipline, doctrine and liturgy, contracts and uses, and marriages, wills, and tithes. A hierarchy of church courts enforced the law: archdeacons’ courts, diocesan courts, provincial courts, and appeal courts in Rome. And a professional class of lawyers administered the courts - trained in the canon law faculties at Oxford and Cambridge.

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<sup>1</sup> The movement addressed the claims of rival popes in Rome and Avignon (1378-1417). The Council of Pisa (1409) failed to end it. The Council of Constance (1414-18) proclaimed its own authority over the pope. The Council of Basel (1431-49) was inconclusive. But the 5th Lateran Council (1512-17) condemned conciliarism.

In turn, alongside the written canon law was the unwritten common law of England – ‘the custom of the realm’ – and, increasingly, written law in parliamentary statutes. These were enforced by the royal courts (like Common Pleas and King’s Bench). Access to court was by royal writ, such as writs of trespass (which developed into our law of tort and crime) and writs of debt and covenant (forerunners of today’s contract law). By the 15th century, judicial precedent was developing. Common lawyers were trained at the Inns of Court.

Importantly, the jurisdictional boundaries of the common law and canon law were stable. The common law and its courts dealt with ‘temporal’ and canon law and church courts with ‘spiritual’ matters. But, ultimately, if the stakes were high enough, ecclesiastical jurisdiction was policed, chiefly by the writ of prohibition, to prevent church courts from trespassing on common law matters.

### THE LIFE AND CAREER OF LYNDWOOD

William Lyndwood was born in Linwood, a village near Market Rasen in Lincolnshire, c. 1375. John Lyndwood was his father and Alice was his mother. John was a wool merchant. He died in 1419 leaving an estate of over £500 – he left £10 to erect a monument in his memory. There is indeed a monumental brass in St. Cornelius Church at Linwood. It shows the family - parents and seven children. In it, William wears the robes of a Cambridge Doctor of Law.

He studied there, at Gonville Hall (founded 1348). There is an inscription in the old library of (what is now) Gonville and Caius College asking us to pray for him. He is said to have become a fellow of Pembroke Hall (now College). He refers to his lectures on canon law in his *Provinciale* - but they have not survived – and how he lectured at Oxford. By 1403 he was a Bachelor of Civil Law and by 1407 a Doctor of Canon Law and a Doctor of Civil Law.<sup>2</sup>

At the same time, Lyndwood was ordained deacon in 1404 and priest in 1407. Throughout his life, he held many benefices - as sources of income rather than to engage in ministry. For instance, in 1403 he became Rector of Walton on the Wolds in Leicestershire - but surrendered it in 1410 for Windfrith Newburgh in Dorset. In 1411, the pope granted him a dispensation to hold for seven years benefices in plurality – the dispensation was made perpetual in 1421. Later he was Rector of Shoreham in Kent, All Hallows, Broad Street London, and Tring in Hertfordshire. He also held cathedral prebends at Exeter, Hereford, Lincoln (where he was also Archdeacon of Stow), St Davids (as prebend of Llanwrthwl, 1421-42), Salisbury, and Bath and Wells – this would not be allowed today!

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<sup>2</sup> Thomas Fuller, *History of the Worthies of England* (1662), ed. J. Freeman (London, 1952) 332: this records that Lyndwood ‘proceeded doctor of laws (probably rather by incorporation than constant education’ at Oxford.

His career was remarkable. One year after graduation, he was the judge of Salisbury consistory court. In 1414, Archbishop Chichele made him chancellor and auditor of causes at Canterbury, and in 1417 Dean of the Canterbury provincial Court of Arches. He dedicated the *Provinciale* to Chichele. He took part in proceedings against the Lollards. In the 1420s, he served as prolocutor of the clergy in five Canterbury Convocations. And in 1431 he preached at the opening of Parliament on behalf of John Kemp, the Archbishop of York.

In the next decade, he was in royal service, representing King Henry VI in France, Holland, Flanders, Prussia, and Portugal – and at the Council of Basel in 1433 during the conciliar controversy. He was also an admiralty commissioner, Keeper of the Privy Seal (1432-43), and involved in founding Eton College and King's College, Cambridge. And, of course, in 1441 he was appointed as Bishop of St Davids. Lyndwood died 21 October 1446. He left one law book to Oxford and two to Cambridge. He was buried in the chantry of Our Lady of Pew in St Stephen's Chapel, Westminster. A body with a crozier, thought to be his, was found there in 1852 and reinterred in Westminster Abbey.

#### THE *PROVINCIALE* OF LYNDWOOD: TEXT AND EDITIONS

It was for not this illustrious career, though, that Lyndwood is remembered. It is as author of the *Provinciale* that he made a lasting contribution to canon law. The book is a glossed edition of the conciliar and synodal legislation of the province of Canterbury. It deals with law enacted from 1222 to his time. He says in the preface that Chichele asked him to write it. By 1422 he had edited the source material, the legislative texts. From 1423 he worked on the gloss. He finished it by 1430. On 25 January 1434 he completed the index. In it his name appears as Latinised: Gulielmus de Tylia Nemore: linden wood/lime grove.

The book was for those more concerned with provincial law than the general law of the church - for clergy, he writes, 'commonly unlearned and ignorant of law', and for archdeacons. In the centre of each page is the text of the law, and around it his gloss or commentary on it. The format was standard for continental and English canonists: John Ayton in the 14th century had collected and added a commentary on the native laws issued at church councils in London in the 13<sup>th</sup> century by papal legates Otto and Ottobuono. Lyndwood's *Provinciale*, though, was up-to-date, wider in its scope, and full of technical citations - and it was circulated widely: at least fifty-seven manuscripts were made of it.

Lyndwood modelled his ordering of the subjects treated in the *Provinciale* on that of the five books of the collection of Decretals of Pope Gregory IX - the *Liber Extra* (1234) – namely: *iudex, iudicium, clerus, connubia, crimen*. The *Provinciale* has 75 titles (compared with 185 in the decretals) and 240 chapters.

As Maitland pointed out, Lyndwood has only 4 chapters on marriage, whereas the Gregorian decretals had 166 chapters on it. Also, Lyndwood did not set out the source materials in their historic or chronological order. One key difference between *Provinciale* and other contemporary works of canon law (as Ferme points out) was that: ‘The continental collections were usually issued by metropolitan or diocesan authority, but Lyndwood’s remained an unofficial book despite the fact that Chichele had urged him to undertake the project, possibly underlining the constant English view that local laws were perceived as supplements to the *ius commune*’, the general law of the church. Interestingly, Lyndwood includes two instruments on church matters from English temporal law: *Cicumspecte agatis* (1286) and some royal replies to *Articuli cleri* (1316).

But Lyndwood may not have been a perfectionist or a purist. C.R. Cheney discovered in the *Provinciale* false attributions, errors of date and transcription, and changes of wording. For example, a decree of Winchelsey (Archbishop of Canterbury 1293-1313) put chancel repair liability on the rector; but Lyndwood recognised that custom (such as in London) may place the duty on parishioners.

The *Provinciale* was also one of the first law books ever printed in England. It appeared around 1483, two years after common lawyer Littleton’s book *Tenures* (1481). It was printed at Oxford by Theoderic Rood (from Cologne), then in Paris in 1501 and 1505 (our edition), and at Antwerp in 1525. John Ayton’s gloss is appended to the Paris editions which have a woodcut with Lyndwood’s coat of arms – but it differs from those on Linwood church brass. The edition which is most commonly used today is that printed at Oxford by the university printer in 1679 – it is dated 5 July 1678 and identifies the publisher as Richard Davis – again, John Ayton’s gloss was also included with separate pagination.

As well as these editions of his source materials – the laws - and commentary, there were other editions of only the legislative texts without his gloss. The first was printed in 1496 by Wynkyn de Worde, another German (Winandus van Worden, d. c. 1534) who worked at Caxton’s house. Its title is: *Constitutiones provinciales ecclesiae Anglicanae*. It was re-printed in 1499 (by de Worde and Richard Pynson, from Normandy, d. c. 1529), c. 1505 (by Pynson), in 1508, 1517, 1526 and 1529 (all by de Worde), and in 1557 (by Thomas Marshe).

All these editions were in the original Latin. But in 1534 Robert Redman published an English translation of the sources (but not gloss): ‘Constitutions Provinciales’. This may have been prompted by the plan in a statute of 1534 to revise the canon law for the new, established Church of England which came to nothing (till 1603). The next edition was in 1664 by Robert Sharrock (d. 1684) of New College, Oxford, who (according to Anthony Wood) was ‘learned in divinity, the civil and common law, and very knowing in vegetables’!

## LYNDWOOD AND THE AUTHORITY OF CHURCH LAW

The *Provinciale* is valuable, then, not so much for the sources Lyndwood relies on, but for his gloss, the commentary. It is of course not a complete statement of canon law applicable in England – that is, the general law or *ius commune* of the church - its *corpus iuris canonici*. The provincial legislation of Canterbury itself, therefore, was not comprehensive. For example, the law of marriage formation was found in the general law of the church;<sup>3</sup> there was no English church law on this subject – so Lyndwood simply points us to the *ius commune*.

And he cites the latest continental learning e.g. Johannes ab Imola who was alive in 1430. Not only is his work a technical gloss on law – as Helmholz shows, Lyndwood is also keenly interested in spiritual themes, and these are evident in his treatment e.g. of clergy education, clergy hospitality, the importance of protecting the pious wishes of testators, and the value of keeping promises. However, let us explore in a little more detail one aspect of his work.

Lyndwood and the themes he explored in the *Provinciale* were the subject of a legendary debate in the nineteenth century between William Stubbs and Frederic William Maitland. William Stubbs (1825-1901) was Regius Professor of Modern History at Oxford 1866-84, Bishop of Chester from 1884-89 and Bishop of Oxford from 1889-1901. Frederic William Maitland (1850-1906) was Downing Professor of the Laws of England at Cambridge (1888).

Stubbs maintained that the English church was independent of Rome; papal canon law was binding on the church in England and Wales only if ratified in native provincial church councils; and its church courts applied the native law even if in conflict with papal law. It has been quipped that for Stubbs, the English church was protestant before the Reformation and catholic after it!

However, Maitland argued that most papal law was absolutely binding of itself, like binding statute law. Stubbs's evidence only related to cases where royal law forced church courts to depart from papal law (e.g. by writs of prohibition). Therefore, outside these circumstances, the evidence was: the English church courts accepted and applied papal law. Maitland found no instance where Lyndwood denied that Roman papal law did not have force in England.

In a detailed critique of Stubbs and Maitland, the modern scholar Richard Helmholz writing in 1990 maintained that the Stubbs-Maitland choice need not be made. Their positions were too positivist – they erred in seeing the issue as

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<sup>3</sup> That is, what today the Roman Catholic Church calls its 'universal law' as opposed to the 'particular law' of e.g. national episcopal conferences or of diocesan bishops.

one of competing sovereignties - Rome and England; neither Stubbs nor Maitland accommodated how medieval canonical jurisprudence allowed flexibility and local variation. For Helmholz, Lyndwood simply participated in this tradition. The *ius commune* itself allowed for regional law and local custom, so that the province of Canterbury could adopt rules supplemental to that general law of the church – or diverging from it - if they were not in conflict with it and could be justified by their reasonable long usage in England.

For example: the *ius commune* punished ‘spiritual’ insults (e.g. ‘you have the conscience of a dog’), but a constitution of the Council of Oxford 1222 penalised ‘temporal’ insults too (e.g. ‘you are a thief’). Papal law treated patronage as purely spiritual, but provincial law recognised temporal jurisdiction over it. And papal law required two witnesses to prove a will, but Canterbury permitted proof by one/two witnesses, i.e. the universal substantive rule that a will had to be witnessed was clearly met by English church law.

Indeed, sometimes Lyndwood dismisses provincial law as *ultra vires* papal law, even if based on long usage. For example: native provincial law allowed nuns to leave their cloisters for recreation or to beg alms, and money paid instead of tithes in kind could be less than one tenth of one’s income - these Lyndwood condemns as contrary to the *ius commune*. He also accepts that, sometimes, the non-use of provincial law means it falls into desuetude and no longer binds – for instance, although the Council of Oxford 1222 required clergy to wear the *cappa clausa*, this rule had fallen into disuse and as such was no longer binding.

## THE CONTINUING AUTHORITY OF LYNDWOOD

Lyndwood knew that his *Provinciale* would become a standard work. His will directs that the exemplar be kept chained in St. Stephen’s Chapel, Westminster. The later editions attest to its popularity. Its durability beyond the Reformation was also boosted by the Submission of the Clergy Act 1534: ‘such canons, constitutions, ordinances and synodals provincial being already made, which be not...repugnant to the laws, statutes and customs of the realm, [and] King’s prerogative royal, shall now still be used and executed as they were afore the making of this Act’. Accordingly, pre-1534 Roman provincial law was to continue to apply to the established Church of England. And so Lyndwood’s gloss on it retained its authority for aspects of the new royal ecclesiastical law.

First, it was used polemically; for example: Richard Cosin (d. 1597), Dean of Arches in 1583 and anti-Puritan, used it, his *Apologie for Sundrie Proceedings by Jurisdiction Ecclesiastical* (1593), to defend the ecclesiastical jurisdiction over the laity; and, a century later, Edmund Hickerlingill in his *The Test or Trial*

of the *Goodness and Value of Spiritual Courts* (1683) uses a passage in *Provinciale* in which Lyndwood objects to customary ecclesiastical fees.

Second, *Provinciale* was cited long after the Reformation by commentators on ecclesiastical law, such as: John Godolphin's *Repertorium Canonicum or Abridgement of the Ecclesiastical Laws of this Realm* (1678); Edmund Gibson's *Codex Juris Ecclesiastici Anglicani* (1713); Richard Grey's *A System of English Ecclesiastical Law* (1730); Richard Burn's *Ecclesiastical Law* (1763); Robert Phillimore's *Ecclesiastical Law* (1873); Robert Owen's *Institutes of Canon Law* (1884); and Thomas Lacey's *A Handbook of Church Law* (1903) who says *Provinciale* 'was formally approved by the Convocation of York, in...1462 and thenceforward became one of the main standards of ecclesiastical law' here.

Third, the *Provinciale* remained a widely recognised authority in English courts. A decade or so before its use in the case of *Hutchins v Glover* (1618), Thomas Compton, London diocesan chancellor (1605-09), held that a statute of 1535 on tithes was 'but an explanation of the gloss in Lyndwood'. In the eighteenth century it was cited in e.g. the Arches Court decision in *Patten v Castlemain* (1753), to justify customary payments to clergy to conduct marriages. Likewise, in the nineteenth century, Lyndwood was described in *Miller v Bloomfield* (1823) as one of the 'ancientest and the best of our canonists', and in *Mastin v Escott* (1841) as 'a most learned and sound expositor of the law' of the English church; and *Titchmarsh v Chapman* (1844) used him on validity of baptism.

The Lyndwood legacy extended into the twentieth century. The report of the Archbishop's Commission on Canon Law 1947 cites him on 43 separate occasions – including in the marginal notes of its draft Canons Ecclesiastical in which the *Provinciale* is identified as a source of norms – this draft was the starting point for the revision of the English canons in the 1960s. And there were studies on him in 1996 (Ferme), 1998 (Baker), and 2018 (Helmholz).

Remarkably, the *Provinciale* is still cited today by practitioners of ecclesiastical law in the Church of England. *Halsbury's Laws of England*, in its latest 2011 edition on Ecclesiastical Law, accepts its importance in two key sentences: 'The principal source of our knowledge of the application of the canon law within England is the *Provinciale* of Lyndwood. The constitutions contained in [it], the general usages of the church and certain portions of the canon law admitted by those usages are still part of the law of the Church of England' (par. 4). Mark Hill QC, in the leading modern commentary on the law of the Church of England, *Ecclesiastical Law* (now in its fourth edition, 2018) also cites him.

Finally, in 1996, the Ecclesiastical Law Society (founded in 1987) and the (Roman Catholic) Canon Law Society of Great Britain and Ireland (founded in

1957) jointly established the biennial Lyndwood Lecture as an ecumenical resource – Lyndwood represented the common canonical tradition which Anglicans and Roman Catholics share from the undivided western church. The first lecture was given by Brian Ferme of Campion Hall, Oxford, later Dean of the Canon Law Faculty at the Lateran University Rome and currently secretary of the Council for the Economy of the Vatican - his topic was Lyndwood. I had the privilege of giving the second Lyndwood Lecture in St. Paul’s Cathedral in 1998. This led to the establishment of the Colloquium of Anglican and Roman Catholic Canon Lawyers in Rome in 1999 – its first meeting included an audience with Pope John Paul II. The work of the Colloquium mirrors Lyndwood in spirit: like him it seeks to reconcile, in this case, the universal law of the Roman Catholic Church (found in its Code of Canon Law 1983) and the provincial laws of autonomous churches of the global Anglican Communion.

### Conclusion

The legal world in which Lyndwood lived was pluralistic. Canon law - papal law and native provincial law - governed so much of the lives of the faithful. The royal common law regulated their temporal existence. They co-existed.

Lyndwood, trained in canon law, had a stellar career - as a judge, as a diplomat, and as the most celebrated writer on the provincial law of Canterbury. The *Provinciale* was novel because it was not a gloss on the church’s general law – like most continental canonists’ treatises - but on particular law: the provincial law of Canterbury. *Provinciale* is in turn a durable legal text: its numerous editions, over three centuries, attest to its abiding significance. Its survival was also ensured by parliamentary statute - the Submission of the Clergy Act 1534.

But equally, the continuous use of it by commentators on English ecclesiastical law from Godolphin to Lacey, by the courts at least until the nineteenth century, by the Archbishops’ Commission of 1947, and by ecclesiastical lawyers even today, clearly reflect its enduring authority. The Lyndwood Lecture set up in 1996 means that he even plays a part in the ecumenical world. What greater proof is needed of the lasting value of the work of the Lincolnshire lad of Linwood (very knowing in canonics), a truly great bishop of St. Davids.

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